

costs that otherwise would not occur” before period at end.

**§ 396. Lead system integrator; financial interests**

**(a) In general**

With respect to contracts entered into after July 1, 2007, and except as provided in subsection (b), no entity performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

**(b) Exception**

An entity described in subsection (a) may have a direct financial interest in the development or construction of an individual system or element of a system of systems if—

(1) the Secretary of Homeland Security certifies to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Homeland Security of the House of Representatives, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Commerce, Science and Transportation of the Senate that—

(A) the entity was selected by the Department of Homeland Security as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(B) the Department took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) the entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

**(c) Construction**

Nothing in this section shall be construed to preclude an entity described in subsection (a) from performing work necessary to integrate two or more individual systems or elements of a system of systems with each other.

**(d) Regulations update**

Not later than July 1, 2007, the Secretary of Homeland Security shall update the acquisition regulations of the Department of Homeland Security in order to specify fully in such regulations the matters with respect to lead system integrators set forth in this section. Included in such regulations shall be: (1) a precise and comprehensive definition of the term “lead system integrator”, modeled after that used by the Department of Defense; and (2) a specification of various types of contracts and fee structures that are appropriate for use by lead system integrators in the production, fielding, and sustainment of complex systems.

(Pub. L. 110–28, title VI, § 6405, May 25, 2007, 121 Stat. 176.)

CODIFICATION

Section was enacted as part of the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Ac-

countability Appropriations Act, 2007, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

PART E—HUMAN RESOURCES MANAGEMENT

**§ 411. Establishment of human resources management system**

**(a) Authority**

**(1) Sense of Congress**

It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

**(2), (3) Omitted**

**(b) Effect on personnel**

**(1) Nonseparation or nonreduction in grade or compensation of full-time personnel and part-time personnel holding permanent positions**

Except as otherwise provided in this chapter, the transfer under this chapter of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for 1 year after the date of transfer to the Department.

**(2) Positions compensated in accordance with Executive Schedule**

Any person who, on the day preceding such person’s date of transfer pursuant to this chapter, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5 and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

**(3) Coordination rule**

Any exercise of authority under chapter 97 of title 5, including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

(Pub. L. 107–296, title VIII, § 841, Nov. 25, 2002, 116 Stat. 2229.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), (2), was in the original “this Act”, meaning Pub. L. 107–296, Nov.

25, 2002, 116 Stat. 2135, known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

#### CODIFICATION

Section is comprised of section 841 of Pub. L. 107-296. Subsec. (a)(2), (3) of section 841 of Pub. L. 107-296 enacted chapter 97 (§9701) of Title 5, Government Organization and Employees.

### § 412. Labor-management relations

#### (a) Limitation on exclusionary authority

##### (1) In general

No agency or subdivision of an agency which is transferred to the Department pursuant to this chapter shall be excluded from the coverage of chapter 71 of title 5 as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

##### (2) Exclusions allowable

Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of such title 5; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

#### (b) Provisions relating to bargaining units

##### (1) Limitation relating to appropriate units

Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5 as of the day before the effective date of this chapter (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this chapter, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

##### (2) Limitation relating to positions or employees

No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of such title 5, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this chapter and any employees first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

#### (c) Waiver

If the President determines that the application of subsections (a), (b), and (d) would have a substantial adverse impact on the ability of the Department to protect homeland security, the President may waive the application of such subsections 10 days after the President has submitted to Congress a written explanation of the reasons for such determination.

#### (d) Coordination rule

No other provision of this chapter or of any amendment made by this chapter may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

#### (e) Rule of construction

Nothing in section 9701(e) of title 5 shall be considered to apply with respect to any agency or subdivision of any agency, which is excluded from the coverage of chapter 71 of title 5 by virtue of an order issued in accordance with section 7103(b) of such title 5 and the preceding provisions of this section (as applicable), or to any employees of any such agency or subdivision or to any individual or entity representing any such employees or any representatives thereof.

(Pub. L. 107-296, title VIII, §842, Nov. 25, 2002, 116 Stat. 2234.)

#### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (b)(1), and (d), was in the original “this Act”, meaning Pub. L. 107-296, Nov. 25, 2002, 116 Stat. 2135, known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

The effective date of this chapter, referred to in subsec. (b), is 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of this title.

### § 413. Use of counternarcotics enforcement activities in certain employee performance appraisals

#### (a) In general

Each subdivision of the Department that is a National Drug Control Program Agency shall include as one of the criteria in its performance appraisal system, for each employee directly or indirectly involved in the enforcement of Federal, State, or local narcotics laws, the performance of that employee with respect to the enforcement of Federal, State, or local narcotics laws, relying to the greatest extent practicable on objective performance measures, including—

(1) the contribution of that employee to seizures of narcotics and arrests of violators of Federal, State, or local narcotics laws; and

(2) the degree to which that employee cooperated with or contributed to the efforts of other employees, either within the Depart-