

ployees, 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

AMENDMENTS

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

§ 3101. General authority to employ

Each Executive agency, military department, and the government of the District of Columbia may employ such number of employees of the various classes recognized by chapter 51 of this title as Congress may appropriate for from year to year.

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

HISTORICAL AND REVISION NOTES

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

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

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

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

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.

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.

CITIZENSHIP REQUIREMENT FOR EMPLOYEES COMPENSATED FROM APPROPRIATED FUNDS

Pub. L. 111-117, div. C, title VII, §704, Dec. 16, 2009, 123 Stat. 3205, provided that: “Unless otherwise specified 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 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. 16, 2009], or to international broadcasters employed by the Broadcasting Board of Governors, 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 were contained in the following prior appropriation acts:

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).

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.

§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); 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—