SEC. __. PUBLIC-PRIVATE TALENT EXCHANGE.

(a) AUTHORITY.—Chapter 81 of title 10, United States Code, [as amended by section XXX of this Act,] is [further] amended by adding at the end the following new section:

"§ [1599i]. Public-private talent exchange

"(a) ASSIGNMENT AUTHORITY.—Under regulations prescribed by the Secretary of Defense, the Secretary may, with the agreement of a private-sector organization and the consent of the employee, 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.

"(b) AGREEMENTS.—(1) 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—

"(A) shall require that the employee of the Department of Defense, upon completion of the assignment, will serve in the Department of Defense, or elsewhere in the civil service if approved by the Secretary, for a period equal to the length of the assignment; and

"(B) 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.

"(2) An amount for which an employee is liable under paragraph (1) shall be treated as a debt due the United States.

"(3) The Secretary may waive, in whole or in part, collection of a debt described in paragraph (2) based on a determination that the collection would be against equity and good conscience and not in the best interests of the United States, after taking into account any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee.

"(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 one year, renewable up to a total of 4 years. No employee of the Department of Defense may be assigned under this section for more than a total of 4 years inclusive of all such assignments.

"(e) STATUS OF FEDERAL EMPLOYEES ASSIGNED TO PRIVATE-SECTOR ORGANIZATIONS.—An employee of the Department of Defense who is assigned to a private-sector organization under this section is deemed, during the period of assignment, to be on detail to a regular work assignment in the Department for all purposes and remains an employee of the Department during the period of assignment. The written agreement established under subsection (b)(1) shall address the specific terms and conditions related to the employee's continued status as a Federal employee.

"(f) 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) shall continue to receive pay and benefits from the private-sector organization from which such employee is assigned and shall not receive pay or benefits from the Department of Defense except as provided in paragraph (2);

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

"(A) chapters 73 and 81 of title 5;

"(B) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18, except that section 209 shall not apply with respect to pay and benefits received from the private-sector organization in accordance with paragraph (1);

"(C) sections 1343, 1344, and 1349(b) of title 31;

"(D) the Federal Tort Claims Act and any other Federal tort liability statute;

"(E) the Ethics in Government Act of 1978;

"(F) section 1043 of the Internal Revenue Code of 1986; and

"(G) chapter 21 of title 41;

"(3) shall 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; and

"(4) shall not participate in particular matters directly and predictably affecting the financial interests of such private-sector organization.

"(g) PROHIBITION AGAINST CHARGING CERTAIN COSTS TO THE FEDERAL GOVERNMENT.—A private-sector organization may not charge the Department 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 organization under this section for the period of the assignment.

"(h) 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); 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.".

(b) ETHICS PROVISIONS.—Section 207 of title 18, United States Code, is amended—

(1) in subsection (c)(2)(A)(v), by inserting "or a Department of Defense organization under section [1599i] of title 10" after "chapter 37 of title 5"; and

(2) in subsection (l)—

(A) by inserting "or a Department of Defense organization under section [1599i] of title 10" after "chapter 37 of title 5"; and

(B) by inserting "or that Department of Defense organization" after "that agency".

1 (c) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of such

2 chapter, as amended by section **[**XXX**]** of this Act, is further amended by adding at the end

3 the following new item:

"[1599i]. Public-private talent exchange.".

Section-by-Section Analysis

This proposal would allow Department of Defense (DoD) employees to gain experience at private companies and bring industry leaders in to DoD, providing a public-private exchange of knowledge and talent that is currently underdeveloped. These exchanges with private sector would not be limited only to companies with traditional, defense-based missions, but also to those where DoD employees could gain skills that align with functional communities or occupational specialties. This might include, for example, a computer engineer being assigned to an internet company to train in user experience; a budget analyst going to an accounting firm to learn about auditing, an HR specialist going to a human resources consulting firm to learn that firm's approach to recruiting and compensation; or a supervisor learning organizational management and leadership development approaches at a company known for innovative approaches.

This exchange program would build on the success of programs like the Intergovernmental Personnel Act (IPA)[1] and the Information Technology Exchange Program (ITEP)[2]. Private companies cannot be included in IPAs, and ITEP is exclusively for information technology workers. This program would be available as yet another tool for DoD organizations with a need to bring temporary expertise from the private sector, and to similarly send their people to the private sector for experience and practical learning. An anticipated added benefit is increased job satisfaction through continued learning and development, which should result in increased retention.

Budget Implications: The budget implications of the elements of this proposal are neutral.

Changes to Existing Law: This proposal would add a new section 1599i to title 10, United States Code, shown in full in the legislative text above, and would amend section 207 of title 18, United States Code, as follows:

§207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches

* * * * *

[1] https://www.opm.gov/policy-data-oversight/hiring-authorities/intergovernment-personnel-act/
[2] http://dodcio.defense.gov/IntheNews/InformationTechnologyExchangeProgram.aspx

(c) One-Year Restrictions on Certain Senior Personnel of the Executive Branch and Independent Agencies.-

(1) Restrictions.-In addition to the restrictions set forth in subsections (a) and (b), any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including an independent agency), who is referred to in paragraph (2), and who, within 1 year after the termination of his or her service or employment as such officer or employee, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency, shall be punished as provided in section 216 of this title.

(2) Persons to whom restrictions apply.-(A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (d))-

(i) employed at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5,

(ii) employed in a position which is not referred to in clause (i) and for which that person is paid at a rate of basic pay which is equal to or greater than 86.5 percent of the rate of basic pay for level II of the Executive Schedule, or, for a period of 2 years following the enactment of the National Defense Authorization Act for Fiscal Year 2004, a person who, on the day prior to the enactment of that Act, was employed in a position which is not referred to in clause (i) and for which the rate of basic pay, exclusive of any locality-based pay adjustment under section 5304 or section 5304a of title 5, was equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service on the day prior to the enactment of that Act,

(iii) appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the Vice President to a position under section 106(a)(1)(B) of title 3,

(iv) employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade O–7 or above; or

(v) assigned from a private sector organization to an agency under chapter 37 of title 5 <u>or a Department of Defense organization under section [1599i] of title 10</u>.

(B) Paragraph (1) shall not apply to a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates.

(C) At the request of a department or agency, the Director of the Office of Government Ethics may waive the restrictions contained in paragraph (1) with respect to any position, or category of positions, referred to in clause (ii) or (iv) of subparagraph (A), in such department or agency if the Director determines that-

(i) the imposition of the restrictions with respect to such position or positions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions, and

(ii) granting the waiver would not create the potential for use of undue influence or unfair advantage.

(3) Members of the independent payment advisory board.-

(A) In general.-Paragraph (1) shall apply to a member of the Independent Payment Advisory Board under section 1899A.[1]

(B) Agencies and congress.-For purposes of paragraph (1), the agency in which the individual described in subparagraph (A) served shall be considered to be the Independent Payment Advisory Board, the Department of Health and Human Services, and the relevant committees of jurisdiction of Congress, including the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate.

* * * * *

(l) Contract Advice by Former Details.-Whoever, being an employee of a private sector organization assigned to an agency under chapter 37 of title 5 <u>or a Department of Defense organization under section [1599i] of title 10</u>, within one year after the end of that assignment, knowingly represents or aids, counsels, or assists in representing any other person (except the United States) in connection with any contract with that agency <u>or that Department of Defense organization</u> shall be punished as provided in section 216 of this title.