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Subtitle A-General Military Law

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CHAPTER 81-CIVILIAN EMPLOYEES

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AMENDMENTS

2016- Pub. L. 114–328, div. A, title XI, §§1104(b), 1121(a)(2), Dec. 23, 2016, 130 Stat. 2447 , 2452, added items 1599g and 1599h.

2015- Pub. L. 114–92, div. A, title XI, §§1105(a)(2), 1107(c), Nov. 25, 2015, 129 Stat. 1024 , 1027, added items 1599e and 1599f.

2011- Pub. L. 112–81, div. A, title X, §1051(b), Dec. 31, 2011, 125 Stat. 1582 , added item 1599d and struck out former item 1599d "Professional accounting positions: authority to prescribe certification and credential standards".

2008- Pub. L. 110–181, div. A, title XVI, §1636(b), Jan. 28, 2008, 122 Stat. 464 , added item 1599c and struck out former item 1599c "Appointment in excepted service of certain health care professionals".

2004- Pub. L. 108–375, div. A, title XI, §1104(b), Oct. 28, 2004, 118 Stat. 2074 , added item 1587a.

Pub. L. 108–375, div. A, title X, §1084(g), Oct. 28, 2004, 118 Stat. 2064 , amended directory language of Pub. L. 107–314, §1064(a)(2), effective Dec. 2, 2002, as if included in Pub. L. 107–314 as enacted. See 2002 Amendment note below.

2002- Pub. L. 107–314, div. A, title XI, §1104(a)(2), Dec. 2, 2002, 116 Stat. 2661 , added item 1599d.

Pub. L. 107–314, div. A, title X, §1064(a)(2), Dec. 2, 2002, 116 Stat. 2654 , as amended by Pub. L. 108–375, div. A, title X, §1084(g), Oct. 28, 2004, 118 Stat. 2064 , added item 1596b.

2001- Pub. L. 107–107, div. A, title XI, §1104(b), Dec. 28, 2001, 115 Stat. 1238 , added item 1599c.

2000- Pub. L. 106–398, §1 [[div. A], title VII, §751(c)(2), title XI, §§1102(b), 1131(c)], Oct. 30, 2000, 114 Stat. 1654 , 1654A-194, 1654A-311, 1654A-317, added items 1580a, 1582, 1596, and 1596a and struck out former item 1596 "Foreign language proficiency: special pay".

1999- Pub. L. 106–65, div. A, title XI, §1103(b)(2), Oct. 5, 1999, 113 Stat. 777 , added item 1580.

1998- Pub. L. 105–339, §6(c)(1)(B), Oct. 31, 1998, 112 Stat. 3188 , struck out item 1599c "Veterans' preference requirements: Department of Defense failure to comply treated as a prohibited personnel practice".

1997- Pub. L. 105–85, div. A, title V, §593(b)(2), title X, §1071(b), Nov. 18, 1997, 111 Stat. 1764 , 1898, added items 1585a and 1589.

1996- Pub. L. 104–201, div. A, title X, §1074(a)(7), title XVI, §§1604(b), 1614(b)(2), 1615(a)(2), 1633(c)(2), Sept. 23, 1996, 110 Stat. 2659 , 2736, 2739, 2741, 2751, struck out items 1589 "Prohibition on payment of lodging expenses when adequate Government quarters are available", 1590 "Management of civilian intelligence personnel of the military departments", and 1599 "Postemployment assistance: certain terminated intelligence employees", struck out "Sec." at beginning of item 1599a, and added items 1599b and 1599c.

Pub. L. 104–106, div. A, title X, §1040(d)(2), Feb. 10, 1996, 110 Stat. 433 , inserted ": reprisals" after "instrumentalities" in item 1587.

Pub. L. 104–93, title V, §505(b), Jan. 6, 1996, 109 Stat. 974 , added item 1599a.

1994- Pub. L. 103–359, title VIII, §806(a)(2), Oct. 14, 1994, 108 Stat. 3442 , added item 1599.

1993- Pub. L. 103–160, div. A, title IX, §923(a)(2), Nov. 30, 1993, 107 Stat. 1731 , substituted "Civilian faculty members at certain Department of Defense schools: employment and compensation" for "National Defense University; Foreign Language Center of the Defense Language Institute: civilian faculty members" in item 1595.

1992- Pub. L. 102–484, div. A, title III, §371(b), title IX, §923(a)(2)(B), div. D, title XLIV, §4442 (b), Oct. 23, 1992, 106 Stat. 2384 , 2474, 2732, substituted "University; Foreign Language Center of the Defense Language Institute" for "University:" in item 1595, substituted "Civilian positions: guidelines for reductions" for "Employees of industrial-type or commercial-type activities: guidelines for future reductions" in item 1597, and added item 1598.

1991- Pub. L. 102–190, div. A, title X, §1003(a)(2), Dec. 5, 1991, 105 Stat. 1456 , added item 1581.

Pub. L. 102–25, title VII, §701(e)(4), (8)(B), Apr. 6, 1991, 105 Stat. 114 , 115, substituted

"Employment of non-citizens" for "Laws relating to employment of non-citizens: not applicable to research and development activities" in item 1584 and struck out "mandatory" after "error in" in item 1594.

1990- Pub. L. 101–510, div. A, title III, §322(a)(2), title XIV, §1484(a), Nov. 5, 1990, 104 Stat. 1529 , 1715, redesignated item 1592 "Foreign language proficiency: special pay" as item 1596 and added item 1597.

1989- Pub. L. 101–193, title V, §501(a)(2), Nov. 30, 1989, 103 Stat. 1708 , added item 1592 "Foreign language proficiency: special pay".

Pub. L. 101–189, div. A, title III, §§311(b)(2), 336(a)(2), title VI, §664(b)(2), title XI, §1124(a)(2), Nov. 29, 1989, 103 Stat. 1412 , 1419, 1467, 1558, added item 1592 "Prohibition on payment of severance pay to foreign nationals in the event of certain overseas base closures.", and items 1593 to 1595.

1987- Pub. L. 100–180, div. A, title VI, §617(b)(2), Dec. 4, 1987, 101 Stat. 1097 , added item 1591.

1986- Pub. L. 99–569, title V, §504(b), Oct. 27, 1986, 100 Stat. 3199 , added item 1590.

1984- Pub. L. 98–525, title XIV, §1401(f)(2), Oct. 19, 1984, 98 Stat. 2618 , added item 1589.

1983- Pub. L. 98–94, title XII, §§1253(a)(2), 1266(b), Sept. 24, 1983, 97 Stat. 700 , 705, added items 1587 and 1588.

1982- Pub. L. 97–295, §1(19)(B), (20)(C), Oct. 12, 1982, 96 Stat. 1290 , struck out items 1581 "Appointment: professional and scientific services" and 1582 "Professional and scientific services: reports to Congress on appointments", and substituted "pay" for "compensation" in item 1583.

1966- Pub. L. 89–718, §13, Nov. 2, 1966, 80 Stat. 1117 , struck out item 1580 "Appointment generally".

1962- Pub. L. 87–651, title II, §206(b), Sept. 7, 1962, 76 Stat. 520 , added item 1580.

1960- Pub. L. 86–585, §2, July 5, 1960, 74 Stat. 327 , added item 1586.

1958- Pub. L. 85–577, §1(2), July 31, 1958, 72 Stat. 456 , added item 1585.

TEMPORARY AND TERM APPOINTMENTS IN THE COMPETITIVE SERVICE IN THE DEPARTMENT OF DEFENSE

Pub. L. 114–328, div. A, title XI, §1105, Dec. 23, 2016, 130 Stat. 2447 , provided that:

"(a) Appointment.-

"(1) In general.-The Secretary of Defense may make a temporary appointment or a term appointment in the Department when the need for the services of an employee in the Department is not permanent.

"(2) Extension.-The Secretary may extend a temporary appointment or a term appointment made under paragraph (1).

"(b) Appointments for Critical Hiring Needs.-

"(1) In general.-If there is a critical hiring need, the Secretary of Defense may make a noncompetitive temporary appointment or a noncompetitive term appointment in the Department of Defense, without regard to the requirements of sections 3327 and 3330 of title 5, United States Code, for a period that is not more than 18 months.

"(2) No extension available.-An appointment made under paragraph (1) may not be extended.

"(c) Regulations.-The Secretary may prescribe regulations to carry out this section.

"(d) Definitions.-In this section:

"(1) The term 'temporary appointment' means the appointment of an employee in the competitive service for a period that is not more than one year.

"(2) The term 'term appointment' means the appointment of an employee in the competitive service for a period that is more than one year and not more than five years, unless the Secretary of Defense, before the appointment of the employee, authorizes a longer period."

DIRECT-HIRE AUTHORITY FOR THE DEPARTMENT OF DEFENSE FOR POST-SECONDARY STUDENTS AND RECENT GRADUATES

Pub. L. 114–328, div. A, title XI, §1106, Dec. 23, 2016, 130 Stat. 2447 , provided that:

"(a) Hiring Authority.-Without regard to sections 3309 through 3318, 3327, and 3330 of title 5, United States Code, the Secretary of Defense may recruit and appoint qualified recent graduates and current post-secondary students to competitive service positions in professional and administrative occupations within the Department of Defense.

"(b) Limitation on Appointments.-Subject to subsection (c)(2), the total number of employees appointed by the Secretary under subsection (a) during a fiscal year may not exceed the number equal to 15 percent of the number of hires made into professional and administrative occupations of the Department at the GS-11 level and below (or equivalent) under competitive examining procedures during the previous fiscal year.

"(c) Regulations.-

"(1) In general.-The Secretary shall administer this section in accordance with regulations prescribed by the Secretary for purposes of this section.

"(2) Lower limit on appointments.-The regulations may establish a lower limit on the number of individuals appointable under subsection (a) during a fiscal year than is otherwise provided for under subsection (b), based on such factors as the Secretary considers appropriate.

"(3) Public notice and advertising.-To the extent practical, as determined by the Secretary, the Secretary shall publicly advertise positions available under this section. In carrying out the preceding sentence, the Secretary shall-

"(A) take into account merit system principles, mission requirements, costs, and organizational benefits of any advertising of positions; and

"(B) advertise such positions in the manner the Secretary determines is most likely to provide diverse and qualified candidates and ensure potential applicants have appropriate information relevant to the positions available.

"(d) Sunset.-The authority provided under this section shall terminate on September 30, 2021.

"(e) Definitions.-In this section:

"(1) The term 'current post-secondary student' means a person who-

"(A) is currently enrolled in, and in good academic standing at, a full-time program at an institution of higher education;

"(B) is making satisfactory progress toward receipt of a baccalaureate or graduate degree; and

"(C) has completed at least one year of the program.

"(2) The term 'institution of higher education' has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

"(3) The term 'recent graduate', with respect to appointment of a person under this section, means a person who was awarded a degree by an institution of higher education not more than two years before the date of the appointment of such person, except that in the case of a person who has completed a period of obligated service in a uniformed service of more than four years, such term means a person who was awarded a degree by an institution of higher education not more than four years before the date of the appointment of such person."

DIRECT HIRE AUTHORITY FOR FINANCIAL MANAGEMENT EXPERTS IN THE DEPARTMENT OF DEFENSE WORKFORCE

Pub. L. 114-328, div. A, title XI, §1110, Dec. 23, 2016, 130 Stat. 2450, provided that:

"(a) Authority.-Each Secretary concerned may appoint qualified candidates possessing a finance, accounting, management, or actuarial science degree, or a related degree or equivalent experience, to positions specified in subsection (c) for the Defense Agencies or the applicable military department without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code.

"(b) Secretary Concerned.-For purposes of this section, the Secretary concerned is as follows:

"(1) The Secretary of Defense with respect to the Defense Agencies.

"(2) The Secretary of a military department with respect to such military department.

"(c) Positions.-The positions specified in this subsection are the positions within the Department of Defense workforce as follows:

"(1) Financial management positions.

- "(2) Accounting positions.
- "(3) Auditing positions.
- "(4) Actuarial positions.
- "(5) Cost estimation positions.
- "(6) Operational research positions.
- "(7) Business and business administration positions.

"(d) Limitation.-Authority under this section may not, in any calendar year and with respect to any Defense Agency or military department, be exercised with respect to a number of candidates greater than the number equal to 10 percent of the total number of the financial management, accounting, auditing, and actuarial positions within the financial management workforce of such Defense Agency or military department that are filled as of the close of the fiscal year last ending before the start of such calendar year.

"(e) Nature of Appointment.-Any appointment under this section shall be treated as an appointment on a full-time equivalent basis, unless such appointment is made on a term or temporary basis.

"(f) Employee Defined.-In this section, the term 'employee' has the meaning given that term in section 2105 of title 5, United States Code.

"(g) Termination.-The authority to make appointments under this section shall not be available after December 31, 2022."

TEMPORARY DIRECT HIRE AUTHORITY FOR DOMESTIC DEFENSE INDUSTRIAL BASE FACILITIES, THE MAJOR RANGE AND TEST FACILITIES BASE, AND THE OFFICE OF THE DIRECTOR OF OPERATIONAL TEST AND EVALUATION

Pub. L. 114–328, div. A, title XI, §1125, Dec. 23, 2016, 130 Stat. 2457 , provided that:

"(a) Defense Industrial Base Facility and MRTFB.-During fiscal years 2017 and 2018, the Secretary of Defense may appoint, without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code, other than sections 3303 and 3328 of such title, qualified candidates to positions in the competitive service at any defense industrial base facility or the Major Range and Test Facilities Base.

"(b) Office of the Director of Operational Test and Evaluation.-During fiscal years 2017 through 2021, the Secretary of Defense may, acting through the Director of Operational Test and Evaluation, appoint qualified candidates possessing an advanced degree to scientific and engineering positions within the Office of the Director of Operational Test and Evaluation without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code, other than sections 3303 and 3328 of such title.

"(c) Definition of Defense Industrial Base Facility.-In this section, the term 'defense industrial base facility' means any Department of Defense depot, arsenal, or shipyard located within the United States."

TEMPORARY PERSONNEL FLEXIBILITIES FOR DOMESTIC DEFENSE INDUSTRIAL BASE FACILITIES AND MAJOR RANGE AND TEST FACILITIES BASE CIVILIAN PERSONNEL

Pub. L. 114–328, div. A, title XI, §1132, Dec. 23, 2016, 130 Stat. 2457 , provided that:

"(a) In General.-Notwithstanding chapter 33 of title 5, United States Code, or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, during fiscal years 2017 and 2018, an employee of a defense industrial base facility or the Major Range and Test Facilities Base serving under a time-limited appointment in the competitive service is eligible to compete for a permanent appointment in the competitive service at (A) any such facility, Base, or any other component of the Department of Defense when such facility, Base, or component (as the case may be) is accepting applications from individuals within the facility, Base, or component's workforce under merit promotion procedures, or (B) any agency when the agency is accepting applications from individuals outside its own workforce under merit promotion procedures of the applicable agency, if-

- "(1) the employee was appointed initially under open, competitive examination under

subchapter I of chapter 33 of such title to the time-limited appointment;

"(2) the employee has served under 1 or more time-limited appointments by a defense industrial base facility or the Major Range and Test Facilities Base for a period or periods totaling more than 24 months without a break of 2 or more years; and

"(3) the employee's performance has been at an acceptable level of performance throughout the period or periods (as the case may be) referred to in paragraph (2).

"(b) Waiver of Age Requirement.-In determining the eligibility of a time-limited employee under this section to be examined for or appointed in the competitive service, the Office of Personnel Management or other examining agency shall waive requirements as to age, unless the requirement is essential to the performance of the duties of the position.

"(c) Status.-An individual appointed under this section-

"(1) becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure; and

"(2) acquires competitive status upon appointment.

"(d) Former Employees.-A former employee of a defense industrial base facility or the Major Range and Test Facilities Base who served under a time-limited appointment and who otherwise meets the requirements of this section shall be deemed a time-limited employee for purposes of this section if-

"(1) such employee applies for a position covered by this section within the period of 2 years after the most recent date of separation; and

"(2) such employee's most recent separation was for reasons other than misconduct or performance.

"(e) Benefits.-Any employee of a defense industrial base facility or the Major Range and Test Facilities Base serving under a time-limited appointment in the competitive service shall be provided with benefits that are comparable to the benefits provided to similar employees not serving under time-limited appointments at the defense industrial base facility or the Major Range and Test Facilities Base concerned, including professional development opportunities, eligibility for awards programs, and designation as status applicants for purposes of eligibility for positions in the civil service.

"(f) Definition of Defense Industrial Base Facility.-In this section, the term 'defense industrial base facility' means any Department of Defense depot, arsenal, or shipyard located within the United States."

COMPLIANCE WITH LAW REGARDING AVAILABILITY OF FUNDING FOR CIVILIAN PERSONNEL

Pub. L. 113-66, div. A, title XI, §1108, Dec. 26, 2013, 127 Stat. 889 , provided that:

"(a) Regulations.-No later than 90 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall prescribe regulations implementing the authority in subsection (a) of section 1111 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 10 U.S.C. 1580 note prec.).

"(b) Coordination.-The Under Secretary of Defense (Comptroller), in consultation with the Under Secretary of Defense for Personnel and Readiness, shall be responsible for coordinating the preparation of the regulations required under subsection (a).

"(c) Limitations.-The regulations required under subsection (a) shall not be restricted by any civilian full-time equivalent or end-strength limitation, nor shall such regulations require offsetting civilian pay funding, civilian full-time equivalents, or civilian end-strengths."

AVAILABILITY OF FUNDS FOR COMPENSATION OF CERTAIN CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE

Pub. L. 111-84, div. A, title XI, §1111, Oct. 28, 2009, 123 Stat. 2495 , as amended by Pub. L. 111-383, div. A, title X, §1075(d)(16), Jan. 7, 2011, 124 Stat. 4373 , provided that:

"(a) Availability of Funds.-Funds authorized to be appropriated for the Department of Defense that are available for the purchase of contract services to meet a requirement that is anticipated to continue for five years or more shall be available to provide compensation for civilian employees

of the Department to meet the same requirement.

"(b) Regulations.-Not later than 120 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall prescribe regulations implementing the authority in subsection (a). Such regulations-

"(1) shall ensure that the authority in subsection (a) is utilized to build government capabilities that are needed to perform inherently governmental functions, functions closely associated with inherently governmental functions, and other critical functions;

"(2) shall include a mechanism to ensure that follow-on funding to provide compensation for civilian employees of the Department to perform functions described in paragraph (1) is provided from appropriate accounts; and

"(3) may establish additional criteria and levels of approval within the Department for the utilization of funds to provide compensation for civilian employees of the Department pursuant to subsection (a).

"(c) Annual Report.-Not later than 60 days after the end of each fiscal year for which the authority in subsection (a) is in effect, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of such authority. Each report shall cover the preceding fiscal year and shall identify, at a minimum, the following:

"(1) The amount of funds used under the authority in subsection (a) to provide compensation for civilian employees.

"(2) The source or sources of the funds so used.

"(3) The number of civilian employees employed through the use of such funds.

"(4) The actions taken by the Secretary to ensure that follow-on funding for such civilian employees is provided through appropriate accounts.

"(d) Temporary Authority.-The authority in subsection (a) shall apply to funds authorized to be appropriated for the Department of Defense for fiscal years 2010 through 2019."

DEPARTMENT OF DEFENSE CIVILIAN LEADERSHIP PROGRAM

Pub. L. 111-84, div. A, title XI, §1112, Oct. 28, 2009, 123 Stat. 2496 , provided that:

"(a) Leadership Program Required.-

"(1) In general.-Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall establish a program of leadership recruitment and development for civilian employees of the Department of Defense, to be known as the 'Department of Defense Civilian Leadership Program' (in this section referred to as the 'program').

"(2) Objectives.-The objectives of the program shall be as follows:

"(A) To develop a new generation of civilian leaders for the Department of Defense.

"(B) To recruit individuals with the academic merit, work experience, and demonstrated leadership skills to meet the future needs of the Department.

"(C) To offer rapid advancement, competitive compensation, and leadership opportunities to highly qualified civilian employees of the Department.

"(3) Available authorities.-In carrying out the program, the Secretary may exercise any authority available to the Office of Personnel Management under section 4703 of title 5, United States Code, except that the Secretary shall not be bound by the limitations in subsection (d) of such section. Nothing in this section shall be construed to authorize the waiver of any part of chapter 71 of title 5, United States Code, or any regulation implementing such chapter, in the carrying out of the program.

"(b) Eligible Individuals.-

"(1) In general.-The following individuals shall be eligible to participate in the program:

"(A) Current employees of the Department of Defense.

"(B) Appropriate individuals in the private sector.

"(2) Limitation on number of participants in program.-The total number of individuals who may participate in the program in any fiscal year may not exceed 5,000.

"(3) Limitation on period of participation in program.-The maximum period of time that an individual may participate in the program is three years.

"(c) Elements of Program.-

"(1) Competitive entry.-The selection of individuals for entry into the program shall be made on the basis of a competition conducted at least twice each year. In each competition, participants in the program shall be selected from among applicants determined by the Secretary to be the most highly qualified in terms of academic merit, work experience, and demonstrated leadership skills. Each competition shall provide for entry-level participants and midcareer participants in the program.

"(2) Allocation of positions.-The Secretary shall allocate positions in the program among the components of the Department of Defense that-

"(A) offer the most challenging assignments;

"(B) provide the greatest level of responsibility; and

"(C) demonstrate the greatest need for participants in the program.

"(3) Assignments to positions.-Participants in the program shall be assigned to components of the Department that best match their skills and qualifications. Participants in the program may be rotated among components of the Department of Defense at the discretion of the Secretary.

"(4) Initial compensation.-The initial compensation of participants in the program shall be determined by the Secretary based on the qualifications of such participants and applicable market conditions.

"(5) Education and training.-The Secretary shall provide participants in the program with training, mentoring, and educational opportunities that are appropriate to facilitate the development of such participants into effective civilian leaders for the Department of Defense.

"(6) Objective, merit-based principles for personnel decisions.-The Secretary shall make personnel decisions under the program in accordance with such objective, merit-based criteria as the Secretary shall prescribe in regulations for purposes of the program. Such criteria shall include, but not be limited to, criteria applicable to the following:

"(A) The selection of individuals for entry into the program.

"(B) The assignment of participants in the program to positions in the Department of Defense.

"(C) The initial compensation of participants in the program.

"(D) The access of participants in the program to training, mentoring, and educational opportunities under the program.

"(E) The consideration of participants in the program for selection into the senior management, functional, and technical workforce of the Department.

"(7) Consideration for senior management, functional, and technical workforce.-Any participant in the program who, as determined by the Secretary, demonstrates outstanding performance shall be afforded priority in consideration for selection into the appropriate element of the senior management, functional, and technical workforce of the Department of Defense (as defined in [former] section 115b(f) of title 10, United States Code)."

DIRECT HIRE AUTHORITY AT PERSONNEL DEMONSTRATION LABORATORIES FOR CERTAIN CANDIDATES

Pub. L. 110-417, [div. A], title XI, §1108, Oct. 14, 2008, 122 Stat. 4618, as amended by Pub. L. 111-383, div. A, title XI, §1101(a), Jan. 7, 2011, 124 Stat. 4381; Pub. L. 112-81, div. A, title XI, §1103, Dec. 31, 2011, 125 Stat. 1612, provided that:

"(a) Authority.-The Secretary of Defense may appoint qualified candidates possessing an advanced degree to positions described in subsection (b) without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code, other than sections 3303 and 3328 of such title.

"(b) Applicability.-This section applies with respect to candidates for scientific and engineering positions within any laboratory designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2486; 10 U.S.C. 2358 note) as a Department of Defense science and technology reinvention laboratory.

"(c) Limitation.- (1) Authority under this section may not, in any calendar year and with respect to any laboratory, be exercised with respect to a number of candidates greater than the number equal to 5 percent of the total number of scientific and engineering positions within such laboratory

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

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

"(d) Employee Defined.-As used in this section, the term 'employee' has the meaning given such term by section 2105 of title 5, United States Code.

[Amendment by section 1101(a)(1) of Pub. L. 111-383 to section 1108(b) of Pub. L. 110-417, set out above, effective Oct. 28, 2009, and amendment by section 1101(a)(2) of Pub. L. 111-383 to section 1108(c) of Pub. L. 110-417, set out above, effective Jan. 7, 2011, see section 1101(d) of Pub. L. 111-383, set out as an Effective Date of 2011 Amendment note under section 9902 of Title 5, Government Organization and Employees.]

EMPLOYMENT FOR RESETTLED IRAQIS

Pub. L. 110-417, [div. A], title XII, §1235, Oct. 14, 2008, 122 Stat. 4641, provided that:

"(a) In General.-The Secretary of Defense and the Secretary of State are authorized to jointly establish and operate a temporary program to offer employment as translators, interpreters, or cultural awareness instructors to individuals described in subsection (b). Individuals described in such subsection may be appointed to temporary positions of one year or less outside Iraq with either the Department of Defense or the Department of State, without competition and without regard for the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code. Such individuals may also be hired as personal services contractors by either of such Departments to provide translation, interpreting, or cultural awareness instruction, except that such individuals so hired shall not by virtue of such employment be considered employees of the United States Government, except for purposes of chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.

"(b) Eligibility.-Individuals referred to in subsection (a) are Iraqi nationals who-

"(1) have received a special immigrant visa issued pursuant to section 1059 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163) [8 U.S.C. 1101 note] or section 1244 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) [8 U.S.C. 1157 note]; and

"(2) are lawfully present in the United States.

"(c) Funding.-

"(1) In general.-Except as provided in paragraph (2), the program established under subsection (a) shall be funded from the annual general operating budget of the Department of Defense.

"(2) Exception.-The Secretary of State shall reimburse the Department of Defense for any costs associated with individuals described in subsection (b) whose work is for or on behalf of the Department of State.

"(d) Rule of Construction Regarding Access to Classified Information.-Nothing in this section may be construed as affecting in any manner practices and procedures regarding the handling of or access to classified information.

"(e) Information Sharing.-The Secretary of Defense and the Secretary of State shall work with the Secretary of Homeland Security and the Office of Refugee Resettlement of the Department of Health and Human Services to ensure that individuals described in subsection (b) are informed of the program established under subsection (a).

"(f) Regulation.-The Secretary of Defense, jointly with the Secretary of State and with the concurrence of the Director of the Office of Personnel Management, shall prescribe such regulations as are necessary to carry out the program established under subsection (a), including ensuring the suitability for employment described in subsection (a) of individuals described in subsection (b), determining the number of positions, and establishing pay scales and hiring procedures.

"(g) Termination.-

"(1) In general.-Except as provided in paragraph (2), the program established under subsection (a) shall terminate on December 31, 2014.

"(2) Earlier termination.-If the Secretary of Defense, jointly with the Secretary of State, determines that the program established under subsection (a) should terminate before the date

specified in paragraph (1), the Secretaries may terminate the program if the Secretaries notify Congress in writing of such termination at least 180 days before such termination."

STRATEGIC HUMAN CAPITAL PLAN FOR CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE

Pub. L. 110–181, div. A, title VIII, §851, Jan. 28, 2008, 122 Stat. 247 , which required that, in updates of the strategic human capital plan, the Secretary of Defense was to include a separate section focused on the defense acquisition workforce, was repealed by Pub. L. 111–84, div. A, title XI, §1108(c)(3), Oct. 28, 2009, 123 Stat. 2492 .

Pub. L. 109–163, div. A, title XI, §1122, Jan. 6, 2006, 119 Stat. 3452 , which required the Secretary of Defense to develop and submit to the Committees on Armed Services of the Senate and House of Representatives a strategic human capital plan to shape and improve the civilian employee workforce of the Department of Defense, along with updates and the assessment of the Secretary of the progress of the Department in implementing the plan, and required the Comptroller General to submit to the Committees on Armed Services a report on the plan, was repealed by Pub. L. 111–84, div. A, title XI, §1108(c)(1), Oct. 28, 2009, 123 Stat. 2491 .