

the United States if that employee is declared eligible for such employment by the Director of the Office of Personnel Management.

(e) **LIMITATION ON DELEGATION.**—The authority of the Secretary of Defense under this section may be delegated only to the Deputy Secretary of Defense, the head of an intelligence component of the Department of Defense (with respect to employees of that component), or the Secretary of a military department (with respect to employees of that department). An action to terminate employment of such an employee by any such official may be appealed to the Secretary of Defense.

(Added Pub. L. 104-201, div. A, title XVI, § 1632(b), Sept. 23, 1996, 110 Stat. 2748.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 1590(e) and 1604(e) of this title prior to repeal by Pub. L. 104-201, §§ 1632(a)(3), 1633(a).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104-201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1610. Reductions and other adjustments in force

(a) **IN GENERAL.**—The Secretary of Defense shall prescribe regulations for the separation of employees in defense intelligence positions, including members of the Defense Intelligence Senior Executive Service and employees in Intelligence Senior Level positions, during a reduction in force or other adjustment in force. The regulations shall apply to such a reduction in force or other adjustment in force notwithstanding sections 3501(b) and 3502 of title 5.

(b) **MATTERS TO BE GIVEN EFFECT.**—The regulations shall give effect to the following:

- (1) Tenure of employment.
- (2) Military preference, subject to sections 3501(a)(3) and 3502(b) of title 5.
- (3) The veteran's preference under section 3502(b) of title 5.
- (4) Performance.
- (5) Length of service computed in accordance with the second sentence of section 3502(a) of title 5.

(c) **REGULATIONS RELATING TO DEFENSE INTELLIGENCE SES.**—The regulations relating to removal from the Defense Intelligence Senior Executive Service in a reduction in force or other adjustment in force shall be consistent with section 3595(a) of title 5.

(d) **RIGHT OF APPEAL.**—(1) The regulations shall provide a right of appeal regarding a personnel action under the regulations. The appeal shall be determined within the Department of Defense. An appeal determined at the highest level provided in the regulations shall be final and not subject to review outside the Department of Defense. A personnel action covered by the regulations is not subject to any other provision of law that provides appellate rights or procedures.

(2) Notwithstanding paragraph (1), a preference eligible referred to in section 7511(a)(1)(B) of title 5 may elect to have an appeal of a personnel action taken against the preference eligible under the regulation determined by the Merit Systems Protection Board instead of having the appeal determined within the Department of Defense. Section 7701 of title 5 shall apply to any such appeal to the Merit Systems Protection Board.

(e) **CONSULTATION WITH OPM.**—Regulations under this section shall be prescribed in consultation with the Director of the Office of Personnel Management.

(Added Pub. L. 104-201, div. A, title XVI, § 1632(b), Sept. 23, 1996, 110 Stat. 2749.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104-201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1611. Postemployment assistance: certain terminated intelligence employees

(a) **AUTHORITY.**—Subject to subsection (c), the Secretary of Defense may, in the case of any individual who is a qualified former intelligence employee, use appropriated funds—

- (1) to assist that individual in finding and qualifying for employment other than in a defense intelligence position;
- (2) to assist that individual in meeting the expenses of treatment of medical or psychological disabilities of that individual; and
- (3) to provide financial support to that individual during periods of unemployment.

(b) **QUALIFIED FORMER INTELLIGENCE EMPLOYEES.**—For purposes of this section, a qualified former intelligence employee is an individual who was employed as a civilian employee of the Department of Defense in a sensitive defense intelligence position—

- (1) who has been found to be ineligible for continued access to information designated as “Sensitive Compartmented Information” and employment in a defense intelligence position; or
- (2) whose employment in a defense intelligence position has been terminated.

(c) **CONDITIONS.**—Assistance may be provided to a qualified former intelligence employee under subsection (a) only if the Secretary determines that such assistance is essential to—

- (1) maintain the judgment and emotional stability of the qualified former intelligence employee; and
- (2) avoid circumstances that might lead to the unlawful disclosure of classified information to which the qualified former intelligence employee had access.

(d) **DURATION OF ASSISTANCE.**—Assistance may not be provided under this section in the case of any individual after the end of the five-year period beginning on the date of the termination of the employment of the individual in a defense intelligence position.

(Added Pub. L. 103-359, title VIII, § 806(a)(1), Oct. 14, 1994, 108 Stat. 3441, § 1599; amended Pub. L.

104-106, div. A, title XV, §1502(a)(11), Feb. 10, 1996, 110 Stat. 503; renumbered §1611 and amended Pub. L. 104-201, div. A, title XVI, §1632(c), Sept. 23, 1996, 110 Stat. 2749; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106-398, §1 [[div. A], title XI, §1141(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-318; Pub. L. 107-107, div. A, title X, §1048(a)(15), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107-306, title VIII, §811(b)(4)(B), Nov. 27, 2002, 116 Stat. 2423; Pub. L. 108-177, title III, §361(h), Dec. 13, 2003, 117 Stat. 2625.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1604(e)(4) of this title and in section 17 of Pub. L. 86-36 as added by Pub. L. 102-88, title V, §503, Aug. 14, 1991, 105 Stat. 436, which was formerly set out in a note under section 402 of Title 50, War and National Defense, prior to repeal by Pub. L. 103-359, §806(b), and editorial reclassification to section 3615 of Title 50.

AMENDMENTS

2003—Subsec. (e). Pub. L. 108-177 struck out heading and text of subsec. (e). Text read as follows:

“(1) The Secretary of Defense shall submit to the congressional committees specified in paragraph (3) an annual report with respect to any expenditure made under this section.

“(2) In the case of a report required to be submitted under paragraph (1) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, the date for the submittal of such report shall be as provided in section 507 of the National Security Act of 1947.

“(3) The committees referred to in paragraph (1) are the following:

“(A) The Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

“(B) The Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate.”

2002—Subsec. (e)(1). Pub. L. 107-306, §811(b)(4)(B)(i), substituted “paragraph (3)” for “paragraph (2)”.

Subsec. (e)(2), (3). Pub. L. 107-306, §811(b)(4)(B)(ii), (iii), added par. (2) and redesignated former par. (2) as (3).

2001—Subsec. (d). Pub. L. 107-107 struck out “with” before “in a defense intelligence position”.

2000—Subsec. (a)(1). Pub. L. 106-398, §1 [[div. A], title XI, §1141(b)(1)], substituted “a defense intelligence position” for “an intelligence component of the Department of Defense”.

Subsec. (b). Pub. L. 106-398, §1 [[div. A], title XI, §1141(b)(2)], substituted “sensitive defense intelligence position” for “sensitive position in an intelligence component of the Department of Defense” in introductory provisions and “in a defense intelligence position” for “with the intelligence component” in pars. (1) and (2).

Subsec. (d). Pub. L. 106-398, §1 [[div. A], title XI, §1141(b)(3)], substituted “in a defense intelligence position” for “an intelligence component of the Department of Defense”.

Subsec. (f). Pub. L. 106-398, §1 [[div. A], title XI, §1141(b)(4)], struck out heading and text of subsec. (f). Text read as follows: “In this section, the term ‘intelligence component of the Department of Defense’ includes the National Reconnaissance Office and any intelligence component of a military department.”

1999—Subsec. (e)(2)(A). Pub. L. 106-65 substituted “Committee on Armed Services” for “Committee on National Security”.

1996—Pub. L. 104-201 renumbered section 1599 of this title as this section.

Subsec. (e)(2)(A). Pub. L. 104-106, §1502(a)(11)(A), substituted “The Committee on National Security, the Committee on Appropriations,” for “The Committees on Armed Services and Appropriations”.

Subsec. (e)(2)(B). Pub. L. 104-106, §1502(a)(11)(B), substituted “The Committee on Armed Services, the Committee on Appropriations,” for “The Committees on Armed Services and Appropriations”.

Subsec. (f). Pub. L. 104-201 substituted “includes the National Reconnaissance Office and any intelligence component of a military department,” for “means any of the following:

“(1) The National Security Agency.

“(2) The Defense Intelligence Agency.

“(3) The National Reconnaissance Office.

“(4) The Central Imagery Office.

“(5) The intelligence components of any of the military departments.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-177, title III, §361(n), Dec. 13, 2003, 117 Stat. 2626, provided that: “The amendments made by this section [amending this section, section 1681b of Title 15, Commerce and Trade, and sections 2366, 3038, 3047, 3050, 3106, and 3381 of Title 50, War and National Defense, repealing section 540C of Title 28, Judiciary and Judicial Procedure, and repealing provisions set out as notes under sections 3036 and 3381 of Title 50] shall take effect on December 31, 2003.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104-201, set out as a note under section 1593 of this title.

§ 1612. Merit system principles and civil service protections: applicability

(a) **APPLICABILITY OF MERIT SYSTEM PRINCIPLES.**—Section 2301 of title 5 shall apply to the exercise of authority under this subchapter (other than sections 1605 and 1611).

(b) **CIVIL SERVICE PROTECTIONS.**—(1) If, in the case of a position established under authority other than section 1601(a)(1) of this title that is reestablished as an excepted service position under that section, the provisions of law referred to in paragraph (2) applied to the person serving in that position immediately before the position is so reestablished and such provisions of law would not otherwise apply to the person while serving in the position as so reestablished, then such provisions of law shall, subject to paragraph (3), continue to apply to the person with respect to service in that position for as long as the person continues to serve in the position without a break in service.

(2) The provisions of law referred to in paragraph (1) are the following provisions of title 5:

(A) Section 2302, relating to prohibited personnel practices.

(B) Chapter 75, relating to adverse actions.

(3)(A) Notwithstanding any provision of chapter 75 of title 5, an appeal of an adverse action by an individual employee covered by paragraph (1) shall be determined within the Department of Defense if the employee so elects.

(B) The Secretary of Defense shall prescribe the procedures for initiating and determining appeals of adverse actions pursuant to elections made under subparagraph (A).