

(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 subsecs. (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 subsecs. (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

Defense, including members of the armed forces;

(B) ensure that the normal duties and functions of such employees are not, as a result of and during the course of such temporary assignment, performed or augmented by contractor personnel in violation of the provisions of section 2461 of this title; and

(C) certify that the temporary assignment of such employee shall not have an adverse or negative impact on mission attainment, warfighter support, or organizational capabilities associated with the assignment.

(f) **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) shall continue to receive pay and benefits from the private-sector organization from which such employee is assigned and shall not receive pay or benefits from the Department of Defense, except as provided in paragraph (2);

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

(A) chapters 73 and 81 of title 5;

(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; and

(F) chapter 21 of title 41;

(3) shall 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;

(4) may perform work that is considered inherently governmental in nature only when requested in writing by the Secretary of Defense; and

(5) may not be used to circumvent the provision of section 2461 of this title nor to circumvent any limitation or restriction on the size of the Department's workforce.

(g) **PROHIBITION AGAINST CHARGING CERTAIN COSTS TO THE FEDERAL GOVERNMENT.**—A private-sector organization may not charge the Department 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 organization under this section for the period of the assignment.

(h) **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 from small business concerns (as defined by section 3703(e)(2)(A) of title 5);

(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; and

(3) shall take into consideration, where applicable, areas of particular private sector expertise, such as cybersecurity.

(Added Pub. L. 114-328, div. A, title XI, § 1104(a), Dec. 23, 2016, 130 Stat. 2445.)

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in subsec. (f)(2)(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.

The Ethics in Government Act of 1978, referred to in subsec. (f)(2)(E), is Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95-521 in the Appendix to Title 5, Government Organization and Employees, and Tables.

§ 1599h. Personnel management authority to attract experts in science and engineering

(a) **PROGRAMS AUTHORIZED.**—

(1) **LABORATORIES OF THE MILITARY DEPARTMENTS.**—The Secretary of Defense may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for such laboratories of the military departments as the Secretary shall designate for purposes of the program for research and development projects of such laboratories.

(2) **DARPA.**—The Director of the Defense Advanced Research Projects Agency may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for research and development projects and to enhance the administration and management of the Agency.

(3) **DOTe.**—The Director of the Office of Operational Test and Evaluation may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering to support operational test and evaluation missions of the Office.

(4) **STRATEGIC CAPABILITIES OFFICE.**—The Director of the Strategic Capabilities Office may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for the Office.

(5) **DIUX.**—The Director of the Defense Innovation Unit Experimental may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for the Unit.

(b) **PERSONNEL MANAGEMENT AUTHORITY.**—Under a program under subsection (a), the official responsible for administration of the program may—

(1) without regard to any provision of title 5 governing the appointment of employees in the civil service—