

Federal Cyber Excepted Service

Legend: This proposal mandates the establishment of a government-wide excepted service for cyber-specific roles as designated by the (pre-existing) cyber role coding structure aligned to the NICE Cybersecurity Workforce Framework. This proposal is adapted from existing legislation and draws extensively from the model put forward in Section 3 of the Border Patrol Agent Pay Reform Act of 2014 and in Section 1107 of the National Defense Authorization Act for Fiscal Year 2016.

SEC. __. FEDERAL CYBER EXCEPTED SERVICE ACT

- (a) **SHORT TITLE.**—This section may be cited as the “Federal Cyber Excepted Service Act”.
- (b) **DEFINITIONS.**—In this section:
- (1) **Appropriate committees of Congress.**—The term “appropriate committees of Congress” means the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate and the House Committee on Oversight and Reform and the Committee on Appropriations of the House of Representatives.
 - (2) **Director.**—The term “Director” means the National Cyber Director.
 - (3) **Collective bargaining agreement.**—The term “collective bargaining agreement” has the meaning given that term in Section 7103(a)(8) of Title 5, United States Code.
 - (4) **Excepted service.**—The term “excepted service” has the meaning given that term in Section 2103 of Title 5, United States Code.
 - (5) **Preference eligible.**—The term “preference eligible” has the meaning given that term in Section 2108 of Title 5, United States Code.
 - (6) **National Initiative for Cybersecurity Education.**—The term “National Initiative for Cybersecurity Education” means the initiative under the national cybersecurity awareness and education program, as authorized under Section 401 of the Cybersecurity Enhancement Act of 2014 (15 U.S.C. 7451).
 - (7) **Work Roles.**—The term “work roles” means a specialized set of tasks and functions requiring specific knowledge, skills, and abilities.
 - (8) **Qualified position.**—The term “qualified position” means a position—
 - (A) in which the incumbent performs, manages, or supervises functions that execute information technology, cybersecurity, or cyber-related responsibilities, and
 - (B) aligned to a work role, or sharing the majority of necessary duties, tasks, or competencies with a work role, in the National Initiative for Cybersecurity Education Workforce Framework for Cybersecurity (NIST Special Publication 800–181, Revision 1), an expansion of that framework, or successor framework.
 - (9) **Senior executive service.**—The term ‘Senior Executive Service’ has the meaning given that term in Section 2101a of Title 5, United States Code.
- (c) **SENSE OF CONGRESS.**—It is the sense of Congress that—
- (1) Flexibility in federal cyber hiring has seen only limited improvement, despite efforts such as the Federal Cybersecurity Workforce Assessment Act of 2015, which was intended to address underlying systemic challenges to addressing the shortfall of cyber professionals in the federal government;

- (2) While Section 3 of the Border Patrol Agent Pay Reform Act of 2014 and Section 1107 of the National Defense Authorization Act for Fiscal Year 2016 have become important tools for hiring cyber talent at the Department of Homeland Security and Department of Defense, respectively, comparable flexibilities are not available outside these two departments;
- (3) Current government-wide direct hire authorities for cyber positions are predicated on occupational classifications that are not well-suited to cyber hiring, and thus current direct hire authorities for cyber are unduly limited; and
- (4) Government-wide pay flexibilities limited to recruitment, relocation, and retention are important tools in cyber talent management, but these temporary solutions cannot fully address federal cyber hiring without creating flexibility in setting base pay rates for cyber positions.

(d) GENERAL AUTHORITY.—

- (1) Provide guidelines, establish positions, appoint personnel, and fix rates of pay.—

(A) General authority.—The Director, in coordination with the Director of the Office of Personnel Management and the Federal Chief Information Officer, shall—

(i) establish a Federal Cyber Excepted Service;

(ii) coordinate with the Secretary of Defense and the Secretary of Homeland Security to ensure the Federal Cyber Excepted Service established in clause (i) benefits from the lessons learned from the establishment of—

(I) the Cyber Talent Management System authorized by Section 3 of the Border Patrol Agent Pay Reform Act of 2014, and

(II) the Cyber Excepted Service as authorized by National Defense Authorization Act for Fiscal Year 2016; and

(iii) prescribe regulations for the administration of this section, including for—

(I) establishing qualified positions in the Federal Cyber Excepted Service,

(II) appointing individuals to qualified positions,

(III) fixing the compensation of an individual for service in a qualified position, and

(IV) other such regulations as the Director determines appropriate.

(B) Federal departments and agencies.—In accordance with the guidance established in subparagraph (A), each head of a Federal department or agency may—

(i) establish, as positions in the excepted service within that Federal department or agency, such qualified positions as the head of that Federal department or agency determines necessary to carry out responsibilities relating to cyber, including positions formerly identified as—

(I) senior level positions designated under Section 5376 of Title 5, United States Code; and

(II) positions in the Senior Executive Service;

(ii) appoint an individual to a qualified position (after taking into consideration the availability of preference eligibles for appointment to the position); and

(iii) subject to the requirements of paragraphs (2) and (3), fix the compensation of an individual for service in a qualified position.

(C) Construction with other laws.—The authorities provided under this subsection apply without regard to the provisions of any other law relating to the appointment, number, classification, or compensation of employees.

(2) Basic pay.—

(A) Authority to fix rates of basic pay.—In accordance with this section and the guidance established in subparagraph (1)(A), the head of a Federal department or agency shall fix the rates of basic pay for any qualified position established under paragraph (1)—

(i) in relation to the rates of pay provided for employees in comparable positions in that Federal department and agency in which the employee occupying the comparable position performs, manages, or supervises functions that execute cyber responsibilities,

(ii) and subject to the same limitations on maximum rates of pay established for such employees by law or regulation.

(B) Additional Compensation, Incentives, and Allowances.—

(i) The Secretary may provide employees in qualified positions compensation (in addition to basic pay), including benefits, incentives, and allowances, consistent with, and not in excess of the level authorized for, comparable positions authorized by Title 5.

(ii) An employee in a qualified position whose rate of basic pay is fixed under Subsection (2)(A) shall be eligible for an allowance under Section 5941 of Title 5 on the same basis and to the same extent as if the employee was an employee covered by such section, including eligibility conditions, allowance rates, and all other terms and conditions in law or regulation.

(3) Additional compensation, incentives, and allowances.—

(A) Additional compensation based on Title 5 authorities.—The Secretary may provide employees in qualified positions compensation (in addition to basic pay), including benefits, incentives, and allowances, consistent with, and not in excess of the level authorized for, comparable positions authorized by Title 5, United States Code.

(B) Allowances in nonforeign areas.—An employee in a qualified position whose rate of basic pay is fixed under paragraph (2)(A) shall be eligible for an allowance under Section 5941 of Title 5, United States Code, on the same basis and to the same extent as if the employee was an employee covered by such Section 5941, including eligibility conditions, allowance rates, and all other terms and conditions in law or regulation.

(4) Plan for execution of authorities.—Not later than 270 days after the date of enactment of this section, the Director, in consultation with the Director of the Office of Personnel Management, the Federal Chief Information Officer, and the heads of such federal departments and agencies as the Director determines relevant, shall submit a report to the appropriate committees of Congress with a plan for the use of the authorities provided under this subsection.

(5) Collective bargaining agreements.—Nothing in paragraph (1) may be construed to impair the continued effectiveness of a collective bargaining agreement with respect to a Federal department or agency, or any office, component, subcomponent, or successor thereof.

(e) ANNUAL REPORT.—Not later than 2 years after the date of enactment of this section, and every year thereafter for 4 years, the Director shall submit to the appropriate committees of Congress a detailed report that—

(1) discusses the process used by heads of Federal departments and agencies in accepting applications, assessing candidates, ensuring adherence to veterans' preference, and selecting applicants for vacancies to be filled by an individual for a qualified position;

(2) describes—

- (A) how the Director, working with heads of Federal departments and agencies, plans to fulfill the critical need to recruit and retain employees in qualified positions;
 - (B) the measures that will be used to measure progress; and
 - (C) any actions taken during the reporting period to fulfill such critical need;
- (3) discusses how the planning and actions taken under paragraph (2) are integrated into the Director’s strategic workforce planning;
- (4) provides metrics on actions occurring during the reporting period, including—
- (A) the number of employees in qualified positions hired by occupation and grade and level or pay band;
 - (B) the placement of employees in qualified positions by Federal department or agency, including information on subcomponents of Federal departments and agencies as applicable;
 - (C) the total number of veterans hired;
 - (D) the number of separations of employees in qualified positions by occupation and grade and level or pay band;
 - (E) the number of retirements of employees in qualified positions by occupation and grade and level or pay band; and
 - (F) the number and amounts of recruitment, relocation, and retention incentives paid to employees in qualified positions by occupation and grade and level or pay band;
- (5) describes the training provided to supervisors of employees in qualified positions on the use of the new authorities; and
- (6) describes the impact of the new authorities on diversity and access recruitment and retention efforts.
- (f) **THREE-YEAR PROBATIONARY PERIOD.**—The probationary period for all employees hired under the authority established in this section shall be 3 years.
- (g) **INCUMBENTS OF EXISTING COMPETITIVE SERVICE POSITIONS.**—
- (1) **In general.**—An individual serving in a position on the date of enactment of this section that is selected to be converted to a position in the excepted service under this section shall have the right to refuse such conversion.
 - (2) **Subsequent conversion.**—After the date on which an individual who refuses a conversion under paragraph (1) stops serving in the position selected to be converted, the position may be converted to a position in the excepted service.
- (h) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated \$1,500,000 for each of fiscal years 2021 and 2022, the use of which may include additional personnel or contract support at the Office of Personnel Management as may be necessary to establish and administer regulations for the administration of this section.
- (i) **CONFORMING AMENDMENT.**—Section 3132(a)(2) of Title 5, United States Code, is amended in the matter following subparagraph (E)—
- (1) in clause (iii), by striking “or” at the end;
 - (2) in clause (iv), by inserting “or” after the semicolon; and
 - (3) by inserting after clause (iv) the following new clause:
 - “(v) any position established as a qualified position in the excepted service by the National Cyber Director under the Federal Cyber Excepted Service Act;”.