

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 The 255th through 296th words are scheduled for repeal as superseded (see Table II-b), and the 297th through 316th words are codified in section 5501. The Act of Aug. 15, 1876, ch. 287, § 5, 19 Stat. 169, cited as authority for former section 46 was repealed by section 7(a) of the Act of Sept. 23, 1950.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

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.

#### 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 1599h 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

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	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.

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.

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."

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 Secretary 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