

Strategic Capabilities Office, or the Defense Innovation Unit Experimental” for “or the Office of Operational Test and Evaluation”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

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

Amendment by section 1843(a) of Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

PROGRAM TO DEVELOP ACCESSES, DISCOVER VULNERABILITIES, AND ENGINEER CYBER TOOLS AND DEVELOP TACTICS, TECHNIQUES, AND PROCEDURES FOR OFFENSIVE CYBER OPERATIONS

Pub. L. 116-283, div. A, title XVII, §1708(b), Jan. 1, 2021, 134 Stat. 4085, provided that:

“(1) IN GENERAL.—Pursuant to the authority provided under section 1599h(a)(8) of title 10, United States Code, as added by subsection (a), [now 10 U.S.C. 4092(a)(9)] the Commander of United States Cyber Command shall establish a program or augment an existing program within the Command to develop accesses, discover vulnerabilities, and engineer cyber tools and develop tactics, techniques, and procedures for the use of these assets and capabilities in offensive cyber operations.

“(2) ELEMENTS.—The program or augmented program required by paragraph (1) shall—

“(A) develop accesses, discover vulnerabilities, and engineer cyber tools and develop tactics, techniques, and procedures fit for Department of Defense military operations in cyberspace, such as reliability, meeting short development and operational timelines, low cost, and expendability;

“(B) aim to decrease the reliance of Cyber Command on accesses, tools, and expertise provided by the intelligence community;

“(C) be designed to provide technical and operational expertise on par with that of programs of the intelligence community;

“(D) enable the Commander to attract and retain expertise resident in the private sector and other technologically elite government organizations; and

“(E) coordinate development activities with, and, as appropriate, facilitate transition of capabilities from, the Defense Advanced Research Projects Agency, the Strategic Capabilities Office, and components within the intelligence community.

“(3) INTELLIGENCE COMMUNITY DEFINED.—In this subsection, the term ‘intelligence community’ has the meaning given such term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).”

GUIDANCE AND DIRECTION ON USE OF DIRECT HIRING PROCESSES FOR ARTIFICIAL INTELLIGENCE PROFESSIONALS AND OTHER DATA SCIENCE AND SOFTWARE DEVELOPMENT PERSONNEL

Pub. L. 116-283, div. A, title XVII, §1751, Jan. 1, 2021, 134 Stat. 4143, provided that:

“(a) GUIDANCE REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall review applicable Department of Defense guidance and where beneficial issue new guidance to the secretaries of the military departments and the heads of the defense components on improved use of the direct hiring processes for artificial intelligence professionals and other data science and software development personnel.

“(b) OBJECTIVE.—The objective of the guidance issued under subsection (a) shall be to ensure that organizational leaders assume greater responsibility for the results of civilian hiring of artificial intelligence profes-

sionals and other data science and software development personnel.

“(c) CONTENTS OF GUIDANCE.—At a minimum, the guidance required by subsection (a) shall—

“(1) instruct human resources professionals and hiring authorities to utilize available direct hiring authorities (including excepted service authorities) for the hiring of artificial intelligence professionals and other data science and software development personnel, to the maximum extent practicable;

“(2) instruct hiring authorities, when using direct hiring authorities, to prioritize utilization of panels of subject matter experts over human resources professionals to assess applicant qualifications and determine which applicants are best qualified for a position;

“(3) authorize and encourage the use of ePortfolio reviews to provide insight into the previous work of applicants as a tangible demonstration of capabilities and contribute to the assessment of applicant qualifications by subject matter experts; and

“(4) encourage the use of referral bonuses for recruitment and hiring of highly qualified artificial intelligence professionals and other data science and software development personnel in accordance with volume 451 of Department of Defense Instruction 1400.25.

“(d) REPORT.—

“(1) IN GENERAL.—Not later than one year after the date on which the guidance is issued under subsection (a), the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the guidance issued pursuant to subsection (a).

“(2) CONTENTS.—At a minimum, the report submitted under paragraph (1) shall address the following:

“(A) The objectives of the guidance and the manner in which the guidance seeks to achieve those objectives.

“(B) The effect of the guidance on the hiring process for artificial intelligence professionals and other data science and software development personnel, including the effect on—

“(i) hiring time;

“(ii) the use of direct hiring authority;

“(iii) the use of subject matter experts; and

“(iv) the quality of new hires, as assessed by hiring managers and organizational leaders.”

APPLICABILITY OF PERSONNEL MANAGEMENT AUTHORITY TO PERSONNEL CURRENTLY EMPLOYED UNDER SUPERSEDED AUTHORITY

Pub. L. 114-328, div. A, title XI, §1121(c), Dec. 23, 2016, 130 Stat. 2452, provided that:

“(1) IN GENERAL.—Any individual employed as of the date of the enactment of this Act [Dec. 23, 2016] under section 1101(b)(1) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note) (as in effect on the day before such date) shall remain employed under section 1599h of title 10, United States Code [now 10 U.S.C. 4092] (as added by subsection (a)), after such date in accordance with such section 1599h [now 4092] and the applicable program carried out under such section 1599h [now 4092].

“(2) DATE OF APPOINTMENT.—For purposes of subsection (c) of section 1599h of title 10, United States Code [now 10 U.S.C. 4092(c)] (as so added), the date of the appointment of any employee who remains employed as described in paragraph (1) shall be the date of the appointment of such employee under section 1101(b)(1) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note) (as so in effect).”

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

(a) REQUIREMENT FOR PROGRAM.—The Secretary of Defense shall carry out a program to

provide financial assistance for education in science, mathematics, engineering, and technology skills and disciplines that, as determined by the Secretary, are critical to the national security functions of the Department of Defense and are needed in the Department of Defense workforce.

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

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

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

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

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

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

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

(A) in the case of an employee of the Department of Defense, the employee shall enter into a written agreement to continue in the employment of the department for the period of obligated service determined under paragraph (2); and

(B) in the case of a person not an employee of the Department of Defense, the person shall enter into a written agreement to accept and continue employment for the period of obligated service determined under paragraph (2)—

- (i) with the Department, including by serving on active duty in the Armed Forces; or
- (ii) with a public or private entity or organization outside of the Department if the Secretary—

(I) is unable to find an appropriate position for the person within the Department; and

(II) determines that employment of the person with such entity or organization for the purpose of such obligated service would provide a benefit to the Department.

(2) For the purposes of this subsection, the period of obligated service for a recipient of financial assistance under this section shall be the period determined by the Secretary of Defense as being appropriate to obtain adequate service in exchange for such financial assistance. The period of service required of a recipient may not be less than the total period of pursuit of a degree that is covered by such financial assist-

ance. The period of obligated service is in addition to any other period for which the recipient is obligated to serve in the civil service of the United States.

(3) An agreement entered into under this subsection by a person pursuing an academic degree shall include any terms and conditions that the Secretary of Defense determines necessary to protect the interests of the United States or otherwise appropriate for carrying out this section.

(d) **EMPLOYMENT OF PROGRAM PARTICIPANTS.**—The Secretary of Defense—

(1) may, without regard to any provision of title 5 governing appointment of employees to competitive service positions within the Department of Defense, appoint to a position in the Department of Defense in the excepted service an individual who has successfully completed an academic program for which a scholarship or fellowship under this section was awarded and who, under the terms of the agreement for such scholarship or fellowship, at the time of such appointment, owes a service commitment to the Department;

(2) may, upon satisfactory completion of 2 years of substantially continuous service by an incumbent who was appointed to an excepted service position under the authority of paragraph (1), convert the appointment of such individual, without competition, to a career or career conditional appointment; and

(3) may establish arrangements so that participants may participate in a paid internship for an appropriate period with an industry sponsor.

(e) **REFUND FOR PERIOD OF UNSERVED OBLIGATED SERVICE.**—(1)(A) A participant in the program under this section who is not an employee of the Department of Defense and who voluntarily fails to complete the educational program for which financial assistance has been provided under this section, or fails to maintain satisfactory academic progress as determined in accordance with regulations prescribed by the Secretary of Defense, shall refund to the United States an appropriate amount, as determined by the Secretary.

(B) A participant in the program under this section who is an employee of the Department of Defense and who—

(i) voluntarily fails to complete the educational program for which financial assistance has been provided, or fails to maintain satisfactory academic progress as determined in accordance with regulations prescribed by the Secretary; or

(ii) before completion of the period of obligated service required of such participant—

(I) voluntarily terminates such participant's employment with the Department; or

(II) is removed from such participant's employment with the Department on the basis of misconduct,

shall refund the United States an appropriate amount, as determined by the Secretary.

(2) An obligation to reimburse the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

(3) The Secretary of Defense may waive, in whole or in part, a refund required under para-

graph (1) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(4) A discharge in bankruptcy under title 11 that is entered less than five years after the termination of an agreement under this section does not discharge the person signing such agreement from a debt arising under such agreement or under this subsection.

(f) RELATIONSHIP TO OTHER PROGRAMS.—(1) The Secretary of Defense shall coordinate the provision of financial assistance under the authority of this section with the provision of financial assistance under the other authorities provided in this chapter in order to maximize the benefits derived by the Department of Defense from the exercise of all such authorities.

(2) The Secretary of Defense shall seek to enter into partnerships with minority institutions of higher education and appropriate public and private sector organizations to diversify the participants in the program under subsection (a).

(3) In coordination with the efforts under paragraph (2), the Secretary of Defense shall additionally establish a program, which shall be known as the “Ronald V. Dellums Memorial Fellowship in STEM”, to provide financial assistance under this section to at least 30 students from communities that are underrepresented in the Department of Defense STEM workforce, not fewer of 50 percent of whom shall attend historically Black colleges and universities and minority-serving institutions. As part of such program, the Secretary shall establish an internship program that provides each student who is awarded a fellowship under this paragraph with an internship in an organization or element of the Department of Defense, and to the extent practicable, each such student shall be paired with a mid-level or a senior-level official of the relevant organization or element of the Department of Defense who shall serve as a mentor during the internship.

(g) LIMITATION ON PARTICIPATION.—(1) The Secretary may not award scholarships or fellowships under this section to more than five individuals described in paragraph (2) per year.

(2) An individual described in this paragraph is an individual who—

(A) has not previously been awarded a scholarship or fellowship under the program under this section;

(B) is not a citizen of the United States; and

(C) is a citizen of a country the government of which is a party to The Technical Cooperation Program (TTCP) memorandum of understanding of October 24, 1995.

(h) INSTITUTION OF HIGHER EDUCATION DEFINED.—In this section, the term “institution of higher education” has the meaning given such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(Added Pub. L. 109–163, div. A, title XI, §1104(d)(1), Jan. 6, 2006, 119 Stat. 3449, §2192a; amended Pub. L. 110–417, [div. A], title X, §1061(a)(5), Oct. 14, 2008, 122 Stat. 4612; Pub. L. 111–84, div. A, title XI, §1102(a)–(d)(1), Oct. 28, 2009, 123 Stat. 2484, 2485; Pub. L. 113–66, div. A,

title XI, §1105(a)(1), Dec. 26, 2013, 127 Stat. 886; Pub. L. 113–291, div. A, title II, §215, Dec. 19, 2014, 128 Stat. 3327; Pub. L. 114–92, div. A, title II, §212, Nov. 25, 2015, 129 Stat. 767; Pub. L. 116–283, div. A, title II, §242, Jan. 1, 2021, 134 Stat. 3488; renumbered §4093, Pub. L. 116–283, div. A, title XVIII, §1843(a), as added Pub. L. 117–81, div. A, title XVII, §1701(u)(4)(A), Dec. 27, 2021, 135 Stat. 2153; Pub. L. 117–263, div. A, title X, §1083, Dec. 23, 2022, 136 Stat. 2800.)

Editorial Notes

CODIFICATION

Section, as added by Pub. L. 109–163, consists of text of Pub. L. 108–375, div. A, title XI, §1105, Oct. 28, 2004, 118 Stat. 2074; Pub. L. 109–163, div. A, title X, §1056(d), title XI, §1104(a)–(c), Jan. 6, 2006, 119 Stat. 3440, 3448, 3449; Pub. L. 111–383, div. A, title X, §1075(h)(5), Jan. 7, 2011, 124 Stat. 4377, which was formerly set out as a note under section 2192 of this title, and was repealed by Pub. L. 109–163, div. A, title XI, §1104(e)(1), Jan. 6, 2006, 119 Stat. 3450.

AMENDMENTS

2022—Subsec. (f)(3). Pub. L. 117–263 added par. (3).

2021—Pub. L. 116–283, §1843(a), as added by Pub. L. 117–81, §1701(u)(4)(A), renumbered section 2192a of this title as this section.

Subsec. (c)(1)(B)(i). Pub. L. 116–283, §242(1), inserted “, including by serving on active duty in the Armed Forces” after “Department”.

Subsec. (d)(3). Pub. L. 116–283, §242(2), added par. (3).

Subsec. (f). Pub. L. 116–283, §242(3), designated existing provisions as par. (1) and added par. (2).

2015—Subsec. (b)(1)(A). Pub. L. 114–92, §212(1), inserted “or, subject to subsection (g), a country the government of which is a party to The Technical Cooperation Program (TTCP) memorandum of understanding of October 24, 1995” after “United States”.

Subsecs. (g), (h). Pub. L. 114–92, §212(2), (3), added subsec. (g) and redesignated former subsec. (g) as (h).

2014—Subsec. (c)(1)(B). Pub. L. 113–291 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “in the case of a person not an employee of the Department of Defense, the person shall enter into a written agreement to accept and continue employment in the Department of Defense for the period of obligated service determined under paragraph (2).”

2013—Subsec. (b)(2). Pub. L. 113–66 substituted “an amount determined by the Secretary of Defense” for “the amount determined by the Secretary of Defense as being necessary to pay all educational expenses incurred by that person, including tuition, fees, cost of books, laboratory expenses, equipment expenses, and expenses of room and board”.

2009—Subsec. (c)(2). Pub. L. 111–84, §1102(b), substituted “The” for “Except as provided in subsection (d), the” in second sentence.

Subsec. (d). Pub. L. 111–84, §1102(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) provided that, under certain circumstances, the Secretary of Defense could appoint or retain a SMART program participant as an interim employee and separate such participant from employment if no appropriate permanent position was available at the end of the interim period and that the period of interim service would count towards the participant’s obligated service requirements.

Subsec. (f). Pub. L. 111–84, §1102(c), struck out “The program under this section is in addition to the authorities provided in chapter 111 of this title.” before “The Secretary” and substituted “the other authorities provided in this chapter” for “the authorities provided in such chapter”.

Subsecs. (g), (h). Pub. L. 111–84, §1102(d)(1), redesignated subsec. (h) as (g) and struck out former subsec. (g). Prior to amendment, text read as follows: “Not

later than February 1, 2007, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Committee on Government Reform of the House of Representatives a plan for expanding and improving the national defense science and engineering workforce educational assistance program carried out under this section as appropriate to improve recruitment and retention to meet the requirements of the Department of Defense for its science and engineering workforce on a short-term basis and on a long-term basis.”

2008—Subsec. (e)(4). Pub. L. 110–417, § 1061(a)(5)(A), substituted “title 11” for “title 11, United States Code,”.

Subsec. (f). Pub. L. 110–417, § 1061(a)(5)(B), substituted “this title” for “title 10, United States Code”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

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

Amendment by section 1843(a) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

NATIONAL SECURITY WORKFORCE AND EDUCATIONAL DIVERSITY ACTIVITIES

Pub. L. 116–283, div. A, title II, § 250, Jan. 1, 2021, 134 Stat. 3495, provided that:

“(a) IN GENERAL.—The Secretary of Defense shall seek to diversify participation in the Science, Mathematics, and Research for Transformation (SMART) Defense Education Program under section 2192a of title 10, United States Code [now 10 U.S.C. 4093].

“(b) ACTIVITIES.—In carrying out subsection (a), the Secretary shall—

“(1) subject to the availability of appropriations for this purpose, set aside funds for financial assistance, scholarships, and fellowships for students at historically Black colleges or universities or at minority institutions of higher education and such other institutions as the Secretary considers appropriate;

“(2) partner with institutions of higher education, and such other public and private sector organizations as the Secretary considers appropriate, to increase diversity of participants in the program described in subsection (a);

“(3) establish individual and organizational incentives, and such other activities as the Secretary considers appropriate, to increase diversity of student participation in the program described in subsection (a);

“(4) increase awareness of opportunities to participate in the program described in subsection (a);

“(5) evaluate the potential for new programs, fellowships, and other activities at historically Black colleges or universities and minority institutions of higher education to increase diversity in educational and workforce development programs;

“(6) identify potential changes to the program described in subsection (a) that would improve diversity of participants in such program; and

“(7) establish metrics to evaluate success of activities under this section.

“(c) REPORT.—Not later than September 30, 2024, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that evaluates the success of activities conducted by the Secretary in increasing diversity in appropriate programs of the Department of Defense and hiring and retaining diverse individuals in

the science, mathematics, and research workforce of the public sector.”

EFFECT ON CURRENT PARTICIPANTS IN SMART PILOT PROGRAM

Pub. L. 109–163, div. A, title XI, § 1104(f), Jan. 6, 2006, 119 Stat. 3450, provided that: “Participation in the Science, Mathematics, and Research for Transformation (SMART) Defense Scholarship Pilot Program under section 1105 of Public Law 108–375 [see Codification note above] by an individual who has entered into an agreement under that pilot program before the date of the enactment of this Act [Jan. 6, 2006] shall be governed by the terms of such agreement without regard to the amendments made by this section [enacting this section, amending section 3304 of Title 5, Government Organization and Employees, and amending and repealing provisions set out as a note under section 2192 of this title].”

§ 4094. Enhanced pay authority for certain research and technology positions in science and technology reinvention laboratories

(a) IN GENERAL.—The Secretary of Defense may carry out a program using the pay authority specified in subsection (d) to fix the rate of basic pay for positions described in subsection (c) in order to assist the military departments in attracting and retaining high quality acquisition and technology experts in positions responsible for managing and performing complex, high-cost research and technology development efforts in the science and technology reinvention laboratories of the Department of Defense.

(b) APPROVAL REQUIRED.—The program may be carried out in a military department only with the approval of the service acquisition executive of the military department concerned.

(c) POSITIONS.—The positions described in this subsection are positions in the science and technology reinvention laboratories of the Department of Defense that—

(1) require expertise of an extremely high level in a scientific, technical, professional, or acquisition management field; and

(2) are critical to the successful accomplishment of an important research or technology development mission.

(d) RATE OF BASIC PAY.—The pay authority specified in this subsection is authority as follows:

(1) Authority to fix the rate of basic pay for a position at a rate not to exceed 150 percent of the rate of basic pay payable for level I of the Executive Schedule, upon the approval of the service acquisition executive concerned.

(2) Authority to fix the rate of basic pay for a position at a rate in excess of 150 percent of the rate of basic pay payable for level I of the Executive Schedule, upon the approval of the Secretary of the military department concerned.

(e) LIMITATIONS.—

(1) IN GENERAL.—The authority in subsection (a) may be used only to the extent necessary to competitively recruit or retain individuals exceptionally well qualified for positions described in subsection (c).

(2) NUMBER OF POSITIONS.—The authority in subsection (a) may not be used with respect to more than five positions in each military department at any one time, unless the Under