

## Recommendation 61: Create a comprehensive public-private exchange program for DoD's acquisition workforce.

### Problem

The relationship between the DoD AWF and its private-sector counterpart is a critical element of the defense acquisition system. Because the private sector plays an increasingly prominent role in helping to shape defense acquisition outcomes, it is important that DoD AWF members and private-sector AWF employees understand each other's processes, attitudes, and objectives. PPEPs provide DoD a valuable tool for fostering such understanding. If implemented properly, PPEPs can form a cornerstone of DoD's efforts to engage with the private sector. Despite its desire to do so, DoD has struggled to successfully develop a broad-based, two-way PPEP that would involve its entire AWF. The problem is not political; there is widespread support among DoD officials and Congress for PPEPs. Obstacles to PPEPs are rooted in implementation rather than intent. A policy response that identifies and eliminates the factors hindering DoD's attempts would allow the department to successfully employ PPEPs for the AWF.

### Background

PPEPs provide legal authority to allow "federal employees to work in external organizations, external employees to serve in the Federal Government, or both."<sup>1</sup> Exchange programs can be one-way if employees only move from the federal government to the private sector, or two-way if employees move between the federal government and the private sector in both directions. Exchange programs vary in the duties and responsibilities that participants are allowed to undertake. Some exchange programs permit participants to exercise decision-making authority; others restrict participants to purely advisory roles. Some exchange programs place participants in research or policymaking positions; others direct participants to operational support roles.<sup>2</sup> Title 5 authorizes all federal agencies to operate one-way exchange programs to send their employees to the private sector. This basic authority does not authorize two-way exchange programs for private-sector employees to be assigned to the government, and such programs require additional authorization from Congress.<sup>3</sup> Within DoD, Title 5 exchange program authority is referred to as Training with Industry and implemented through DoDI 1322.06, which identifies PPEPs as one type of "education, training, and professional development opportunity" that serves to "enhance the educational and training level of DoD personnel."<sup>4</sup>

The recent history of PPEPs across the federal government reveals the range of exchange programs within the executive branch. At the end of 2013, 16 exchange program authorities existed among

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<sup>1</sup> Susannah V. Howieson et al., *Federal Personnel Exchange Mechanisms*, IDA Science & Technology Policy Institute, November 2013, accessed June 15, 2018, <https://www.ida.org/idamedia/Corporate/Files/Publications/STPIPubs/D-4906.pdf>.

<sup>2</sup> Ibid.

<sup>3</sup> Establishment of Training Programs, 5 U.S.C. § 4103(a). Susannah V. Howieson et al., *Federal Personnel Exchange Mechanisms*, IDA Science & Technology Policy Institute, November 2013, accessed June 15, 2018, <https://www.ida.org/idamedia/Corporate/Files/Publications/STPIPubs/D-4906.pdf>.

<sup>4</sup> Fellowships, Legislative Fellowships, Internships, Scholarships, Training-With-Industry (TWI), and Grants Provided to DoD or DoD Personnel for Education and Training, DoDI 1322.06 (2016).

federal agencies.<sup>5</sup> Several exchange programs focused on research and policymaking duties, such as the Franklin Fellows Program of the State Department and U.S. Agency for International Development.<sup>6</sup> Other exchange programs were purely advisory in nature, such as the Loaned Executive Program of the Department of Homeland Security.<sup>7</sup> In addition to Training with Industry, DoD oversees several agency-specific PPEPs, including the Information Technology Exchange Program (ITEP) and the DoD Visiting Research Opportunities program.<sup>8</sup> Despite the variety of PPEPs within DoD and the federal government as a whole, DoD does not currently manage a comprehensive PPEP that encompasses its entire AWF. Instead, DoD uses several smaller, more limited PPEPs to provide opportunities to select groups of employees or narrow subsets of the workforce. The Army and Air Force both operate distinct PPEPs called Training with Industry and Education with Industry, respectively, but the Army program is not open to civilian employees and neither program establishes a two-way exchange with the private sector.<sup>9</sup> The Navy does not operate its own PPEP; nor can one be found among the civilian defense agencies.<sup>10</sup> The office of the Secretary of Defense oversees several PPEPs that offer opportunities to employees throughout the DoD workforce, but these exchange programs are small-scale and tend to focus on specific career fields or prospective leaders.<sup>11</sup>

## Discussion

### ***DoD Support and Its Limitations***

The fragmented nature of DoD exchange programs and the lack of specific coverage for the AWF has created gaps in DoD's ability to encourage acquisition employee participation. This situation runs counter to DoD's avowed beliefs regarding the benefits of exchange program participation. DoD's views align with the conclusions of an external study, which argued that "personnel exchanges provide myriad benefits for exchangees, destination organizations, and home organizations" and called PPEPs a "triple win" for both sides and the employees in between.<sup>12</sup> In its regulatory guidance implementing Training with Industry, DoD states that such exchanges can supplement existing training and education programs by providing opportunities "that are not otherwise available through existing military or advanced civilian education programs."<sup>13</sup> DoD also declares that PPEPs can provide DoD personnel with "the opportunity to gain career broadening experience while working in an industry environment," and DoD agencies with "the means to acquire needed skills or expertise to accomplish their mission."<sup>14</sup> This clear articulation of DoD's support for PPEPs is echoed by AWF senior leaders. One AWF senior official argued that PPEPs enable the AWF to negotiate more effectively with the

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<sup>5</sup> Susannah V. Howieson et al., *Federal Personnel Exchange Mechanisms*, IDA Science & Technology Policy Institute, November 2013, accessed June 15, 2018, <https://www.ida.org/idamedia/Corporate/Files/Publications/STPIPubs/D-4906.pdf>.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> DoD Officials, meetings with Section 809 Panel, October 3 and 4, 2017.

<sup>10</sup> DoD Officials, meetings with Section 809 Panel, November 28 and December 7, 2017.

<sup>11</sup> DoD Official, meeting with Section 809 Panel, June 21, 2018.

<sup>12</sup> Susannah V. Howieson et al., *Federal Personnel Exchange Mechanisms*, IDA Science & Technology Policy Institute, November 2013, accessed June 15, 2018, <https://www.ida.org/idamedia/Corporate/Files/Publications/STPIPubs/D-4906.pdf>.

<sup>13</sup> Fellowships, Legislative Fellowships, Internships, Scholarships, Training-With-Industry (TWI), and Grants Provided to DoD or DoD Personnel for Education and Training, DoDI 1322.06 (2016).

<sup>14</sup> Ibid.

private sector because acquisition employees become acquainted with industry practices.<sup>15</sup> A second senior official asserted that any program to bring DoD AWF employees and private-sector employees together was positive for the government.<sup>16</sup> A third official touted a military service's efforts to provide funding support for PPEPs, despite competition from other priorities and initiatives.<sup>17</sup> Regardless of varied circumstances among different DoD Components, senior officials consistently support PPEPs and their beneficial effects.

Broad support for PPEPs has not netted development of a comprehensive, two-way exchange program for DoD's AWF, despite congressional effort to create such a program (as a pilot program) in the FY 2016 NDAA.<sup>18</sup> DoD's inability to effectively implement the pilot program is emblematic of its overall difficulties in successfully implementing exchange programs. An Army PPEP for civilian employees failed due to lack of interest.<sup>19</sup> The Navy's efforts to gain administrative flexibility for a prospective PPEP have been stymied.<sup>20</sup> A provision in the FY 2017 NDAA creating yet another framework for an exchange program is only now nearing implementation, nearly 2 years after its passage.<sup>21</sup> The cumulative effect of these frustrations has been that large-scale exchange programs have produced little benefit for DoD's AWF.

### ***Disincentives for Exchange Programs***

The explanation for these setbacks lies within the interplay between the cultural context and the PPEP statutory authorities. PPEPs have largely failed to take root due to structural, cultural, and legal factors that are embedded within the traditional framework of exchange programs. These factors have had the effect of creating disincentives for the essential actors in PPEPs, dissuading them from participating. There are three primary actors in any PPEP: the employing office that employs the participating DoD employee, the DoD employee, and the private-sector company that either receives the DoD employee or sends its own employee to DoD (as well as private-sector employees themselves, although their interests can be considered jointly with their employers). The attitudes and incentives of employing offices, employees, and private-sector companies require attention to successfully implement a two-way exchange program on a large scale. The factors that have deterred each of these actors must be properly understood to craft policy changes to overcome them.

DoD employing offices are often neglected in considerations of PPEPs. While an employee is participating in a PPEP, the employing office is compelled to relinquish a talented employee. Tension exists between overall DoD interests, which are furthered by enhanced public- and private-sector cooperation, and the interests of a particular office at a particular moment, which can be negatively affected by the temporary loss of a valuable employee. The current structure of PPEPs does nothing to alleviate the difficulties for participating DoD offices. Consequently, the tension between offices and their front-line managers and PPEPs has impeded implementation.

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<sup>15</sup> DoD Official, meeting with Section 809 Panel, October 3, 2017.

<sup>16</sup> DoD Official, meeting with Section 809 Panel, November 30, 2017.

<sup>17</sup> DoD Official, meeting with Section 809 Panel, February 23, 2018.

<sup>18</sup> FY 2016 NDAA, Pub. L. No. 114-92, 129 Stat. 1030 (2015).

<sup>19</sup> DoD Official, meeting with Section 809 Panel, October 3, 2017.

<sup>20</sup> DoD Official, meeting with Section 809 Panel, November 28, 2017.

<sup>21</sup> Public-private Talent Exchange, 10 U.S.C. §1599g.

Recent congressional authorizations for PPEPs have offered no statutory authority for employing offices to temporarily replace participating employees, which has increased the strain on the employees who remain and raised concern about maintaining productivity.<sup>22</sup> Employing offices are required to maintain participating employees on their payroll, and recent PPEPs have been unable to muster funding to properly support the offices.<sup>23</sup> Insufficient personnel flexibility and insufficient funding have compounded the friction between employing offices and PPEPs. Civilian supervisors resist PPEP participation and do nothing to raise the profile of PPEPs among the workforce.<sup>24</sup> One senior official with a PPEP characterized front-line civilian managers as one of the few groups that were outright opposed to the PPEP and argued that if their resistance dissipated, there would be “twenty times the interest” in the exchange program among civilian employees.<sup>25</sup> A successful PPEP must ameliorate these concerns and convince front-line managers that the short-term costs of encouraging participation in the program can be managed, and will be outweighed by the long-term benefits.

DoD employees are equally critical to the success of any PPEP. The employees must voluntarily join the program, properly take advantage of their experiences with the private sector, and use their newfound insights on behalf of the government. An outside study of PPEPs concluded that public-sector participants gain new skills, are exposed to fresh ideas, and experience a form of external career growth without leaving the government.<sup>26</sup> These benefits have failed to persuade DoD employees, particularly civilians, to embrace the merits of joining a PPEP.

The skepticism among DoD employees can be traced to several aspects of recent PPEPs, such as a chronic lack of awareness among public-sector employees regarding PPEP opportunities.<sup>27</sup> The primary dilemma is rooted in the culture of career development among the DoD civilian workforce (see Recommendation 60). Although senior DoD leaders readily acknowledge PPEP benefits for the workforce as a whole, the immediate career benefits for individual participants are far less clear. Currently, there are no explicit career advantages to be gained from successfully completing a PPEP. PPEPs do not provide additional certification or take the place of any mandatory training program, nor do they open any pathways to promotion.<sup>28</sup> DoD employees receive no tangible career benefits as an inducement to participate in a PPEP. Uncertain whether completing a PPEP will help their careers, employees are hesitant to accept the potential lifestyle disruption of exchange program participation.<sup>29</sup> Some employees fear they could lose their current position in DoD on returning from a PPEP placement.<sup>30</sup> The absence of PPEP integration into DoD’s career development structure has hindered

<sup>22</sup> Susannah V. Howieson et al., *Federal Personnel Exchange Mechanisms*, IDA Science & Technology Policy Institute, November 2013, accessed June 15, 2018, <https://www.ida.org/idamedia/Corporate/Files/Publications/STPIPubs/D-4906.pdf>. DoD Official, meeting with Section 809 Panel, February 23, 2018.

<sup>23</sup> Ibid. DoD Official, meeting with Section 809 Panel, November 28, 2017.

<sup>24</sup> Susannah V. Howieson et al., *Federal Personnel Exchange Mechanisms*, IDA Science & Technology Policy Institute, November 2013, accessed June 15, 2018, <https://www.ida.org/idamedia/Corporate/Files/Publications/STPIPubs/D-4906.pdf>. DoD Official, meeting with Section 809 Panel, October 4, 2017.

<sup>25</sup> DoD Official, meeting with Section 809 Panel, May 30, 2018.

<sup>26</sup> Susannah V. Howieson et al., *Federal Personnel Exchange Mechanisms*, IDA Science & Technology Policy Institute, November 2013, accessed June 15, 2018, <https://www.ida.org/idamedia/Corporate/Files/Publications/STPIPubs/D-4906.pdf>.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid. DoD Official, meeting with Section 809 Panel, October 4, 2017.

<sup>29</sup> Susannah V. Howieson et al., *Federal Personnel Exchange Mechanisms*, IDA Science & Technology Policy Institute, November 2013, accessed June 15, 2018, <https://www.ida.org/idamedia/Corporate/Files/Publications/STPIPubs/D-4906.pdf>.

<sup>30</sup> DoD Official, meeting with Section 809 Panel, October 4, 2017.

DoD's attempts to encourage workforce participation. Employees are reluctant to uproot their careers for a PPEP without the assurance that doing so will advance their ambitions. A successful PPEP must provide that assurance.

Private-sector companies are the final component of a successful PPEP, particularly if the exchange program is designed to operate in both directions and bring private-sector employees into the government. These two-way PPEPs carry benefits for the private sector as well as DoD. Private-sector companies can gain valuable insights into the structures and processes of the government, which often differ substantially from the private sector. Private-sector employees who participate in two-way PPEPs can obtain a firsthand perspective regarding the priorities and methods of their public-sector counterparts, which can help improve public-private communications on their return to the private sector. DoD benefits from an influx of fresh ideas and skill sets that reflect the different approaches of the private sector.<sup>31</sup> The private sector appreciates the potential advantages that can arise from exchange programs, and representatives from the private sector praised PPEPs as "a great experience" that they would "definitely support" under the right circumstances.<sup>32</sup> Despite the value to the companies and their willingness to accept public-sector employees as part of one-way PPEPs, two-way PPEPs have failed to overcome reservations among private-sector companies.

One aspect of the private sector's hesitation revolves around personal conflicts-of-interest (PCIs), and the multitude of statutes that govern PCIs for government employees. Private-sector employees frequently become subject to federal PCI statutes as a result of their participation in two-way exchange programs, and applicable laws such as the Ethics in Government Act of 1978 and Chapter 21 of Title 41 of the U.S. Code (relating to obtaining and disclosing of certain information) can limit their activities for a period when they return to the private sector. The private sector views PCI as a manageable problem in its evaluation of costs and benefits related to two-way PPEPs.

A stronger source of private-sector resistance is rooted in concerns over organizational conflicts-of-interest (OCIs). The FAR defines an OCI as a situation involving either for-profit or nonprofit organizations for which "factors create an actual or potential conflict of interest on an instant contract, or when the nature of the work to be performed on the instant contract creates an actual or potential conflict of interest on a future acquisition."<sup>33</sup> Companies seek to avoid situations in which it appears prior services rendered to the government provided access or information that offered an unfair advantage on a subsequent contract bid, which could expose them to an OCI complaint and jeopardize future contracts. Companies fear such situations may arise through their participation in a two-way PPEP. The purpose of a PPEP is to increase the communication between public and private sectors, and to provide employees on both sides with a more accurate perspective on the actions of their counterparts. But if a private-sector employee joins DoD as a part of a temporary exchange program, employers worry that the employee's return to the private sector could be perceived as an unfair advantage, expose the company to OCI complaints on future DoD contracts, and endanger some or all

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<sup>31</sup> Susannah V. Howieson et al., *Federal Personnel Exchange Mechanisms*, IDA Science & Technology Policy Institute, November 2013, accessed June 15, 2018, <https://www.ida.org/idamedia/Corporate/Files/Publications/STPIPubs/D-4906.pdf>.

<sup>32</sup> Industry Executives, meeting with Section 809 Panel, August 15, 2018.

<sup>33</sup> Organizational and Consultant Conflicts of Interest, FAR 9.5.



of the company's business with DoD.<sup>34</sup> This is a risk that few private-sector companies have been willing to take. An external analysis of PPEPs characterized the problem bluntly by stating that "for-profit organizations were unwilling to risk losing future business with the government over potential conflicts of interest created by an employee rotating through a Federal agency."<sup>35</sup> Thus, OCI concerns represent one of the chief obstacles to implementing a two-way PPEP for DoD. Any proposal for a two-way PPEP must contain a solution that will provide reassurance to private-sector companies to gain their assent and participation.

### ***The Effect of Disincentives***

The fate of recent PPEPs illustrates the effect of structural and cultural disincentives. DoD's inability to overcome these issues has proven a crucial factor concerning the success of its PPEPs. The recent histories of two PPEPs—the governmentwide ITEP and the Air Force's Education with Industry (EWI) program—demonstrate the divergent paths that confront exchange programs based upon their relative susceptibility to existing disincentives among the key actors within the program.

Created in the E-Government Act of 2002, ITEP was a governmentwide PPEP that authorized federal agencies to "temporarily detail IT staff to private-sector companies and to accept individuals from the private sector."<sup>36</sup> ITEP had a troubled existence and never achieved real traction. According to GAO, ITEP failed to reassure the private sector regarding potential OCI liability. As a result, OCI concerns became a "major issue" for ITEP because it was "not easy to determine what information is appropriate for private sector employees," and private-sector companies feared "that an exchange would interfere with future federal contracting opportunities."<sup>37</sup> These anxieties resulted in "few inquiries and little interest from private sector companies," which crippled ITEP's ability to bring private-sector employees into the government.<sup>38</sup> At the same time, demand for ITEP among federal agencies and employees was low, and OPM struggled to implement the program because of its complexity.<sup>39</sup> DoD did manage to achieve a functioning ITEP exchange, but that exchange featured exactly one participant before the program's authority was allowed to expire in December 2007.<sup>40</sup> ITEP was undermined by its inability to eliminate the disincentives experienced by the key actors.

By contrast, the Air Force's EWI program demonstrates that a PPEP can provide real value for DoD if it can overcome some of its structural disincentives. EWI represents the Air Force's implementation of the Training with Industry governmentwide authority. EWI assigns selected midcareer professionals—both uniformed and civilian—to private-sector companies "to provide students with management

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<sup>34</sup> Susannah V. Howieson et al., *Federal Personnel Exchange Mechanisms*, IDA Science & Technology Policy Institute, November 2013, accessed June 15, 2018, <https://www.ida.org/idamedia/Corporate/Files/Publications/STPIPubs/D-4906.pdf>. DoD Official, meeting with Section 809 Panel, January 31, 2018.

<sup>35</sup> Susannah V. Howieson et al., *Federal Personnel Exchange Mechanisms*, IDA Science & Technology Policy Institute, November 2013, accessed June 15, 2018, <https://www.ida.org/idamedia/Corporate/Files/Publications/STPIPubs/D-4906.pdf>.

<sup>36</sup> GAO, *Information Technology: Status and Challenges of Employee Exchange Program*, GAO-07-216, December 2006, accessed June 15, 2018, <https://www.gao.gov/assets/260/254567.pdf>.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid. IDA, *Federal Personnel Exchange Mechanisms*, November 2013, accessed June 2018, <https://www.ida.org/idamedia/Corporate/Files/Publications/STPIPubs/D-4906.pdf>.

skills and technical expertise as they study best practices with leaders of industry.”<sup>41</sup> EWI is broadly considered a successful PPEP and widely praised throughout the Air Force. Senior Air Force acquisition officials believe the program possesses great merit, and one senior official overseeing EWI characterized it as a “pretty loved program.”<sup>42</sup> EWI has succeeded primarily because program officials have mitigated disincentives that have undermined other PPEPs and offered positive incentives. EWI has secured stable funding through DAWDF, which has provided it with greater flexibility to support program needs and protect program funding.<sup>43</sup> EWI attempts to offer a compelling rationale to AWF employees regarding the potential benefits of participation by coordinating career placements for returning participants to maximize the advantages of the program.<sup>44</sup> Through these efforts, EWI has lessened the disincentives confronting the workforce and revealed many of the benefits exchange programs can provide.

Despite its successes, EWI remains limited in its ability to eliminate disincentives, limiting the program from fully realizing its potential. Employing offices are still required to pay the salaries for their civilian employees who are on an EWI assignment and still restricted in their ability to temporarily fill the positions of EWI participants.<sup>45</sup> Notwithstanding EWI’s best efforts, Air Force civilian personnel still lack a defined, explicit promotion pathway that uses EWI as a means for career advancement.<sup>46</sup> EWI lacks the statutory authority to bring private-sector employees into the Air Force. Due to these disincentives, Air Force front-line managers continue to resist allowing their employees to participate in EWI and participation rates among civilians lag far behind uniformed personnel.<sup>47</sup> A senior leader overseeing EWI stated that personnel concerns among civilian offices suppressed enthusiasm among civilian employees, and that greater personnel flexibility and confidence among Air Force offices would produce a surge in civilian interest.<sup>48</sup> EWI holds valuable lessons for DoD, both in terms of the positive effects of successfully implemented PPEPs and limitations that will continue to undermine their appeal without statutory changes.

## Conclusions

### ***Framework for a Comprehensive PPEP for the Acquisition Workforce***

To realize the full potential of PPEPs for the DoD AWF, exchange programs must eliminate the disincentives that have dissuaded key actors from participating. Policy changes are necessary to correct the persistent flaws in the framework of PPEPs. A useful template for an AWF PPEP already exists in Section 1104 of the FY 2017 NDAA.<sup>49</sup> The provision authorizes DoD to establish a two-way, comprehensive PPEP for the entire DoD workforce, a scale and scope that does not currently exist with any other PPEP.<sup>50</sup> As defined by Section 1104, no ceiling exists to limit the number of participants in the

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<sup>41</sup> Air Force Institute of Technology, *Education with Industry Handbook*, August 2009, accessed June 15, 2018, [https://www.afit.edu/cip/docs/EWI\\_Handbook.pdf](https://www.afit.edu/cip/docs/EWI_Handbook.pdf).

<sup>42</sup> DoD officials, meetings with Section 809 Panel, October 4, 2017; February 23, 2018; and May 30, 2018.

<sup>43</sup> DoD official, meeting with Section 809 Panel, May 30, 2018.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Public-private Talent Exchange, 10 U.S.C. § 1599g.

<sup>50</sup> Ibid.

exchange program (talent exchange) at any given time. Exchange program assignments can range from 3 months to 2 years, and DoD participants in the exchange program must afterwards return to DoD for a period twice the length of the exchange program assignment. For legal purposes, DoD employees are considered to be on detail within DoD for the extent of their assignment in the private sector. DoD is prohibited from using internal transfers, internal reassignments or external contractors to temporarily replace participants in the exchange program. Both DoD and private-sector employees are governed by conflict-of-interest rules that prohibit them from improperly using nonpublic or proprietary information for personal or organizational benefit. Private-sector employees, in particular, are “deemed to be an employee of the Department of Defense” in regards to the core personal conflict-of-interest and integrity statutes of Title 5, Title 18, Title 31, Title 41, and statutes such as the Ethics in Government Act of 1978 and the Federal Tort Claims Act.<sup>51</sup>

The Section 1104 talent exchange is a useful foundation for a new PPEP because it is representative of the standard exchange program model of previous years, and because its recent enactment makes it a relevant reflection of current congressional sentiment regarding exchange programs. The talent exchange was intended to “encourage Department of Defense employees to gain skills that align with functional communities or occupational specialties.”<sup>52</sup> Nearly 2 years after its passage, however, the provision is only now being implemented. DoD finally issued regulatory guidelines in July 2018, and was slated to be fully operational by the end of December 2018.<sup>53</sup> DoD’s policy guidance for Section 1104 is impressive, providing detailed criteria for administration of the program.<sup>54</sup> Nevertheless, the slow implementation pace has limited the program’s effectiveness.

Section 1104 is not specifically tailored to the AWF and does not address the key problems confronting PPEPs. Accordingly, a new PPEP, based on the Section 1104 framework, should be created with application solely to the AWF, while the existing Section 1104 talent exchange would be limited to non-AWF positions. Section 1104 does not specify a range of eligible employees within the DoD workforce by statute (although DoD establishes a floor at GS-12 in its implementation guidance).<sup>55</sup> The AWF PPEP would explicitly define a scope of eligibility between GS-12 and GS-15 for AWF civilian employees, or AcqDemo equivalent starting at NH-III. Within the AWF, these midcareer to late-career employees are experienced enough to take full advantage of the opportunities afforded by their interactions with the private sector, while still being able to use the benefits of the PPEP on DoD’s behalf for many years thereafter. Unlike Section 1104, which establishes a minimum duration of 3 months for an exchange program assignment, the AWF PPEP would contain no minimum duration—with durations potentially as short as weeks—to provide the greatest flexibility for DoD. The AWF PPEP would also permit the Service Acquisition Executives to oversee the selection process for exchange program participants within their military departments. The AWF PPEP would also address the disincentives confronting

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<sup>51</sup> Ibid.

<sup>52</sup> FY 2017 NDAA, Pub. L. No. 114-328, Joint Explanatory Statement of the Committee of Conference, <https://www.congress.gov/114/crpt/hrpt840/CRPT-114hrpt840.pdf>.

<sup>53</sup> Deputy Secretary of Defense Memorandum, *Public-private Talent Exchange Implementation Procedures*, July 19, 2018, accessed November 6, 2018, [https://www.cpmc.osd.mil/Content/Documents/PPTE\\_Memorandum\\_2018.pdf](https://www.cpmc.osd.mil/Content/Documents/PPTE_Memorandum_2018.pdf).

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.



employing offices, employees, and the private sector. Once these disincentives have been removed, the AWF PPEP can achieve a better outcome than its predecessors.

### ***Employing Offices: Funding and Personnel Flexibility***

DoD employing offices—representing both the office as an institution and the front-line managers within the office—constitute one of the chief pillars of skepticism and resistance toward PPEPs. Their resistance is rooted in two issues: funding concerns due to a budgetary responsibility to continue to pay employee salaries while they are absent in the exchange program and personnel concerns due to the inability of offices to seamlessly replace employees absent for extended periods of time. Both concerns can be addressed within the statutory language of the AWF PPEP.

The most effective way to address the budgetary concerns of employing offices is to ensure a stable source of funding for the AWF PPEP and to provide statutory authority for the AWF PPEP to wield that funding broadly. The proposed PPEP is designed for the AWF, so DoD should be authorized to use DAWDF to cover salary and indirect costs for civilian AWF employees during their participation in the exchange program. DAWDF has successfully funded a host of AWF priorities, and the fund's flexibility underscores its potential as a stable source of funding for a PPEP tailored to the AWF. To reinforce the AWF PPEP as a budgetary priority, DAWDF funding levels should be increased to fully account for the PPEP's budget. Such a funding boost would send a strong message in support of the exchange program and insulate it from competing budgetary pressures.

The AWF PPEP's budget, properly funded through DAWDF, would cover several primary expenditures. The budget would cover all administrative costs and overhead expenses associated with the permanent operation of the PPEP. The budget would also include all salary costs for DoD employees who participate in the AWF PPEP for the full duration of their participation. The AWF PPEP would possess the resources and authority to relieve employing offices of the burden to support employees who have departed for private-sector assignments through the exchange program. Employing offices, freed from using their own budgets to pay the salaries of absent employees, could redirect those resources to other priorities until the employee returns. Section 841 of the FY 2018 NDAA authorized a similar use of DAWDF funding to pay the salaries of participants in the Program Manager Development Program—such an approach could garner widespread support.<sup>56</sup> The AWF PPEP would also fund Temporary Duty (TDY) costs for employees who need to travel to take advantage of exchange program opportunities. TDY funding would broaden the geographic reach of the AWF PPEP because many DoD installations are located in areas that lack potential private-sector partners and would struggle to provide the same local possibilities for employees as large metropolitan regions such as Washington, D.C.<sup>57</sup> The AWF PPEP's authority to fund TDY for participants would prevent employees from being effectively excluded from the program on a purely geographic basis and allow DoD to deploy its resources to maximum effect. The mitigation of budgetary pressures on employing offices would reduce one of the primary sources of tension between those offices and PPEPs. Amended budgetary structures and responsibilities could reverse one of the largest disincentives for employing offices to support a PPEP for the AWF.

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<sup>56</sup> FY 2018 NDAA, Pub. L. No. 115-91, 131 Stat. 1477 (2017).

<sup>57</sup> DoD official, meeting with Section 809 Panel, May 30, 2018.

The other major issue creating disincentives for employing offices to support PPEPs is personnel flexibility. The personnel concerns of employing offices are rooted in the basic procedures governing Executive Branch civilian personnel actions, and compounded by the existing statutory framework of PPEPs such as Section 1104 of the FY 2017 NDAA. PPEPs are unpopular with employing offices and front-line managers who are reluctant to lose skilled employees to private-sector assignments for extended periods of time. Allowing offices to make temporary and term appointments to replace participating employees would address this issue. Existing PPEPs frequently restrict the tools at DoD's disposal to respond quickly to open positions.<sup>58</sup> These constraints are too strict, and temporary and term appointments—which are time-limited appointments that cannot exceed 1 year and 4 years, respectively—could mitigate personnel concerns.<sup>59</sup>

The AWF PPEP would authorize employing offices to make temporary and term appointments to fill an open position for the duration of the participating employee's assignment in the private sector. Offices would be obligated to fund the temporary or term appointment themselves, but they would possess the necessary funding flexibility due to the AWF PPEP's assumption of salary responsibility for participating employees. One senior AWF official argued that temporary and term appointments would "alleviate the burden" on employing offices to "continue to achieve the Agency's mission," and diminish concerns that personnel disruption would undermine the appeal of the AWF PPEP.<sup>60</sup>

The AWF PPEP would also allow participating employees to enroll in DoD's Priority Placement Program on their completion of an exchange program assignment, so long as their assignment surpassed 9 months. This policy would provide further personnel flexibility to employing offices that were required to adapt to long-term employee absences due to the AWF PPEP, and provide an additional guarantee to the employee.

### ***DoD Employees: Career Development***

DoD employees have been reluctant to participate in PPEPs without a clear understanding of the benefit to their careers. These doubts are particularly understandable for civilian employees, who lack the more extensive career development structures that exist for uniformed members and are often expected to forge their own career pathways with little guidance from DoD's civilian leadership. Situating the AWF PPEP within a career development framework for AWF employees is the most effective means to eliminate this disincentive. Professional ambition should be an incentive for employees to participate in the exchange program.

The shift toward career pathways and competencies for the AWF recommended above encourages greater emphasis on experiential learning, in part by integrating concepts such as "key work experiences" into the career development framework. PPEPs represent a decidedly useful form of experiential learning for AWF employees, with the ability to convey substantial benefits upon individual employees and the workforce as a whole. The AWF PPEP should function well within the shift toward experiential learning. If an employee successfully completes an assignment in the private sector through the AWF PPEP, the achievement should provide tangible benefits in terms of the

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<sup>58</sup> Public-private Talent Exchange, 10 U.S.C. § 1599g.

<sup>59</sup> Temporary and Term Employment, 5 CFR 316 Subpart C and 5 CFR 316 Subpart D.

<sup>60</sup> DoD official, meeting with Section 809 Panel, November 13, 2017.

employee's career development, as defined by the functional leaders of each AWF career field. Specifically, the benefits should manifest through the designation of the AWF PPEP as a "key work experience" that conveys competencies to AWF employees throughout their careers. The benefits should also be reflected in competency metrics that value the knowledge conveyed by the exchange program. If understanding industry practices represented a part of the competencies required to advance in the acquisition field, the AWF PPEP would be a logical vehicle to provide those competencies to AWF employees, and by extension the workforce as a whole.

Clear professional benefits for AWF employees would promote their participation in the AWF PPEP. The exchange program would occupy a tangible position along the progression of an employee's career path within DoD's AWF career fields. It would also assist employees with meeting competency requirements, strengthening the link between the skills gained through the exchange program and AWF competencies. Ambitious employees would view the AWF PPEP as an opportunity to set themselves apart from their peers, having gained a DoD-recognized key work experience and valuable form of experiential learning. Within the AWF culture, the AWF PPEP could become a path to professional advancement, particularly for talented employees seeking to gain competencies to rise quickly through the ranks. This dynamic would complement DoD's desire to encourage PPEP participation and benefit both DoD and its AWF employees.

#### ***Private-sector Companies: Organizational Conflict-of-Interest***

Private-sector companies' reluctance to embrace two-way PPEPs stems from fear of OCI concerns. Private-sector companies have lacked clarity regarding the scope of acceptable activities for their employees within a DoD PPEP. Two-way exchange programs contain great promise as a means to enhance the communication and understanding between public-sector and private-sector AWF employees. The OCI concerns of private-sector companies represent a crucial obstacle to achieving a successful PPEP for the DoD AWF.

The optimal way to offer clarity to the private sector is to incorporate a framework for avoiding OCI violations within the statutory authority of the AWF PPEP itself. The proposed OCI framework is in no way intended to weaken OCI regulations, which serve an important function in maintaining the integrity of the procurement bidding process. The framework is intended to clearly define the boundaries of acceptable activities for a private-sector company and its participating employees. With the AWF PPEP's interpretation of OCI clearly defined, the private sector will simply need to abide by the PPEP rules to avoid the risk of an OCI protest.

The central principle of the AWF PPEP's treatment of OCI should be a straightforward statutory declaration that private-sector employees' participation, in and of itself, does not create an OCI for their employers. The statutory authority of the AWF PPEP would establish that as a matter of law, an OCI for an employing private-sector organization shall not be created by virtue of an individual's participation in the exchange program. At the same time, the AWF PPEP would also establish that private-sector participants would be prohibited from gaining access to trade secrets and other nonpublic information that possesses commercial value to their private-sector employers. Specific and tangible evidence of improper access to information would be required to justify a complaint.

By creating a legal distinction between simply participating in the AWF PPEP and obtaining improper access to trade secrets and nonpublic information of commercial value, the statutory OCI framework would clarify the implementation of OCI within the exchange program. The private sector could allow employees to receive DoD assignments without fear of violating OCI regulations, as long as the employees themselves complied with the rules and management decisions made by DoD. Furthermore, the AWF PPEP would bear responsibility to ensure that DoD assignments for private-sector employees did not create conflicts-of-interest that could run afoul of OCI (and PCI) standards. Under the rules of the AWF PPEP, no exchange program assignment could be finalized without the mutual agreement of DoD, the private-sector company, and the private-sector employee. A negotiation process would require DoD to gain the support of the private sector for an assignment, while providing an opportunity to guarantee that assignments would comply with all necessary conflict-of-interest guidelines.

The implementation of the statutory OCI framework would not require any great innovation by DoD. Current exchange programs that assign DoD employees to the private sector already account for potential conflicts-of-interest by directing employees to particular positions on their return to government service. For example, the Air Force's EWI program specifically guides employees' next assignment within DoD to maximize their benefit to the department and minimize any potential complications from their participation in the exchange program. The AWF PPEP would bear a similar responsibility.

## **Implementation**

### ***Legislative Branch***

- Create a new PPEP in Chapter 87 of Title 10, U.S. Code.
  - Use the public-private talent exchange, codified at 10 U.S.C. § 1599g, as a template for the PPEP.
  - Limit the scope of the PPEP to AWF employees.
  - Define the eligibility for the PPEP between GS-12 and GS-15, with equivalent personnel grades in the AcqDemo and military personnel systems.
  - Decline to establish any minimum duration for assignments within the PPEP.
  - Direct the use of DAWDF to fund the PPEP budget.
  - Direct the PPEP budget to cover the salary costs of participating employees for the full duration of their assignment, notwithstanding any prohibition on the use of DAWDF funds to pay the base salaries of DoD employees.
  - Direct the PPEP budget to cover the TDY costs of participating employees for the full duration of their assignment.
  - Allow the use of temporary and term appointments to replace participating employees for the full duration of their assignment, pursuant to the regulations established at 5 CFR 316 Subparts C and D.
  - Establish that employees who successfully complete a PPEP assignment extending at least 9 months gain eligibility for enrollment in DoD's Priority Placement Program.
  - Establish that an OCI cannot be created for a private-sector company by virtue of a company employee's participation, in and of itself, in the PPEP.

- Eliminate the consideration of specific private-sector concerns and areas of expertise in the implementation of the PPEP.
- Increase annual appropriations for DAWDF to fully support the budgetary requirements of the PPEP.
- Amend 10 U.S.C. § 1599g to limit the scope of the public–private talent exchange to non-AWF employees.

#### ***Executive Branch***

- Establish that the successful completion of a PPEP assignment shall constitute a key work experience in regards to AWF career paths.
- Establish that the successful completion of a PPEP assignment shall contribute toward AWF competency requirements.

#### ***Implications for Other Agencies***

- There are no cross-agency implications for this recommendation.



## RECOMMENDED REPORT LANGUAGE

### SEC. \_\_\_. PUBLIC-PRIVATE EXCHANGE PROGRAM FOR ACQUISITION WORKFORCE.

This section would create a two-way exchange program between the Defense Department acquisition workforce and private sector companies.

The committee recognizes that exchange programs between the public sector and the private sector could benefit the federal government and private sector companies alike. The committee is aware that the Defense Department's previous efforts to implement such exchange programs were undermined by structural disincentives for key stakeholders. The committee notes that the new statute would eliminate these disincentives. In particular, the committee notes that the new statute would preclude the use of a private sector employee's participation in the exchange program, in and of itself, as the basis of an organizational conflict-of-interest complaint.

The committee observes that the new statute should increase exchange program participation among public sector employees. The committee recognizes that the Defense Department's willingness to support those employees who participate in the exchange program and promote the further development of their careers would be essential to the success of the program.

This section would make conforming amendments to 10 U.S.C. 1705 to permit the use of the Defense Acquisition Workforce Development Fund for the exchange program, and to 10 U.S.C. 1599g to exclude members of the acquisition workforce from that section.

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1 **SEC. \_\_\_\_ . PUBLIC-PRIVATE EXCHANGE PROGRAM FOR ACQUISITION**

2 **WORKFORCE.**

3 (a) IN GENERAL.—Subchapter IV of Chapter 87 of title 10, United States Code, is  
4 amended by adding at the end the following new section:

5 **“§1749. Public-private exchange program for the acquisition workforce**

6 “(a) ASSIGNMENT AUTHORITY.—(1) Under regulations prescribed by the Secretary of  
7 Defense, the Secretary may, with the agreement of a private-sector organization, arrange for the  
8 temporary assignment under this section of—

9 “(A) a member of the acquisition workforce to such private-sector organization;  
10 or

11 “(B) an employee of such private-sector organization to a Department of Defense  
12 organization.

13 Such an assignment may only be made with the consent of the member of the acquisition  
14 workforce or the employee concerned.

15 “(2) Members of the acquisition workforce are eligible for an assignment under this  
16 section as follows:

17 “(A) Civilians in any of grades GS-12 through GS-15 under the General Schedule  
18 or, for employees in the demonstration project under section 1762 of this title, the  
19 equivalent.

20 “(B) Members of the armed forces serving in any of pay grades O-3 through O-6.

21 “(3) A private-sector organization shall not be considered to have an organizational  
22 conflict of interest merely by reason of—

1 “(A) the assignment of an employee of that organization to the Department of  
2 Defense under this section; or

3 “(B) the assignment of a member of the acquisition workforce to that organization  
4 under this section.

5 “(b) AGREEMENTS.—(1) The Secretary of Defense shall provide for a written agreement  
6 among the Department of Defense, the private-sector organization, and the member of the  
7 acquisition workforce or the employee concerned regarding the terms and conditions of an  
8 assignment under this section. Each such agreement shall include the following:

9 “(A) In the case of an agreement for the assignment of a member of the  
10 acquisition workforce, a requirement that the member of the acquisition workforce, upon  
11 completion of the assignment, will—

12 “(i) if a member of the armed forces, serve in the armed forces for a period  
13 equal to twice the length of the assignment (in addition to any other period of  
14 obligated service); or

15 “(ii) if a civilian, serve in the Department of Defense, or elsewhere in the  
16 civil service if approved by the Secretary, for a period equal to twice the length of  
17 the assignment.

18 “(B) A provision that if the member of the acquisition workforce or the employee  
19 of the private-sector organization (as the case may be) fails to carry out the agreement,  
20 such member or employee shall be liable to the United States for payment of all expenses  
21 of the assignment, unless that failure was for good and sufficient reason, as determined  
22 by the Secretary of Defense.

1           “(C) In the case of an agreement for the assignment of a member of the  
2           acquisition workforce, language ensuring that such member of the acquisition workforce  
3           does not improperly use pre-decisional or draft deliberative information that such  
4           member may be privy to or aware of related to Department programing, budgeting,  
5           resourcing, acquisition, or procurement for the benefit or advantage of the private-sector  
6           organization.

7           “(2) An amount for which an individual is liable under paragraph (1)(B) shall be treated  
8           as a debt due the United States.

9           “(3) The Secretary may waive, in whole or in part, collection of a debt described in  
10          paragraph (2) based on a determination that the collection would be against equity and good  
11          conscience and not in the best interests of the United States, after taking into account any  
12          indication of fraud, misrepresentation, fault, or lack of good faith on the part of the individual  
13          who is liable for the debt.

14          “(c) TERMINATION.—An assignment under this section may, at any time and for any  
15          reason, be terminated by the Department of Defense or the private-sector organization  
16          concerned.

17          “(d) DURATION.—(1) Except as provided in paragraph (2), an assignment under this  
18          section shall be for a period of not more than two years, renewable up to a total of four years.

19          “(2) An assignment under this section may be for a period in excess of two years, but not  
20          more than four years, if the Secretary determines that such assignment is necessary to meet  
21          critical mission or program requirements.

22          “(3) A member of the acquisition workforce may not be assigned under this section for  
23          more than a total of four years inclusive of all such assignments.



1 “(e) STATUS OF ACQUISITION WORKFORCE MEMBERS ASSIGNED TO PRIVATE-SECTOR  
2 ORGANIZATIONS.—(1) A member of the acquisition workforce who is assigned to a private-  
3 sector organization under this section shall be considered, during the period of assignment, to be  
4 on detail to a regular duty or work assignment in the Department for all purposes. In the case of a  
5 civilian member of the acquisition workforce, the written agreement established under subsection  
6 (b)(1)—

7 “(A) shall address the specific terms and conditions related to the employee's  
8 continued status as a Federal employee; and

9 “(B) in the case of an assignment of nine months or longer, shall provide that, if  
10 the employee successfully completes the assignment (as determined by the Secretary), the  
11 employee shall be eligible for consideration for placement in a new position under  
12 programs of the Department of Defense providing priority placement to certain  
13 employees.

14 “(2) In establishing an assignment of a member of the acquisition workforce of the  
15 Department of Defense to a private-sector organization, the Secretary of Defense—

16 “(A) may, in the case of a civilian member of the acquisition workforce, provide  
17 for the performance, during the member's absence, of the normal duties and functions of  
18 that member by making a temporary or term appointment under general civil service  
19 authorities for such appointments

20 “(B) shall ensure that the normal duties and functions of the acquisition workforce  
21 member can be reasonably performed by other personnel of the Department of Defense  
22 without the transfer or reassignment of other personnel of the Department of Defense,  
23 including members of the armed forces;

“(C) shall ensure that the normal duties and functions of the acquisition workforce member are not, as a result of and during the course of such temporary assignment, performed or augmented by contractor personnel in violation of the provisions of section 2461 of this title; and

“(D) shall certify that the temporary assignment of the acquisition workforce member will not have an adverse or negative impact on mission attainment, warfighter support, or organizational capabilities associated with the assignment.

“(f) TERMS AND CONDITIONS FOR PRIVATE-SECTOR EMPLOYEES.—An employee of a private-sector organization who is assigned to a Department of Defense organization under this section—

“(1) shall continue to receive pay and benefits from the private-sector organization from which such employee is assigned and shall not receive pay or benefits from the Department of Defense, except as provided in paragraph (2);

“(2) is deemed to be an employee of the Department of Defense for the purposes of—

“(A) chapters 73 and 81 of title 5;

“(B) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18;

“(C) sections 1343, 1344, and 1349(b) of title 31;

“(D) the Federal Tort Claims Act and any other Federal tort liability statute;

“(E) the Ethics in Government Act of 1978; and

“(F) chapter 21 of title 41;

1 “(3) shall not have access to any trade secrets or to any other nonpublic  
2 information which is of commercial value to the private-sector organization from which  
3 such employee is assigned;

4 “(4) may perform work that is considered inherently governmental in nature only  
5 when requested in writing by the Secretary of Defense; and

6 “(5) may not be used to circumvent the provision of section 2461 of this title nor  
7 to circumvent any limitation or restriction on the size of the Department's workforce.

8 “(g) PROHIBITION AGAINST CHARGING CERTAIN COSTS TO THE FEDERAL GOVERNMENT.—

9 A private-sector organization may not charge the Department or any other agency of the Federal  
10 Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid  
11 by the organization to an employee assigned to a Department organization under this section for  
12 the period of the assignment.

13 “(h) CONSIDERATION OF TRAINING NEEDS FOR MEMBERS OF THE ACQUISITION

14 WORKFORCE.—In carrying out this section, the Secretary of Defense shall take into consideration  
15 the question of how assignments under this section might best be used to help meet the needs of  
16 the Department of Defense with respect to the training of members of the acquisition workforce.

17 “(i) FUNDING; USE OF DEFENSE ACQUISITION WORKFORCE DEVELOPMENT FUND.—Funds  
18 for the expenses for the program under this section shall be provided from amounts in the  
19 Department of Defense Acquisition Workforce Development Fund. For such purpose, expenses  
20 of the program include—

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

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

4 “(3) expenses for the administration of the program.”.

5 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of such  
6 subchapter is amended by adding at the end the following new item:

7 “1749. Public-private exchange program for acquisition workforce.”.

8 (b) USE OF DEFENSE ACQUISITION WORKFORCE DEVELOPMENT FUND.—Section  
9 1705(e)(1) of such title is amended by adding at the end the following new subparagraph:

10 “(C) Amounts in the Fund shall be used to pay the expenses of the public-private  
11 exchange program for the acquisition workforce under section 1749 of this title.”.

12 (c) ACQUISITION WORKFORCE EMPLOYEES EXCLUDED FROM SECTION 1599G PROGRAM.—

13 (1) IN GENERAL.—Section **1599g** of such title is **amended** by adding at the end  
14 the following new subsection:

15 “(i) ACQUISITION WORKFORCE EMPLOYEES.—An employee of the Department of Defense  
16 who is eligible for the public-private exchange program for the acquisition workforce under  
17 section 1749 of this title is not eligible for an assignment under this section.”.

18 (2) APPLICABILITY.—Subsection (i) of section 1599g of title 10, United States Code, as added by  
19 paragraph (1), shall not apply to an employee of the Department of Defense who entered into an  
20 agreement under that section before the date of the enactment of this Act.