

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 Con-

gress 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.

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 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 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 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 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