



FY 09 NDAA § 1111 (PL 110-417) **EXCEPTIONS AND ADJUSTMENTS TO LIMITATIONS ON PERSONNEL AND** **REPORTS ON SUCH EXCEPTIONS AND ADJUSTMENTS**

- (a) Exception to Limitations on Personnel – For fiscal year 2009 and fiscal years thereafter, the baseline personnel limitations in sections 143, 194, 3014, 5014, and 8014 of title 10, United States Code (as adjusted pursuant to subsection (b)), shall not apply to –
- (1) Acquisition personnel hired pursuant to the expedited hiring authority provided in section 1705(h) of title 10, United States Code, as amended by section 821 of this Act, or otherwise hired with funds in the Department of Defense Acquisition Workforce Development Fund established in accordance with section 1705(a) of such title; or
 - (2) Personnel hired pursuant to a shortage category designation by the Secretary of Defense or the Director of the Office of Personnel Management.
- (b) Authority to Adjust Limitations on Personnel – For fiscal year 2009 and for four fiscal years thereafter, the Secretary of Defense or a secretary of a military department may adjust the baseline personnel limitations in sections 143, 194, 3014, 5014 and 8014 of title 10, United States Code, to –
- (1) Fill a gap in the civilian workforce of the Department of Defense identified by the Secretary of Defense in a strategic human capital plan submitted to Congress in accordance with the requirements of –
 - (A) Section 1122 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 10 U.S.C. prec. 1580 note);
 - (B) Section 1102 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-; 120 Stat. 2407); or
 - (C) Section 851 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. note prec. 1580); or
 - (2) Accommodate increases in workload or modify the type of personnel required to accomplish work, for any purpose described in paragraphs (1) through (4) of subsection (c).
- (c) Limitation on Authority to Adjust Limitations on Personnel – The Secretary of Defense or the secretary of a military department may not increase a baseline personnel limitation under paragraph (2) of subsection (b) by more than 5 percent in a fiscal year. An increase in a baseline personnel limitation under such paragraph may be made for any of the following purposes:
- (1) Performance of inherently governmental functions.
 - (2) Performance of work pursuant to section 2463 of title 10 United States Code.
 - (3) Ability to maintain sufficient organic expertise and technical capability.
 - (4) Performance of work that, while the position may not exercise an inherently governmental function, nevertheless should be performed only by officers or employees of the Federal Government or members of the Armed Forces because of the critical nature of the work.

(d) Report Required – The Secretary of Defense shall submit a report to the congressional defense committees on the implementation of this section at the same time that the defense budget materials for each of the four fiscal years after fiscal year 2009 are presented to Congress. The report shall include the following information regarding the implementation of this section during the preceding fiscal year:

- (1) The average number of military personnel, civilian employees of the Department of Defense, and contractor employees assigned to or detailed to permanent duty in –
 - (A) The Office of the Secretary of Defense;
 - (B) The management headquarters activities and management headquarters support activities in the Defense Agencies and Department of Defense Field Activities;
 - (C) The Office of the Secretary of the Army and the Army Staff;
 - (D) The Office of the Secretary of the Navy, the Office of Chief of Naval Operations, and the Headquarters, Marine Corps; and
 - (E) The Office of the Secretary of the Air Force and the Air Staff.
 - (2) An estimate of the number of personnel hired pursuant to an exception in subsection (a) in each office described in subparagraphs (A) through (E) of paragraph (1).
 - (3) The amount of any adjustment in the limitation on personnel made by the Secretary of Defense or the secretary of a military department, and, for each adjustment made pursuant to subsection (b)(2), the purpose of the adjustment.
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