

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.

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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

¹ So in original. Does not conform to section catchline.

² So in original. Probably should be followed by a period.

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);¹ 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.

¹ 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.

“(3) The provisions of subsections (d), (e), (f), (g), (h), (i), (j), and (k) of section 5305 of title 5, United States Code, shall apply with respect to any concurrent resolution referred to in paragraph (1) of this subsection, except that for the purpose of this paragraph the reference in such subsection (e) to 10 calendar days shall be considered a reference to 30 calendar days.

“(4) During the 5-year period referred to in paragraph (1) of this subsection, the Director of the Office of Personnel Management shall include in each report required under section 3135 of title 5, United States Code (as added by this title) an evaluation of the effectiveness of the Senior Executive Service and the manner in which such Service is administered.”

CONGRESSIONAL FINDINGS RESPECTING CONTINUATION OF SENIOR EXECUTIVE SERVICE

Pub. L. 98-615, title III, § 301, Nov. 8, 1984, 98 Stat. 3217, provided that: “The Congress finds that the Senior Executive Service should be continued indefinitely.”

Executive Documents

EX. ORD. NO. 13714. STRENGTHENING THE SENIOR EXECUTIVE SERVICE

Ex. Ord. No. 13714, Dec. 15, 2015, 80 F.R. 79225, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to strengthen the recruitment, hiring, and development of the Federal Government’s senior executives; I hereby order as follows:

SECTION 1. Policy. It is in the national interest to facilitate career executive continuity between administrations; to increase senior leadership attention to, and involvement in, executive recruitment; to reduce unnecessary burdens on applicants for executive positions; and to efficiently document demonstrated executive experience. Furthermore, it is imperative to periodically explore and promote new selection methods that effectively and efficiently identify the most capable and talented candidates for executive leadership positions to enhance the breadth and diversity of experiences among our Federal executives; to better support, recognize, and reward our executives, especially our top performers; and to strengthen executive accountability, all while maintaining a system that is focused on the public interest and free from improper political influence. An important aspect of strengthening our Senior Executive Service (SES) members is valuing the work they do every day, rewarding excellence, professionalism, and outstanding achievement through special act awards, Presidential Rank Awards, and other non-monetary and honorary awards. Consistent with the requirements of Executive Order 13583 of August 18, 2011 (Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce), and with merit-based principles, this order continues to support executive departments and agencies (agencies) to develop and implement a comprehensive, integrated, and strategic focus on diversity and inclusion as a key component of the recruitment, hiring, retention, and development of their SES cadre. Pursuing these goals will significantly improve the Federal Government’s ability to serve the American people. Unless otherwise noted, this order applies to career members of the SES.

Section 2 of this order establishes, under the President’s Management Council (PMC), a Subcommittee to advise the Office of Personnel Management (OPM), the PMC, and the President on senior executive matters, help monitor execution of an important set of executive reforms contained in section 3 of this order, and help keep the Federal Government’s executive management practices current and effective. In order to identify and maximize the use of best practices, requirements in sections [sic] 3(b)(i)–(iv) of this order will be implemented in three phases, with Phase I consisting of seven agencies, which will execute those reforms in fis-

cal year (FY) 2016; Phase II consisting of seven agencies, which will execute those reforms in FY 2017; and Phase III consisting of all other agencies, which will execute those reforms in FY 2018.

SEC. 2. Establishment of PMC Subcommittee to Strengthen the Senior Executive Service. There is established the PMC Subcommittee to Strengthen the Senior Executive Service (Subcommittee) to inform and support Government-wide priorities for improved management of senior executives identified by the Deputy Director for Management of the Office of Management and Budget (OMB) in consultation with the Director of OPM. The Subcommittee shall consist of five members of the PMC: the Deputy Director for Management of OMB, the Director of OPM, and three other members of the PMC. The Subcommittee will be advised by at least two career members of the SES to be determined by the members of the Subcommittee, and shall collaborate with the Chief Human Capital Officers Council. Expressions of interest to serve on the Subcommittee will be solicited, and final selections will be made by the Deputy Director for Management of OMB in consultation with the Director of OPM. The Subcommittee will advise OPM, members of the PMC, and the President on ways to strengthen and improve the SES workforce, as outlined in this order. In addition, it will identify any Government-wide obstacles it perceives to executive management, assist OPM in facilitating career executive continuity between administrations, and facilitate communication among the SES cadre.

SEC. 3. Requirements. Under the direction, or, in the case of sections 3(a)(i) and 3(b)(ii) of this order, the guidance, of the Director of OPM, and in consultation with OMB and the PMC Subcommittee, agencies shall undertake the following actions:

(a) *Actions for Immediate Government-wide Implementation.*

(i) Starting in FY 2017, agencies should limit their aggregate spending on agency performance awards for SES and Senior Level (SL) and Senior Scientific or Professional (ST) employees to 7.5 percent of aggregate SES and SL/ST salaries respectively. OMB and OPM shall undertake a review of, and revise as appropriate, their current guidance regarding aggregate spending on such awards. In addition, agencies should allocate awards in a manner that provides meaningfully greater rewards to top performers. Within 120 days of the date of this order, OPM shall issue, as appropriate, additional guidance regarding the distribution of such awards.

(ii) The heads of agencies with SES positions that supervise General Schedule (GS) employees shall implement policies, as permitted by and consistent with applicable law and regulation, for initial pay setting and pay adjustments, as appropriate, for career SES appointees to result in compensation exceeding the rates of pay, including locality pay, of their subordinate GS employees. Similar policies shall be implemented by heads of agencies for Senior Professional (i.e., SL or ST) employees that supervise GS employees. Such policies and practices support, recognize, and reward agency executives, especially top performers, in a manner commensurate with their roles, responsibilities, and contributions, and may increase the competitiveness of SES positions with comparable positions outside of Government.

(iii) Within 90 days of the date of this order, OPM shall evaluate the current Qualifications Review Board (QRB) process and issue guidance to agencies about materials that would be acceptable for QRB consideration and that will serve as an alternative or replacement to the current lengthy essay requirement for QRB submission, which may deter qualified applicants for SES positions or put an additional burden on human resources staff. The guidance shall also advise agencies about ways to streamline their initial application requirements for SES positions, including evaluation of options, such as allowing individuals to apply by only submitting a resume-based application and any additional materials necessary to determine relevant quali-

fications, consistent with the new QRB submission requirements.

(iv) Within 120 days of OPM issuing the guidance described in section 3(a)(iii) of this order, the heads of agencies with SES positions shall examine the agency's career SES hiring process and make changes to the process to make it more efficient, effective, and less burdensome for all participants. Agencies shall simplify the initial application requirements for SES positions consistent with the guidance issued in section 3(a)(iii) of this order, and should only request critically necessary technical qualifications, with the goal of minimizing requirements that may deter qualified applicants from applying. Agencies shall also monitor time to hire of SES positions, and identify appropriate process improvements or other changes that can help reduce time to hire while ensuring high quality of hires.

(v) By May 31, 2016, the heads of agencies with 20 or more SES positions shall develop and submit to OPM a 2-year plan to increase the number of SES members who are rotating to improve talent development, mission delivery and collaboration. While agency specific targets will not be required, this order establishes a Government-wide goal of 15 percent of SES members rotating for a minimum of 120 days (including to different departments, agencies, subcomponents, functional areas, sectors, and non-federal partners) during FY 2017, and thereafter, in order to ensure the mobility of the corps while also maintaining stability of operations. Within 45 days of the date of this order, OPM shall issue guidance for implementation of section 3(a)(v) of this order. OPM shall evaluate the percentages set forth in this subsection on an ongoing basis and make adjustments as necessary and appropriate. These plans shall take into consideration the policy priorities of the agency, agency needs and rules in the context of administration transitions, needs identified in agency hiring plans and succession plans, the development opportunities listed in individuals' Executive Development Plans (EDP), and the Federal Government's interest in cultivating generalist executives with broad and diverse experiences who can lead a variety of organizations. These plans shall build on existing succession management processes and those established in section 3(b)(i) of this order to ensure high potential and top performers have an opportunity to cycle through rotations. These plans shall also incorporate, as appropriate, flexibilities agencies have such as the Intergovernmental Personnel Act (implemented in 5 CFR part 334) to encourage SES members to pursue temporary assignments to State and local governments, colleges and universities, tribal governments, and other eligible organizations, and to better understand the impact of the Federal Government's work on those it serves. Finally, these plans shall include an assessment of the degree to which these rotation assignments achieve the desired goals for the individual and agency.

(b) *Actions for Phased Implementation.* Under the direction, or, in the case of section 3(b)(ii) of this order, the guidance, of the Director of OPM, in consultation with OMB and the PMC Subcommittee, the reforms listed in sections [sic] 3(b)(i)–(iv) of this order shall be implemented by agencies on the following schedule: the Secretaries of Defense, Energy, Health and Human Services, Housing and Urban Development, and Veterans Affairs; the Administrator of General Services; and the Director of OPM shall implement these reforms by September 30, 2016; the Secretaries of Agriculture, Education, Labor, and Transportation, and the Administrators of the National Aeronautics and Space Administration, the Environmental Protection Agency, and the Small Business Administration shall implement these reforms by September 30, 2017; the Secretaries of State, the Treasury, the Interior, Commerce, and Homeland Security, the Attorney General, and the Administrator of the U.S. Agency for International Development, as well as the Directors of OMB and the National Science Foundation, shall implement these reforms by Sep-

tember 30, 2018. By October 1 of each year, OPM shall issue additional guidance after each phase of implementation that reflects lessons learned and any adjustments to these reforms based on the agencies that have implemented them. By the respective date specified above, the heads of agencies shall:

(i) Establish an annual talent management and succession planning process to assess the development needs of all SES members, and SL and ST employees as appropriate, to inform readiness decisions about hiring, career development, and executive reassignments and rotations. These assessments shall include input from each executive, as well as the executive's supervisor, and shall be used to recommend development activities and inform the organization's succession planning, decisions about duty assignments, and agency hiring plans;

(ii) Proactively recruit individuals for vacant SES positions and regularly review those recruitment efforts at the Deputy Secretary (or direct designee) level on at least a quarterly basis, consistent with existing rules and regulations. Establish a mechanism to track, and raise for appropriate senior-level attention, information about each position that agencies are seeking to fill, including, at a minimum, source of the recruitment, number, quality and diversity (as available) of applicants, source of applicants (subcomponent, agency or non-government), and timeliness of the hiring process. Use the talent management and succession planning process described in section 3(b)(i) of this order and agency hiring plans to inform these recruitment efforts; and develop a tailored outreach strategy for proactive recruitment for key strategic positions;

(iii) Require supervisors of executives in their agency to work with their subordinate executives to update EDPs for each executive required by 5 CFR part 412.401, to include at least one developmental activity annually and at least one leadership assessment involving employee feedback (for example, 360 degree-type reviews) every 3 years to inform each executive's developmental needs. In addition, non-career SES and equivalent appointees should also have one leadership assessment during their first 2 years, and additional assessments every 3 years thereafter; and

(iv) Establish a formal Executive Onboarding Program informed by OPM's Enhanced Executive Onboarding Model and Government-Wide Executive Onboarding Framework, which shall provide critical support and guidance to executives through their first year of service in new positions, consistent with guidance to be issued by OPM no later than 60 days after the date of this order. Onboarding shall be provided for career and non-career SES, SL and ST employees, and SES-equivalent positions.

SEC. 4. *Additional Implementation Considerations.* (a) *Actions for Agencies with SES-Equivalent Positions.* Certain agencies have independent authorities enabling them to establish positions that are equivalent to SES or Senior Professional positions, or an executive personnel system that includes such positions. Whether the positions or employment systems are established in title 5 (for example, FBI/DEA SES) or in other titles of the United States Code (for example, Senior Foreign Service, Defense Intelligence SES, Senior National Intelligence Service), the agency head shall determine the extent to which the agency implements policies and processes to support objectives identified in sections 3(a) and 3(b) of this order for such positions consistent with the agency's authorities and purposes for which the law provides them, with such consultation with the Director of OPM, OMB, and the PMC Subcommittee as the agency may require.

(b) *Agency Status and Reporting.* Within 45 days of the date of this order, OPM will issue guidance, concurrent with guidance in section 3(a)(v) of this order, that defines regular reporting on the status of each agency's implementation of the provisions in this order.

SEC. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

BARACK OBAMA.

§ 3132. Definitions and exclusions

(a) For the purpose of this subchapter—

(1) “agency” means an Executive agency, except a Government corporation and the Government Accountability Office, but does not include—

(A) any agency or unit thereof excluded from coverage by the President under subsection (c) of this section; or

(B) the Federal Bureau of Investigation, the Drug Enforcement Administration, the Central Intelligence Agency, the Office of the Director of National Intelligence, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, Department of Defense intelligence activities the civilian employees of which are subject to section 1590 of title 10, and, as determined by the President, an Executive agency, or unit thereof, whose principal function is the conduct of foreign intelligence or counterintelligence activities;

(C) the Federal Election Commission or the Election Assistance Commission;

(D) the Office of the Comptroller of the Currency, the Office of Thrift Supervision,¹ the Resolution Trust Corporation, the Farm Credit Administration, the Federal Housing Finance Agency, the National Credit Union Administration, the Bureau of Consumer Financial Protection, and the Office of Financial Research;

(E) the Securities and Exchange Commission; or

(F) the Commodity Futures Trading Commission;

(2) “Senior Executive Service position” means any position in an agency which is classified above GS-15 pursuant to section 5108 or in level IV or V of the Executive Schedule, or an equivalent position, which is not required to be filled by an appointment by the President by and with the advice and consent of the Senate, and in which an employee—

(A) directs the work of an organizational unit;

(B) is held accountable for the success of one or more specific programs or projects;

(C) monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals;

(D) supervises the work of employees other than personal assistants; or

(E) otherwise exercises important policy-making, policy-determining, or other executive functions;

but does not include—

(i) any position in the Foreign Service of the United States;

(ii) an administrative law judge position under section 3105 of this title;

(iii) any position established as a qualified position in the excepted service by the Secretary of Homeland Security under section 226² of the Homeland Security Act of 2002; or

(iv) any position established as a qualified position in the excepted service by the Secretary of Defense under section 1599f of title 10;

(3) “senior executive” means a member of the Senior Executive Service;

(4) “career appointee” means an individual in a Senior Executive Service position whose appointment to the position or previous appointment to another Senior Executive Service position was based on approval by the Office of Personnel Management of the executive qualifications of such individual;

(5) “limited term appointee” means an individual appointed under a nonrenewable appointment for a term of 3 years or less to a Senior Executive Service position the duties of which will expire at the end of such term;

(6) “limited emergency appointee” means an individual appointed under a nonrenewable appointment, not to exceed 18 months, to a Senior Executive Service position established to meet a bona fide, unanticipated, urgent need;

(7) “noncareer appointee” means an individual in a Senior Executive Service position who is not a career appointee, a limited term appointee, or a limited emergency appointee;

(8) “career reserved position” means a position which is required to be filled by a career appointee and which is designated under subsection (b) of this section; and

(9) “general position” means any position, other than a career reserved position, which may be filled by either a career appointee, noncareer appointee, limited emergency appointee, or limited term appointee.

(b)(1) For the purpose of paragraph (8) of subsection (a) of this section, the Office shall prescribe the criteria and regulations governing the designation of career reserved positions. The criteria and regulations shall provide that a position shall be designated as a career reserved position only if the filling of the position by a career appointee is necessary to ensure impartiality, or the public’s confidence in the impartiality, of the Government. The head of each agency shall be responsible for designating career reserved positions in such agency in accordance with such criteria and regulations.

(2) The Office shall periodically review general positions to determine whether the positions should be designated as career reserved. If the Office determines that any such position should be so designated, it shall order the agency to make the designation.

(3) Notwithstanding the provisions of any other law, any position to be designated as a Senior Executive Service position (except a position in the Executive Office of the President) which—

¹ So in original.

² So in original. See References in Text note below.

(A) is under the Executive Schedule, or for which the rate of basic pay is determined by reference to the Executive Schedule, and

(B) on the day before the date of the enactment of the Civil Service Reform Act of 1978 was specifically required under section 2102 of this title or otherwise required by law to be in the competitive service,

shall be designated as a career reserved position if the position entails direct responsibility to the public for the management or operation of particular government programs or functions.

(4) Not later than March 1 of each year, the head of each agency shall publish in the Federal Register a list of positions in the agency which were career reserved positions during the preceding calendar year.

(c) An agency may file an application with the Office setting forth reasons why it, or a unit thereof, should be excluded from the coverage of this subchapter. The Office shall—

(1) review the application and stated reasons,

(2) undertake a review to determine whether the agency or unit should be excluded from the coverage of this subchapter, and

(3) upon completion of its review, recommend to the President whether the agency or unit should be excluded from the coverage of this subchapter.

If the Office recommends that an agency or unit thereof be excluded from the coverage of this subchapter, the President may, on written determination, make the exclusion for the period determined by the President to be appropriate.

(d) Any agency or unit which is excluded from coverage under subsection (c) of this section shall make a sustained effort to bring its personnel system into conformity with the Senior Executive Service to the extent practicable.

(e) The Office may at any time recommend to the President that any exclusion previously granted to an agency or unit thereof under subsection (c) of this section be revoked. Upon recommendation of the Office, the President may revoke, by written determination, any exclusion made under subsection (c) of this section.

(f) If—

(1) any agency is excluded under subsection (c) of this section, or

(2) any exclusion is revoked under subsection (e) of this section,

the Office shall, within 30 days after the action, transmit to the Congress written notice of the exclusion or revocation.

(Added Pub. L. 95-454, title IV, §402(a), Oct. 13, 1978, 92 Stat. 1155; amended Pub. L. 96-54, §2(a)(12), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96-187, title II, §203, Jan. 8, 1980, 93 Stat. 1368; Pub. L. 100-325, §2(c), May 30, 1988, 102 Stat. 581; Pub. L. 101-73, title VII, §742(c), Aug. 9, 1989, 103 Stat. 437; Pub. L. 101-509, title V, §529 [title I, §101(b)(9)(A)], Nov. 5, 1990, 104 Stat. 1427, 1441; Pub. L. 101-624, title XVIII, §1841, Nov. 28, 1990, 104 Stat. 3835; Pub. L. 102-496, title IV, §402(b), Oct. 24, 1992, 106 Stat. 3184; Pub. L. 102-550, title XIII, §1351(b), Oct. 28, 1992, 106 Stat. 3969; Pub. L. 103-359, title V, §501(d), Oct. 14, 1994, 108 Stat. 3429; Pub. L. 104-201, div. A, title XI, §1122(a)(1),

Sept. 23, 1996, 110 Stat. 2687; Pub. L. 107-123, §8(d)(1)(B), Jan. 16, 2002, 115 Stat. 2399; Pub. L. 107-171, title X, §10702(c)(1), May 13, 2002, 116 Stat. 517; Pub. L. 107-252, title VIII, §811(b), Oct. 29, 2002, 116 Stat. 1727; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110-289, div. A, title I, §1161(g)(2), July 30, 2008, 122 Stat. 2781; Pub. L. 110-417, [div. A], title IX, §931(a)(1), Oct. 14, 2008, 122 Stat. 4575; Pub. L. 111-203, title I, §152(d)(4), July 21, 2010, 124 Stat. 1414; Pub. L. 112-277, title V, §505(b), Jan. 14, 2013, 126 Stat. 2478; Pub. L. 113-277, §3(b), Dec. 18, 2014, 128 Stat. 3008; Pub. L. 114-92, div. A, title XI, §1107(b), Nov. 25, 2015, 129 Stat. 1027.)

Editorial Notes

REFERENCES IN TEXT

Level IV or V of the Executive Schedule, referred to in subsec. (a)(2), are set out in sections 5315 and 5316 of this title.

Section 226 of the Homeland Security Act of 2002, referred to in cl. (iii) of concluding provisions of subsec. (a)(2), probably means the section 226 of Pub. L. 107-296 as added by Pub. L. 113-277, §3(a), Dec. 18, 2014, 128 Stat. 3005, which was renumbered section 2208 of Pub. L. 107-296 by Pub. L. 115-278, §2(g)(2)(I), Nov. 16, 2018, 132 Stat. 4178, and is classified to section 658 of Title 6, Domestic Security.

The date of the enactment of the Civil Service Reform Act of 1978, referred to in subsec. (b)(3), is the date of the enactment of Pub. L. 95-454, which was approved Oct. 13, 1978.

AMENDMENTS

2015—Subsec. (a)(2). Pub. L. 114-92 added cl. (iv) of concluding provisions.

2014—Subsec. (a)(2). Pub. L. 113-277 added cl. (iii) of concluding provisions.

2013—Subsec. (a)(1)(B). Pub. L. 112-277 inserted “the Office of the Director of National Intelligence,” after “the Central Intelligence Agency.”

2010—Subsec. (a)(1)(D). Pub. L. 111-203 substituted “the National Credit Union Administration, the Bureau of Consumer Financial Protection, and the Office of Financial Research;” for “and the National Credit Union Administration;”

2008—Subsec. (a)(1)(B). Pub. L. 110-417 substituted “National Geospatial-Intelligence Agency” for “National Imagery and Mapping Agency”.

Pub. L. 110-289, §1161(g)(2)(A), substituted “, and” for “, and”.

Subsec. (a)(1)(D). Pub. L. 110-289, §1161(g)(2)(B), struck out “the Federal Housing Finance Board” after “the Office of Thrift Supervision,” substituted “the Federal Housing Finance Agency” for “the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development”, and struck out “or or” at end.

Subsec. (a)(1)(E), (F). Pub. L. 110-289, §1161(g)(2)(C), (D), inserted “or” at end of subpar. (E), relating to Securities and Exchange Commission, and redesignated subpar. (E), relating to Commodity Futures Trading Commission, as (F).

2004—Subsec. (a)(1). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in introductory provisions.

2002—Subsec. (a)(1)(C). Pub. L. 107-252, §811(b), inserted “or the Election Assistance Commission” after “Commission”.

Pub. L. 107-171, §10702(c)(1)(A), which directed amendment by striking “or” at the end, could not be executed because the word “or” did not appear at the end. See below.

Pub. L. 107-123, §8(d)(1)(B)(i), struck out “or” at end.

Subsec. (a)(1)(D). Pub. L. 107-171, §10702(c)(1)(B), inserted “or” at end.

Pub. L. 107-123, §8(d)(1)(B)(ii), inserted “or” at end.
Subsec. (a)(1)(E). Pub. L. 107-171, §10702(c)(1)(C), added subpar. (E) relating to Commodity Futures Trading Commission.

Pub. L. 107-123, §8(d)(1)(B)(iii), added subpar. (E) relating to the Securities and Exchange Commission.

1996—Subsec. (a)(1)(B). Pub. L. 104-201 substituted “National Imagery and Mapping Agency” for “Central Imagery Office”.

1994—Subsec. (a)(1)(B). Pub. L. 103-359 inserted “the Central Imagery Office,” after “Defense Intelligence Agency.”

1992—Subsec. (a)(1)(B). Pub. L. 102-496 inserted “, Department of Defense intelligence activities the civilian employees of which are subject to section 1590 of title 10,” after “National Security Agency”.

Subsec. (a)(1)(D). Pub. L. 102-550 inserted “the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development,” after “Farm Credit Administration.”

1990—Subsec. (a)(1)(D). Pub. L. 101-624 inserted reference to Farm Credit Administration.

Subsec. (a)(2). Pub. L. 101-509 substituted “classified above GS-15 pursuant to section 5108” for “in GS-16, 17, or 18 of the General Schedule”.

1989—Subsec. (a)(1)(D). Pub. L. 101-73 added subpar. (D).

1988—Subsec. (a)(1)(B). Pub. L. 100-325, §2(c)(1), inserted reference to Drug Enforcement Administration.

Subsec. (a)(2)(iii). Pub. L. 100-235, §2(c)(2), struck out cl. (iii) which read as follows: “any position in the Drug Enforcement Administration which is excluded from the competitive service under section 201 of the Crime Control Act of 1976 (5 U.S.C. 5108 note; 90 Stat. 2425);”.

1980—Subsec. (a)(1)(C). Pub. L. 96-187 added subpar. (C).

1979—Subsec. (a)(1)(B). Pub. L. 96-54 inserted “and,” after “Security Agency.”

Statutory Notes and Related Subsidiaries

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.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-289, div. A, title I, §1163, July 30, 2008, 122 Stat. 2782, provided that: “Except as otherwise specifically provided in this title [see Tables for classification], this title and the amendments made by this title shall take effect on, and shall apply beginning on, the date of enactment of this Act [July 30, 2008].”

EFFECTIVE DATE OF 2002 AMENDMENTS

Amendment by Pub. L. 107-252 effective upon appointment of all members of the Election Assistance Commission under section 20923 of Title 52, Voting and Elections, see section 21134(a) of Title 52.

Amendment by Pub. L. 107-123 effective Oct. 1, 2001, see section 11 of Pub. L. 107-123, set out as a note under section 78ee of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104-201, set out as a note under section 193 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-187 effective on Jan. 8, 1980, see section 301(a) of Pub. L. 96-187, set out as a note under section 30101 of Title 52, Voting and Elections.

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

Section 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(a)(1), (b), of Pub. L. 95-454, set out as a note under section 3131 of this title.

CONSTRUCTION

Pub. L. 112-166, §2(hh), Aug. 10, 2012, 126 Stat. 1290, provided that: “Notwithstanding section 3132(a)(2) of title 5, United States Code, removal of Senate confirmation for any position in this section shall not—

“(1) result in any such position being placed in the Senior Executive Service; or

“(2) alter compensation for any such position under the Executive Schedule or other applicable compensation provisions of law.”

§ 3133. Authorization of positions; authority for appointment

(a) During each even-numbered calendar year, each agency shall—

(1) examine its needs for Senior Executive Service positions for each of the 2 fiscal years beginning after such calendar year; and

(2) submit to the Office of Personnel Management a written request for a specific number of Senior Executive Service positions for each of such fiscal years.

(b) Each agency request submitted under subsection (a) of this section shall—

(1) be based on the anticipated type and extent of program activities and budget requests of the agency for each of the 2 fiscal years involved, and such other factors as may be prescribed from time to time by the Office; and

(2) identify, by position title, positions which are proposed to be designated as or removed from designation as career reserved positions, and set forth justifications for such proposed actions.

(c) The Office of Personnel Management, in consultation with the Office of Management and Budget, shall review the request of each agency and shall authorize, for each of the 2 fiscal years covered by requests required under subsection (a) of this section, a specific number of Senior Executive Service positions for each agency. Beginning in 2023, the number of such positions authorized under the preceding sentence for the Department of Defense may not exceed the limitation provided in section 1109 of the National Defense Authorization Act for Fiscal Year 2017.

(d)(1) The Office of Personnel Management may, on a written request of an agency or on its own initiative, make an adjustment in the number of positions authorized for any agency. Each agency request under this paragraph shall be submitted in such form, and shall be based on such factors, as the Office shall prescribe.

(2) The total number of positions in the Senior Executive Service may not at any time during any fiscal year exceed 105 percent of the total number of positions authorized under subsection (c) of this section for such fiscal year.

(e)(1) Not later than July 1, 1979, and from time to time thereafter as the Director of the

Office of Personnel Management finds appropriate, the Director shall establish, by rule issued in accordance with section 1103(b) of this title, the number of positions out of the total number of positions in the Senior Executive Service, as authorized by this section or section 413 of the Civil Service Reform Act of 1978, which are to be career reserved positions. Except as provided in paragraph (2) of this subsection, the number of positions required by this subsection to be career reserved positions shall not be less than the number of the positions then in the Senior Executive Service which, before the date of such Act, were authorized to be filled only through competitive civil service examination.

(2) The Director may, by rule, designate a number of career reserved positions which is less than the number required by paragraph (1) of this subsection only if the Director determines such lesser number necessary in order to designate as general positions one or more positions (other than positions described in section 3132(b)(3) of this title) which—

(A) involve policymaking responsibilities which require the advocacy or management of programs of the President and support of controversial aspects of such programs;

(B) involve significant participation in the major political policies of the President; or

(C) require the senior executives in the positions to serve as personal assistants of, or advisers to, Presidential appointees.

The Director shall provide a full explanation for his determination in each case.

(Added Pub. L. 95-454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1158; amended Pub. L. 114-328, div. A, title XI, § 1109(c), Dec. 23, 2016, 130 Stat. 2449.)

Editorial Notes

REFERENCES IN TEXT

Section 1109 of the National Defense Authorization Act for Fiscal Year 2017, referred to in subsec. (c), is section 1109 of Pub. L. 114-328, set out as a note below.

Section 413 of the Civil Service Reform Act of 1978, referred to in subsec. (e)(1), is section 413 of Pub. L. 95-454, set out as a note below.

The date of such Act, referred to in subsec. (e)(1), probably means Oct. 13, 1978, the date of the enactment of the Civil Service Reform Act of 1978.

AMENDMENTS

2016—Subsec. (c). Pub. L. 114-328 inserted at end “Beginning in 2023, the number of such positions authorized under the preceding sentence for the Department of Defense may not exceed the limitation provided in section 1109 of the National Defense Authorization Act for Fiscal Year 2017.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section 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(a)(1), (b), of Pub. L. 95-454, set out as a note under section 3131 of this title.

LIMITATION ON NUMBER OF DOD SES POSITIONS

Pub. L. 114-328, div. A, title XI, § 1109, Dec. 23, 2016, 130 Stat. 2449, as amended by Pub. L. 118-31, div. A, title XI, § 1115, Dec. 22, 2023, 137 Stat. 433, provided that:

“(a) LIMITATION ON NUMBER OF DOD SES POSITIONS.—

“(1) IN GENERAL.—Not later than December 31, 2022, the total number of Senior Executive Service positions authorized under section 3133 of title 5, United States Code, for the Department of Defense may not exceed 1,260.

“(2) HIGHLY QUALIFIED EXPERTS.—Of the total number of positions authorized under paragraph (1), not more than 200 of such positions may be occupied by an individual appointed under the authority provided in section 9903 of such title.

“(3) EXCEPTION.—The limitation under this subsection shall not apply to positions described in this subsection that are fully funded through amounts appropriated to an agency other than the Department of Defense.

“(b) PLAN TO ACHIEVE REQUIRED LIMITATION.—

“(1) IN GENERAL.—The Secretary of Defense shall develop a plan to achieve the limitation required by subsection (a) that includes—

“(A) the distribution of Senior Executive Service positions across the Office of the Secretary of Defense, the Joint Staff, the Military Departments, the Defense Agencies and Field Activities, the unified and specified combatant commands, and other key elements of the Department of Defense;

“(B) the by-year reductions to Senior Executive Service positions consistent with the distribution required under subparagraph (A); and

“(C) recommendations for any legislative action that may be necessary for personnel management and shaping authorities to achieve the required limitation.

“(2) SUBMISSION OF PLAN.—Not less than one year after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the plan developed under paragraph (1).

“(3) PROGRESS REPORTS.—The Secretary of Defense shall provide to the Committees on Armed Services of the Senate and the House of Representatives semi-annual progress report briefings describing and assessing the progress of the Secretary in implementing the plan developed under paragraph (1).

“(c) CONFORMING AMENDMENT.—[Amended section 3133(c) of this title.]

“(d) DEFINITION OF SENIOR EXECUTIVE SERVICE POSITION.—In this section, the term ‘Senior Executive Service position’ has the meaning given such term in section 3132(a)(2) of title 5, United States Code.”

CONVERSION TO SENIOR EXECUTIVE SERVICE

Pub. L. 95-454, title IV, § 413, Oct. 13, 1978, 92 Stat. 1175, provided that:

“(a) For the purpose of this section, ‘agency’, ‘Senior Executive Service position’, ‘career appointee’, ‘career reserved position’, ‘limited term appointee’, ‘noncareer appointee’, and ‘general position’ have the meanings set forth in section 3132(a) of title 5, United States Code (as added by this title) and ‘Senior Executive Service’ has the meaning set forth in section 2101a of such title 5 (as added by this title).

“(b)(1) Under the guidance of the Office of Personnel Management, each agency shall—

“(A) designate those positions which it considers should be Senior Executive Service positions and designate which of those positions it considers should be career reserved positions; and

“(B) submit to the Office a written request for—

“(i) a specific number of Senior Executive Service positions; and

“(ii) authority to employ a specific number of noncareer appointees.

“(2) The Office of Personnel Management shall review the designations and requests of each agency under paragraph (1) of this subsection, and shall establish interim authorizations in accordance with sections 3133 and 3134 of title 5, United States Code (as added by this Act), and shall publish the titles of the authorized positions in the Federal Register.

“(c)(1) Each employee serving in a position at the time it is designated as a Senior Executive Service position under subsection (b) of this section shall elect to—

“(A) decline conversion and be appointed to a position under such employee’s current type of appointment and pay system, retaining the grade, seniority, and other rights and benefits associated with such type of appointment and pay system; or

“(B) accept conversion and be appointed to a Senior Executive Service position in accordance with the provisions of subsections (d), (e), (f), (g), and (h) of this section.

The appointment of an employee in an agency because of an election under subparagraph (A) of this paragraph shall not result in the separation or reduction in grade of any other employee in such agency.

“(2) Any employee in a position which has been designated a Senior Executive Service position under this section shall be notified in writing of such designation, the election required under paragraph (1) of this subsection, and the provisions of subsections (d), (e), (f), (g), and (h) of this section. The employee shall be given 90 days from the date of such notification to make the election under paragraph (1) of this subsection.

“(d) Each employee who has elected to accept conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and who is serving under—

“(1) a career or career-conditional appointment; or

“(2) a similar type of appointment in an excepted service position, as determined by the Office; in a position which is designated as a Senior Executive Service position shall be appointed as a career appointee to such Senior Executive Service position without regard to section 3393(b)–(e) of title 5, United States Code (as added by this title).

“(e) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and who is serving under an excepted appointment in a position which is not designated a career reserved position in the Senior Executive Service, but is—

“(1) a position in Schedule C of subpart C of part 213 of title 5, Code of Federal Regulations;

“(2) a position filled by noncareer executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations; or

“(3) a position in the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code [section 5311 et seq. of this title], other than a career Executive Schedule position; shall be appointed as a noncareer appointee to a Senior Executive Service position.

“(f) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a career reserved position under subsection (b) of this section shall be appointed as a noncareer appointee to an appropriate general position in the Senior Executive Service or shall be separated.

“(g) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a Senior Executive Service position and who has reinstatement eligibility to a position in the competitive service, may, on request to the Office, be appointed as a career appointee to a Senior Executive Service position. The name of, and basis for reinstatement eligibility for, each employee appointed as a career appointee under this subsection shall be published in the Federal Register.

“(h) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and who is serving under a limited executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations, shall—

“(1) be appointed as a limited term appointee to a Senior Executive Service position if the position then held by such employee will terminate within 3 years of the date of such appointment;

“(2) be appointed as a noncareer appointee to a Senior Executive Service position if the position then held by such employee is designated as a general position; or

“(3) be appointed as a noncareer appointee to a general position if the position then held by such employee is designated as a career reserved position.

“(i) The rate of basic pay for any employee appointed to a Senior Executive Service position under this section shall be greater than or equal to the rate of basic pay payable for the position held by such employee at the time of such appointment.

“(j) Any employee who is aggrieved by any action by any agency under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of title 5, United States Code (as added by this title). An agency shall take any corrective action which the Board orders in its decision on an appeal under this subsection.

“(k) The Office shall prescribe regulations to carry out the purpose of this section.”

[Pub. L. 95-454, title IV, §415(a)(2), Oct. 13, 1978, 92 Stat. 1179, provided that section 413 [set out above] is effective Oct. 13, 1978.]

§ 3134. Limitations on noncareer and limited appointments

(a) During each calendar year, each agency shall—

(1) examine its needs for employment of noncareer appointees for the fiscal year beginning in the following year; and

(2) submit to the Office of Personnel Management, in accordance with regulations prescribed by the Office, a written request for authority to employ a specific number of noncareer appointees for such fiscal year.

(b) The number of noncareer appointees in each agency shall be determined annually by the Office on the basis of demonstrated need of the agency. The total number of noncareer appointees in all agencies may not exceed 10 percent of the total number of Senior Executive Service positions in all agencies.

(c) Subject to the 10 percent limitation of subsection (b) of this section, the Office may adjust the number of noncareer positions authorized for any agency under subsection (b) of this section if emergency needs arise that were not anticipated when the original authorizations were made.

(d) The number of Senior Executive Service positions in any agency which are filled by noncareer appointees may not at any time exceed the greater of—

(1) 25 percent of the total number of Senior Executive Service positions in the agency; or

(2) the number of positions in the agency which were filled on the date of the enactment of the Civil Service Reform Act of 1978 by—

(A) noncareer executive assignments under subpart F of part 305 of title 5, Code of Federal Regulations, as in effect on such date, or

(B) appointments to level IV or V of the Executive Schedule which were not required on such date to be made by and with the advice and consent of the Senate.

This subsection shall not apply in the case of any agency having fewer than 4 Senior Executive Service positions.

(e) The total number of limited emergency appointees and limited term appointees in all agencies may not exceed 5 percent of the total number of Senior Executive Service positions in all agencies.

(Added Pub. L. 95-454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1159.)

Editorial Notes

REFERENCES IN TEXT

The date of enactment of the Civil Service Reform Act of 1978, referred to in subsec. (d)(2), is the date of enactment of Pub. L. 95-454, which was approved Oct. 13, 1978.

Level IV or V of the Executive Schedule, referred to in subsec. (d)(2)(B), are set out in sections 5315 and 5316 of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section 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(a)(1), (b), of Pub. L. 95-454, set out as a note under section 3131 of this title.

§ 3135. Repealed. Pub. L. 104-66, title II, § 2181(a)(1), Dec. 21, 1995, 109 Stat. 732]

Section, added Pub. L. 95-454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1159; amended Pub. L. 98-168, title III, § 301(b), Nov. 29, 1983, 97 Stat. 1112; Pub. L. 98-615, title III, § 306(a), Nov. 8, 1984, 98 Stat. 3219, directed Office of Personnel Management to submit reports to Congress relating to Senior Executive Service.

§ 3136. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95-454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1160.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section 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(a)(1), (b), of Pub. L. 95-454, set out as a note under section 3131 of this title.

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

(a) The Attorney General may by regulation establish a personnel system for senior personnel within the Federal Bureau of Investigation and the Drug Enforcement Administration to be known as the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service (hereinafter in this subchapter referred to as the “FBI-DEA Senior Executive Service”). The regulations establishing the FBI-DEA Senior Executive Service shall—

(1) meet the requirements set forth in section 3131 for the Senior Executive Service;

(2) provide that positions in the FBI-DEA Senior Executive Service meet requirements

that are consistent with the provisions of section 3132(a)(2);

(3) provide rates of pay for the FBI-DEA Senior Executive Service that are not in excess of the maximum rate or less than the minimum rate of basic pay established for the Senior Executive Service under section 5382 and that are adjusted at the same time and to the same extent as rates of basic pay for the Senior Executive Service are adjusted;

(4) provide a performance appraisal system for the FBI-DEA Senior Executive Service that conforms to the provisions of subchapter II of chapter 43;

(5) provide for—

(A) removal consistent with section 3592;

(B) reduction-in-force procedures consistent with section 3595(a), together with measures to ensure that a member of the FBI-DEA Senior Executive Service may not be removed due to a reduction in force unless reasonable efforts to place such member in another such position are first taken;

(C) procedures in accordance with which any furlough affecting the FBI-DEA Senior Executive Service shall be carried out;

(D) removal or suspension consistent with subsections (a), (b), and (c) of section 7543 (except that any hearing or appeal to which a member of the FBI-DEA Senior Executive Service is entitled shall be held or decided pursuant to procedures established by regulations of the Attorney General); and

(E) recertification consistent with section 3393a;¹

(6) permit the payment of performance awards to members of the FBI-DEA Senior Executive Service consistent with the provisions applicable to performance awards under section 5384; and

(7) provide that members of the FBI-DEA Senior Executive Service may be granted sabbatical leaves consistent with the provisions of section 3396(c).

(b) Except as provided in subsection (a), the Attorney General may—

(1) make applicable to the FBI-DEA Senior Executive Service any of the provisions of this title applicable to applicants for or members of the Senior Executive Service; and

(2) appoint, promote, and assign individuals to positions established within the FBI-DEA Senior Executive Service without regard to the provisions of this title governing appointments and other personnel actions in the competitive service.

(c) The President, based on the recommendations of the Attorney General, may award ranks to members of the FBI-DEA Senior Executive Service in a manner consistent with the provisions of section 4507.

(d) Notwithstanding any other provision of this section, the Attorney General may detail or assign any member of the FBI-DEA Senior Executive Service to serve in a position outside the Federal Bureau of Investigation or the Drug Enforcement Administration (as the case may be) in which the member's expertise and experience

¹ See References in Text note below.

may be of benefit to the Federal Bureau of Investigation or the Drug Enforcement Administration (as the case may be) or another Government agency. Any such member shall not by reason of such detail or assignment lose any entitlement or status associated with membership in the FBI-DEA Senior Executive Service.

(e) The Attorney General shall each year submit to Congress, at the time the budget is submitted by the President to the Congress for the next fiscal year, a report on the FBI-DEA Senior Executive Service. The report shall include, in the aggregate and by agency—

(1) the number of FBI-DEA Senior Executive Service positions established as of the end of the preceding fiscal year;

(2) the number of individuals being paid at each rate of basic pay for the FBI-DEA Senior Executive Service as of the end of the preceding fiscal year;

(3) the number, distribution, and amount of awards paid to members of the FBI-DEA Senior Executive Service during the preceding fiscal year; and

(4) the number of individuals removed from the FBI-DEA Senior Executive Service during the preceding fiscal year—

(A) for less than fully successful performance;

(B) due to a reduction in force; or

(C) for any other reason.

(Added Pub. L. 100-325, §1(a), May 30, 1988, 102 Stat. 579; amended Pub. L. 101-194, title V, §506(b)(1), Nov. 30, 1989, 103 Stat. 1758; Pub. L. 109-108, title I, §111, Nov. 22, 2005, 119 Stat. 2305.)

Editorial Notes

REFERENCES IN TEXT

Section 3393a, referred to in subsec. (a)(5)(E), was repealed by Pub. L. 107-296, title XIII, §1321(a)(1)(B), Nov. 25, 2002, 116 Stat. 2296.

Provisions of this title governing appointments and other personnel actions in the competitive service, referred to in subsec. (b)(2), are classified generally to section 3301 et seq. of this title.

AMENDMENTS

2005—Subsec. (b). Pub. L. 109-108 struck out par. (1) designation before “Except as provided”, redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and struck out former par. (2) which read as follows:

“(A) Notwithstanding any other provision of this section, an individual may not be selected for the FBI-DEA Senior Executive Service unless such individual is a career employee in the civil service.

“(B) For the purpose of subparagraph (A), ‘career employee in the civil service’ shall have such meaning as the Attorney General, in consultation with the Director of the Office of Personnel Management, by regulation prescribes.”

1989—Subsec. (a)(5)(E). Pub. L. 101-194 added subpar. (E).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-194, title V, §506(d), Nov. 30, 1989, 103 Stat. 1759, provided that: “The amendments made by this section [enacting section 3393a of this title and amending this section, sections 3393, 3592 to 3594, 7701, 8336, 8339, 8414, and 8421 of this title, section 1601 of Title 10, Armed Forces, section 3945 of Title 22, Foreign Relations and Intercourse, and section 3610 of Title 50, War

and National Defense] shall take effect on January 1, 1991.”

§ 3152. Limitation on pay

Members of the FBI-DEA Senior Executive Service shall be subject to the limitation under section 5307.

(Added Pub. L. 100-325, §1(a), May 30, 1988, 102 Stat. 581; amended Pub. L. 102-378, §2(9), Oct. 2, 1992, 106 Stat. 1347.)

Editorial Notes

AMENDMENTS

1992—Pub. L. 102-378 amended section generally. Prior to amendment, section read as follows: “Nothing in this subchapter shall be construed to allow the aggregate amount payable to a member of the FBI-DEA Senior Executive Service under this subchapter during any fiscal year to exceed the annual rate payable for positions at level I of the Executive Schedule in effect at the end of such year. This section shall be applied in a manner consistent with paragraphs (1) and (2) of section 5383(b).”

SUBCHAPTER IV—TEMPORARY ORGANIZATIONS ESTABLISHED BY LAW OR EXECUTIVE ORDER

§ 3161. Employment and compensation of employees

(a) DEFINITION OF TEMPORARY ORGANIZATION.—For the purposes of this subchapter, the term “temporary organization” means a commission, committee, board, or other organization that—

(1) is established by law or Executive order for a specific period not in excess of three years for the purpose of performing a specific study or other project; and

(2) is terminated upon the completion of the study or project or upon the occurrence of a condition related to the completion of the study or project.

(b) EMPLOYMENT AUTHORITY.—(1) Notwithstanding the provisions of chapter 51 of this title, the head of a temporary organization may appoint persons to positions of employment in a temporary organization in such numbers and with such skills as are necessary for the performance of the functions required of a temporary organization.

(2) The period of an appointment under paragraph (1) may not exceed three years, except that under regulations prescribed by the Office of Personnel Management the period of appointment may be extended for up to an additional two years.

(3) The positions of employment in a temporary organization are in the excepted service of the civil service.

(c) DETAIL AUTHORITY.—Upon the request of the head of a temporary organization, the head of any department or agency of the Government may detail, on a nonreimbursable basis, any personnel of the department or agency to that organization to assist in carrying out its duties.

(d) COMPENSATION.—(1) The rate of basic pay for an employee appointed under subsection (b) shall be established under regulations prescribed by the Office of Personnel Management without regard to the provisions of chapter 51 and subchapter III of chapter 53 of this title.

(2) The rate of basic pay for the chairman, a member, an executive director, a staff director, or another executive level position of a temporary organization may not exceed the maximum rate of basic pay established for the Senior Executive Service under section 5382 of this title.

(3) Except as provided in paragraph (4), the rate of basic pay for other positions in a temporary organization may not exceed the maximum rate of basic pay for grade GS-15 of the General Schedule under section 5332 of this title.

(4) The rate of basic pay for a senior staff position of a temporary organization may, in a case determined by the head of the temporary organization as exceptional, exceed the maximum rate of basic pay authorized under paragraph (3), but may not exceed the maximum rate of basic pay authorized for an executive level position under paragraph (2).

(5) In this subsection, the term “basic pay” includes locality pay provided for under section 5304 of this title.

(e) TRAVEL EXPENSES.—An employee of a temporary organization, whether employed on a full-time or part-time basis, may be allowed travel and transportation expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of this title, while traveling away from the employee's regular place of business in the performance of services for the temporary organization.

(f) BENEFITS.—An employee appointed under subsection (b) shall be afforded the same benefits and entitlements as are provided temporary employees under this title.

(g) RETURN RIGHTS.—An employee serving under a career or career conditional appointment or the equivalent in an agency who transfers to or converts to an appointment in a temporary organization with the consent of the head of the agency is entitled to be returned to the employee's former position or a position of like seniority, status, and pay without grade or pay retention in the agency if the employee—

(1) is being separated from the temporary organization for reasons other than misconduct, neglect of duty, or malfeasance; and

(2) applies for return not later than 30 days before the earlier of—

(A) the date of the termination of the employment in the temporary organization; or

(B) the date of the termination of the temporary organization.

(h) TEMPORARY AND INTERMITTENT SERVICES.—The head of a temporary organization may procure for the organization temporary and intermittent services under section 3109(b) of this title.

(i) ACCEPTANCE OF VOLUNTEER SERVICES.—(1) The head of a temporary organization may accept volunteer services appropriate to the duties of the organization without regard to section 1342 of title 31.

(2) Donors of voluntary services accepted for a temporary organization under this subsection may include the following:

(A) Advisors.

(B) Experts.

(C) Members of the commission, committee, board, or other temporary organization, as the case may be.

(D) A person performing services in any other capacity determined appropriate by the head of the temporary organization.

(3) The head of the temporary organization—

(A) shall ensure that each person performing voluntary services accepted under this subsection is notified of the scope of the voluntary services accepted;

(B) shall supervise the volunteer to the same extent as employees receiving compensation for similar services; and

(C) shall ensure that the volunteer has appropriate credentials or is otherwise qualified to perform in each capacity for which the volunteer's services are accepted.

(4) A person providing volunteer services accepted under this subsection shall be considered an employee of the Federal Government in the performance of those services for the purposes of the following provisions of law:

(A) Chapter 81 of this title, relating to compensation for work-related injuries.

(B) Chapter 171 of title 28, relating to tort claims.

(C) Chapter 11 of title 18, relating to conflicts of interest.

(Added Pub. L. 106-398, §1 [[div. A], title XI, §1101(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-308.)

SUBCHAPTER V—PRESIDENTIAL INNOVATION FELLOWS PROGRAM

§ 3171. Presidential Innovation Fellows Program

(a) POLICY.—It is in the national interest for the Government to attract the brightest minds skilled in technology or innovative practices to serve in the Government to work on some of the Nation's biggest and most pressing challenges. This subchapter establishes a program to encourage successful entrepreneurs, executives, and innovators to join the Government and work in close cooperation with Government leaders, to create meaningful solutions that can help save lives and taxpayer money, fuel job creation, and significantly improve how the Government serves the American people.

(b) ESTABLISHMENT.—The Administrator of General Services shall continue the Presidential Innovation Fellows Program (hereinafter referred to as the “Program”) to enable exceptional individuals with proven track records to serve time-limited appointments in executive agencies to address some of the Nation's most significant challenges and improve existing Government efforts that would particularly benefit from expertise using innovative techniques and technology.

(c) ADMINISTRATION.—The Program shall be administered by a Director, appointed by the Administrator under authorities of the General Services Administration. The Administrator shall provide necessary staff, resources and administrative support for the Program.

(d) APPOINTMENT OF FELLOWS.—The Director shall appoint fellows pursuant to the Program and, in cooperation with executive agencies, shall facilitate placement of fellows to partici-

pate in projects that have the potential for significant positive effects and are consistent with the President's goals.

(e) APPLICATION PROCESS.—

(1) IN GENERAL.—The Director shall prescribe the process for applications and nominations of individuals to the Program.

(2) PROGRAM STANDARDS.—Following publication of these processes, the Director may accept for consideration applications from individuals. The Director shall establish, administer, review, and revise, if appropriate, a Governmentwide cap on the number of fellows. The Director shall establish and publish salary ranges, benefits, and standards for the Program.

(f) SELECTION, APPOINTMENT, AND ASSIGNMENT OF FELLOWS.—

(1) PROCEDURES.—The Director shall prescribe appropriate procedures for the selection, appointment, and assignment of fellows.

(2) CONSULTATION.—Prior to the selection of fellows, the Director shall consult with the heads of executive agencies regarding potential projects and how best to meet those needs. Following such consultation, the Director shall select and appoint individuals to serve as fellows.

(3) TIME LIMITATION.—Fellows selected for the Program shall serve under short-term, time-limited appointments. Such fellows shall be appointed for no less than 6 months and no longer than 2 years in the Program. The Director shall facilitate the process of placing fellows at requesting executive agencies.

(g) RESPONSIBILITIES OF AGENCIES.—Each executive agency shall work with the Director and the Presidential Innovation Fellows Program advisory board established under section 3172 to attempt to maximize the Program's benefits to the agency and the Government, including by identifying initiatives that have a meaningful effect on the people served and that benefit from involvement by one or more fellows. Such agencies shall ensure that each fellow works closely with responsible senior officials for the duration of the assignment.

(Added Pub. L. 115–1, §2(a), Jan. 20, 2017, 131 Stat. 3.)

Statutory Notes and Related Subsidiaries

TRANSITION

Pub. L. 115–1, §2(c), Jan. 20, 2017, 131 Stat. 5, provided that: “The Presidential Innovation Fellows Program established pursuant to Executive Order No. 13704 (5 U.S.C. 3301 note [now 5 U.S.C. 3171 note]) as in existence on the day before the date of enactment of this Act [Jan. 20, 2017] shall be considered the Presidential Innovation Fellows Program described in the amendments made by this Act [enacting this section and section 3172 of this title].”

Executive Documents

EX. ORD. NO. 13704. PRESIDENTIAL INNOVATION FELLOWS PROGRAM

Ex. Ord. No. 13704, Aug. 17, 2015, 80 F.R. 50751, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy.* It is in the national interest for the Federal Government to attract the brightest minds skilled in technology or innovative practices to serve in the Federal Government to work on some of the Nation's biggest and most pressing challenges. This order establishes a program to encourage successful entrepreneurs, executives, and innovators to join the Federal Government and work in close cooperation with Federal Government leaders, to create meaningful solutions that can help save lives and taxpayer money, fuel job creation, and significantly improve how the Federal Government serves the American people.

SEC. 2. *Establishment and Administration.* (a) The Administrator of General Services (Administrator) shall establish the Presidential Innovation Fellows Program (Program) to enable exceptional individuals with proven track records to serve time-limited appointments in executive branch departments and agencies (agencies) to address some of the Nation's most significant challenges and improve existing Government efforts that would particularly benefit from expertise using innovative techniques and technology. Individuals selected for the Program shall be known as Presidential Innovation Fellows (Fellows).

(b) The Program shall be administered by a Director, appointed by the Administrator under authorities of the General Services Administration (GSA). GSA shall provide necessary staff, resources and administrative support for the Program to the extent permitted by law and within existing appropriations.

(c) GSA shall appoint the Fellows and, in cooperation with agencies, shall facilitate placement of the Fellows to participate in projects that have the potential for significant positive effects and are consistent with the President's goals.

SEC. 3. *Advisory Board.* (a) The Administrator shall establish an Advisory Board to advise the Director by recommending such priorities and standards as may be beneficial to fulfill the mission of the Program and assist in identifying potential projects and placements for Fellows. The Advisory Board will not participate in the Fellows' selection process.

(b) The Administrator will designate a representative to serve as the Chair of the Advisory Board. In addition to the Chair, the membership of the Advisory Board shall include the Deputy Director for Management of the Office of Management and Budget, the Director of the Office of Personnel Management, the Office of Management and Budget's Administrator of the Office of Electronic Government, and the Assistant to the President and Chief Technology Officer, or their designees and such other persons as may be designated by the Administrator. Consistent with law, the Advisory Board may consult with industry, academia, or non-profits to ensure the Program is continually identifying opportunities to apply advanced skillsets and innovative practices in effective ways to address the Nation's most significant challenges.

SEC. 4. *Application Process.* (a) The Director, in accordance with applicable law, shall prescribe the process for applications and nominations of individuals to the Program.

(b) Following publication of these processes, the Director may accept for consideration applications from individuals. The Director shall establish, administer, review, and revise, if appropriate, a Government-wide cap on the number of Fellows.

The Director shall establish and publish salary ranges, benefits, and standards for the Program.

SEC. 5. *Selection, Appointment, and Assignment of Fellows.* (a) The Director, in accordance with applicable law, shall prescribe appropriate procedures for the selection, appointment, and assignment of Fellows.

(b) Prior to the selection of Fellows, the Director will consult with agencies and executive branch departments, regarding potential projects and how best to meet those needs. Following such consultation, the Director shall select and appoint individuals to serve as Fellows.

(c) The Fellows shall serve under short-term, time-limited appointments. As a general matter, they shall

be appointed for no less than 6 months and no longer than 2 years in the Program. The Director shall facilitate the process of placing Fellows at requesting agencies and executive branch departments.

SEC. 6. *Responsibilities of Agencies.* Each executive branch department or agency, as defined in section 105 of title 5, United States Code, is encouraged to work with the Director and Advisory Board to attempt to maximize the Program's benefits to the department or agency and the Federal Government, including by identifying initiatives that will have a meaningful effect on the people served and that will benefit from involvement by one or more Fellows. Departments and agencies also are encouraged to ensure that each Fellow will work closely with responsible senior officials for the duration of the assignment.

SEC. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

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

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

BARACK OBAMA.

§ 3172. Presidential Innovation Fellows Program advisory board

(a) IN GENERAL.—The Administrator of General Services shall continue an advisory board to advise the Director of the Presidential Innovation Fellows Program by recommending such priorities and standards as may be beneficial to fulfill the mission of the Presidential Innovation Fellows Program and assist in identifying potential projects and placements for fellows. The advisory board may not participate in the selection process under section 3171(f).

(b) CHAIR; MEMBERSHIP.—The Administrator shall designate a representative to serve as the Chair of the advisory board. In addition to the Chair, the membership of the advisory board shall include—

(1) the Deputy Director for Management of the Office of Management and Budget;

(2) the Director of the Office of Personnel Management;

(3) the Administrator of the Office of Electronic Government of the Office of Management and Budget;

(4) the Assistant to the President and Chief Technology Officer; and

(5) other individuals as may be designated by the Administrator.

(c) CONSULTATION.—The advisory board may consult with industry, academia, or nonprofits to ensure the Presidential Innovation Fellows Program is continually identifying opportunities to apply advanced skillsets and innovative practices in effective ways to address the Nation's most significant challenges.

(Added Pub. L. 115–1, §2(a), Jan. 20, 2017, 131 Stat. 4.)

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

- Sec.
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- 3302. Competitive service; rules.
- 3303. Competitive service; recommendations of Senators or Representatives.
- 3304. Competitive service; examinations.
- 3304a. Competitive service; career appointment after 3 years' temporary service.
- 3305. Competitive service; examinations; when held.
- [3306. Repealed.]
- 3307. Competitive service; maximum-age entrance requirements; exceptions.
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- 3324. Appointments to positions classified above GS–15.
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