

U.S. Office of Personnel Management

Ensuring the Federal Government has an effective civilian workforce

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Laws, Regulations & Other Guidance

Citizenship Requirements for Employment

The Federal Government gives strong priority to hiring United States citizens and nationals, but non-citizens may be hired in certain circumstances. Agencies considering non-citizens for Federal employment in the competitive service must follow usual selection procedures and also meet the requirements of **all three** of the following: immigration law; an appropriations act ban on paying certain non-citizens; and an executive order restriction on appointing non-citizens in the competitive service. In addition, agencies are responsible for applying any citizenship requirements that may appear in their individual agency's authorization and appropriation laws.

- [General Information on Employment of Non-Citizens](#)
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Federal Employment of Non-Citizens - Detailed Policy Information with Citations

The Federal Government gives strong priority to hiring United States citizens and nationals, but non-citizens may be hired in certain circumstances. Agencies considering non-citizens for Federal employment in the competitive service must follow usual selection procedures and also meet the requirements of all three of the following:

- [immigration law](#);
- [appropriations act ban on paying certain non-citizens](#); and
- [executive order restriction on appointing non-citizens in the competitive service](#)

Agencies considering non-citizens for Federal employment in the excepted service and Senior Executive Service must meet the requirements of the top two above. In addition, agencies are responsible for applying any citizenship requirements that may appear in their individual agency's authorization and appropriation laws.

Immigration Law

Since the passage of the Immigration Reform Act of 1986, employers have been responsible for ensuring that the people they hire are eligible to work in the United States. Employers and all new employees are required to complete a [Department of Homeland Security \(DHS\), U. S. Citizenship and Immigration Services, Form I-9](#)  (Employment Eligibility Verification) and employers (appointing officials) must check employees' documents to verify employment eligibility. The Immigration and Nationality Act of 1990 added other requirements. One of those requirements is that employers may not discriminate against employees by requesting more or different

documents than are required. The Immigration and Nationality Act, as modified, provides at [title 8, United States Code \(U.S.C.\), section 1324a](#), that it is unlawful for a person or other entity to employ an unauthorized alien. In 1996, Public Law 104-208 added a statement that ". . . the term 'entity' includes an entity in any branch of the Federal Government."

Regulations that implement immigration laws are published in [title 8 of the Code of Federal Regulations \(CFR\)](#). According to 8 CFR 274a, U.S. employers may only hire an individual who is:

- a [citizen](#) (either by birth or naturalization);
- lawfully admitted for permanent residence;
- lawfully admitted for temporary residence;
- an alien admitted or paroled into the United States as a refugee;
- an alien granted asylum;
- a fiancé, fiancée, child, or parent of an alien who was admitted under certain conditions;
- an alien who is authorized employment with a specific employer incident to status (such as on-campus part-time employment of a non-immigrant student); or
- an alien who meets other requirements that are listed in the regulations.

For more detailed information about employer and employee responsibilities under United States immigration law, please contact the [U.S. Citizenship and Immigration Services, DHS](#).



Appropriations Act Ban on Paying Certain Non-Citizens

For every year since 1939, the Congress has placed language in annual appropriations laws to prevent the use of appropriated funds in the continental United States to pay Federal employees unless they are United States citizens or meet one of several exceptions. It is the responsibility of each agency to apply the terms of this law. No authority is given to the Office of Personnel Management to regulate, enforce, or grant exceptions to the ban.

Current appropriations law prohibits an agency from using appropriated funds 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 in the service of the United States on the date of enactment of the appropriations act who, being eligible for citizenship, has filed a declaration of intention to become a citizen of the United States prior to such date and is actually residing in the United States,
3. is a [person who owes allegiance](#) to the United States,
4. is an alien from Cuba, Poland, South Vietnam, the countries of the former Soviet Union, or the Baltic countries lawfully admitted to the United States for permanent residence,
5. is a South Vietnamese, Cambodian, or Laotian refugee paroled in the United States after January 1, 1975, or
6. is a national of the People's Republic of China who qualifies for adjustment of status pursuant to the Chinese Student Protection Act of 1992.

The ban does not apply to citizens of Ireland, Israel, or the Republic of the Philippines, or to nationals of those [countries allied](#) with the United States in a current defense effort, or to international broadcasters employed by the United States Information Agency, or to temporary employment of translators, or to temporary employment in the field service (not to exceed 60 days) as a result of emergencies.



Notes on the Appropriations Act Ban

- Some agencies may have appropriations language that specifically exempts them from the ban on paying non-citizens. For example, the Department of Defense is granted such an exception in its Appropriations Act.
- The term "continental United States" includes all states except Hawaii. Note that Civil Service Rule VIII provides separate authority to appoint non-citizens in overseas positions. "Overseas positions" are defined for this purpose as ". . . positions in foreign countries and in other areas beyond the continental limits of the United States, except as provided in section 8.4."

Excerpt from 5 CFR 8 Appointments to Overseas Positions.

Sec. 8.3 Appointment of persons not citizens of the United States.

Persons who are not citizens of the United States may be recruited overseas and appointed to overseas positions without regard to the Civil Service Act.

Sec. 8.4 Positions excepted from the application of this part.

This part shall not apply to positions in Hawaii, Puerto Rico, the Virgin Islands, and Alaska, and on the Isthmus of Panama.

- Citizens of the United States include those who were:
 - born in the United States (the fifty states, the District of Columbia, Puerto Rico, Guam [since 1950], or the U. S. Virgin Islands);
 - born outside the United States to parents who are citizens of the United States, one of which was physically present in the United States or one of its outlying possessions for a continuous period of one year at any time prior to the birth of the person (in some situations only one parent has to be a citizen);
 - naturalized as a United States citizen; or
 - otherwise granted citizenship under authorities described in law, beginning at [8 U.S.C. 1401](#).
- Persons (nationals) who owe allegiance to the United States include those who were ". . . born in an outlying possession of the United States on or after the date of formal acquisition of such possession;" (including American Samoa, Swains Island, and the Northern Mariana Islands), or who are children of nationals under certain circumstances, or who meet other requirements described in law at [8 U.S.C. 1408](#).
- The Chinese Student Protection Act of 1992 allows certain nationals of the Peoples Republic of China (PRC) who were identified in [Executive Order 12711](#) to have their immigration status upgraded from "student" category or from some other designated category. The appropriations ban does not bar payments to PRC nationals who qualify under the terms of the Chinese Student Protection Act for a change in immigration status.
- Countries "... allied with the United States in a current defense effort ..." are those with which the United States has certain treaties. For an authoritative list of allied countries, contact the Office of the Assistant Legal Adviser for Treaty Affairs, Office of the Legal Adviser, U.S. Department of State, or see the list of U.S. Collective Defense Arrangements available on their Web site at www.state.gov.



Executive Order Restriction on Appointing Non-Citizens to the Competitive Service

- Executive Order 11935 (September 2, 1976) restricts the employment of non-citizens into "competitive service" positions covered by title 5 of the U.S. Code. This applies to all agencies with [competitive service](#) positions, any place in the world. The Executive order amended Civil Service Rule VII to include the following section:

Excerpt from 5 CFR 7 General Provisions

5 CFR 7.3 Citizenship.

(a) No person shall be admitted to competitive examination unless such person is a [citizen](#) or [national](#) of the United States.

(b) No person shall be given any appointment in the [competitive service](#) unless such person is a citizen or national of the United States.

(c) OPM may, as an [exception to this rule](#) and to the extent permitted by law, authorize the appointment of aliens to positions in the competitive service when necessary to promote the efficiency of the service in specific cases or for temporary appointments.

- The Executive order is also the basis for the following regulation:

5 CFR 338.101 Citizenship.

(a) A person may be admitted to competitive examination only if he is a [citizen](#) of the United States or owes [permanent allegiance](#) to the United States.

(b) A person may be given an appointment in the [competitive service](#) only if he or she is a citizen of or owes permanent allegiance to the United States. However, a non-citizen may be given an appointment in rare cases under section 316.601 of this chapter, unless the appointment is prohibited by statute.

(c) Paragraph (b) of this section applies to reinstatement and transfer as well as to other noncompetitive appointments, and to conversion to career or career-conditional employment.



Notes on the Executive Order Restriction, 5 CFR 7.3, and 5 CFR 338.101

- The competitive service includes all positions in which appointments are subject to the provisions of law at 5 U.S.C. Chapter 33, Examination, Selection, and Placement. The primary differences between the competitive service and the excepted service are in the areas of appointment procedures and job protections.
 - Some Federal agencies are outside the competitive service. These include the United States Postal Service, the Tennessee Valley Authority, the Federal Bureau of Investigation, the Federal Aviation Administration, and a number of other agencies. These agencies are exempt from the Executive order ban on hiring non-citizens.
 - Some positions common to other agencies are "excepted" from the competitive service. These positions are also exempt from the Executive order ban. Excepted positions include lawyers and others as described in 5 CFR part 213, Excepted Service. Subpart C of part 213 lists positions that have been placed under excepted Schedules A, B, and C.
- Under the Executive order provision that permits the Office of Personnel Management to make exceptions to the Executive order ban, the only exception referenced in the regulation at 5 CFR 338.101 is an appointment under 5 CFR 316.601, "Appointment without competitive examination in rare cases."

Such appointments are truly rare. However, if agencies find no qualified citizens available to fill a competitive service position, and if they meet all of the requirements of the appropriations ban and immigration rules, they may hire a non-citizen under a special Schedule A excepted appointment, authorized by 5 CFR 213.3102 (bb). The position that is filled this way is withdrawn from the competitive service for the period it is filled by the non-citizen. The excepted appointment does not give the employee eligibility for any other job. He or she may not be promoted or reassigned to a position in the competitive service, except in situations where a qualified citizen is not available and a Schedule A appointment is again used.

Excerpt from the listing of excepted Schedule A appointments in 5 CFR 213.3102

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of the Office [of Personnel Management] except when the authority is specifically included in a delegated examining agreement with the Office.

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