

2008, 122 Stat. 4619; Pub. L. 112-81, div. A, title X, § 1051(a), Dec. 31, 2011, 125 Stat. 1581.)

AMENDMENTS

2011—Pub. L. 112-81 amended section generally. Prior to amendment, section related to the authority to prescribe certification and credential standards for professional accounting positions.

2008—Subsec. (e). Pub. L. 110-417 substituted “0505, 0510, 0511, or equivalent” for “GS-510, GS-511, and GS-505”.

EFFECTIVE DATE

Pub. L. 107-314, div. A, title XI, § 1104(b), Dec. 2, 2002, 116 Stat. 2661, provided that: “Standards established pursuant to section 1599d of title 10, United States Code, as added by subsection (a), may take effect no sooner than 120 days after the date of the enactment of this Act [Dec. 2, 2002].”

§ 1599e. Probationary period for employees

(a) **IN GENERAL.**—Notwithstanding sections 3321 and 3393(d) of title 5, the appointment of a covered employee shall become final only after such employee has served a probationary period of two years. The Secretary concerned may extend a probationary period under this subsection at the discretion of such Secretary.

(b) **DEFINITIONS.**—In this section:

(1) The term “covered employee” means any individual—

(A) appointed to a permanent position within the competitive service at the Department of Defense; or

(B) appointed as a career appointee (as that term is defined in section 3132(a)(4) of title 5) within the Senior Executive Service at the Department.

(2) The term “Secretary concerned” includes the Secretary of Defense with respect to employees of the Department of Defense who are not employees of a military department.

(c) **EMPLOYMENT BECOMES FINAL.**—Upon the expiration of a covered employee’s probationary period under subsection (a), the supervisor of the employee shall determine whether the appointment becomes final based on regulations prescribed for such purpose by the Secretary of Defense.

(d) **APPLICATION OF CHAPTER 75 OF TITLE 5 FOR EMPLOYEES IN THE COMPETITIVE SERVICE.**—With respect to any individual described in subsection (b)(1)(A) and to whom this section applies, section 7501(1) and section 7511(a)(1)(A)(ii) of title 5 shall be applied to such individual by substituting “completed 2 years” for “completed 1 year” in each instance it appears.

(Added Pub. L. 114-92, div. A, title XI, § 1105(a)(1), Nov. 25, 2015, 129 Stat. 1023.)

EFFECTIVE DATE

Pub. L. 114-92, div. A, title XI, § 1105(b), Nov. 25, 2015, 129 Stat. 1024, provided that: “The amendment made by subsection (a) [enacting this section] shall apply to any covered employee (as that term is defined in section 1599e of title 10, United States Code, as added by such subsection) appointed after the date of the enactment of this section [Nov. 25, 2015].”

§ 1599f. United States Cyber Command recruitment and retention

(a) **GENERAL AUTHORITY.**—(1) The Secretary of Defense may—

(A) establish, as positions in the excepted service, such qualified positions in the Department of Defense as the Secretary determines necessary to carry out the responsibilities of the United States Cyber Command, including—

(i) positions held by staff of the headquarters of the United States Cyber Command;

(ii) positions held by elements of the United States Cyber Command enterprise relating to cyberspace operations, including elements assigned to the Joint Task Force-Department of Defense Information Networks; and

(iii) positions held by elements of the military departments supporting the United States Cyber Command;

(B) appoint an individual to a qualified position (after taking into consideration the availability of preference eligibles for appointment to the position); and

(C) subject to the requirements of subsections (b) and (c), fix the compensation of an individual for service in a qualified position.

(2) The authority of the Secretary under this subsection applies without regard to the provisions of any other law relating to the appointment, number, classification, or compensation of employees.

(b) **BASIC PAY.**—(1) In accordance with this section, the Secretary shall fix the rates of basic pay for any qualified position established under subsection (a)—

(A) in relation to the rates of pay provided for employees in comparable positions in the Department, in which the employee occupying the comparable position performs, manages, or supervises functions that execute the cyber mission of the Department; and

(B) subject to the same limitations on maximum rates of pay established for such employees by law or regulation.

(2) The Secretary may—

(A) consistent with section 5341 of title 5, adopt such provisions of that title to provide for prevailing rate systems of basic pay; and

(B) apply those provisions to qualified positions for employees in or under which the Department may employ individuals described by section 5342(a)(2)(A) of such title.

(c) **ADDITIONAL COMPENSATION, INCENTIVES, AND ALLOWANCES.**—(1) The Secretary may provide employees in qualified positions compensation (in addition to basic pay), including benefits, incentives, and allowances, consistent with, and not in excess of the level authorized for, comparable positions authorized by title 5.

(2) An employee in a qualified position whose rate of basic pay is fixed under subsection (b)(1) shall be eligible for an allowance under section 5941 of title 5 on the same basis and to the same extent as if the employee was an employee covered by such section, including eligibility conditions, allowance rates, and all other terms and conditions in law or regulation.

(d) **IMPLEMENTATION PLAN REQUIRED.**—The authority granted in subsection (a) shall become effective 30 days after the date on which the

Secretary of Defense provides to the congressional defense committees a plan for implementation of such authority. The plan shall include the following:

- (1) An assessment of the current scope of the positions covered by the authority.
- (2) A plan for the use of the authority.
- (3) An assessment of the anticipated workforce needs of the United States Cyber Command across the future-years defense plan.
- (4) Other matters as appropriate.

(e) **COLLECTIVE BARGAINING AGREEMENTS.**—Nothing in subsection (a) may be construed to impair the continued effectiveness of a collective bargaining agreement with respect to an office, component, subcomponent, or equivalent of the Department that is a successor to an office, component, subcomponent, or equivalent of the Department covered by the agreement before the succession.

(f) **TRAINING.**—(1) The Secretary shall provide training to covered personnel on hiring and pay matters relating to authorities under this section.

(2) For purposes of this subsection, covered personnel are employees of the Department who—

- (A) carry out functions relating to—
 - (i) the management of human resources and the civilian workforce of the Department; or
 - (ii) the writing of guidance for the implementation of authorities regarding hiring and pay under this section; or

(B) are employed in supervisory positions or have responsibilities relating to the hiring of individuals for positions in the Department and to whom the Secretary intends to delegate authority under this section.

(g) **REQUIRED REGULATIONS.**—The Secretary, in coordination with the Director of the Office of Personnel Management, shall prescribe regulations for the administration of this section.

(h) **ANNUAL REPORT.**—(1) Not later than one year after the date of the enactment of this section and not less frequently than once each year thereafter until the date that is five years after the date of the enactment of this section, the Director of the Office of Personnel Management, in coordination with the Secretary, shall submit to the appropriate committees of Congress a detailed report on the administration of this section during the most recent one-year period.

(2) Each report submitted under paragraph (1) shall include, for the period covered by the report, the following:

- (A) A discussion of the process used in accepting applications, assessing candidates, ensuring adherence to veterans' preference, and selecting applicants for vacancies to be filled by an individual for a qualified position.
- (B) A description of the following:
 - (i) How the Secretary plans to fulfill the critical need of the Department to recruit and retain employees in qualified positions.
 - (ii) The measures that will be used to measure progress.
 - (iii) Any actions taken during the reporting period to fulfill such critical need.

(C) A discussion of how the planning and actions taken under subparagraph (B) are inte-

grated into the strategic workforce planning of the Department.

(D) The metrics on actions occurring during the reporting period, including the following:

- (i) The number of employees in qualified positions hired, disaggregated by occupation, grade, and level or pay band.
- (ii) The placement of employees in qualified positions, disaggregated by military department, Defense Agency, or other component within the Department.
- (iii) The total number of veterans hired.
- (iv) The number of separations of employees in qualified positions, disaggregated by occupation and grade and level or pay band.
- (v) The number of retirements of employees in qualified positions, disaggregated by occupation, grade, and level or pay band.
- (vi) The number and amounts of recruitment, relocation, and retention incentives paid to employees in qualified positions, disaggregated by occupation, grade, and level or pay band.

(E) A description of the training provided to employees described in subsection (f)(2) on the use of authorities under this section.

(i) **THREE-YEAR PROBATIONARY PERIOD.**—The probationary period for all employees hired under the authority established in this section shall be three years.

(j) **INCUMBENTS OF EXISTING COMPETITIVE SERVICE POSITIONS.**—(1) An individual occupying a position on the date of the enactment of this section that is selected to be converted to a position in the excepted service under this section shall have the right to refuse such conversion.

(2) After the date on which an individual who refuses a conversion under paragraph (1) stops serving in the position selected to be converted, the position may be converted to a position in the excepted service.

(k) **DEFINITIONS.**—In this section:

(1) The term “appropriate committees of Congress” means—

- (A) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and
- (B) the Committee on Armed Services, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.

(2) The term “collective bargaining agreement” has the meaning given that term in section 7103(a)(8) of title 5.

(3) The term “excepted service” has the meaning given that term in section 2103 of title 5.

(4) The term “preference eligible” has the meaning given that term in section 2108(3) of title 5.

(5) The term “qualified position” means a position, designated by the Secretary for the purpose of this section, in which the individual occupying such position performs, manages, or supervises functions that execute the responsibilities of the United States Cyber Command relating to cyber operations.

(6) The term “Senior Executive Service” has the meaning given that term in section 2101a of title 5.

(Added Pub. L. 114-92, div. A, title XI, §1107(a), Nov. 25, 2015, 129 Stat. 1024; amended Pub. L. 114-328, div. A, title XI, §1103(a), (b)(2), Dec. 23, 2016, 130 Stat. 2444.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subssecs. (h)(1) and (j)(1), is the date of enactment of Pub. L. 114-92, which was approved Nov. 25, 2015.

AMENDMENTS

2016—Subsecs. (f), (g). Pub. L. 114-328, §1103(a), added subsec. (f) and redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 114-328, §1103(a)(1), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (h)(2)(E). Pub. L. 114-328, §1103(b)(2), substituted “employees described in subsection (f)(2) on the use of authorities under this section” for “supervisors of employees in qualified positions at the Department on the use of the new authorities”.

Subsecs. (i) to (k). Pub. L. 114-328, §1103(a)(1), redesignated subssecs. (h) to (j) as (i) to (k), respectively.

ACTIONS PENDING FULL IMPLEMENTATION OF PLAN FOR CYBER MISSION FORCE POSITIONS

Pub. L. 114-328, div. A, title XVI, §1643(a), Dec. 23, 2016, 130 Stat. 2602, provided that: “Until the Secretary of Defense completes implementation of the authority in subsection (a) of section 1599f of title 10, United States Code, for United States Cyber Command workforce positions in accordance with the implementation plan required by subsection (d) of such section, the Secretary shall do each of the following:

“(1) Notwithstanding sections 3309 through 3318 of title 5, United States Code, provide for and implement an interagency transfer agreement between excepted service position systems and competitive service position systems in military departments and Defense Agencies concerned to satisfy the requirements for cyber workforce positions from among a mix of employees in the excepted service and the competitive service in such military departments and Defense Agencies.

“(2) Implement in the defense civilian cyber personnel system a classification system commonly known as a ‘Rank-in-person’ classification system similar to such classification system used by the National Security Agency as of the date of the enactment of this Act [Dec. 23, 2016].

“(3) Approve direct hiring authority for cyber workforce positions up to the GG or GS-15 level in accordance with the criteria in section 3304 of title 5, United States Code.

“(4) Notwithstanding section 5333 of title 5, United States Code, authorize officials conducting hiring in the competitive service for cyber workforce positions to set starting salaries at up to a step-five level with no justification and at up to a step-ten level with justification that meets published guidelines applicable to the excepted service.”

§ 1599g. Public-private talent exchange

(a) **ASSIGNMENT AUTHORITY.**—Under regulations prescribed by the Secretary of Defense, the Secretary may, with the agreement of a private-sector organization and the consent of the employee, 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.

(b) **AGREEMENTS.**—(1) 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—

(A) shall require that the employee of the Department of Defense, upon completion of the assignment, will serve in the Department of Defense, or elsewhere in the civil service if approved by the Secretary, for a period equal to twice the length of the assignment;

(B) 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; and

(C) shall contain language ensuring that such employee of the Department does not improperly use pre-decisional or draft deliberative information that such employee may be privy to or aware of related to Department programing, budgeting, resourcing, acquisition, or procurement for the benefit or advantage of the private-sector organization.

(2) An amount for which an employee is liable under paragraph (1) shall be treated as a debt due the United States.

(3) The Secretary may waive, in whole or in part, collection of a debt described in paragraph (2) based on a determination that the collection would be against equity and good conscience and not in the best interests of the United States, after taking into account any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee.

(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.**—(1) An assignment under this section shall be for a period of not less than three months and not more than two years, renewable up to a total of four years. No employee of the Department of Defense may be assigned under this section for more than a total of 4 years inclusive of all such assignments.

(2) An assignment under this section may be for a period in excess of two years, but not more than four years, if the Secretary determines that such assignment is necessary to meet critical mission or program requirements.

(e) **STATUS OF FEDERAL EMPLOYEES ASSIGNED TO PRIVATE-SECTOR ORGANIZATIONS.**—(1) An employee of the Department of Defense who is assigned to a private-sector organization under this section shall be considered, during the period of assignment, to be on detail to a regular work assignment in the Department for all purposes. The written agreement established under subsection (b)(1) shall address the specific terms and conditions related to the employee’s continued status as a Federal employee.

(2) In establishing a temporary assignment of an employee of the Department of Defense to a private-sector organization, the Secretary of Defense shall—

(A) ensure that the normal duties and functions of such employee can be reasonably performed by other employees of the Department of Defense without the transfer or reassignment of other personnel of the Department of