without a change of position from the agency that employs the individual, or

(B) the assignment or loan of an employee of a private sector organization to an agency without a change of position from the private sector organization that employs the individual,

whichever is appropriate in the context in which such term is used.

(Added Pub. L. 107–347, title II, § 209(c)(1), Dec. 17, 2002, 116 Stat. 2925; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Par. (1). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

EFFECTIVE DATE

Chapter effective 120 days after Dec. 17, 2002, see section 402(a) of Pub. L. 107–347, set out as a note under section 3601 of Title 44, Public Printing and Documents.

§ 3702. General provisions

(a) ASSIGNMENT AUTHORITY.—On request from or with the agreement of a private sector organization, and with the consent of the employee concerned, the head of an agency may arrange for the assignment of an employee of the agency to a private sector organization or an employee of a private sector organization to the agency. An eligible employee is an individual who—

(1) works in the field of information technology management;

(2) is considered an exceptional performer by the individual's current employer; and

(3) is expected to assume increased information technology management responsibilities in the future.

An employee of an agency shall be eligible to participate in this program only if the employee is employed at the GS–11 level or above (or equivalent) and is serving under a career or career-conditional appointment or an appointment of equivalent tenure in the excepted service, and applicable requirements of section 209(b) of the E-Government Act of 2002 are met with respect to the proposed assignment of such employee.

(b) AGREEMENTS.—Each agency that exercises its authority under this chapter shall provide for a written agreement between the agency and the employee concerned regarding the terms and conditions of the employee's assignment. In the case of an employee of the agency, the agreement shall—

(1) require the employee to serve in the civil service, upon completion of the assignment, for a period equal to the length of the assignment; and

(2) provide that, in the event the employee fails to carry out the agreement (except for good and sufficient reason, as determined by the head of the agency from which assigned) the employee shall be liable to the United States for payment of all expenses of the assignment.

An amount under paragraph (2) shall be treated as a debt due the United States.

(c) TERMINATION.—Assignments may be terminated by the agency or private sector organization concerned for any reason at any time.

(d) DURATION.—Assignments under this chapter shall be for a period of between 3 months and 1 year, and may be extended in 3-month increments for a total of not more than 1 additional year, except that no assignment under this chapter may commence after the end of the 5-year period beginning on the date of the enactment of this chapter.

(e) ASSISTANCE.—The Chief Information Officers Council, by agreement with the Office of Personnel Management, may assist in the administration of this chapter, including by maintaining lists of potential candidates for assignment under this chapter, establishing mentoring relationships for the benefit of individuals who are given assignments under this chapter, and publicizing the program.

(f) CONSIDERATIONS.—In exercising any authority under this chapter, an agency shall take into consideration—

(1) the need to ensure that small business concerns are appropriately represented with respect to the assignments described in sections 3703 and 3704, respectively; and

(2) how assignments described in section 3703 might best be used to help meet the needs of the agency for the training of employees in information technology management.

(Added Pub. L. 107–347, title II, § 209(c)(1), Dec. 17, 2002, 116 Stat. 2925.)

REFERENCES IN TEXT

GS–11, referred to in subsec. (a), is contained in the General Schedule which is set out under section 5332 of this title.

Section 209(b) of the E-Government Act of 2002, referred to in subsec. (a), is section 209(b) of Pub. L. 107–347, which is set out in a note under section 3501 of Title 44, Public Printing and Documents.

The date of the enactment of this chapter, referred to in subsec. (d), is the date of enactment of Pub. L. 107–347, which was approved Dec. 17, 2002.

PILOT PROGRAM FOR THE TEMPORARY ASSIGNMENT OF INFORMATION TECHNOLOGY PERSONNEL TO PRIVATE SECTOR ORGANIZATIONS

Pub. L. 111–84, div. A, title XI, § 1110, Oct. 28, 2009, 123 Stat. 2493, provided that:

''(a) ASSIGNMENT AUTHORITY.—The Secretary of Defense may, with the agreement of the private sector organization concerned, arrange for the temporary assignment of an employee to such private sector organization, or from such private sector organization to a Department of Defense organization under this section. An employee shall be eligible for such an assignment only if—

''(1) the employee—

''(A) works in the field of information technology management;

''(B) is considered by the Secretary of Defense to be an exceptional employee;

''(C) is expected to assume increased information technology management responsibilities in the future; and

''(D) is compensated at not less than the GS–11 level (or the equivalent); and

''(2) the proposed assignment meets applicable requirements of section 209(b) of the E-Government Act of 2002 [Pub. L. 107–347] (44 U.S.C. 3501 note).

''(b) AGREEMENTS.—The Secretary of Defense shall provide for a written agreement among the Department of Defense, the private sector organization, and the employee concerned regarding the terms and conditions of the employee's assignment under this section. The agreement—

''(1) shall require that employees of the Department of Defense, upon completion of the assignment, will serve in the civil service for a period equal to the length of the assignment; and

''(2) shall provide that if the employee of the Department of Defense or of the private sector organization (as the case may be) fails to carry out the agreement, such employee shall be liable to the United States for payment of all expenses of the assignment, unless that failure was for good and sufficient reason, as determined by the Secretary of Defense.

An amount for which an employee is liable under paragraph (2) shall be treated as a debt due the United States.

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

''(d) DURATION.—An assignment under this section shall be for a period of not less than 3 months and not more than 1 year, and may be extended in 3-month increments for a total of not more than 1 additional year; however, no assignment under this section may commence after September 30, 2013.

''(e) 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) may continue to receive pay and benefits from the private sector organization from which such employee is assigned;

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

''(A) chapter 73 of title 5, United States Code;

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

''(C) sections 1343, 1344, and 1349(b) of title 31, United States Code;

''(D) the Federal Tort Claims Act [see Short Title note under section 2671 of Title 28, Judiciary and Judicial Procedure] and any other Federal tort liability statute;

''(E) the Ethics in Government Act of 1978 [5 U.S.C. App.];

''(F) section 1043 of the Internal Revenue Code of 1986 [26 U.S.C. 1043]; and

''(G) section 27 of the Office of Federal Procurement Policy Act [now 41 U.S.C. 2101 et seq.]; and

''(3) may not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which such employee is assigned.

''(f) PROHIBITION AGAINST CHARGING CERTAIN COSTS TO THE FEDERAL GOVERNMENT.—A private sector organization may not charge the Department of Defense or any other agency of the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the organization to an employee assigned to a Department of Defense organization under this section for the period of the assignment.

''(g) CONSIDERATIONS.—In carrying out this section, the Secretary of Defense—

''(1) shall ensure that, of the assignments made under this section each year, at least 20 percent are from small business concerns (as defined by section 3703(e)(2)(A) of title 5, United States Code); and

''(2) shall take into consideration the question of how assignments under this section might best be used to help meet the needs of the Department of Defense with respect to the training of employees in information technology management.

''(h) NUMERICAL LIMITATION.—In no event may more than 10 employees be participating in assignments under this section at any given time.

''(i) REPORTING REQUIREMENT.—For each of fiscal years 2010 through 2015, 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], not later than 1 month after the end of the fiscal year involved, a report on any activities carried out under this section during such fiscal year, including information concerning—

''(1) the respective organizations (as referred to in subsection (a)) to and from which any employee was assigned under this section;

''(2) the positions those employees held while they were so assigned;

''(3) a description of the tasks they performed while they were so assigned; and

''(4) a discussion of any actions that might be taken to improve the effectiveness of the program under this section, including any proposed changes in law.

''(j) REPEAL OF SUPERSEDED SECTION.—Section 1109 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 358) [formerly set out as a note under this section] is repealed, except that—

''(1) nothing in this subsection shall, in the case of any assignment commencing under such section 1109 on or before the date of the enactment of this Act [Oct. 28, 2009], affect—

''(A) the duration of such assignment or the authority to extend such assignment in accordance with subsection (d) of such section 1109, as last in effect; or

''(B) the terms or conditions of the agreement governing such assignment, including with respect to any service obligation under subsection (b) thereof; and

''(2) any employee whose assignment is allowed to continue by virtue of paragraph (1) shall be taken into account for purposes of—

''(A) the numerical limitation under subsection (h); and

''(B) the reporting requirement under subsection (i).''

Pub. L. 110–181, div. A, title XI, § 1109, Jan. 28, 2008, 122 Stat. 358, which authorized the Secretary of Defense to arrange for the temporary assignment of a Department of Defense employee to a private sector organization under certain terms, conditions, and considerations, and for a limited period, and required the Secretary to submit to the Committees on Armed Services a report on the potential benefits of temporarily assigning information technology specialists from private sector organizations to the Department of Defense, was repealed, with certain exceptions, by Pub. L. 111–84, div. A, title XI, § 1110(j), Oct. 28, 2009, 123 Stat. 2495, see above.

§ 3703. Assignment of employees to private sector organizations

(a) IN GENERAL.—An employee of an agency assigned to a private sector organization under this chapter is deemed, during the period of the assignment, to be on detail to a regular work assignment in his agency.

(b) COORDINATION WITH CHAPTER 81.—Notwithstanding any other provision of law, an employee of an agency assigned to a private sector organization under this chapter is entitled to retain coverage, rights, and benefits under subchapter I of chapter 81, and employment during the assignment is deemed employment by the United States, except that, if the employee or the employee's dependents receive from the private sector organization any payment under an insurance policy for which the premium is wholly paid by the private sector organization, or other benefit of any kind on account of the same injury or death, then, the amount of such payment or benefit shall be credited against any compensation otherwise payable under subchapter I of chapter 81.

(c) REIMBURSEMENTS.—The assignment of an employee to a private sector organization under