§ 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.


Historical and Revision Notes

<table>
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<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
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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The Act of Aug. 1, 1947, ch. 433, 61 Stat. 715, as amended by the following Acts is omitted from the derivation and repealed (see Table II) as superseded by the Act of Oct. 4, 1961, Pub.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 20, 1958, Pub. L. 85–462, § 12(a)–(d), 72 Stat. 213A.

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

<table>
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<th>1967 Act</th>
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<td><strong>Section of title 5</strong></td>
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The amendment to 5 U.S.C. 3104 (a)(5) reflects Public Law 89–492, section 5.


**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.

Experimental Personnel Program for Scientific and Technical Personnel


“(a) Program Authorized.—During the program period specified in subsection (c)(1), the Secretary of Defense may carry out a program of experimental use of the special personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for research and development projects administered by the Defense Advanced Research Projects Agency and research and development projects administered by laboratories designated for the program by the Secretary from among the laboratories of each of the military departments.

“(b) Special Personnel Management Authority.—Under the program, the Secretary may—

“(1) without regard to any provision of title 5, United States Code, governing the appointment of employees in the civil service, appoint scientists and engineers from outside the civil service and uniformed services (as such terms are defined in section 2101 of such title) to—

“(A) not more than 40 scientific and engineering positions in the Defense Advanced Research Projects Agency;

“(B) not more than 40 scientific and engineering positions in the designated laboratories of each of the military services;

“(C) not more than a total of 10 scientific and engineering positions in the National Geospatial-Intelligence Agency and the National Security Agency;

“(D) not more than a total of 10 scientific and engineering positions in the Office of the Assistant Secretary of Defense for Research and Engineering; and

“(E) not more than a total of 10 scientific and engineering positions in the Office of the Director of Operational Test and Evaluation;

“(2) prescribe the rates of basic pay for positions to which employees are appointed under paragraph (1) at rates not in excess of the maximum rate of basic pay authorized for senior-level positions under section 5376 of title 5, United States Code, as increased by locality-based comparability payments under section 5304 of such title, notwithstanding any provision of such title governing the rates of pay or classification of employees in the executive branch; and

“(3) pay any employee appointed under paragraph (1) payments in addition to basic pay within the limit applicable to the employee under subsection (d).

“(c) Limitation on Term of Appointment.—(1) Except as provided in paragraph (2), the service of an employee under an appointment under subsection (b)(1) may not exceed 4 years.

“(2) The Secretary may, in the case of a particular employee, extend the period to which service is limited under paragraph (1) by up to 2 years if the Secretary determines that such action is necessary to promote the efficiency of the Defense Advanced Research Projects Agency.

“(d) Limitations on Additional Payments.—(1) Subject to paragraph (3), the total amount of additional payments paid to an employee under subsection (b)(3) for any 12-month period may not exceed the lesser of the following amounts:

“(A) $50,000 in fiscal year 2010, which may be adjusted annually thereafter by the Secretary, with a percentage increase equal to one-half of 1 percentage point less than the percentage by which the Employment Cost Index, published quarterly by the Bureau of Labor Statistics, for the base quarter of the year before the preceding calendar year exceeds the Employment Cost Index for the base quarter of the second year before the preceding calendar year.

“(B) The amount equal to 50 percent of the employee’s annual rate of basic pay.
“(2) In paragraph (1), the term ‘base quarter’ has the meaning given that term in section 5302 (3) of title 5, United States Code.

“(3) Notwithstanding any other provision of this section or section 5307 of title 5, United States Code, no additional payments may be paid to an employee under subsection (b)(3) in any calendar year if, or to the extent that, the employee’s total annual compensation in such calendar year will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3, United States Code.

“(4) An employee appointed under the program is not eligible for any bonus, monetary award, or other monetary incentive for service under the appointment other than payments authorized by this section.

“(c) Period of Program.—(1) The period for carrying out the program authorized under this section begins on October 17, 1998, and ends on September 30, 2016.

“(2) After the termination of the program—

“(A) no appointment may be made under paragraph (1) of subsection (b);

“(B) a rate of basic pay prescribed under paragraph (2) of that subsection may not take effect for a position; and

“(C) no period of service may be extended under subsection (c)(2).

“(f) Savings Provisions.—In the case of an employee who, on the last day of the program period specified in subsection (e)(1), is serving in a position pursuant to an appointment under subsection (b)(1)—

“(1) the termination of the program does not terminate the employee’s employment in that position before the expiration of the lesser of—

“(A) the period for which the employee was appointed; or

“(B) the period to which the employee’s service is limited under subsection (c), including any extension made under paragraph (2) of that subsection before the termination of the program; and

“(2) the rate of basic pay prescribed for the position under subsection (b)(2) may not be reduced for so long (within the period applicable to the employee under paragraph (1)) as the employee continues to serve in the position without a break in service.

“(g) Annual Report.—(1)(A) Not later than December 31 of each year in which the authority under this section is in effect, the Secretary of Defense shall submit to the committees of Congress specified in subparagraph (B) a report on the operation of this section. Each report shall cover the fiscal year that most recently ended before such December 31.

“(B) The committees of Congress specified in this subparagraph are—

“(i) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and

“(ii) the Committee on Armed Services, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.

“(2) The annual report shall contain, for the period covered by the report, the following:

“(A) A detailed discussion of the exercise of authority under this section.

“(B) The sources from which individuals appointed under subsection (b)(1) were recruited.

“(C) The methodology used for identifying and selecting such individuals.

“(D) Any additional information that the Secretary considers helpful for assessing the utility of the authority under this section.”

[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.]

**FBI Personnel Management System for Non-Special Agent Employees; Secretary of the Treasury**


Similar provisions were contained in the following prior appropriation acts:


[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**

Section 414(a)(2)(A) of Pub. L. 95–454 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.”


**Limitations on Executive Positions Not To Apply to Individuals Occupying Those Positions on October 12, 1978**

Section 414(a)(3) of Pub. L. 95–454 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.”

[Section 415(a)(3) of Pub. L. 95–454 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.]