

appointment in a defense intelligence position at the end of the first year of the period of the appointment and determine whether the appointment should be continued for the remainder of the period. The continuation of a time-limited appointment after the first year shall be subject to the approval of the Secretary.

(c) **CONDITION ON PERMANENT APPOINTMENT TO DEFENSE INTELLIGENCE SENIOR EXECUTIVE SERVICE.**—An employee serving in a defense intelligence position pursuant to a time-limited appointment is not eligible for a permanent appointment to a Defense Intelligence Senior Executive Service position (including a position in which the employee is serving) unless the employee is selected for the permanent appointment on a competitive basis.

(d) **TIME-LIMITED APPOINTMENT DEFINED.**—In this section, the term “time-limited appointment” means an appointment (subject to the condition in subsection (b)) for a period not to exceed two years.

(Added Pub. L. 104-201, div. A, title XVI, § 1632(b), Sept. 23, 1996, 110 Stat. 2748.)

PRIOR PROVISIONS

A prior section 1608 was renumbered section 1623 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104-201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1609. Termination of defense intelligence employees

(a) **TERMINATION AUTHORITY.**—Notwithstanding any other provision of law, the Secretary of Defense may terminate the employment of any employee in a defense intelligence position if the Secretary—

- (1) considers that action to be in the interests of the United States; and
- (2) determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of such employee cannot be invoked in a manner consistent with the national security.

(b) **FINALITY.**—A decision by the Secretary of Defense to terminate the employment of an employee under this section is final and may not be appealed or reviewed outside the Department of Defense.

(c) **NOTIFICATION TO CONGRESSIONAL COMMITTEES.**—Whenever the Secretary of Defense terminates the employment of an employee under the authority of this section, the Secretary shall promptly notify the congressional oversight committees of such termination.

(d) **PRESERVATION OF RIGHT TO SEEK OTHER EMPLOYMENT.**—Any termination of employment under this section does not affect the right of the employee involved to seek or accept employment with any other department or agency of the United States if that employee is declared eligible for such employment by the Director of the Office of Personnel Management.

(e) **LIMITATION ON DELEGATION.**—The authority of the Secretary of Defense under this section may be delegated only to the Deputy Secretary

of Defense, the head of an intelligence component of the Department of Defense (with respect to employees of that component), or the Secretary of a military department (with respect to employees of that department). An action to terminate employment of such an employee by any such official may be appealed to the Secretary of Defense.

(Added Pub. L. 104-201, div. A, title XVI, § 1632(b), Sept. 23, 1996, 110 Stat. 2748.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 1590(e) and 1604(e) of this title prior to repeal by Pub. L. 104-201, §§ 1632(a)(3), 1633(a).

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104-201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1610. Reductions and other adjustments in force

(a) **IN GENERAL.**—The Secretary of Defense shall prescribe regulations for the separation of employees in defense intelligence positions, including members of the Defense Intelligence Senior Executive Service and employees in Intelligence Senior Level positions, during a reduction in force or other adjustment in force. The regulations shall apply to such a reduction in force or other adjustment in force notwithstanding sections 3501(b) and 3502 of title 5.

(b) **MATTERS TO BE GIVEN EFFECT.**—The regulations shall give effect to the following:

- (1) Tenure of employment.
- (2) Military preference, subject to sections 3501(a)(3) and 3502(b) of title 5.
- (3) The veteran's preference under section 3502(b) of title 5.
- (4) Performance.
- (5) Length of service computed in accordance with the second sentence of section 3502(a) of title 5.

(c) **REGULATIONS RELATING TO DEFENSE INTELLIGENCE SES.**—The regulations relating to removal from the Defense Intelligence Senior Executive Service in a reduction in force or other adjustment in force shall be consistent with section 3595(a) of title 5.

(d) **RIGHT OF APPEAL.**—(1) The regulations shall provide a right of appeal regarding a personnel action under the regulations. The appeal shall be determined within the Department of Defense. An appeal determined at the highest level provided in the regulations shall be final and not subject to review outside the Department of Defense. A personnel action covered by the regulations is not subject to any other provision of law that provides appellate rights or procedures.

(2) Notwithstanding paragraph (1), a preference eligible referred to in section 7511(a)(1)(B) of title 5 may elect to have an appeal of a personnel action taken against the preference eligible under the regulation determined by the Merit Systems Protection Board instead of having the appeal determined within the Department of Defense. Section 7701 of title 5 shall apply to any such appeal to the Merit Systems Protection Board.