

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Temporary Employment in the Federal Government

A Report to Congress
by the U.S. Office of Personnel Management

a New Day for Federal Service



**TEMPORARY EMPLOYMENT
IN THE FEDERAL GOVERNMENT**

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September 2013

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I. EXECUTIVE SUMMARY

Purpose and Content of Report

This report is submitted in accordance with Senate Report 112-79, which requires the Office of Personnel Management (OPM) to transmit a report to Congress on options and recommendations to remedy perceived inequities in the use of temporary hiring authorities. The Senate Appropriations Committee required the report due to its concerns with alleged continuous and sustained inappropriate use of temporary hiring authority by Federal agencies.

On June 30, 2010, Ms. Angela Bailey, Deputy Associate Director for Recruitment and Hiring, testified before the House Oversight and Government Reform Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia's hearing on "Temporary Employee Practices: How Long Does Temporary Last?". Ms. Bailey provided information on the nature of temporary employment, along with its limitations and stated that OPM did not find that Federal agencies have a sustained inappropriate use of temporary employment. The assertion of sustained inappropriate use of temporary employment is typically raised in the context of seasonal employment of firefighters employed with the Department of Agriculture during fire seasons and summer workers who work for the Department of the Interior in our national parks.

This report includes an explanation of the special rules for such *seasonal* temporary employment. This report also provides background information on temporary employment, provides data on the temporary workforce over the last 5 years, discusses the appropriate uses of temporary appointments, identifies the rights and benefits eligibility of temporary employees, and discusses alternatives for changes in temporary employment. Temporary employment, for purposes of this report, covers temporary employees in the executive branch agencies subject to the civil service laws in chapters 31 and 33 of title 5, United States Code.

Temporary Hiring Authorities and Their Appropriate Use

For purposes of this report, a temporary Federal employee is an employee serving under "temporary limited appointment" within the meaning of 5 CFR part 316, subpart D, or an excepted service employee serving under a similar time limit, i.e., an employee serving under an appointment limited to 1 year or less, which can be extended for a period of up to 1 additional year. This is contrasted with permanent or career Federal appointments in which employees serve without time limitation, as well as "term" or other "time-limited" appointments in which employees serve for limited periods of more than 1 year.

Federal agencies hire temporary employees for jobs where need for the employees is not expected to be permanent. Temporary employees perform special projects, deal with workload surges, serve as fill-ins for permanent workers, provide summer help, and provide additional support during peak seasonal demands. Generally, agencies do not experience difficulty in recruiting or retaining temporary employees.

Rights and Benefits of Temporary Federal Employees

- In general, employees are eligible for health insurance coverage under the Federal Employees Health Benefits (FEHB) program only if they are permanent or term appointees. Longstanding OPM regulations exclude most temporary employees from

coverage. However, Congress has provided that, in the case where a temporary employee's appointment is extended beyond one year, he/she will be eligible after 1 year of service. The same statute, though, specifies that such coverage shall be provided with no Federal contribution to premiums.

- Recently, however, OPM modified its exclusion regulation to permit temporary employees providing emergency response services for wildland fire protection to enroll in FEHB. Because these employees are no longer covered by an exclusion, the Federal contributions to premiums will also be available to them.
- Temporary employees are covered by Social Security and Medicare but are excluded from the Federal Employees Retirement System (FERS).
- Temporary employees serving under appointments limited to 1 year or less are excluded from life insurance coverage.
- Although paid the same hourly rates as permanent employees, temporary employees paid under the General Schedule do not earn periodic step increases, by law.
- Temporary employees are eligible for annual and sick leave and paid holidays when employed on a regularly scheduled basis.
- Because of the nature of their appointments, temporary employees are not entitled to procedural protections from adverse actions or reductions in force. As a condition of employment, they can be separated from employment with minimal notice and with no appeal rights.
- Temporary employees cannot be promoted, transferred, or reassigned to other positions, and they must compete with outside candidates for permanent jobs.

Alternatives for Further Action

This report discusses alternatives for changing the nature of temporary employment. Because the Federal Government is not experiencing significant challenges with recruiting or retaining temporary employees at this time, the motivation for making these kinds of changes would emanate from considerations relating to agency mission accomplishment, cost, and employee equity.

II. PURPOSE OF THIS REPORT

This report is submitted in accordance with Senate Report 112-79, which requires the Office of Personnel Management to transmit a report to Congress on "options and recommendations to remedy the inequity" in the use of temporary hiring authorities. The Senate Report directed that OPM's report should include: 1) identification of agencies and types of positions where continuous and sustained inappropriate use of temporary hiring authority is occurring; 2) options to provide competitive status to employees performing regular and recurring work of a permanent nature under a series of temporary appointments; and 3) actions that can be taken to ensure that Federal agencies use appropriate hiring authorities in the future.

The Committee on Appropriations required the report due to its concern that “continuous and sustained inappropriate use of temporary hiring authority by Federal agencies occurs” and that this situation has remained unresolved for some time.

III. BACKGROUND INFORMATION ON TEMPORARY EMPLOYMENT

Until 1985, temporary appointments were much like they are today. Appointments were limited to 1 year with a maximum 1-year extension. In 1985, OPM made several policy changes to give agencies greater flexibility to meet mission and budgetary challenges. From 1985 through 1994, temporary appointments could be extended for up to 4 years, in 1-year increments. There was no limit on the number of times the same position could be filled using temporary appointments.

In 1994, a situation arose in which the family members of an employee who had died while employed by the Federal Government, after more than 8 years of service, discovered that they were not entitled to benefits that would have been available had the employee been on an appointment without time limitation. Discussions concerning this family’s situation prompted OPM to review its regulations. As a result, OPM amended its regulations and prescribed a limit of two years on continuous appointments. It also established a rule that an agency may use a temporary appointment to fill a specific position only for a maximum of 24-months, within the preceding 3-year period. This limitation was intended to ensure that temporary appointments will be used only for truly short-term hiring needs and to avoid the perception that temporary employment could last indefinitely. Appointments to a position involving the same basic duties and the same major subdivision of the agency and same local commuting area as the original appointment, is also considered to be an extension of the original appointment.

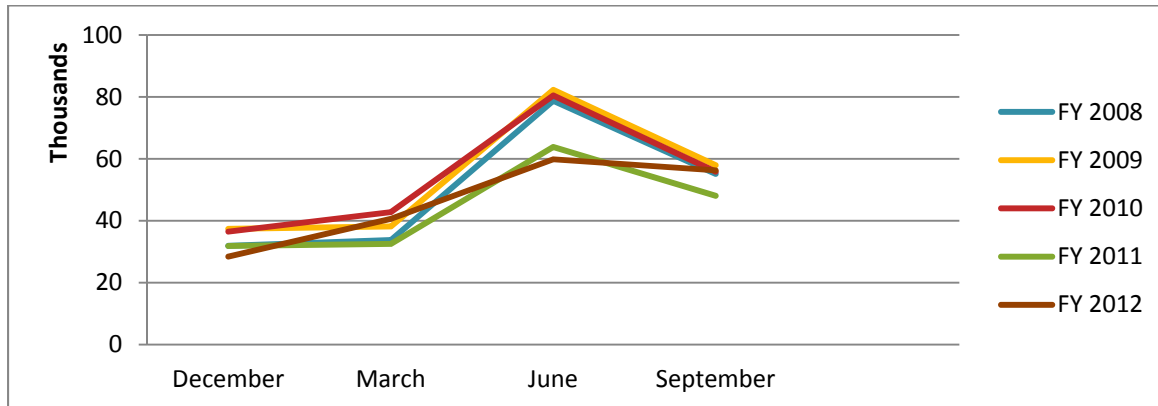
OPM’s regulations provide for limited exceptions from the 2-year maximum continuous employment time limits. Agencies can apply to OPM for an exception on a case-by-case basis, but only when required by major reorganizations, base closings, or other unusual circumstances. The agencies must submit a work-related justification for each request.

In addition, OPM regulations provide an exception to the 2-year maximum continuous appointment. This exception allows for multiple renewals of the temporary appointment authority, as long as the work under the appointment is expected to last less than 6 months each year. This exception allows agencies that invest a significant amount of training in their temporary employees to re-appoint them on a seasonal basis. The exception also allows agencies to limit the number of permanent employees they hire and provides them with the flexibility they need to hire seasonal employees, when their services are needed for less than 6 months.

Agencies may also make appointments to positions without time limitations to fill seasonal needs. Seasonal employees on permanent appointments, however, work more than 6 months in a year. Because these employees are on permanent appointments, they are eligible for Federal benefits designed to attract and retain a stable workforce, even though they are in a non-pay status during the off-season.

IV. SEASONAL FLUCTUATION OF THE TEMPORARY WORKFORCE

During the course of any particular year, the number of temporary employees varies significantly from month to month because of season fluctuations. **Summer employment program hires and the wild land fire season bring the temporary workforce to its peak during June, July, and August each year.** Here is a look at the total number of temporary appointments and/or extensions covering Fiscal Years (FY) 2008 through 2012. Data by agency for each fiscal year is listed in the appendix.



Note: The data in this report are from OPM’s Enterprise Human Resources Integration—Statistical Data Mart – an automated inventory of statistical and demographic information on the Federal workforce.

V. TEMPORARY HIRING AUTHORITIES AND THEIR APPROPRIATE USE

Scope of Report

In the competitive service, temporary limited employees are appointed to executive branch positions for periods of up to 1 year, and their service may be extended for up to 1 additional year (maximum total of 2 years). (5 CFR part 316, subpart D) However, under certain circumstances, this time limit does not apply (e.g., employing student interns, military base closures, seasonal work). Temporary employees also serve in executive branch positions that have been excepted from the competitive hiring requirements by law, regulation, or administrative determination. In the excepted service, the time limits can mirror those associated with the competitive service (“temporary appointments” or “time-limited appointments”), or they may vary in duration because of a specific situation for which the excepted service appointment is authorized. (5 CFR 213.104) Temporary employees are contrasted with permanent Federal employees (career-conditional or career employees in the competitive service who serve without time limitation).

This report covers temporary employees in the executive branch agencies subject to the civil service laws in chapters 31 and 33 of title 5, United States Code. Among organizations excluded

from these laws are the Postal Service and agencies in the legislative and judicial branches, as well as the State Department, which includes only a portion of its workforce in OPM’s statistical data source. Also excluded from the report are private-sector temporaries whose services are used under contract by Federal agencies. Federal agencies have the authority to contract for services of private-sector temporary help firms; but the private-sector temporaries do not serve under Federal appointments and are not considered Federal employees for any purpose.

Current Hiring Authorities

Depending on the circumstances, agencies may choose from among the following categories of temporary appointing authorities:

Appointment Type	Purpose	Conditions
Temporary limited appointments not to exceed 1 year <i>(competitive and excepted service)</i>	Authorized when the need for the employee is not expected to be permanent	May be extended up to 1 additional year without OPM approval. A position may not be filled with a temporary appointment for an aggregate of 2 years or 24 months, within the preceding 3 year period.*
Time limited appointments <i>(excepted service)</i>	Authorized by statute, EO or OPM regulation for specific conditions and/or specific agencies	Length of appointment may be specified, if necessary, in each individual appointing authority (e.g., not-to-exceed 18 months)

*Temporary appointments made for less than 6 months are not subject to this 3-year limit.

Appropriate Use, General

Temporary limited appointments are appropriate for meeting a range of staffing requirements when the agency expects there will be no permanent need for the employee. Agencies have basic authority to make this determination, but must document the reason for each temporary appointment in the employee’s personnel file. Part 316 of title 5, Code of Federal Regulations, gives the following examples of appropriate use:

- To fill a short-term position (i.e., one that is not expected to last longer than 1 year);
- To meet an employment need that is scheduled to be terminated within a certain timeframe because of abolishment, reorganization, or contracting of a function, anticipated reduction in funding, completion of a specific project, or peak workload; or
- To fill positions on a temporary basis when the positions are expected to be needed for placement of permanent employees who would otherwise be displaced from other parts of the organization.

Each supervisor of each position filled by temporary appointments must certify that the employment need is truly temporary and that the proposed appointment meets the regulatory time limits. This certification may constitute appropriate documentation of the compliance with

the time limits associated with temporary limited appointments. The reason(s) for making a temporary limited appointment must be stated on the form documenting each such appointment.

Appropriate Use, Special Circumstances

Ordinarily, temporary appointments are limited to 1 year or less, although they may be extended for a second year. However, OPM has authorized a regulatory exception to the 24-month maximum time limit which allows temporary appointments to be extended beyond the 24-month limit when filled by employees working on a seasonal work schedule for less than 6 months each year (e.g., wild land fire fighters during fire season; individuals employed in Federal national parks during the summer). The rationale for this exception is that recurring work that lasts for less than 6 months each year is best performed under temporary appointments.

Permanent appointments with seasonal work schedules that are expected to last for more than 6 months are covered by Federal employment benefits even when the employees are in a nonpay status during the off-season. The exception to the time limits for temporary seasonal appointments that permit agencies to reappoint individuals who are expected to work less than 6 months in any given year has enabled agencies an alternative way to cope with recurring periods of seasonal employment, but has the drawback of leaving these employees ineligible for certain benefits available to other Federal employees.

Most recently, OPM, through regulation, extended eligibility for health insurance coverage under the Federal Employees Health Benefits (FEHB) program to temporary firefighters and fire protection personnel. We believe that the extension of this coverage was particularly appropriate because firefighters face unique hazards and risks to their health. In addition, providing health insurance coverage under these circumstances was consistent with the administration's emphasis upon expanding insurance coverage and avoiding exposing community emergency rooms to the risk of having to treat uninsured Federal employees engaged in particularly high-risk duties.

Inappropriate Use

Temporary limited appointments are intended to meet legitimate nonpermanent staffing needs, as determined by the agency, only when there is a reason to expect that there will be no permanent need for the employee. The use of temporary limited appointments for other reasons is inappropriate and is not authorized. Here are a few examples of inappropriate use:

- Using temporary employees as a “tryout” or trial period prior to permanent appointment (except where specifically authorized by OPM regulation, e.g., for severely disabled employees);
- Circumventing the competitive examining process by appointing an individual on a temporary basis because that individual is not within reach for permanent employment; and
- Unless otherwise authorized, refilling positions which, over the preceding 3 years, have been filled continuously on a temporary basis (this does not include certain temporary appointments that are exempt from the general time limits).

VI. RIGHTS AND BENEFITS AVAILABLE TO TEMPORARY EMPLOYEES

Temporary employees in the Federal Government are eligible for many of the same entitlements that are available to permanent employees. The following represents the major benefits available to temporary employees:

- Annual leave, sick leave, court leave, family medical sick leave;
- Paid holidays (for employees with regularly scheduled tours of duty that fall on holidays);
- Full salary based on the grade and step of the positions;
- Annual pay adjustments;
- Advances in pay for new hires;
- Fair Labor Standards Act coverage, including minimum wage and overtime pay entitlement;
- Eligibility for overtime and premium pay (e.g., night pay, Sunday pay, holiday premium pay);
- Eligibility for hazard pay, remote worksite allowances, uniform allowances, student stipends, evacuation payments, and supervisory differentials; and
- FEHB coverage, once they have completed a year of continuous service (with the employee paying both the employee and the Government share of the premium.
 - Certain temporary employees who provide emergency services for fire protection and who are expected to work 90 days or more during any 1-year period are eligible to be enrolled in FEHB.

VII. OVERSIGHT AND ACCOUNTABILITY

Agencies (through their self-led accountability audits) and OPM's Merit System Accountability and Compliance team, include temporary employment in their reviews of hiring practices. We have not found that agencies have carried out sustained inappropriate use of temporary employment.

VIII. ALTERNATIVES FOR FURTHER ACTIONS

While we have found no evidence of continuous and sustained inappropriate use of temporary employment, we recognize that the Committee has raised concerns about the practice. If Congress is interested in addressing the issue, the feasibility of doing so should be dependent upon agency mission accomplishment, cost, and employee equity. In considering alternatives, Congress should consider whether changes are needed regarding temporary employment in general, or perhaps whether changes could be made more specifically regarding the use of temporary employment on a regular, recurring basis. Here are a few alternatives:

General Temporary Employment

One alternative could be to provide statutory authority for longer-serving temporary workers to be converted to permanent positions without further competition or under merit promotion and

internal placement procedures. This sort of change would require legislation. OPM is available to assist the Congress on any legislation that might be proposed to provide such an authority.

Recurring Temporary Employment

Another alternative could be to provide statutory authority for temporary employees who perform recurring temporary work to acquire competitive status for the purpose of applying for permanent Federal positions. In this case, an individual who has held a series of temporary appointments would be able to apply for permanent positions as a “status” candidate. Currently, such an authority does not exist. However, OPM is available to work with the Congress on any legislation that might be proposed to provide such an authority.

Congress also could remove the regulatory exception to the overall employment restrictions on temporary employment for recurring seasonal work that lasts for less than 6 months each year. This alternative would subject all temporary appointments to a 2-year limitation. Once a position is filled for 2 years, the position could no longer be filled by a temporary appointment. This alternative could negatively impact the way in which an agency could supplement its permanent staff during peak seasons each year. Agencies with seasonal employment needs would have to fill their seasonal positions on a permanent basis. However, as always, OPM is available to provide assistance to the Congress if it wishes to pursue legislation addressing this issue.

APPENDIX

Note: The data in this Appendix are from OPM’s Enterprise Human Resources Integration—Statistical Data Mart – an automated inventory of statistical and demographic information on the Federal workforce. Coverage is limited to Federal civilian employees with the following executive branch exclusions:

- U.S. Postal Service
- Postal Regulatory Commission
- Central Intelligence Agency
- National Security Agency
- Defense Intelligence Agency
- National Geospatial-Intelligence Agency
- Office of the Director of National Intelligence
- White House Office
- Office of the Vice President
- Foreign Service Personnel - State Department
- Tennessee Valley Authority
- Board of Governors of the Federal Reserve
- Public Health Service - Commissioned Officer Corps
- Non-appropriated fund employees
- Foreign Nationals Overseas

TEMPORARY APPOINTMENTS AND EXTENSIONS, CABINET LEVEL AGENCIES FISCAL YEAR 2008					
AGENCY	1-Dec	2-Mar	3-Jun	4-Sep	All
Department of the Air Force	3,015	3,026	6,956	4,408	17,405
Department of Agriculture	3,892	2,542	15,036	3,722	25,192
Department of the Army	5,112	5,554	9,789	8,683	29,138
Department of Commerce	435	627	971	700	2,733
Other Department of Defense	3,199	2,954	3,781	4,647	14,581
Department of Justice	713	590	1,143	1,234	3,680
Department of Labor	73	73	181	105	432
Department of Energy	80	120	210	80	490
Department of Education	61	54	107	93	315
Department of Health And Human Services	1,421	1,385	2,316	2,222	7,344
Department of Homeland Security	1,914	2,006	3,210	2,872	10,002
Department of Housing and Urban Development	77	17	211	153	458
Department of the Interior	2,660	2,715	14,675	8,516	28,566
Department of the Navy	736	602	2,457	1,258	5,053
Department of State (minus Foreign Service)	506	542	730	410	2,188
Department of Transportation	133	330	913	919	2,295
Department of the Treasury	541	2,636	2,209	770	6,156
Department of Veterans Affairs	5,253	6,488	9,246	11,340	32,327
All Other Agencies	2,080	1,468	4,621	3,028	11,197
ALL	31,901	33,729	78,762	55,160	199,552

TEMPORARY APPOINTMENTS AND EXTENSIONS, CABINET LEVEL AGENCIES FISCAL YEAR 2009					
AGENCY	1-Dec	2-Mar	3-Jun	4-Sep	All
Department of the Air Force	3,466	3,183	8,024	4,679	19,352
Department of Agriculture	3,818	2,594	16,197	3,948	26,557
Department of the Army	5,924	7,388	11,731	9,231	34,274
Department of Commerce	1,621	1,907	1,702	3,020	8,250
Other Department of Defense	3,072	2,675	2,742	3,657	12,146
Department of Justice	691	569	1,021	1,340	3,621
Department of Labor	57	30	257	224	568
Department of Energy	102	115	297	135	649
Department of Education	32	42	70	62	206
Department of Health and Human Services	1,390	1,384	2,430	2,344	7,548
Department of Homeland Security	3,095	3,065	3,105	2,552	11,817
Department of Housing and Urban Development	45	27	327	157	556
Department of the Interior	3,045	3,039	15,442	9,318	30,844
Department of the Navy	845	469	2,731	1,784	5,829
Department of State (minus Foreign Service)	465	423	728	506	2,122
Department of Transportation	622	695	837	840	2,994
Department of the Treasury	498	2,575	1,989	836	5,898
Department of Veterans Affairs	5,875	5,272	7,435	9,938	28,520
All Other Agencies	2,727	2,663	5,222	3,355	13,967
ALL	37,390	38,115	82,287	57,926	215,718

TEMPORARY APPOINTMENTS AND EXTENSIONS, CABINET LEVEL AGENCIES FISCAL YEAR 2010					
AGENCY	1-Dec	2-Mar	3-Jun	4-Sep	All
Department of the Air Force	3,550	2,970	6,036	4,106	16,662
Department of Agriculture	3,816	3,362	16,880	4,497	28,555
Department of the Army	5,962	5,107	9,190	6,107	26,366
Department of Commerce	2,692	3,530	2,469	3,073	11,764
Other Department of Defense	2,509	2,076	2,588	3,970	11,143
Department of Justice	739	644	916	1,256	3,555
Department of Labor	103	83	301	244	731
Department of Energy	140	112	300	191	743
Department of Education	46	45	99	144	334
Department of Health and Human Services	1,553	1,271	2,625	2,402	7,851
Department of Homeland Security	1,815	10,299	2,451	2,647	17,212
Department of Housing and Urban Development	53	24	386	250	713
Department of the Interior	3,651	3,413	17,241	10,351	34,656
Department of the Navy	798	756	2,855	1,611	6,020
Department of State (minus Foreign Service)	469	288	768	560	2,085
Department of Transportation	685	373	763	698	2,519
Department of the Treasury	452	1,044	1,866	684	4,046
Department of Veterans Affairs	5,161	5,382	6,405	9,350	26,298
All Other Agencies	2,300	2,009	6,350	3,734	14,393
ALL	36,494	42,788	80,489	55,875	215,646

TEMPORARY APPOINTMENTS AND EXTENSIONS, CABINET LEVEL AGENCIES FISCAL YEAR 2011					
AGENCY	1-Dec	2-Mar	3-Jun	4-Sep	All
Department of the Air Force	2,908	2,503	4,531	3,558	13,500
Department of Agriculture	3,919	3,017	13,928	3,628	24,492
Department of the Army	4,443	4,237	6,666	6,035	21,381
Department of Commerce	1,156	947	2,620	1,707	6,430
Other Department of Defense	2,113	3,231	2,509	3,655	11,508
Department of Justice	861	541	606	744	2,752
Department of Labor	76	72	184	240	572
Department of Energy	163	138	215	167	683
Department of Education	32	60	96	96	284
Department of Health and Human Services	1,426	1,295	1,860	2,267	6,848
Department of Homeland Security	1,898	1,885	2,494	2,665	8,942
Department of Housing and Urban Development	158	47	242	145	592
Department of the Interior	3,723	3,071	15,331	9,287	31,412
Department of the Navy	735	741	1,677	1,412	4,565
Department of State (minus Foreign Service)	500	462	763	648	2,373
Department of Transportation	425	473	604	582	2,084
Department of the Treasury	533	2,815	1,199	424	4,971
Department of Veterans Affairs	4,703	4,737	5,651	8,301	23,392
All Other Agencies	2,070	2,248	2,642	2,507	9,467
ALL	31,842	32,520	63,818	48,068	176,248

**TEMPORARY APPOINTMENTS AND EXTENSIONS, CABINET LEVEL AGENCIES
FISCAL YEAR 2012**

AGENCY	1-Dec	2-Mar	3-Jun	4-Sep	All
Department of the Air Force	2,225	2,020	3,391	3,308	10,944
Department of Agriculture	3,381	2,532	14,001	3,994	23,908
Department of the Army	4,212	4,166	6,657	7,051	22,086
Department of Commerce	1,037	776	742	590	3,145
Other Department of Defense	2,073	2,498	2,493	2,481	9,545
Department of Justice	589	351	517	1,072	2,529
Department of Labor	170	128	250	274	822
Department of Energy	58	128	313	167	666
Department of Education	76	26	42	62	206
Department of Health and Human Services	1,386	1,266	1,922	2,246	6,820
Department of Homeland Security	1,926	11,161	2,539	9,775	25,401
Department of Housing and Urban Development	91	24	106	107	328
Department of the Interior	2,918	5,050	13,242	9,543	30,753
Department of the Navy	809	501	2238	1,520	5,068
Department of State (minus Foreign Service)	497	509	741	889	2,636
Department of Transportation	487	478	509	570	2,044
Department of the Treasury	306	2,783	1,130	375	4,594
Department of Veterans Affairs	4,178	4,307	5,829	9,626	23,940
All Other Agencies	1,982	1,892	3,181	2,625	9,680
ALL	28,401	40,596	59,843	56,275	185,115



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