

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1842(b), Jan. 1, 2021, 134 Stat. 4151, 4244, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 303 of this title, as added by section 1842(a) of Pub. L. 116–283, inserted after section 4062, and redesignated as section 4063 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

IMPLEMENTATION OF SECTION

Pub. L. 116–92, div. A, title VIII, §835(a)(3), Dec. 20, 2019, 133 Stat. 1496, provided that:

“(A) DEADLINE.—Not later than March 1, 2020, the Secretary of Defense shall establish the extramural acquisition innovation and research activities required by section 2361a of title 10, United States Code (as added by this subsection).

“(B) REPORT.—

“(i) IN GENERAL.—Not later than January 1, 2021, the Director of the extramural acquisition innovation and research activities appointed under such section shall submit to the Secretary of Defense a report setting forth a plan, proposed budget, and schedule for execution of such activities.

“(ii) TRANSMITTAL.—Not later than February 1, 2021, the Secretary of Defense shall transmit the report required under clause (i), together with whatever comments the Secretary considers appropriate, to the Committees on Armed Services of the Senate and the House of Representatives.”

RECORDS OF THE SECTION 809 PANEL

Pub. L. 116–92, div. A, title VIII, §835(b), Dec. 20, 2019, 133 Stat. 1496, provided that:

“(1) TRANSFER AND MAINTENANCE OF RECORDS.—Not later than March 1, 2020, the records of the Section 809 Panel shall be transferred to, and shall be maintained by, the Defense Technical Information Center.

“(2) STATUS OF RECORDS.—Working papers, records of interview, and any other draft work products generated for any purpose by the Section 809 Panel shall be covered by the deliberative process privilege exemption under paragraph (5) of section 552(b) of title 5, United States Code.

“(3) AVAILABILITY.—To the maximum extent practicable, the Secretary shall make the records available to support activities conducted by the research organization described under section 2361a of title 10, United States Code (as added by subsection (a)).

“(4) SECTION 809 PANEL DEFINED.—In this subsection, the term ‘Section 809 Panel’ means the panel established by the Secretary of Defense pursuant to section 809 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92) [129 Stat. 889].”

§ 2362. Research and educational programs and activities: historically black colleges and universities and minority-serving institutions of higher education

(a) PROGRAM ESTABLISHED.—(1) The Secretary of Defense, acting through the Assistant Secretary of Defense for Research and Engineering and the Secretary of each military department, shall carry out a program to provide assistance to covered educational institutions to assist the Department in defense-related research, development, testing, and evaluation activities.

(2) The Secretary of Defense may not delegate or transfer to an individual outside the Office of the Secretary of Defense the authority regarding the programming or budgeting of the program established by this section that is carried out by the Assistant Secretary of Defense for Research and Engineering.

(b) PROGRAM OBJECTIVE.—The objective of the program established by subsection (a)(1) is to enhance defense-related research and education at covered educational institutions. Such objective shall be accomplished through initiatives designed to—

(1) enhance the research and educational capabilities of such institutions in areas of importance to national defense, as determined by the Secretary;

(2) encourage the participation of such institutions in the research, development, testing, and evaluation programs and activities of the Department of Defense;

(3) increase the number of graduates from such institutions engaged in disciplines important to the national security functions of the Department of Defense, as determined by the Secretary; and

(4) encourage research and educational collaborations between such institutions and other institutions of higher education, Government defense organizations, and the defense industry.

(c) ASSISTANCE PROVIDED.—Under the program established by subsection (a)(1), the Secretary of Defense may provide covered educational institutions with funding or technical assistance, including any of the following:

(1) Support for research, development, testing, evaluation, or educational enhancements in areas important to national defense through the competitive awarding of grants, cooperative agreements, contracts, scholarships, fellowships, or the acquisition of research equipment or instrumentation.

(2) Support to assist in the attraction and retention of faculty in scientific disciplines important to the national security functions of the Department of Defense.

(3) Establishing partnerships between such institutions and defense laboratories, Government defense organizations, the defense industry, and other institutions of higher education in research, development, testing, and evaluation in areas important to the national security functions of the Department of Defense.

(4) Other such non-monetary assistance as the Secretary finds appropriate to enhance defense-related research, development, testing, and evaluation activities at such institutions.

(d) INCENTIVES.—The Secretary of Defense may develop incentives to encourage research and educational collaborations between covered educational institutions and other institutions of higher education.

(e) CRITERIA FOR FUNDING.—The Secretary of Defense may establish procedures under which the Secretary may limit funding under this section to institutions that have not otherwise received a significant amount of funding from the Department of Defense for research, development, testing, and evaluation programs sup-

porting the national security functions of the Department.

(f) DEFINITION OF COVERED EDUCATIONAL INSTITUTION.—In this section the term “covered educational institution” means—

(1) an institution of higher education eligible for assistance under title III or V of the Higher Education Act of 1965 (20 U.S.C. 1051 et seq.); or

(2) an accredited postsecondary minority institution.

(Added Pub. L. 111–84, div. A, title II, §252(a), Oct. 28, 2009, 123 Stat. 2242; amended Pub. L. 111–383, div. A, title X, §1075(b)(32), Jan. 7, 2011, 124 Stat. 4370; Pub. L. 112–81, div. A, title II, §219, Dec. 31, 2011, 125 Stat. 1335; Pub. L. 112–239, div. A, title X, §1076(c)(2)(A)(i), Jan. 2, 2013, 126 Stat. 1949; Pub. L. 115–232, div. A, title II, §245, Aug. 13, 2018, 132 Stat. 1700; Pub. L. 116–92, div. A, title II, §214, Dec. 20, 2019, 133 Stat. 1257.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1838(b), Jan. 1, 2021, 134 Stat. 4151, 4242, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 285 of this title, as added by section 1838(a) of Pub. L. 116–283, inserted after section 3903, and redesignated as section 3904 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (f)(1), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Titles III and V of the Act are classified generally to subchapters III (§1051 et seq.) and V (§1101 et seq.), respectively, of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 2362, added Pub. L. 99–145, title I, §123(a)(1), Nov. 8, 1985, 99 Stat. 599; amended Pub. L. 99–433, title I, §110(g)(4), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284, which related to testing requirements for wheeled or tracked armored vehicles, was repealed by Pub. L. 103–160, div. A, title VIII, §821(a)(3), Nov. 30, 1993, 107 Stat. 1704.

AMENDMENTS

2019—Subsecs. (d) to (f). Pub. L. 116–92 added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

2018—Subsec. (d). Pub. L. 115–232 substituted “Criteria” for “Priority” in heading and “limit” for “give priority in providing” in text.

2013—Subsec. (a)(1). Pub. L. 112–239 substituted “Assistant Secretary of Defense for Research and Engineering” for “Director of Defense Research and Engineering”.

2011—Subsec. (a). Pub. L. 112–81, §219(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 112–81, §219(b)(1), substituted “established by subsection (a)(1)” for “established under subsection (a)” in introductory provisions.

Subsec. (c). Pub. L. 112–81, §219(b)(2), substituted “subsection (a)(1)” for “subsection (a)” in introductory provisions.

Subsec. (e)(1). Pub. L. 111–383, §1075(b)(32), substituted “title III or V” for “title III or IV”.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation

and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

NATIONAL STUDY ON DEFENSE RESEARCH AT HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AND OTHER MINORITY INSTITUTIONS

Pub. L. 116–92, div. A, title II, §262, Dec. 20, 2019, 133 Stat. 1295, provided that:

“(a) STUDY REQUIRED.—The Secretary of Defense shall seek to enter into an agreement with the National Academies of Sciences, Engineering, and Medicine (referred to in this section as the ‘National Academies’) under which the National Academies will conduct a study on the status of defense research at covered institutions and the methods and means necessary to advance research capacity at covered institutions to comprehensively address the national security and defense needs of the United States.

“(b) DESIGNATION.—The study conducted under subsection (a) shall be known as the ‘National Study on Defense Research At Historically Black Colleges and Universities and Other Minority Institutions’.

“(c) ELEMENTS.—The study conducted under subsection (a) shall include an examination of each of the following:

“(1) The degree to which covered institutions are successful in competing for and executing Department of Defense contracts and grants for defense research.

“(2) Best practices for advancing the capacity of covered institutions to compete for and conduct research programs related to national security and defense.

“(3) The advancements and investments necessary to elevate covered institutions to R2 status or R1 status on the Carnegie Classification of Institutions of Higher Education, consistent with the criteria of the classification system.

“(4) The facilities and infrastructure for defense-related research at covered institutions as compared to the facilities and infrastructure at institutions classified as R1 status on the Carnegie Classification of Institutions of Higher Education.

“(5) Incentives to attract, recruit, and retain leading research faculty to covered institutions.

“(6) Best practices of institutions classified as R1 status on the Carnegie Classification of Institutions of Higher Education, including best practices with respect to—

“(A) the establishment of a distinct legal entity to—

“(i) enter into contracts or receive grants from the Department;

“(ii) lay the groundwork for future research opportunities;

“(iii) develop research proposals;

“(iv) engage with defense research funding organizations; and

“(v) execute the administration of grants; and

“(B) determining the type of legal entity, if any, to establish for the purposes described in subparagraph (A).

“(7) The ability of covered institutions to develop, protect, and commercialize intellectual property created through defense-related research.

“(8) The total amount of defense research funding awarded to all institutions of higher education, including covered institutions, through contracts and grants for each of fiscal years 2010 through 2019 and, with respect to each such institution—

“(A) whether the institution established a distinct legal entity to enter into contracts or receive grants from the Department and, if so, the type of legal entity that was established;

“(B) the total value of contracts and grants awarded to the institution of higher education for each of fiscal years 2010 through 2019;

“(C) the overhead rate of the institution of higher education for fiscal year 2019;

“(D) the institution’s classification on the Carnegie Classification of Institutions of Higher Education; and

“(E) whether the institution qualifies as a covered institution.

“(9) Recommendations for strengthening and enhancing the programs executed under section 2362 of title 10, United States Code.

“(10) Recommendations to enhance the capacity of covered institutions to transition research products into defense acquisition programs or commercialization.

“(11) Previous executive or legislative actions by the Federal Government to address imbalances in Federal research funding, including such programs as the Defense Established Program to Stimulate Competitive Research (commonly known as ‘DEPSCoR’).

“(12) The effectiveness of the Department in attracting and retaining students specializing in science, technology, engineering, and mathematics fields from covered institutions for the Department’s programs on emerging capabilities and technologies.

“(13) Recommendations for the development of incentives to encourage research and educational collaborations between covered institutions and other institutions of higher education.

“(14) Any other matters the Secretary of Defense determines to be relevant to advancing the defense research capacity of covered institutions.

“(d) REPORTS.—

“(1) INITIAL REPORT.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall submit to the President and the appropriate congressional committees an initial report that includes—

“(A) the findings of the study conducted under subsection (a); and

“(B) any recommendations that the National Academies may have for action by the executive branch and Congress to improve the participation of covered institutions in Department of Defense research and any actions that may be carried out to expand the research capacity of such institutions.

“(2) FINAL REPORT.—Not later than December 31, 2021, the Secretary of Defense shall submit to the President and the appropriate congressional committees a comprehensive report on the results of the study required under subsection (a).

“(3) FORM OF REPORTS.—Each report submitted under this subsection shall be made publicly available.

“(e) IMPLEMENTATION REQUIRED.—

“(1) IN GENERAL.—Except as provided in paragraph (2), not later than March 1, 2022, the Secretary of Defense shall commence implementation of each recommendation included in the final report submitted under subsection (d)(2).

“(2) EXCEPTIONS.—

“(A) DELAYED IMPLEMENTATION.—The Secretary of Defense may commence implementation of a recommendation described paragraph (1) later than March 1, 2022, if—

“(i) the Secretary submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] written notice of the intent of the Secretary to delay implementation of the recommendation; and

“(ii) includes, as part of such notice, a specific justification for the delay in implementing the recommendation.

“(B) NONIMPLEMENTATION.—The Secretary of Defense may elect not to implement a recommendation described in paragraph (1), if—

“(i) the Secretary submits to the congressional defense committees written notice of the intent of the Secretary not to implement the recommendation; and

“(ii) includes, as part of such notice—

“(I) the reasons for the Secretary’s decision not to implement the recommendation; and

“(II) a summary of alternative actions the Secretary will carry out to address the purposes underlying the recommendation.

“(3) IMPLEMENTATION PLAN.—For each recommendation that the Secretary implements under this subsection, the Secretary shall submit to the congressional defense committees an implementation plan that includes—

“(A) a summary of actions that have been, or will be, carried out to implement the recommendation; and

“(B) a schedule, with specific milestones, for completing the implementation of the recommendation.

“(f) LIST OF COVERED INSTITUTIONS.—The Secretary of Defense, in consultation with the Secretary of Education and the Presidents of the National Academies, shall make available a list identifying each covered institution examined as part of the study under subsection (a). The list shall be made available on a publicly accessible website and shall be updated not less frequently than once annually until the date on which the final report is submitted under subsection (d)(2).

“(g) DEFINITIONS.—In this section:

“(1) The term ‘appropriate congressional committees’ means—

“(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives];

“(B) the Committee on Health, Education, Labor, and Pensions of the Senate; and

“(C) the Committee on Education and Labor of the House of Representatives.

“(2) The term ‘covered institution’ means—

“(A) a part B institution (as that term is defined in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2))[]); or

“(B) any other institution of higher education (as that term is defined in section 101 of such Act (20 U.S.C. 1001)) at which not less than 50 percent of the total student enrollment consists of students from ethnic groups that are underrepresented in the fields of science and engineering.”

STRATEGIES FOR ENGAGEMENT WITH HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AND MINORITY-SERVING INSTITUTIONS OF HIGHER EDUCATION

Pub. L. 114–92, div. A, title II, §233, Nov. 25, 2015, 129 Stat. 779, provided that:

“(a) BASIC RESEARCH ENTITIES.—

“(1) STRATEGY.—The heads of each basic research entity shall each develop a strategy for how to engage with and support the development of scientific, technical, engineering, and mathematics capabilities of covered educational institutions in carrying out section 2362 of title 10, United States Code.

“(2) ELEMENTS.—Each strategy under paragraph (1) shall include the following:

“(A) Goals and vision for maintaining a credible and sustainable program relating to the engagement and support under the strategy.

“(B) Metrics to enhance scientific, technical, engineering, and mathematics capabilities at covered educational institutions, including with respect to measuring progress toward increasing the success of such institutions to compete for broader research funding sources other than set-aside funds.

“(C) Promotion of mentoring opportunities between covered educational institutions and other research institutions.

“(D) Regular assessment of activities that are used to develop, maintain, and grow scientific, technical, engineering, and mathematics capabilities.

“(E) Inclusion of faculty of covered educational institutions into program reviews, peer reviews, and other similar activities.

“(F) Targeting of undergraduate, graduate, and postgraduate students at covered educational institutions for inclusion into research or internship opportunities within the military department.

“(b) OFFICE OF THE SECRETARY.—The Secretary of Defense shall develop and implement a strategy for how to engage with and support the development of scientific, technical, engineering, and mathematics capabilities of covered educational institutions pursuant to the strategies developed under subsection (a).

“(c) Submission.—

“(1) BASIC RESEARCH ENTITIES.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the heads of each basic research entity shall each submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the strategy developed by the head under subsection (a)(1).

“(2) OFFICE OF THE SECRETARY.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees the strategy developed under subsection (b).

“(d) COVERED INSTITUTION DEFINED.—In this section:

“(1) The term ‘basic research entity’ means an entity of the Department of Defense that executes research, development, test, and evaluation budget activity 1 funding, as described in the Department of Defense Financial Management Regulation.

“(2) The term ‘covered educational institution’ has the meaning given that term in section 2362(e) [now 2362(f)] of title 10, United States Code.”

§ 2363. Mechanisms to provide funds for defense laboratories for research and development of technologies for military missions

(a) MECHANISMS TO PROVIDE FUNDS.—(1) The Secretary of Defense, in consultation with the Secretaries of the military departments, shall establish mechanisms under which the director of a defense laboratory may use an amount of funds equal to not less than two percent and not more than four percent of all funds available to the defense laboratory for the following purposes:

(A) To fund innovative basic and applied research that is conducted at the defense laboratory and supports military missions.

(B) To fund development programs that support the transition of technologies developed by the defense laboratory into operational use.

(C) To fund workforce development activities that improve the capacity of the defense laboratory to recruit and retain personnel with necessary scientific and engineering expertise that support military missions.

(D) To fund the repair or minor military construction of the laboratory infrastructure and equipment, in accordance with subsection (b).

(2) The mechanisms established under paragraph (1) shall provide that funding shall be used under paragraph (1) at the discretion of the director of a defense laboratory in consultation with the science and technology executive of the military department concerned.

(3) The science and technology executive of a military department may develop policies and guidance to leverage funding and promote cross-laboratory collaboration, including with laboratories of other military departments.

(4) After consultation with the science and technology executive of the military department concerned, the director of a defense laboratory may charge customer activities a fixed percentage fee, in addition to normal costs of

performance, in order to obtain funds to carry out activities authorized by this subsection. The fixed fee may not exceed four percent of costs.

(b) AVAILABILITY OF FUNDS FOR INFRASTRUCTURE PROJECTS.—Funds shall be available in accordance with subsection (a)(1)(D) only if—

(1) the Secretary notifies the congressional defense committees of the total cost of the project before the date on which the Secretary uses the mechanism under such subsection for such project; and

(2) the Secretary ensures that the project complies with the applicable cost limitations in—

(A) section 2805(d) of this title, with respect to revitalization and recapitalization projects; and

(B) section 2811 of this title, with respect to repair projects.

(c) RELEASE AND DISSEMINATION OF INFORMATION ON CONTRIBUTIONS FROM USE OF AUTHORITY TO MILITARY MISSIONS.—

(1) COLLECTION OF INFORMATION.—The Secretary shall establish and maintain mechanisms for the continuous collection of information on achievements, best practices identified, lessons learned, and challenges arising in the exercise of the authority in this section.

(2) RELEASE OF INFORMATION.—The Secretary shall establish and maintain mechanisms as follows:

(A) Mechanisms for the release to the public of information on achievements and best practices described in paragraph (1) in unclassified form.

(B) Mechanisms for dissemination to appropriate civilian and military officials of information on achievements and best practices described in paragraph (1) in classified form.

(Added Pub. L. 115–91, div. A, title II, §220(a), Dec. 12, 2017, 131 Stat. 1332; amended Pub. L. 115–232, div. A, title II, §250, Aug. 13, 2018, 132 Stat. 1702.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1843(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4245, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to subchapter I of chapter 305 of this title, as added by section 1843(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of such subchapter, and redesignated as section 4103 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2363, added Pub. L. 99–145, title XIV, §1457(a), Nov. 8, 1985, 99 Stat. 762, related to encouragement of technology transfer, prior to repeal by Pub. L. 102–484, div. D, title XLII, §§4224(c), 4271(a)(2), Oct. 23, 1992, 106 Stat. 2683, 2695. See section 2514 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.