

(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.

(i) CONFLICTS OF INTEREST.—A private-sector organization that is temporarily assigned a member of the acquisition workforce under this section shall not be considered to have a conflict of interest with the Department of Defense solely because of participation in the program established under this section.

(j) FUNDING; USE OF DEFENSE ACQUISITION WORKFORCE DEVELOPMENT FUND.—Funds for the expenses for the program established under this section may be provided from amounts in the Department of Defense Acquisition Workforce Development Fund. Expenses for the program include—

(1) notwithstanding section 1705(e)(5) of this title, the base salary of a civilian member of the acquisition workforce assigned to a private-sector organization under this section, during the period of that assignment;

(2) expenses relating to assignment under this section of a member of the acquisition workforce away from the member's regular duty station, including expenses for travel, per diem, and lodging; and

(3) expenses for the administration of the program.

(Added Pub. L. 114-328, div. A, title XI, §1104(a), Dec. 23, 2016, 130 Stat. 2445; amended Pub. L. 116-92, div. A, title VIII, §863(a), title XI, §1116, Dec. 20, 2019, 133 Stat. 1522, 1604; Pub. L. 116-283, div. A, title XI, §1102(a), Jan. 1, 2021, 134 Stat. 3885.)

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 Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq.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.

AMENDMENTS

2021—Subsec. (b)(1)(C). Pub. L. 116-283, §1102(a)(1), amended subpar. (C) generally. Prior to amendment,

subpar. (C) read as follows: “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.”

Subsec. (f)(4). Pub. L. 116-283, §1102(a)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “may perform work that is considered inherently governmental in nature only when requested in writing by the Secretary of Defense; and”.

2019—Subsec. (e)(2)(A). Pub. L. 116-92, §1116, inserted “permanent” after “without the”.

Subsecs. (i), (j). Pub. L. 116-92, §863(a), added subsecs. (i) and (j).

ENHANCEMENT OF PUBLIC-PRIVATE TALENT EXCHANGE PROGRAMS IN THE DEPARTMENT OF DEFENSE

Pub. L. 116-283, div. A, title XI, §1102(b)-(d), Jan. 1, 2021, 134 Stat. 3885, 3886, provided that:

“(b) APPLICATION OF EXCHANGE AUTHORITY TO MODERNIZATION PRIORITIES.—Not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall take steps to ensure that the authority of the Secretary to carry out a public-private talent exchange program under section 1599g of title 10, United States Code (as amended by subsection (a)), is used to—

“(1) carry out exchanges of personnel with private sector entities that are working on the modernization priorities of the Department of Defense; and

“(2) carry out exchanges in—

“(A) the office of the Under Secretary of Defense for Research and Engineering;

“(B) the office of the Chief Information Officer of the Department of Defense;

“(C) each Armed Force under the jurisdiction of the Secretary of a military department; and

“(D) any other organizations or elements of the Department of Defense the Secretary determines appropriate.

“(c) CONFLICTS OF INTEREST.—The Secretary shall implement a system to identify, mitigate, and manage any conflicts of interests that may arise as a result of an individual's participation in a public-private talent exchange under section 1599g of title 10, United States Code.

“(d) TREATMENT OF PROGRAM PARTICIPANTS.—The Secretary of Defense, in consultation with each Secretary of a military department, shall develop practices to ensure that participation by a member of an Armed Force under the jurisdiction of the Secretary of a military department in an public-private talent exchange under section 1599g of title 10, United States Code, is taken into consideration in subsequent assignments.”

§ 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 devel-

opment 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) DIU.—The Director of the Defense Innovation Unit 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.

(6) JOINT ARTIFICIAL INTELLIGENCE CENTER.—The Director of the Joint Artificial Intelligence Center 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 Center. The authority to carry out the program under this paragraph shall terminate on December 31, 2024.

(7)¹ NGA.—The Director of the National Geospatial-Intelligence 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.

(7)¹ SDA.—The Director of the Space Development 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. The authority to carry out the program under this paragraph shall terminate on December 31, 2025.

(8) UNITED STATES CYBER COMMAND.—The Commander of United States Cyber Command may carry out a program of personnel management authority provided in subsection (b) in order to facilitate the recruitment of eminent experts in computer science, data science, engineering, mathematics, and computer network exploitation within the headquarters of United States Cyber Command and the Cyber National Mission Force.

(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—

(A) in the case of the laboratories of the military departments designated pursuant to subsection (a)(1), appoint scientists and

engineers to a total of not more than 40 scientific and engineering positions in such laboratories;

(B) in the case of the Defense Advanced Research Projects Agency, appoint individuals to a total of not more than 140 positions in the Agency, of which not more than 5 such positions may be positions of administration or management of the Agency;

(C) in the case of the Office of Operational Test and Evaluation, appoint scientists and engineers to a total of not more than 10 scientific and engineering positions in the Office;

(D) in the case of the Strategic Capabilities Office, appoint scientists and engineers to a total of not more than 5 scientific and engineering positions in the Office;

(E) in the case of the Defense Innovation Unit, appoint scientists and engineers to a total of not more than 5 scientific and engineering positions in the Unit;

(F) in the case of the Joint Artificial Intelligence Center, appoint scientists and engineers to a total of not more than 5 scientific and engineering positions in the Center;

(G)² in the case of the National Geospatial-Intelligence Agency, appoint individuals to a total of not more than 7 positions in the Agency, of which not more than 2 such positions may be positions of administration or management in the Agency;

(G)² in the case of the Space Development Agency, appoint individuals to a total of not more than 10 positions in the Agency, of which not more than 3 such positions may be positions of administration or management of the Agency; and

(H) in the case of United States Cyber Command, appoint computer scientists, data scientists, engineers, mathematicians, and computer network exploitation specialists to a total of not more than 10 scientific and engineering positions in the Command;

(2) notwithstanding any provision of title 5 governing the rates of pay or classification of employees in the executive branch, prescribe the rates of basic pay for positions to which employees are appointed under paragraph (1)—

(A) in the case of employees appointed pursuant to paragraph (1)(B) to any of 5 positions designated by the Director of the Defense Advanced Research Projects Agency for purposes of this subparagraph, at rates not in excess of a rate equal to 150 percent of the maximum rate of basic pay authorized for positions at Level I of the Executive Schedule under section 5312 of title 5; and

(B) in the case of any other employee appointed pursuant to paragraph (1), at rates not in excess of the maximum rate of basic pay authorized for senior-level positions under section 5376 of title 5; and

(3) pay any employee appointed under paragraph (1), other than an employee appointed to a position designated as described in paragraph (2)(A), payments in addition to basic pay within the limit applicable to the employee under subsection (d).

¹ So in original. Two pars. (7) have been enacted.

² So in original. Two subpars. (G) have been enacted.

(c) LIMITATION ON TERM OF APPOINTMENT.—

(1) IN GENERAL.—Except as provided in paragraph (2), the service of an employee under an appointment under subsection (b)(1) may not exceed four years.

(2) EXTENSION.—The official responsible for the administration of a program under subsection (a) may, in the case of a particular employee under the program, extend the period to which service is limited under paragraph (1) by up to two years if the official determines that such action is necessary to promote the efficiency of a laboratory of a military department, the Defense Advanced Research Projects Agency, the Office of Operational Test and Evaluation, the Strategic Capabilities Office, the Defense Innovation Unit, the Joint Artificial Intelligence Center, or the National Geospatial-Intelligence Agency, as applicable.

(d) MAXIMUM AMOUNT OF ADDITIONAL PAYMENTS PAYABLE.—Notwithstanding any other provision of this section or section 5307 of title 5, no additional payments may be paid to an employee under subsection (b)(3) in any calendar year if, or to the extent that, the employee's total annual compensation in such calendar year will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

(Added Pub. L. 114-328, div. A, title XI, §1121(a)(1), Dec. 23, 2016, 130 Stat. 2451; amended Pub. L. 115-232, div. A, title XI, §1111, Aug. 13, 2018, 132 Stat. 2011; Pub. L. 116-92, div. A, title II, §212, title XI, §1101, Dec. 20, 2019, 133 Stat. 1255, 1595; Pub. L. 116-260, div. W, title IV, §402, Dec. 27, 2020, 134 Stat. 2377; Pub. L. 116-283, div. A, title XVI, §1602, title XVII, §1708(a), Jan. 1, 2021, 134 Stat. 4042, 4085.)

AMENDMENTS

2021—Subsec. (a)(7). Pub. L. 116-283, §1602(a), added par. (7) relating to the Space Development Agency.

Subsec. (a)(8). Pub. L. 116-283, §1708(a)(1), added par. (8).

Subsec. (b)(1)(G). Pub. L. 116-283, §1602(b), added subpar. (G) relating to the Space Development Agency. Similar conforming amendments to subsec. (b)(1)(E) and (F) were made by Pub. L. 116-260 and Pub. L. 116-283. Text of subsec. (b)(1)(E) reflects amendment made by Pub. L. 116-283.

Subsec. (b)(1)(H). Pub. L. 116-283, §1708(a)(2), added subpar. (H). Conforming amendment inserting “and” at end of subpar. (G) was executed to the second subpar. (G) to reflect the probable intent of Congress.

2020—Subsec. (a)(7). Pub. L. 116-260, §402(1), added par. (7) relating to the National Geospatial-Intelligence Agency.

Subsec. (b)(1)(G). Pub. L. 116-260, §402(2), added subpar. (G) relating to the National Geospatial-Intelligence Agency.

Subsec. (c)(2). Pub. L. 116-260, §402(3), substituted “the Joint Artificial Intelligence Center, or the National Geospatial-Intelligence Agency” for “or the Joint Artificial Intelligence Center”.

2019—Subsec. (a)(5). Pub. L. 116-92, §212(d)(1), substituted “DIU” for “DIUX” in heading and struck out “Experimental” after “Innovation Unit”.

Subsec. (a)(6). Pub. L. 116-92, §212(a), added par. (6).

Subsec. (b)(1)(B). Pub. L. 116-92, §1101, substituted “140 positions” for “100 positions”.

Subsec. (b)(1)(E). Pub. L. 116-92, §212(d)(2), struck out “Experimental” after “Innovation Unit”.

Subsec. (b)(1)(F). Pub. L. 116-92, §212(b), added subpar. (F).

Subsec. (c)(2). Pub. L. 116-92, §212(c), substituted “the Defense Innovation Unit, or the Joint Artificial Intelligence Center” for “or the Defense Innovation Unit Experimental”.

2018—Subsec. (a)(4), (5). Pub. L. 115-232, §1111(a), added pars. (4) and (5).

Subsec. (b)(1)(D), (E). Pub. L. 115-232, §1111(b), added subpars. (D) and (E).

Subsec. (c)(2). Pub. L. 115-232, §1111(c), substituted “the Office of Operational Test and Evaluation, the Strategic Capabilities Office, or the Defense Innovation Unit Experimental” for “or the Office of Operational Test and Evaluation”.

PROGRAM TO DEVELOP ACCESSES, DISCOVER VULNERABILITIES, AND ENGINEER CYBER TOOLS AND DEVELOP TACTICS, TECHNIQUES, AND PROCEDURES FOR OFFENSIVE CYBER OPERATIONS

Pub. L. 116-283, div. A, title XVII, §1708(b), Jan. 1, 2021, 134 Stat. 4085, provided that:

“(1) IN GENERAL.—Pursuant to the authority provided under section 1599h(a)(8) of title 10, United States Code, as added by subsection (a), the Commander of United States Cyber Command shall establish a program or augment an existing program within the Command to develop accesses, discover vulnerabilities, and engineer cyber tools and develop tactics, techniques, and procedures for the use of these assets and capabilities in offensive cyber operations.

“(2) ELEMENTS.—The program or augmented program required by paragraph (1) shall—

“(A) develop accesses, discover vulnerabilities, and engineer cyber tools and develop tactics, techniques, and procedures fit for Department of Defense military operations in cyberspace, such as reliability, meeting short development and operational timelines, low cost, and expendability;

“(B) aim to decrease the reliance of Cyber Command on accesses, tools, and expertise provided by the intelligence community;

“(C) be designed to provide technical and operational expertise on par with that of programs of the intelligence community;

“(D) enable the Commander to attract and retain expertise resident in the private sector and other technologically elite government organizations; and

“(E) coordinate development activities with, and, as appropriate, facilitate transition of capabilities from, the Defense Advanced Research Projects Agency, the Strategic Capabilities Office, and components within the intelligence community.

“(3) INTELLIGENCE COMMUNITY DEFINED.—In this subsection, the term ‘intelligence community’ has the meaning given such term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).”

GUIDANCE AND DIRECTION ON USE OF DIRECT HIRING PROCESSES FOR ARTIFICIAL INTELLIGENCE PROFESSIONALS AND OTHER DATA SCIENCE AND SOFTWARE DEVELOPMENT PERSONNEL

Pub. L. 116-283, div. A, title XVII, §1751, Jan. 1, 2021, 134 Stat. 4143, provided that:

“(a) GUIDANCE REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall review applicable Department of Defense guidance and where beneficial issue new guidance to the secretaries of the military departments and the heads of the defense components on improved use of the direct hiring processes for artificial intelligence professionals and other data science and software development personnel.

“(b) OBJECTIVE.—The objective of the guidance issued under subsection (a) shall be to ensure that organizational leaders assume greater responsibility for the results of civilian hiring of artificial intelligence professionals and other data science and software development personnel.

“(c) CONTENTS OF GUIDANCE.—At a minimum, the guidance required by subsection (a) shall—

“(1) instruct human resources professionals and hiring authorities to utilize available direct hiring authorities (including excepted service authorities) for the hiring of artificial intelligence professionals and other data science and software development personnel, to the maximum extent practicable;

“(2) instruct hiring authorities, when using direct hiring authorities, to prioritize utilization of panels of subject matter experts over human resources professionals to assess applicant qualifications and determine which applicants are best qualified for a position;

“(3) authorize and encourage the use of ePortfolio reviews to provide insight into the previous work of applicants as a tangible demonstration of capabilities and contribute to the assessment of applicant qualifications by subject matter experts; and

“(4) encourage the use of referral bonuses for recruitment and hiring of highly qualified artificial intelligence professionals and other data science and software development personnel in accordance with volume 451 of Department of Defense Instruction 1400.25.

“(d) REPORT.—

“(1) IN GENERAL.—Not later than one year after the date on which the guidance is issued under subsection (a), the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the guidance issued pursuant to subsection (a).

“(2) CONTENTS.—At a minimum, the report submitted under paragraph (1) shall address the following:

“(A) The objectives of the guidance and the manner in which the guidance seeks to achieve those objectives.

“(B) The effect of the guidance on the hiring process for artificial intelligence professionals and other data science and software development personnel, including the effect on—

“(i) hiring time;

“(ii) the use of direct hiring authority;

“(iii) the use of subject matter experts; and

“(iv) the quality of new hires, as assessed by hiring managers and organizational leaders.”

APPLICABILITY OF PERSONNEL MANAGEMENT AUTHORITY TO PERSONNEL CURRENTLY EMPLOYED UNDER SUPERSEDED AUTHORITY

Pub. L. 114-328, div. A, title XI, § 1121(c), Dec. 23, 2016, 130 Stat. 2452, provided that:

“(1) IN GENERAL.—Any individual employed as of the date of the enactment of this Act [Dec. 23, 2016] under section 1101(b)(1) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note) (as in effect on the day before such date) shall remain employed under section 1599h of title 10, United States Code (as added by subsection (a)), after such date in accordance with such section 1599h and the applicable program carried out under such section 1599h.

“(2) DATE OF APPOINTMENT.—For purposes of subsection (c) of section 1599h of title 10, United States Code (as so added), the date of the appointment of any employee who remains employed as described in paragraph (1) shall be the date of the appointment of such employee under section 1101(b)(1) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note) (as so in effect).”

§ 1599i. Recruitment incentives for placement at remote locations

(a) RECRUITMENT INCENTIVE.—

(1) IN GENERAL.—An individual appointed to a position in the Department of Defense at a covered location may be paid a recruitment incentive in connection with such appointment.

(2) AMOUNT.—The amount of a recruitment incentive payable to an individual under this subsection may not exceed the amount equal to—

(A) 25 percent of the annual rate of basic pay of the employee for the position concerned as of the date on which the service period in such position agreed to by the individual under paragraph (3) commences; multiplied by

(B) the number of years (including fractions of a year) of such service period (not to exceed four years).

(3) SERVICE AGREEMENT.—To receive a recruitment incentive under this subsection, an individual appointed to a position under paragraph (1) shall enter into an agreement with the Secretary of Defense to complete a period of service at the covered location. The period of obligated service of the individual at such location under the agreement may not exceed four years. The agreement shall include such repayment or alternative employment obligations as the Secretary considers appropriate for failure of the individual to complete the period of obligated service specified in the agreement.

(4) COVERED LOCATIONS DEFINED.—In this section, a covered location is a location for which the Secretary of Defense has determined that critical hiring needs are not being met due to the geographic remoteness or isolation or extreme climate conditions of the location.

(b) SUNSET.—Effective on September 30, 2022, the authority provided under subsection (a) shall expire.

(Added Pub. L. 116-283, div. A, title XI, § 1120(a), Jan. 1, 2021, 134 Stat. 3898.)

OUTCOME MEASUREMENTS

Pub. L. 116-283, div. A, title XI, § 1120(b), Jan. 1, 2021, 134 Stat. 3899, provided that: “The Secretary of Defense shall develop outcome measurements to evaluate the effect of the authority provided under subsection (a) of section 1599i of title 10, United States Code, as added by subsection (a), and any relocation incentives provided under subsection (b) of such section.”

CHAPTER 83—CIVILIAN DEFENSE INTELLIGENCE EMPLOYEES

Subchapter Sec.
I. Defense-Wide Intelligence Personnel Policy 1601
II. Defense Intelligence Agency Personnel 1621

PRIOR PROVISIONS

A prior chapter 85 of this title was repealed by Pub. L. 102-190, div. A, title X, § 1061(a)(26)(C)(i), Dec. 5, 1991, 105 Stat. 1474, effective Oct. 1, 1993. Previously, the individual sections of that chapter, sections 1621 to 1624, were repealed by Pub. L. 101-510, div. A, title XII, § 1207(c)(1), (3), (4), Nov. 5, 1990, 104 Stat. 1665.

AMENDMENTS

1996—Pub. L. 104-201, div. A, title XVI, § 1632(a)(3), Sept. 23, 1996, 110 Stat. 2745, substituted “CIVILIAN DEFENSE INTELLIGENCE EMPLOYEES” for “DEFENSE INTELLIGENCE AGENCY AND CENTRAL IMAGERY OFFICE CIVILIAN PERSONNEL” as chapter heading and added subchapter analysis.