

Calendar No. 463

113TH CONGRESS
2D SESSION**S. 2354****[Report No. 113–207]**

To improve cybersecurity recruitment and retention.

IN THE SENATE OF THE UNITED STATES

MAY 20, 2014

Mr. CARPER introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

JULY 14, 2014

Reported by Mr. CARPER, with an amendment

[Insert the part printed in italic]

A BILL

To improve cybersecurity recruitment and retention.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “DHS Cybersecurity
5 Workforce Recruitment and Retention Act of 2014”.

1 **SEC. 2. CYBERSECURITY RECRUITMENT AND RETENTION.**

2 (a) IN GENERAL.—At the end of subtitle C of title
3 II of the Homeland Security Act of 2002 (6 U.S.C. 141
4 et seq.), add the following:

5 **“SEC. 226. CYBERSECURITY RECRUITMENT AND RETEN-**
6 **TION.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) APPROPRIATE COMMITTEES OF CON-
9 GRESS.—The term ‘appropriate committees of Con-
10 gress’ means the Committee on Homeland Security
11 and Governmental Affairs and the Committee on
12 Appropriations of the Senate and the Committee on
13 Homeland Security and the Committee on Appro-
14 priations of the House of Representatives.

15 “(2) COLLECTIVE BARGAINING AGREEMENT.—
16 The term ‘collective bargaining agreement’ has the
17 meaning given that term in section 7103(a)(8) of
18 title 5, United States Code.

19 “(3) EXCEPTED SERVICE.—The term ‘excepted
20 service’ has the meaning given that term in section
21 2103 of title 5, United States Code.

22 “(4) PREFERENCE ELIGIBLE.—The term ‘pref-
23 erence eligible’ has the meaning given that term in
24 section 2108 of title 5, United States Code.

25 “(5) QUALIFIED POSITION.—The term ‘quali-
26 fied position’ means a position, designated by the

1 Secretary for the purpose of this section, in which
2 the incumbent performs, manages, or supervises
3 functions that execute the responsibilities of the De-
4 partment relating to cybersecurity.

5 “(6) SENIOR EXECUTIVE SERVICE.—The term
6 ‘Senior Executive Service’ has the meaning given
7 that term in section 2101a of title 5, United States
8 Code.

9 “(b) GENERAL AUTHORITY.—

10 “(1) ESTABLISH POSITIONS, APPOINT PER-
11 SONNEL, AND FIX RATES OF PAY.—

12 “(A) GENERAL AUTHORITY.—The Sec-
13 retary may—

14 “(i) establish, as positions in the ex-
15 cepted service, such qualified positions in
16 the Department as the Secretary deter-
17 mines necessary to carry out the respon-
18 sibilities of the Department relating to cy-
19 bersecurity, including positions formerly
20 identified as—

21 “(I) senior level positions des-
22 igned under section 5376 of title 5,
23 United States Code; and

24 “(II) positions in the Senior Ex-
25 ecutive Service;

1 “(ii) appoint an individual to a quali-
2 fied position (after taking into consider-
3 ation the availability of preference eligibles
4 for appointment to the position); and

5 “(iii) subject to the requirements of
6 paragraphs (2) and (3), fix the compensa-
7 tion of an individual for service in a quali-
8 fied position.

9 “(B) CONSTRUCTION WITH OTHER
10 LAWS.—The authority of the Secretary under
11 this subsection applies without regard to the
12 provisions of any other law relating to the ap-
13 pointment, number, classification, or compensa-
14 tion of employees.

15 “(2) BASIC PAY.—

16 “(A) AUTHORITY TO FIX RATES OF BASIC
17 PAY.—In accordance with this section, the Sec-
18 retary shall fix the rates of basic pay for any
19 qualified position established under paragraph
20 (1) in relation to the rates of pay provided for
21 employees in comparable positions in the De-
22 partment of Defense and subject to the same
23 limitations on maximum rates of pay estab-
24 lished for such employees by law or regulation.

1 “(B) PREVAILING RATE SYSTEMS.—The
2 Secretary may, consistent with section 5341 of
3 title 5, United States Code, adopt such provi-
4 sions of that title as provide for prevailing rate
5 systems of basic pay and may apply those pro-
6 visions to qualified positions for employees in or
7 under which the Department may employ indi-
8 viduals described by section 5342(a)(2)(A) of
9 that title.

10 “(3) ADDITIONAL COMPENSATION, INCENTIVES,
11 AND ALLOWANCES.—

12 “(A) ADDITIONAL COMPENSATION BASED
13 ON TITLE 5 AUTHORITIES.—The Secretary may
14 provide employees in qualified positions com-
15 pensation (in addition to basic pay), including
16 benefits, incentives, and allowances, consistent
17 with, and not in excess of the level authorized
18 for, comparable positions authorized by title 5,
19 United States Code.

20 “(B) ALLOWANCES IN NONFOREIGN
21 AREAS.—An employee in a qualified position
22 whose rate of basic pay is fixed under para-
23 graph (2)(A) shall be eligible for an allowance
24 under section 5941 of title 5, United States
25 Code, on the same basis and to the same extent

1 as if the employee was an employee covered by
2 such section 5941, including eligibility condi-
3 tions, allowance rates, and all other terms and
4 conditions in law or regulation.

5 “(4) PLAN FOR EXECUTION OF AUTHORI-
6 TIES.—Not later than 120 days after the date of en-
7 actment of this section, the Secretary shall submit a
8 report to the appropriate committees of Congress
9 with a plan for the use of the authorities provided
10 under this subsection.

11 “(5) COLLECTIVE BARGAINING AGREEMENTS.—
12 Nothing in paragraph (1) may be construed to im-
13 pair the continued effectiveness of a collective bar-
14 gaining agreement with respect to an office, compo-
15 nent, subcomponent, or equivalent of the Depart-
16 ment that is a successor to an office, component,
17 subcomponent, or equivalent of the Department cov-
18 ered by the agreement before the succession.

19 “(6) REQUIRED REGULATIONS.—The Secretary,
20 in coordination with the Director of the Office of
21 Personnel Management, shall prescribe regulations
22 for the administration of this section.

23 “(c) ANNUAL REPORT.—Not later than 1 year after
24 the date of enactment of this section, and every year there-

1 after for 4 years, the Secretary shall submit to the appro-
2 priate committees of Congress a detailed report that—

3 “(1) discusses the process used by the Sec-
4 retary in accepting applications, assessing can-
5 didates, ensuring adherence to veterans’ preference,
6 and selecting applicants for vacancies to be filled by
7 an individual for a qualified position;

8 “(2) describes—

9 “(A) how the Secretary plans to fulfill the
10 critical need of the Department to recruit and
11 retain employees in qualified positions;

12 “(B) the measures that will be used to
13 measure progress; and

14 “(C) any actions taken during the report-
15 ing period to fulfill such critical need;

16 “(3) discusses how the planning and actions
17 taken under paragraph (2) are integrated into the
18 strategic workforce planning of the Department;

19 “(4) provides metrics on actions occurring dur-
20 ing the reporting period, including—

21 “(A) the number of employees in qualified
22 positions hired by occupation and grade and
23 level or pay band;

1 “(B) the placement of employees in quali-
2 fied positions by directorate and office within
3 the Department;

4 “(C) the total number of veterans hired;

5 “(D) the number of separations of employ-
6 ees in qualified positions by occupation and
7 grade and level or pay band;

8 “(E) the number of retirements of employ-
9 ees in qualified positions by occupation and
10 grade and level or pay band; and

11 “(F) the number and amounts of recruit-
12 ment, relocation, and retention incentives paid
13 to employees in qualified positions by occupa-
14 tion and grade and level or pay band; and

15 “(5) describes the training provided to super-
16 visors of employees in qualified positions at the De-
17 partment on the use of the new authorities.

18 “(d) THREE-YEAR PROBATIONARY PERIOD.—The
19 probationary period for all employees hired under the au-
20 thority established in this section shall be 3 years.

21 “(e) INCUMBENTS OF EXISTING COMPETITIVE SERV-
22 ICE POSITIONS.—

23 “(1) IN GENERAL.—An individual serving in a
24 position on the date of enactment of this section
25 that is selected to be converted to a position in the

1 excepted service under this section shall have the
2 right to refuse such conversion.

3 “(2) SUBSEQUENT CONVERSION.—After the
4 date on which an individual who refuses a conversion
5 under paragraph (1) stops serving in the position se-
6 lected to be converted, the position may be converted
7 to a position in the excepted service.”.

8 (b) CONFORMING AMENDMENT.—Section 3132(a)(2)
9 of title 5, United States Code, is amended in the matter
10 following subparagraph (E)—

11 (1) in clause (i), by striking “or” at the end;

12 (2) in clause (ii), by inserting “or” after the
13 semicolon; and

14 (3) by inserting after clause (ii) the following:

15 “(iii) any position established as a qualified po-
16 sition in the excepted service by the Secretary of
17 Homeland Security under section 226 of the Home-
18 land Security Act of 2002;”.

19 (c) TABLE OF CONTENTS AMENDMENT.—The table
20 of contents in section 1(b) of the Homeland Security Act
21 of 2002 (6 U.S.C. 101 et seq.) is amended by inserting
22 after the item relating to section 225 the following:

“Sec. 226. Cybersecurity recruitment and retention.”.

1 **SEC. 3. HOMELAND SECURITY CYBERSECURITY WORK-**
2 **FORCE ASSESSMENT.**

3 (a) *SHORT TITLE.*—*This section may be cited as the*
4 *“Homeland Security Cybersecurity Workforce Assessment*
5 *Act”.*

6 (b) *DEFINITIONS.*—*In this section:*

7 (1) *APPROPRIATE CONGRESSIONAL COMMIT-*
8 *TEES.*—*The term “appropriate congressional commit-*
9 *tees” means—*

10 (A) *the Committee on Homeland Security*
11 *and Governmental Affairs of the Senate;*

12 (B) *the Committee on Homeland Security of*
13 *the House of Representatives; and*

14 (C) *the Committee on House Administra-*
15 *tion of the House of Representatives.*

16 (2) *CYBERSECURITY WORK CATEGORY; DATA*
17 *ELEMENT CODE; SPECIALTY AREA.*—*The terms “Cy-*
18 *bersecurity Work Category”, “Data Element Code”,*
19 *and “Specialty Area” have the meanings given such*
20 *terms in the Office of Personnel Management’s Guide*
21 *to Data Standards.*

22 (3) *DEPARTMENT.*—*The term “Department”*
23 *means the Department of Homeland Security.*

24 (4) *DIRECTOR.*—*The term “Director” means the*
25 *Director of the Office of Personnel Management.*

1 (5) *SECRETARY.*—*The term “Secretary” means*
2 *the Secretary of Homeland Security.*

3 (c) *NATIONAL CYBERSECURITY WORKFORCE MEAS-*
4 *UREMENT INITIATIVE.*—

5 (1) *IN GENERAL.*—*The Secretary shall—*

6 (A) *identify all cybersecurity workforce po-*
7 *sitions within the Department;*

8 (B) *determine the primary Cybersecurity*
9 *Work Category and Specialty Area of such posi-*
10 *tions; and*

11 (C) *assign the corresponding Data Element*
12 *Code, as set forth in the Office of Personnel Man-*
13 *agement’s Guide to Data Standards which is*
14 *aligned with the National Initiative for Cyberse-*
15 *curity Education’s National Cybersecurity Work-*
16 *force Framework report, in accordance with*
17 *paragraph (2).*

18 (2) *EMPLOYMENT CODES.*—

19 (A) *PROCEDURES.*—*Not later than 90 days*
20 *after the date of the enactment of this Act, the*
21 *Secretary shall establish procedures—*

22 (i) *to identify open positions that in-*
23 *clude cybersecurity functions (as defined in*
24 *the OPM Guide to Data Standards); and*

1 (ii) to assign the appropriate employ-
2 ment code to each such position, using
3 agreed standards and definitions.

4 (B) *CODE ASSIGNMENTS.*—Not later than 9
5 months after the date of the enactment of this
6 Act, the Secretary shall assign the appropriate
7 employment code to—

8 (i) each employee within the Depart-
9 ment who carries out cybersecurity func-
10 tions; and

11 (ii) each open position within the De-
12 partment that have been identified as hav-
13 ing cybersecurity functions.

14 (3) *PROGRESS REPORT.*—Not later than 1 year
15 after the date of the enactment of this Act, the Direc-
16 tor shall submit a progress report on the implementa-
17 tion of this subsection to the appropriate congress-
18 sional committees.

19 (d) *IDENTIFICATION OF CYBERSECURITY SPECIALTY*
20 *AREAS OF CRITICAL NEED.*—

21 (1) *IN GENERAL.*—Beginning not later than 1
22 year after the date on which the employment codes
23 are assigned to employees pursuant to subsection
24 (c)(2)(B), and annually through 2021, the Secretary,
25 in consultation with the Director, shall—

1 (A) identify Cybersecurity Work Categories
2 and Specialty Areas of critical need in the De-
3 partment’s cybersecurity workforce; and

4 (B) submit a report to the Director that—

5 (i) describes the Cybersecurity Work
6 Categories and Specialty Areas identified
7 under subparagraph (A); and

8 (ii) substantiates the critical need des-
9 ignations.

10 (2) GUIDANCE.—The Director shall provide the
11 Secretary with timely guidance for identifying Cyber-
12 security Work Categories and Specialty Areas of crit-
13 ical need, including—

14 (A) current Cybersecurity Work Categories
15 and Specialty Areas with acute skill shortages;
16 and

17 (B) Cybersecurity Work Categories and Spe-
18 cialty Areas with emerging skill shortages.

19 (3) CYBERSECURITY CRITICAL NEEDS REPORT.—
20 Not later than 18 months after the date of the enact-
21 ment of this Act, the Secretary, in consultation with
22 the Director, shall—

23 (A) identify Specialty Areas of critical need
24 for cybersecurity workforce across the Depart-
25 ment; and

1 (B) submit a progress report on the imple-
2 mentation of this subsection to the appropriate
3 congressional committees.

4 (e) *GOVERNMENT ACCOUNTABILITY OFFICE STATUS*
5 *REPORTS.*—*The Comptroller General of the United States*
6 *shall—*

7 (1) analyze and monitor the implementation of
8 subsections (c) and (d); and

9 (2) not later than 3 years after the date of the
10 enactment of this Act, submit a report to the appro-
11 priate congressional committees that describes the sta-
12 tus of such implementation.

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