

2009—Pub. L. 111-84, div. A, title XI, §1113(f)(2), Oct. 28, 2009, 123 Stat. 2502, added item 9902 and struck out former item 9902 “Establishment of human resources management system”.

### § 9901. Definitions

For purposes of this chapter—

(1) the term “Director” means the Director of the Office of Personnel Management; and

(2) the term “Secretary” means the Secretary of Defense.

(Added Pub. L. 108-136, div. A, title XI, §1101(a)(1), Nov. 24, 2003, 117 Stat. 1621.)

#### Statutory Notes and Related Subsidiaries

##### IMPACT ON DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL

Pub. L. 108-136, div. A, title XI, §1101(b), Nov. 24, 2003, 117 Stat. 1633, provided that:

“(1) Any exercise of authority under chapter 99 of such title [this chapter] (as added by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

“(2) No other provision of this Act [see Tables for classification] or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section [enacting this chapter], except to the extent that it does so by specific reference to this section.”

### § 9902. Department of Defense personnel authorities

(a) PERFORMANCE MANAGEMENT AND WORKFORCE INCENTIVES.—(1) The Secretary, in coordination with the Director, shall promulgate regulations providing for the following:

(A) A fair, credible, and transparent performance appraisal system for employees.

(B) A fair, credible, and transparent system for linking employee bonuses and other performance-based actions to performance appraisals of employees.

(C) A process for ensuring ongoing performance feedback and dialogue among supervisors, managers, and employees throughout the appraisal period and setting timetables for review.

(D) Development of attractive career paths.

(E) Development of “performance assistance plans” that are designed to give employees formal training, on-the-job training, counseling, mentoring, and other assistance.

(2) In developing the regulations required by this subsection, the Secretary, in coordination with the Director, may waive the requirements of chapter 43 (other than sections 4302 and 4303(e)) and the regulations implementing such chapter, to the extent necessary to achieve the objectives of this subsection.

(3)(A) The Secretary may establish a fund, to be known as the “Department of Defense Civilian Workforce Incentive Fund” (in this paragraph referred to as the “Fund”).

(B) The Fund shall consist of the following:

(i) Amounts appropriated to the Fund.

(ii) Amounts available for compensation of employees that are transferred to the Fund.

(C) Amounts in the Fund shall be available for the following:

(i) Incentive payments for employees based on team or individual performance (which payments shall be in addition to basic pay).

(ii) Incentive payments to attract or retain employees with particular or superior qualifications or abilities.

(D) The authority provided in this paragraph is in addition to, and does not supersede or replace, any authority or source of funding otherwise available to the Secretary to pay bonuses or make incentive payments to civilian employees of the Department.

(4)(A) Any action taken by the Secretary under this subsection, or to implement this subsection, shall be subject to the requirements of subsection (c) and chapter 71.

(B) Any rules or regulations promulgated pursuant to this subsection shall be deemed an agency rule or regulation under section 7117(a)(2), and shall not be deemed a Government-wide rule or regulation under section 7117(a)(1).

(b) FLEXIBILITIES RELATING TO APPOINTMENTS.—(1) The Secretary, in coordination with the Director, shall promulgate regulations to redesign the procedures which are applied by the Department of Defense in making appointments to positions within the competitive service in order to—

(A) better meet mission needs;

(B) respond to managers’ needs and the needs of applicants;

(C) produce high-quality applicants;

(D) support timely decisions;

(E) uphold appointments based on merit system principles; and

(F) promote competitive job offers.

(2) In redesigning the process by which such appointments shall be made, the Secretary, in coordination with the Director, may waive the requirements of chapter 33, and the regulations implementing such chapter, to the extent necessary to achieve the objectives of this section, while providing for the following:

(A) Fair, credible, and transparent methods of establishing qualification requirements for, recruitment for, and appointments to positions.

(B) Fair and open competition and equitable treatment in the consideration and selection of individuals to positions.

(C) Fair, credible, and transparent methods of assigning, reassigning, detailing, transferring, or promoting employees.

(3) In implementing this subsection, the Secretary shall comply with the provisions of section 2302(b)(11), regarding veterans’ preference requirements, in a manner consistent with that in which such provisions are applied under chapter 33.

(4)(A) Any action taken by the Secretary under this subsection, or to implement this subsection, shall be subject to the requirements of subsection (c) and chapter 71.

(B) Any rules or regulations promulgated pursuant to this section shall be deemed an agency rule or regulation under section 7117(a)(2), and shall not be deemed a Government-wide rule or regulation under section 7117(a)(1).

(5) The Secretary shall develop a training program for Department of Defense human resource