

as of the close of the fiscal year last ending before the start of such calendar year.

(B) For purposes of this paragraph, positions and candidates shall be counted on a full-time equivalent basis.

(g) DEFINITIONS.—In this section:

(1) The term “Defense Test Resource Management Center” means the Department of Defense Test Resource Management Center established under section 4173 of this title.

(2) The term “employee” has the meaning given that term in section 2105 of title 5.

(3) The term “Major Range and Test Facility Base” means the test and evaluation facilities and resources that are designated by the Secretary of Defense as facilities and resources comprising the Major Range and Test Facility Base.

(4) The term “veteran” has the meaning given that term in section 101 of title 38.

(Added Pub. L. 114-328, div. A, title XI, §1122(a)(1), Dec. 23, 2016, 130 Stat. 2453, §2358a; amended Pub. L. 115-91, div. A, title XI, §1111, Dec. 12, 2017, 131 Stat. 1636; Pub. L. 115-232, div. A, title XI, §1112(a), Aug. 13, 2018, 132 Stat. 2012; renumbered §4091, Pub. L. 116-283, div. A, title XVIII, §1843(a), as added Pub. L. 117-81, div. A, title XVII, §1701(u)(4)(A), Dec. 27, 2021, 135 Stat. 2153; Pub. L. 116-283, div. A, title XVIII, §§1843(b)(2), 1845(c)(5), Jan. 1, 2021, 134 Stat. 4245, 4247; Pub. L. 117-81, div. A, title II, §§212(a), 215(d)(13), Dec. 27, 2021, 135 Stat. 1588, 1595.)

### Editorial Notes

#### AMENDMENTS

2021—Pub. L. 116-283, §1843(a), as added by Pub. L. 117-81, §1701(u)(4)(A), renumbered section 2358a of this title as this section.

Pub. L. 116-283, §1843(b)(2), which directed the renumbering of section 2358a of this title as section 4111 instead of this section, was repealed by Pub. L. 117-81, §1701(u)(4)(A), effective as if included therein, so that such renumbering was no longer directed.

Subsec. (b)(1), (3). Pub. L. 117-81, §215(d)(13)(A), substituted “designated by section 4121(b) of this title” for “designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 10 U.S.C. 2358 note)”.

Subsec. (d)(2)(A), (B). Pub. L. 117-81, §215(d)(13)(B), substituted “pursuant to section 4121(a) of this title” for “pursuant to section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 10 U.S.C. 2358 note)”.

Subsec. (f). Pub. L. 117-81, §212(a)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 117-81, §212(a)(1), redesignated subsec. (f) as (g).

Subsec. (g)(1). Pub. L. 116-283, §1845(c)(5), which directed amendment of subsec. (f)(1) of this section, as transferred and redesignated by section 503(b)(2) of Pub. L. 116-283, by substituting “section 4173” for “section 196”, was executed to subsec. (g)(1) of this section, as transferred and redesignated by section 1843(a) of Pub. L. 116-283, to reflect the probable intent of Congress and the amendments by Pub. L. 117-81, §§212(a)(1), 1701(u)(4)(A). See notes above.

2018—Subsec. (a)(4). Pub. L. 115-232 substituted “of appointments” for “to permanent appointment” in heading and “to another temporary appointment or to a term or permanent appointment” for “to a permanent appointment” in text.

2017—Subsec. (d)(1). Pub. L. 115-91, §1111(1)(A)(i), inserted “, each facility of the Major Range and Test Fa-

cility Base, and the Defense Test Resource Management Center” after “each STRL” in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 115-91, §1111(1)(A)(ii), which directed insertion of “, of such facility of the Major Range and Test Facility Base, or the Defense Test Resource Management Center”, was executed by making the insertion after “such STRL”, to reflect the probable intent of Congress.

Subsec. (d)(2). Pub. L. 115-91, §1111(1)(B), designated existing provisions as subpar. (A), substituted “The laboratory positions” for “The positions”, and added subpar. (B).

Subsec. (f). Pub. L. 115-91, §1111(2), added pars. (1) and (3) and redesignated former pars. (1) and (2) as (2) and (4), respectively.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 117-81, div. A, title II, §215(e), Dec. 27, 2021, 135 Stat. 1595, provided that: “This section [enacting section 4121 of this title, amending this section and sections 4094 and 4124 of this title, amending provisions set out as notes preceding section 1580 of this title and under sections 2223a, 2358, 4001, and 4121 of this title, and repealing provisions set out as notes under section 2358 of this title] and the amendments and repeals made by this section shall take effect immediately after the effective date of the amendments made by title XVIII of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283) [Jan. 1, 2022].”

Amendment by section 1701(u)(4)(A) of Pub. L. 117-81 applicable as if included in the enactment of title XVIII of Pub. L. 116-283 as enacted, see section 1701(a)(2) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and note below.

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.

### § 4092. 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) 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) 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.

(8) 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.

(9) 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) 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;

(H) 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

(I) 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)—

(i) to any of 5 positions designated by the Director of the Defense Advanced Research Projects Agency for purposes of this clause, 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

(ii) to any other position designated by the Director for purposes of this clause, at rates not in excess of the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3;

(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;

(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); and

(4) during any fiscal year, pay up to 15 individuals newly appointed pursuant to paragraph (1)(B) the travel, transportation, and relocation expenses and services described under sections 5724, 5724a, and 5724c of title 5.

(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, §1599h; 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; renumbered §4092, Pub. L. 116-283, div. A, title XVIII, §1843(a), as added Pub. L. 117-81, div. A, title XVII, §1701(u)(4)(A), Dec. 27, 2021, 135 Stat. 2153; Pub. L. 117-81, div. A, title X, §1081(a)(21), title XI, §1107, Dec. 27, 2021, 135 Stat. 1920, 1951.)

### Editorial Notes

#### AMENDMENTS

2021—Pub. L. 116-283, §1843(a), as added by Pub. L. 117-81, §1701(u)(4)(A), renumbered section 1599h of this title as this section.

Subsec. (a)(7). Pub. L. 117-81, §1081(a)(21)(A), redesignated second par. (7), relating to the Space Development Agency, as (8). Former par. (8) redesignated (9).

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. (a)(9). Pub. L. 117-81, §1081(a)(21)(A), redesignated par. (8) as (9).

Subsec. (b)(1)(G). Pub. L. 117-81, §1081(a)(21)(B), redesignated second subpar. (G), relating to the Space Development Agency, as (H). Former subpar. (H) redesignated (I).

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.

Subsec. (b)(1)(D). Pub. L. 117-81, §1081(a)(21)(B), redesignated subpar. (H) as (I).

Subsec. (b)(2)(A). Pub. L. 117-81, §1107(1)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: “in the case of employees appointed pursuant to paragraph (1)(B) to any of 5 positions designated by the Director of the Defense Advanced Re-

search 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”.

Subsec. (b)(4). Pub. L. 117-81, §1107(1)(B)–(3), added par. (4).

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”.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 applicable as if included in the enactment of title XVIII of Pub. L. 116-283 as enacted, see section 1701(a)(2) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and note below.

Amendment by section 1843(a) of 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.

#### 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 [now 10 U.S.C. 4092(a)(8)], 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 [now 10 U.S.C. 4092] (as added by subsection (a)), after such date in accordance with such section 1599h [now 4092] and the applicable program carried out under such section 1599h [now 4092].

“(2) DATE OF APPOINTMENT.—For purposes of subsection (c) of section 1599h of title 10, United States Code [now 10 U.S.C. 4092(c)] (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).”

§ 4093. Science, Mathematics, and Research for Transformation (SMART) Defense Education Program

(a) REQUIREMENT FOR PROGRAM.—The Secretary of Defense shall carry out a program to provide financial assistance for education in science, mathematics, engineering, and technology skills and disciplines that, as determined by the Secretary, are critical to the national security functions of the Department of Defense and are needed in the Department of Defense workforce.

(b) FINANCIAL ASSISTANCE.—(1) Under the program under this section, the Secretary of Defense may award a scholarship or fellowship in accordance with this section to a person who—

(A) is a citizen of the United States or, subject to subsection (g), a country the government of which is a party to The Technical Cooperation Program (TTCP) memorandum of understanding of October 24, 1995;

(B) is pursuing an associates degree, undergraduate degree, or advanced degree in a critical skill or discipline described in subsection (a) at an accredited institution of higher education; and

(C) enters into a service agreement with the Secretary of Defense as described in subsection (c).

(2) The amount of the financial assistance provided under a scholarship or fellowship awarded to a person under this subsection shall be an amount determined by the Secretary of Defense.

(3) Financial assistance provided under a scholarship or fellowship awarded under this section may be paid directly to the recipient of such scholarship or fellowship or to an administering entity for disbursement of the funds.

(c) SERVICE AGREEMENT FOR RECIPIENTS OF FINANCIAL ASSISTANCE.—(1) To receive financial assistance under this section—

(A) in the case of an employee of the Department of Defense, the employee shall enter into