

“(a) ASSIGNMENT AUTHORITY.—The Secretary of Defense may, with the agreement of the private sector organization concerned, arrange for the temporary assignment of an employee to such private sector organization, or from such private sector organization to a Department of Defense organization under this section. An employee shall be eligible for such an assignment only if—

“(1) the employee—

“(A) works in the field of cyber operations or information technology management;

“(B) is considered by the Secretary of Defense to be an exceptional employee;

“(C) is expected to receive increased cyber operations or information technology management responsibilities in the future; and

“(D) is compensated at not less than the GS-11 level (or the equivalent); and

“(2) the proposed assignment meets applicable requirements of section 209(b) of the E-Government Act of 2002 [Pub. L. 107-347] (44 U.S.C. 3501 note).

“(b) AGREEMENTS.—The Secretary of Defense shall provide for a written agreement among the Department of Defense, the private sector organization, and the employee concerned regarding the terms and conditions of the employee’s assignment under this section. The agreement—

“(1) shall require that employees of the Department of Defense, upon completion of the assignment, will serve in the civil service for a period equal to the length of the assignment; and

“(2) shall provide that if the employee of the Department of Defense or of the private sector organization (as the case may be) fails to carry out the agreement, such employee shall be liable to the United States for payment of all expenses of the assignment, unless that failure was for good and sufficient reason, as determined by the Secretary of Defense.

An amount for which an employee is liable under paragraph (2) shall be treated as a debt due the United States.

“(c) TERMINATION.—An assignment under this section may, at any time and for any reason, be terminated by the Department of Defense or the private sector organization concerned.

“(d) DURATION.—An assignment under this section shall be for a period of not less than 3 months and not more than 1 year, and may be extended in 3-month increments for a total of not more than 1 additional year; however, no assignment under this section may commence after September 30, 2022.

“(e) TERMS AND CONDITIONS FOR PRIVATE SECTOR EMPLOYEES.—An employee of a private sector organization who is assigned to a Department of Defense organization under this section—

“(1) may continue to receive pay and benefits from the private sector organization from which such employee is assigned;

“(2) is deemed to be an employee of the Department of Defense for the purposes of—

“(A) chapter 73 of title 5, United States Code;

“(B) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18, United States Code;

“(C) sections 1343, 1344, and 1349(b) of title 31, United States Code;

“(D) the Federal Tort Claims Act [see Short Title note under section 2671 of Title 28, Judiciary and Judicial Procedure] and any other Federal tort liability statute;

“(E) the Ethics in Government Act of 1978 [5 U.S.C. App.];

“(F) section 1043 of the Internal Revenue Code of 1986 [26 U.S.C. 1043]; and

“(G) section 27 of the Office of Federal Procurement Policy Act [now 41 U.S.C. 2101 et seq.]; and

“(3) may not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which such employee is assigned.

“(f) PROHIBITION AGAINST CHARGING CERTAIN COSTS TO THE FEDERAL GOVERNMENT.—A private sector organization may not charge the Department of Defense or any other agency of the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the organization to an employee assigned to a Department of Defense organization under this section for the period of the assignment.

“(g) CONSIDERATIONS.—In carrying out this section, the Secretary of Defense—

“(1) shall ensure that, of the assignments made under this section each year, at least 20 percent are to or from small business concerns (as defined by section 3703(e)(2)(A) of title 5, United States Code); and

“(2) shall take into consideration the question of how assignments under this section might best be used to help meet the needs of the Department of Defense with respect to the training of employees in cyber operations or information technology management.

“(h) NUMERICAL LIMITATION.—In no event may more than 50 employees be participating in assignments under this section at any given time.

“(i) REPEAL OF SUPERSEDED SECTION.—Section 1109 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 358) [formerly set out as a note under this section] is repealed, except that—

“(1) nothing in this subsection shall, in the case of any assignment commencing under such section 1109 on or before the date of the enactment of this Act [Oct. 28, 2009], affect—

“(A) the duration of such assignment or the authority to extend such assignment in accordance with subsection (d) of such section 1109, as last in effect; or

“(B) the terms or conditions of the agreement governing such assignment, including with respect to any service obligation under subsection (b) thereof; and

“(2) any employee whose assignment is allowed to continue by virtue of paragraph (1) shall be taken into account for purposes of the numerical limitation under subsection (h).”

Pub. L. 110-181, div. A, title XI, § 1109, Jan. 28, 2008, 122 Stat. 358, which authorized the Secretary of Defense to arrange for the temporary assignment of a Department of Defense employee to a private sector organization under certain terms, conditions, and considerations, and for a limited period, and required the Secretary to submit to the Committees on Armed Services a report on the potential benefits of temporarily assigning information technology specialists from private sector organizations to the Department of Defense, was repealed, with certain exceptions, by Pub. L. 111-84, div. A, title XI, § 1110(i), formerly § 1110(j), Oct. 28, 2009, 123 Stat. 2495, renumbered § 1110(i), Pub. L. 114-92, div. A, title X, § 1075(a)(2), Nov. 25, 2015, 129 Stat. 997, see above.

§ 3703. Assignment of employees to private sector organizations

(a) IN GENERAL.—An employee of an agency assigned to a private sector organization under this chapter is deemed, during the period of the assignment, to be on detail to a regular work assignment in his agency.

(b) COORDINATION WITH CHAPTER 81.—Notwithstanding any other provision of law, an employee of an agency assigned to a private sector organization under this chapter is entitled to retain coverage, rights, and benefits under subchapter I of chapter 81, and employment during the assignment is deemed employment by the United States, except that, if the employee or the employee’s dependents receive from the private sector organization any payment under an insurance policy for which the premium is wholly paid by the private sector organization, or

other benefit of any kind on account of the same injury or death, then, the amount of such payment or benefit shall be credited against any compensation otherwise payable under subchapter I of chapter 81.

(c) REIMBURSEMENTS.—The assignment of an employee to a private sector organization under this chapter may be made with or without reimbursement by the private sector organization for the travel and transportation expenses to or from the place of assignment, subject to the same terms and conditions as apply with respect to an employee of a Federal agency or a State or local government under section 3375, and for the pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the agency used for paying the travel and transportation expenses or pay.

(d) TORT LIABILITY; SUPERVISION.—The Federal Tort Claims Act and any other Federal tort liability statute apply to an employee of an agency assigned to a private sector organization under this chapter. The supervision of the duties of an employee of an agency so assigned to a private sector organization may be governed by an agreement between the agency and the organization.

(e) SMALL BUSINESS CONCERNS.—

(1) IN GENERAL.—The head of each agency shall take such actions as may be necessary to ensure that, of the assignments made under this chapter from such agency to private sector organizations in each year, at least 20 percent are to small business concerns.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the term “small business concern” means a business concern that satisfies the definitions and standards specified by the Administrator of the Small Business Administration under section 3(a)(2) of the Small Business Act (as from time to time amended by the Administrator);

(B) the term “year” refers to the 12-month period beginning on the date of the enactment of this chapter, and each succeeding 12-month period in which any assignments under this chapter may be made; and

(C) the assignments “made” in a year are those commencing in such year.

(3) REPORTING REQUIREMENT.—An agency which fails to comply with paragraph (1) in a year shall, within 90 days after the end of such year, submit a report to the Committees on Government Reform and Small Business of the House of Representatives and the Committees on Governmental Affairs and Small Business of the Senate. The report shall include—

(A) the total number of assignments made under this chapter from such agency to private sector organizations in the year;

(B) of that total number, the number (and percentage) made to small business concerns; and

(C) the reasons for the agency’s non-compliance with paragraph (1).

(4) EXCLUSION.—This subsection shall not apply to an agency in any year in which it makes fewer than 5 assignments under this chapter to private sector organizations.

(Added Pub. L. 107-347, title II, §209(c)(1), Dec. 17, 2002, 116 Stat. 2926.)

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in subsec. (d), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§921, 922, 931-934, 941-946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

Section 3(a)(2) of the Small Business Act, referred to in subsec. (e)(2)(A), is classified to section 632(a)(2) of Title 15, Commerce and Trade.

The date of the enactment of this chapter, referred to in subsec. (e)(2)(B), is the date of enactment of Pub. L. 107-347, which was approved Dec. 17, 2002.

CHANGE OF NAME

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE

Section effective 120 days after Dec. 17, 2002, see section 402(a) of Pub. L. 107-347, set out as a note under section 3601 of Title 44, Public Printing and Documents.

§3704. Assignment of employees from private sector organizations

(a) IN GENERAL.—An employee of a private sector organization assigned to an agency under this chapter is deemed, during the period of the assignment, to be on detail to such agency.

(b) TERMS AND CONDITIONS.—An employee of a private sector organization assigned to an agency under this chapter—

(1) may continue to receive pay and benefits from the private sector organization from which he is assigned;

(2) is deemed, notwithstanding subsection (a), to be an employee of the agency for the purposes of—

(A) chapter 73;

(B) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18;

(C) sections 1343, 1344, and 1349(b) of title 31;

(D) the Federal Tort Claims Act and any other Federal tort liability statute;

(E) the Ethics in Government Act of 1978;

(F) section 1043 of the Internal Revenue Code of 1986; and

(G) chapter 21 of title 41;

(3) may not have access to any trade secrets or to any other nonpublic information which