

who, within two years after leaving service in the Department of Defense, expects to receive compensation from a Department of Defense contractor, shall, prior to accepting such compensation, request a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

“(2) SUBMISSION OF REQUEST.—A request for a written opinion under paragraph (1) shall be submitted in writing to an ethics official of the Department of Defense having responsibility for the organization in which the official or former official serves or served and shall set forth all information relevant to the request, including information relating to government positions held and major duties in those positions, actions taken concerning future employment, positions sought, and future job descriptions, if applicable.

“(3) WRITTEN OPINION.—Not later than 30 days after receiving a request by an official or former official of the Department of Defense described in subsection (c), the appropriate ethics counselor shall provide such official or former official a written opinion regarding the applicability or inapplicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

“(4) CONTRACTOR REQUIREMENT.—A Department of Defense contractor may not knowingly provide compensation to a former Department of Defense official described in subsection (c) within two years after such former official leaves service in the Department of Defense, without first determining that the former official has sought and received (or has not received after 30 days of seeking) a written opinion from the appropriate ethics counselor regarding the applicability of post-employment restrictions to the activities that the former official is expected to undertake on behalf of the contractor.

“(5) ADMINISTRATIVE ACTIONS.—In the event that an official or former official of the Department of Defense described in subsection (c), or a Department of Defense contractor, knowingly fails to comply with the requirements of this subsection, the Secretary of Defense may take any of the administrative actions set forth in section 2105 of title 41, United States Code[,] that the Secretary of Defense determines to be appropriate.

“(b) RECORDKEEPING REQUIREMENT.—

“(1) DATABASE.—Each request for a written opinion made pursuant to this section, and each written opinion provided pursuant to such a request, shall be retained by the Department of Defense in a central database or repository maintained by the General Counsel of the Department for not less than five years beginning on the date on which the written opinion was provided.

“(2) INSPECTOR GENERAL REVIEW.—The Inspector General of the Department of Defense shall conduct periodic reviews to ensure that written opinions are being provided and retained in accordance with the requirements of this section. The first such review shall be conducted no later than two years after the date of the enactment of this Act [Jan. 28, 2008].

“(c) COVERED DEPARTMENT OF DEFENSE OFFICIALS.—An official or former official of the Department of Defense is covered by the requirements of this section if such official or former official—

“(1) participated personally and substantially in an acquisition as defined in section 131 of title 41, United States Code[,] with a value in excess of \$10,000,000 and serves or served—

“(A) in an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code;

“(B) in a position in the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code; or

“(C) in a general or flag officer position compensated at a rate of pay for grade O-7 or above under section 201 of title 37, United States Code; or

“(2) serves or served as a program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team for a contract in an amount in excess of \$10,000,000.

“(d) DEFINITION.—In this section, the term ‘post-employment restrictions’ includes—

“(1) chapter 21 of title 41, United States Code;

“(2) section 207 of title 18, United States Code; and

“(3) any other statute or regulation restricting the employment or activities of individuals who leave government service in the Department of Defense.”

GOVERNMENT PERFORMANCE OF CRITICAL ACQUISITION FUNCTIONS

Pub. L. 109-364, div. A, title VIII, § 820, Oct. 17, 2006, 120 Stat. 2330, as amended by Pub. L. 111-84, div. A, title VIII, § 805(c), Oct. 28, 2009, 123 Stat. 2403; Pub. L. 112-81, div. A, title VIII, § 835(a), Dec. 31, 2011, 125 Stat. 1507, which related to government performance of critical acquisition functions, was repealed by Pub. L. 112-239, div. A, title VIII, § 824(b), Jan. 2, 2013, 126 Stat. 1833.

DEMONSTRATION PROJECT RELATING TO CERTAIN PERSONNEL MANAGEMENT POLICIES AND PROCEDURES

Pub. L. 104-106, div. D, title XLIII, § 4308, Feb. 10, 1996, 110 Stat. 669, as amended by Pub. L. 105-85, div. A, title VIII, § 845, Nov. 18, 1997, 111 Stat. 1845; Pub. L. 107-314, div. A, title VIII, § 813(b), Dec. 2, 2002, 116 Stat. 2609; Pub. L. 108-136, div. A, title XI, § 1112, Nov. 24, 2003, 117 Stat. 1634, which encouraged the Secretary of Defense to commence a demonstration project relating to improving the personnel management policies or procedures that apply to the acquisition workforce of the Department of Defense and supporting personnel, was repealed and restated as section 1762 of this title by Pub. L. 111-383, div. A, title VIII, § 872(a)(1), (b), Jan. 7, 2011, 124 Stat. 4300, 4302.

EVALUATION BY COMPTROLLER GENERAL

Pub. L. 101-510, div. A, title XII, § 1208, Nov. 5, 1990, 104 Stat. 1665, as amended by Pub. L. 102-25, title VII, § 704(b)(2), Apr. 6, 1991, 105 Stat. 119; Pub. L. 102-484, div. A, title VIII, § 812(g), Oct. 23, 1992, 106 Stat. 2452; Pub. L. 104-106, div. A, title XV, § 1502(c)(4)(A), Feb. 10, 1996, 110 Stat. 507, provided for evaluation by Comptroller General of actions taken by Secretary of Defense to carry out requirements of Defense Acquisition Workforce Improvement Act and submission of annual reports to Congress, prior to repeal by Pub. L. 104-66, title I, § 1031(b)(1), Dec. 21, 1995, 109 Stat. 714.

DEADLINES FOR QUALIFICATION REQUIREMENTS

Pub. L. 101-510, div. A, title XII, § 1210(b), Nov. 5, 1990, 104 Stat. 1667, provided that: “Not later than October 1, 1992, the Secretary of Defense shall prescribe regulations to implement sections 1723, 1724, and 1732 of title 10, United States Code (as added by section 1202).”

§ 1701a. Management for acquisition workforce excellence

(a) PURPOSE.—The purpose of this chapter is to require the Department of Defense to develop and manage a highly skilled professional acquisition workforce—

(1) in which excellence and contribution to mission is rewarded;

(2) which has the technical expertise and business skills to ensure the Department receives the best value for the expenditure of public resources;

(3) which serves as a model for performance management of employees of the Department; and

(4) which is managed in a manner that complements and reinforces the management of the defense acquisition system pursuant to chapter 149 of this title.

(b) PERFORMANCE MANAGEMENT.—In order to achieve the purpose set forth in subsection (a), the Secretary of Defense shall—

(1) use the full authorities provided in subsections (a) through (d) of section 9902 of title 5, including flexibilities related to performance management and hiring and to training of managers;

(2) require managers to develop performance plans for individual members of the acquisition workforce in order to give members an understanding of how their performance contributes to their organization's mission and the success of the defense acquisition system (as defined in section 2545 of this title);

(3) to the extent appropriate, use the lessons learned from the acquisition demonstration project carried out under section 1762 of this title related to contribution-based compensation and appraisal, and how those lessons may be applied within the General Schedule system;

(4) develop and implement a career path, as described in section 1722(a) of this title, for each career field designated by the Secretary under section 1721(a) of this title as an acquisition workforce career field;

(5) direct continuing education and training;

(6) authorize a member of the acquisition workforce to participate in professional associations, consistent with the performance plan of such a member in order to provide the member with the opportunity to gain leadership and management skills.¹

(7) develop appropriate procedures for warnings and consequences during performance evaluations for members of the acquisition workforce who consistently fail to meet performance standards;

(8) take full advantage of the Defense Civilian Leadership Program established under section 1112 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2496; 10 U.S.C. 1580 note prec.);

(9) use the authorities for highly qualified experts under section 9903 of title 5, to hire experts who are skilled acquisition professionals to—

(A) serve in leadership positions within the acquisition workforce to strengthen management and oversight;

(B) provide mentors to advise individuals within the acquisition workforce on their career paths and opportunities to advance and excel within the acquisition workforce; and

(C) assist with the design of education and training courses and the training of individuals in the acquisition workforce; and

(10) use the authorities for expedited security clearance processing pursuant to section 1564 of this title.

(c) PROFESSIONAL CERTIFICATION.—(1)² IN GENERAL.—The Secretary of Defense shall imple-

ment a certification program to provide for a professional certification requirement for all members of the acquisition workforce. Except as provided in paragraph (2), the certification requirement for any acquisition workforce career field shall be based on standards developed by a third-party accredited program based on nationally or internationally recognized standards.

(2) REQUIREMENTS FOR SECRETARY.—If the Secretary determines that, for a particular acquisition workforce career field, a third-party accredited program based on nationally or internationally recognized standards does not exist, the Secretary shall establish the certification requirement for that career field that conforms with the practices of national or international accrediting organizations. The Secretary shall determine the best approach for meeting the certification requirement for any such career field, including by implementing such certification requirement through entities outside the Department of Defense, and may design and implement such certification requirement without regard to section 1746 of this title.

(d) NEGOTIATIONS.—Any action taken by the Secretary under this section, or to implement this section, shall be subject to the requirements of chapter 71 of title 5.

(e) REGULATIONS.—Any rules or regulations prescribed pursuant to this section shall be deemed an agency rule or regulation under section 7117(a)(2) of title 5, and shall not be deemed a Government-wide rule or regulation under section 7117(a)(1) of such title.

(Added Pub. L. 111-383, div. A, title VIII, §871(a), Jan. 7, 2011, 124 Stat. 4299; amended Pub. L. 116-92, div. A, title VIII, §861(a)(1)–(3), (e)(1), Dec. 20, 2019, 133 Stat. 1515, 1517.)

AMENDMENTS

2019—Subsec. (b)(4). Pub. L. 116-92, §861(e)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “develop attractive career paths;”.

Subsec. (b)(5). Pub. L. 116-92, §861(a)(2)(A), substituted “direct” for “encourage”.

Subsec. (b)(6). Pub. L. 116-92, §861(a)(3)(B), added par. (6). Former par. (6) redesignated (7).

Pub. L. 116-92, §861(a)(2)(B), inserted “and consequences” after “warnings”.

Subsec. (b)(7) to (10). Pub. L. 116-92, §861(a)(3)(A), redesignated pars. (6) to (9) as (7) to (10), respectively.

Subsecs. (c) to (e). Pub. L. 116-92, §861(a)(1), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

DEADLINE FOR IMPLEMENTATION OF PROCEDURES TO INSTITUTE CERTIFICATION PROGRAM

Pub. L. 116-92, div. A, title VIII, §861(a)(5), Dec. 20, 2019, 133 Stat. 1516, provided that: “The Secretary of Defense shall implement procedures to institute the program required by subsection (c) of section 1701a of title 10, United States Code, as added by paragraph (1), not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019].”

DEADLINE FOR IMPLEMENTATION OF CAREER PATHS

Pub. L. 116-92, div. A, title VIII, §861(e)(3), Dec. 20, 2019, 133 Stat. 1517, provided that: “Not later than the end of the two-year period beginning on the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall carry out the requirements of paragraph (4) of section 1701a(b) of title 10, United States Code (as amended by paragraph (1)).”

¹ So in original. The period probably should be a semicolon.

² So in original. Par. (1) probably should begin on a new line.

FLEXIBILITY IN CONTRACTING AWARD PROGRAM

Pub. L. 114-328, div. A, title VIII, §834, Dec. 23, 2016, 130 Stat. 2285, provided that:

“(a) ESTABLISHMENT OF AWARD PROGRAM.—The Secretary of Defense shall create an award to recognize those acquisition programs and professionals that make the best use of the flexibilities and authorities granted by the Federal Acquisition Regulation and Department of Defense Instruction 5000.02 (Operation of the Defense Acquisition System).

“(b) PURPOSE OF AWARD.—The award established under subsection (a) shall recognize outstanding performers whose approach to program management emphasizes innovation and local adaptation, including the use of—

- “(1) simplified acquisition procedures;
- “(2) inherent flexibilities within the Federal Acquisition Regulation;
- “(3) commercial contracting approaches;
- “(4) public-private partnership agreements and practices;
- “(5) cost-sharing arrangements;
- “(6) innovative contractor incentive practices; and
- “(7) other innovative implementations of acquisition flexibilities.”

§ 1702. Under Secretary of Defense for Acquisition and Sustainment: authorities and responsibilities

Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment shall carry out all powers, functions, and duties of the Secretary of Defense with respect to the acquisition workforce in the Department of Defense. The Under Secretary shall ensure that the policies of the Secretary of Defense established in accordance with this chapter are implemented throughout the Department of Defense. The Under Secretary shall prescribe policies and requirements for the educational programs of the defense acquisition university structure established under section 1746 of this title.

(Added Pub. L. 101-510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1638; amended Pub. L. 103-160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 105-261, div. A, title VIII, §815, Oct. 17, 1998, 112 Stat. 2088; Pub. L. 107-107, div. A, title X, §1048(b)(2), (3)(A), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 116-92, div. A, title IX, §902(11), Dec. 20, 2019, 133 Stat. 1544.)

AMENDMENTS

2019—Pub. L. 116-92 substituted “Under Secretary of Defense for Acquisition and Sustainment” for “Under Secretary of Defense for Acquisition, Technology, and Logistics” in section catchline and in text.

2001—Pub. L. 107-107 substituted “Under Secretary of Defense for Acquisition, Technology, and Logistics” for “Under Secretary of Defense for Acquisition and Technology” in section catchline and in text.

1998—Pub. L. 105-261 inserted at end “The Under Secretary shall prescribe policies and requirements for the educational programs of the defense acquisition university structure established under section 1746 of this title.”

1993—Pub. L. 103-160 substituted “Under Secretary of Defense for Acquisition and Technology” for “Under Secretary of Defense for Acquisition” in section catchline and in text.

QUICK-REACTION SPECIAL PROJECTS ACQUISITION TEAM

Pub. L. 107-314, div. A, title VIII, §807, Dec. 2, 2002, 116 Stat. 2608, as amended by Pub. L. 116-92, div. A, title IX, §902(12), Dec. 20, 2019, 133 Stat. 1544, provided that:

“(a) ESTABLISHMENT.—The Under Secretary of Defense for Acquisition and Sustainment shall establish a team of highly qualified acquisition professionals who shall be available to advise the Under Secretary on actions that can be taken to expedite the acquisition of urgently needed systems.

“(b) DUTIES.—The issues on which the team may provide advice shall include the following:

- “(1) Industrial base issues, including the limited availability of suppliers.
- “(2) Technology development and technology transition issues.
- “(3) Issues of acquisition policy, including the length of the acquisition cycle.
- “(4) Issues of testing policy and ensuring that weapon systems perform properly in combat situations.
- “(5) Issues of procurement policy, including the impact of socio-economic requirements.
- “(6) Issues relating to compliance with environmental requirements.”

[§ 1703. Repealed. Pub. L. 108-136, div. A, title VIII, § 831(a), Nov. 24, 2003, 117 Stat. 1549]

Section, added Pub. L. 101-510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1639; amended Pub. L. 103-160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107-107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225, related to Director of Acquisition Education, Training, and Career Development.

§ 1704. Service acquisition executives: authorities and responsibilities

Subject to the authority, direction, and control of the Secretary of the military department concerned, the service acquisition executive for each military department shall carry out all powers, functions, and duties of the Secretary concerned with respect to the acquisition workforce within the military department concerned and shall ensure that the policies of the Secretary of Defense established in accordance with this chapter are implemented in that department.

(Added Pub. L. 101-510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1639.)

§ 1705. Department of Defense Acquisition Workforce Development Account

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a fund¹ to be known as the “Department of Defense Acquisition Workforce Development Account” (in this section referred to as the “Account”) to provide funds, in addition to other funds that may be available, for the recruitment, training, and retention of acquisition personnel of the Department of Defense.

(b) PURPOSE.—The purpose of the Account is to ensure that the Department of Defense acquisition workforce has the capacity, in both personnel and skills, needed to properly perform its mission, provide appropriate oversight of contractor performance, and ensure that the Department receives the best value for the expenditure of public resources.

(c) MANAGEMENT.—The Account shall be managed by a senior official of the Department of Defense designated by the Under Secretary of Defense for Acquisition and Sustainment for that purpose, from among persons with an extensive background in management relating to acquisition and personnel.

¹ So in original. Probably should be “an account”.