

## Recommendation 25: Streamline and adapt hiring authorities to support the acquisition workforce.

### Problem

The primary dilemma confronting the hiring process for the defense AFW is the need to fill critical skill gaps. The AFW experiences shortfalls in certain positions and career fields that require specialized skills and backgrounds. The slow pace and rigidity of the hiring process undermines DoD's ability to successfully recruit desirable candidates. Hiring authorities are an important aspect of those process shortcomings. Hiring authorities should allow DoD to hire with speed and flexibility, particularly for high-priority positions. Instead, DoD hiring authorities are too complex to take full advantage of the flexibility offered, and the hiring authorities with the greatest potential for creating speed and flexibility are hindered by internal limitations. As a result, DoD struggles to hire the right applicants with the right skills for the AFW. Hiring authorities must be streamlined and adapted to address the current and evolving AFW needs.<sup>1</sup>

### Background

Different government institutions have assigned meanings to the term *hiring authority*, but these definitions are neither precise nor consistent. According to the Government Accountability Office (GAO), a hiring authority is "the law, executive order, or regulation that allows an agency to hire a person into the federal civil service."<sup>2</sup> In broader terms, hiring authorities determine the rules that a federal agency must adhere to during the hiring process. The traditional federal hiring process, codified in Title 5 of the U.S. Code, is the Competitive Examining Hiring Authority, which establishes uniform hiring rules and procedures across the entire Executive Branch.<sup>3</sup> All other hiring authorities permit federal agencies to fill open positions under different procedures, as opposed to the traditional competitive examining process. The Congressional Research Service (CRS) defines these flexible hiring authorities as "a suite of tools that are intended to simplify, and sometimes accelerate, the hiring process."<sup>4</sup> The fundamental purpose of flexible hiring authorities is to modify the traditional competitive hiring process to make a particular type of hiring easier for the federal government. Most flexible hiring authorities advance one of two goals: to promote a certain category of applicants in the federal hiring process, such as technical acquisition experts, or to ease the hiring process for certain positions, such as scientific and engineering positions in certain DoD laboratories.<sup>5</sup> Flexible hiring authorities can take many different forms and be used to pursue many different specific objectives. Some flexible hiring authorities grant exemptions from aspects of competitive hiring; others provide an agency with greater hiring autonomy. Some flexible hiring authorities apply to the entire Executive

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<sup>1</sup> The composition of the defense acquisition workforce is established at 10 U.S.C. § 1721 (Designation of Acquisition Positions).

<sup>2</sup> GAO, *Federal Hiring: OPM Needs to Improve Management and Oversight of Hiring Authorities*, August 2016, accessed September 29, 2017, <https://www.gao.gov/assets/680/678814.pdf>.

<sup>3</sup> Ibid.

<sup>4</sup> CRS, *The Civil Defense Acquisition Workforce: Enhancing Recruitment Through Hiring Flexibilities*, November 2016, accessed August 14, 2017, <https://fas.org/sgp/crs/natsec/R44695.pdf>.

<sup>5</sup> Management Policies, 10 U.S.C. § 1701. Research and Development Projects, 10 U.S.C. § 2358.

Branch; others apply solely to a particular agency. Some authorities are temporary; others are permanent.<sup>6</sup> Most federal hiring authorities are statutory, rather than regulatory.

The entire federal government used 105 different hiring authorities in FY 2014. Most federal hiring authorities do not apply to the defense AWF. A 2016 CRS report, supplemented by a Section 809 Panel analysis of subsequent NDAAAs, determined that 44 separate hiring authorities can be applied to the civilian AWF.<sup>7</sup> Among those 44 hiring authorities, five are solely available to the AWF; another 15 are available to DoD as a whole; and 24 are available to the entire federal government.<sup>8</sup> The 44 hiring authorities constitute the universe of alternatives to the competitive examining process for the AWF. This landscape has changed rapidly in recent years, as Congress has become increasingly active in using hiring authorities to shape the hiring process for the AWF. Congress has created 12 hiring authorities that are unique to DoD and the AWF since the FY 2016 NDAA. Congress appears to be highly attuned to the use of hiring authorities as a tool to improve the AWF.

## Discussion

### ***Shifting Challenges Confronting the AWF Hiring Process***

The defense AWF has undergone a substantial overhaul during the past decade. Targeted policy responses have supported overcoming some problems, yet other problems have persisted and become more prominent. The current AWF hiring process arose in response to a widespread employee shortfall that occurred after budget cuts in the 1990s, combined with an increased willingness to outsource acquisition activities to contractors in the 1990s and 2000s.<sup>9</sup> Between 1998 and 2008, the size of the AWF decreased by 14 percent from 146,000 to 126,000 employees.<sup>10</sup> Concurrent with those downsizing efforts, the burden placed on the AWF increased substantially due to the wars in Iraq and Afghanistan, which defined the role of the U.S. military in the 2000s.<sup>11</sup> By 2008, both Congress and DoD recognized the AWF lacked capacity to fulfill its responsibilities and jointly committed to reversing the cuts of the previous decade. DoD pledged to increase the AWF by 20,000 employees by FY 2015. Congress created DAWDF in the FY 2008 NDAA and the Expedited Hiring Authority (EHA) in the FY 2009 NDAA.<sup>12</sup> EHA provides substantial hiring flexibility, at the Secretary of Defense's discretion, for AWF positions that are experiencing a *shortage of candidates* or a *critical hiring need*.<sup>13</sup> The combination of EHA, DAWDF, and DoD's AWF hiring efforts erased the overall employee shortfall. By March 2015, the AWF had

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<sup>6</sup> CRS, *The Civil Defense Acquisition Workforce: Enhancing Recruitment Through Hiring Flexibilities*, November 2016, accessed August 14, 2017, <https://fas.org/sgp/crs/natsec/R44695.pdf>.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> GAO, *Defense Acquisition Workforce: Actions Needed to Guide Planning Efforts and Improve Workforce Capability*, GAO-16-80, December 2015, accessed August 14, 2017, <https://www.gao.gov/assets/680/674152.pdf>.

<sup>10</sup> Ibid.

<sup>11</sup> RAND, *The Defense Acquisition Workforce Growth Initiative: Changing Workforce Characteristics and the Implications for Workforce Retention*, September 2016, accessed March 23, 2018, [https://www.rand.org/pubs/rgs\\_dissertations/RGSD383.html](https://www.rand.org/pubs/rgs_dissertations/RGSD383.html).

<sup>12</sup> Section 833 of FY 2009 NDAA, Pub. L. No. 110-417, 122 Stat. 4535 (2008).

<sup>13</sup> Department of Defense Acquisition Workforce Development Fund, 10 U.S.C. § 1705.

increased from 126,000 to 153,000 employees, exceeding DoD's growth goal by a sizeable margin.<sup>14</sup> EHA was the most frequently-used hiring authority for the AWF during this period.<sup>15</sup>

The broad realization of the AWF's growth goals did not extend evenly throughout the workforce. As the overall employee shortfall ended, shortfalls in certain career fields and positions emerged. Between September 2008 and March 2015, six out of 13 career fields missed their growth goals, including the priority career fields of contracting, business, and engineering, which fell more than 3,500 combined employees short.<sup>16</sup> Contracting and engineering, in particular, suffered from "high attrition rates and difficulty in hiring qualified personnel."<sup>17</sup> As a result, competency gaps in critical skills and career fields have become the most pressing challenge confronting the AWF hiring process.

GAO identified the problem as early as December 2015. Because DoD had successfully "surpassed its overall growth goals," the agency urged DoD to emphasize "reshaping career fields to ensure the most critical acquisition needs are being met" and "focus future hiring efforts on priority career fields."<sup>18</sup> AWF stakeholders confirmed that competency gaps remain an ongoing hiring dilemma. One DoD official identified "current and emerging technical skill gaps" as one of the two greatest challenges facing a career field, describing an imperative need to hire the right people with the appropriate skill sets.<sup>19</sup> Another DoD official maintained the key challenge facing the AWF was managing career field skill deficits through "the ability to attract and retain excellent talent."<sup>20</sup> A third DoD official emphasized the need to aggressively identify competency gaps in AWF functional areas to "hire the right people with the right competencies for the right positions."<sup>21</sup>

The existing hiring process has failed to address persistent skill gaps in the AWF. Although hiring authorities are not the only relevant factor in the AWF hiring process—the role of human resources and its relationship to hiring offices is another critical element—the shortcomings in the framework of hiring authorities constitute a key concern that must be reformed.<sup>22</sup>

### ***Excessive Complexity and Undue Constraints on AWF Hiring Authorities***

As noted above, the AWF has access to 44 distinct hiring authorities. Rather than benefitting the hiring process, however, the large number of hiring authorities has hindered the AWF's ability to exploit the hiring flexibilities at its disposal. There are two primary factors undermining the effectiveness of AWF

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<sup>14</sup> GAO, *Defense Acquisition Workforce: Actions Needed to Guide Planning Efforts and Improve Workforce Capability*, GAO-16-80, December 2015, accessed August 14, 2017, <https://www.gao.gov/assets/680/674152.pdf>.

<sup>15</sup> CRS, *The Civil Defense Acquisition Workforce: Enhancing Recruitment Through Hiring Flexibilities*, November 2016, accessed August 14, 2017, <https://fas.org/sgp/crs/natsec/R44695.pdf>. According to a 2016 GAO report, EHA was the 17th most frequently-used hiring authority in the entire federal government in FY 2014, despite being limited to a portion of the DoD workforce.

<sup>16</sup> GAO, *Defense Acquisition Workforce: Actions Needed to Guide Planning Efforts and Improve Workforce Capability*, GAO-16-80, December 2015, accessed August 14, 2017, <https://www.gao.gov/assets/680/674152.pdf>. In 2010, the "business" career field was divided into two separate career fields: business-cost estimating and business-financial management. Nevertheless, GAO reported both career fields under "business" to maintain consistency within the data, and this paper will follow that convention.

<sup>17</sup> GAO, *Defense Acquisition Workforce: Actions Needed to Guide Planning Efforts and Improve Workforce Capability*, GAO-16-80, December 2015, accessed August 14, 2017, <https://www.gao.gov/assets/680/674152.pdf>.

<sup>18</sup> *Ibid.*

<sup>19</sup> DoD official, meeting with Section 809 Panel, November 13, 2017.

<sup>20</sup> DoD official, meeting with Section 809 Panel, December 6, 2017.

<sup>21</sup> DoD official, meeting with Section 809 Panel, January 30, 2018.

<sup>22</sup> The Section 809 Panel plans to address the role of human resources in the AWF hiring process in a future report. This report will focus entirely on AWF hiring authorities.

hiring authorities: the excessive complexity of the existing array of hiring authorities and the unnecessary constraints under which many of them operate.

Officials at every level of the AWF support hiring flexibility, which presents an alternative to a competitive examining process, featuring mandatory procedures for job posting, ranking and rating, and candidate referral, which is universally derided as too slow, cumbersome, and restrictive to support the hiring process the AWF requires. DoD's annual time-to-hire under competitive examining exceeded 100 days on average during 4 of the 6 years between FY 2009 and FY 2014. By contrast, annual time-to-hire exceeded 100 days on average only twice for EHA and once for Direct-Hire Authority (DHA) during the same period.<sup>23</sup> One human resources official described competitive examining as an authority to be avoided at all costs.<sup>24</sup> Nevertheless, an unintended irony continues to sustain competitive examining beyond DoD's intent. Although dozens of hiring authorities exist to serve as alternatives to competitive examining, the very number of hiring authorities has created enough confusion to maintain competitive examining's presence in the hiring process.

Representatives from across the Military Services argued the number and variety of hiring authorities available to the AWF was overwhelming and bred confusion among human resources personnel and hiring offices alike.<sup>25</sup> Multiple officials asserted the large number of hiring authorities has created excessive complexity, leaving both local human resources personnel and hiring offices struggling to fully realize the potential of the hiring flexibilities at their disposal.<sup>26</sup> Officials also said the number of different hiring authorities contributed to tension between human resources personnel and hiring offices over the proper authority to use for a particular job opening.<sup>27</sup> Even when hiring offices are determined to use a particular hiring authority, overly cautious legal guidance can induce them to revert back to the traditional competitive process. As a practical consequence, confusion over hiring authorities has undermined DoD's ability to address critical skill gaps in the AWF by reducing the effectiveness of the hiring authorities that exist for that purpose. Opportunities to use the faster, more flexible EHA or DHA processes have been forsaken in favor of competitive examining; between FY 2012 and FY 2014, a form of competitive examining with no hiring exemptions constituted the second-most frequently used hiring authority for the AWF.<sup>28</sup> One human resources official lamented, "Some folks have not taken advantage of these authorities even though they are sitting right in front of them."<sup>29</sup> The complexity caused by the large number of AWF hiring authorities drives human resources officials to use competitive examining even when they could use hiring authorities designed to accelerate and simplify the hiring process.

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<sup>23</sup> CRS, *The Civil Defense Acquisition Workforce: Enhancing Recruitment Through Hiring Flexibilities*, November 2016, accessed August 14, 2017, <https://fas.org/sgp/crs/natsec/R44695.pdf>.

<sup>24</sup> DoD official, meeting with Section 809 Panel, January 25, 2018.

<sup>25</sup> DoD officials, interviews conducted by Section 809 Panel, from January to April 2018.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> CRS, *The Civil Defense Acquisition Workforce: Enhancing Recruitment Through Hiring Flexibilities*, November 2016, accessed August 14, 2017, <https://fas.org/sgp/crs/natsec/R44695.pdf>. The form of competitive examining currently used by DoD is Delegated Examining Authority, which allows DoD (rather than OPM) to oversee its own hiring procedures but otherwise does not alter the requirements established by Title 5 in any way. For the sake of simplicity, and due to the fact that the two authorities uphold the same Title 5 competitive hiring structure, this paper includes Delegated Examining Authority under the broader term "competitive examining."

<sup>29</sup> DoD official, meeting with Section 809 Panel, January 30, 2018.

A number of potentially vital hiring authorities are stymied by statutory constraints. In the past three NDAAAs, Congress has created 12 new hiring authorities that can be applied to the AWF. The new hiring authorities have contributed to the problem of excessive complexity, yet they also contain potentially powerful new tools to streamline the AWF hiring process. Among these recently enacted hiring authorities are multiple new DoD-unique DHAs, a type of authority that expedites the hiring process by providing exemptions from provisions of Title 5, including competitive rating and ranking procedures and veterans' preference.<sup>30</sup>

DoD officials have expressed eagerness to maximize the potential of these new hiring authorities, which are directed at key competencies and applicant groups such as science, technology, engineering, and math (STEM) researchers; financial management experts; and recent college graduates. One military official said the Military Service intended to go "full throttle" in maximizing the new DHAs.<sup>31</sup> This top-level enthusiasm on the part of acquisition leaders is starting to produce results. For example, hiring data provided by the Air Force Personnel Center revealed that in FY 2017, the first year many of the new DHAs were implemented, the Air Force hired 125 AWF employees through the new DHAs despite a hiring freeze.<sup>32</sup> The effect of the new hiring authorities is circumscribed, however, by their statutory language. Each of the hiring authorities contains strict limitations on the scope of implementation. Most authorities impose ceilings on the number of applicants that can be hired annually, either in the form of a hard numerical cap or as a percentage of the existing workforce in a respective category during the previous fiscal year. Most authorities are also temporary, with authorizations that expire in the early 2020s. As DoD fully implements these hiring authorities over the next few years, statutory constraints will limit their ability to simplify and accelerate the AWF hiring process. In conversations with the Section 809 Panel, multiple senior AWF officials endorsed eliminating statutory constraints by lifting hiring caps and removing sunset dates. One official summed up the prevailing attitude declaring that in terms of hiring authorities, "if it's a skill shortage category, the fewer restrictions, the better."<sup>33</sup>

The current state of AWF hiring authorities defies a simple diagnosis. The total number of hiring authorities applicable to the AWF is too large, and the ensuing complexity has hindered DoD's ability to properly use the flexibilities at its disposal. Simultaneously, however, recently enacted hiring authorities offer considerable potential that is impeded by constraints in their statutory language. In seeking a policy solution, these dilemmas must be addressed in a complementary manner that strengthens DoD's ability to use the hiring process to address persistent AWF critical skill gaps.

### ***New Horizon for Expedited Hiring Authority***

As the AWF hiring process reorients itself to prioritize competency shortfalls, EHA's role must also be evaluated. EHA has been a critical instrument in DoD's recent AWF hiring, and its widespread implementation has succeeded, partially offsetting the complexities described above. In FY 2015,

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<sup>30</sup> GAO, *Federal Hiring: OPM Needs to Improve Management and Oversight of Hiring Authorities*, GAO-16-521, August 2016, accessed September 29, 2017, <https://www.gao.gov/assets/680/678814.pdf>.

<sup>31</sup> DoD official, meeting with Section 809 Panel, January 25, 2018.

<sup>32</sup> Air Force Personnel Center email to Section 809 Panel, January 23, 2018. DoD's difficulty in quickly implementing new AWF hiring authorities was raised several times in Panel discussions with DoD stakeholders. The Panel plans to address this issue in a future report as a part of its recommendations regarding the role of human resources in the AWF hiring process.

<sup>33</sup> DoD official, meeting with Section 809 Panel, January 30, 2018.



FY 2016, and FY 2017, for example, the Air Force used EHA to hire about 62 percent of all new external AWF hires.<sup>34</sup> EHA's ascent as the only hiring authority that has been used more often than competitive examining has also exposed its limitations. It is a tool devised to solve the problem of a general employee shortage, yet the most pressing workforce issue now is critical skill gaps.

Congress created EHA in the FY 2009 NDAA to address a distinct problem: the overall AWF employee shortfall. EHA was designed to mitigate this problem by allowing DoD—at its own discretion, rather than the Office of Personnel Management's (OPM's)—to use a streamlined, accelerated hiring process for any AWF position that was experiencing a “shortage of candidates” or a “critical hiring need.”<sup>35</sup> EHA accomplished its objective, and senior AWF officials expressed support for the authority, which they described in glowing terms as “huge,” an authority that DoD was “really lucky” to possess, and an authority that should be the preferred option for hiring “every time, all the time, no matter what.”<sup>36</sup> EHA played an essential role in solving the problem for which it was designed: increasing the total size of the AWF from 126,000 to 153,000 employees in a little more than 6 years. It has proven to be less effective in confronting the persistent critical skill gaps. Even as EHA has benefitted the AWF as a whole, these skill gaps have remained.

EHA's weakness in this regard is structural. EHA emphasizes the position itself, rather than the types of applicants that DoD wishes to hire. Under the current authority, a Military Service or Defense Agency must prove that positions are experiencing a shortage of candidates or a critical hiring need to gain access to EHA. As a result, DoD uses EHA for specific occupational series and positions in the AWF, but those positions are dictated by the hiring difficulties of the position rather than a strategic understanding of AWF hiring needs. This structure is effective at accelerating the overall pace of hiring, but less effective at advancing the individuals with competencies DoD needs to fill critical skill gaps. Such applicants often do not fit within the contours of EHA as currently applied.

This shortcoming of EHA explains the limits of its present-day effectiveness; yet EHA's ongoing centrality to the AWF hiring process and its potential to have an even greater effect cannot be overstated. EHA is a successful hiring authority that enjoys broad appeal among both congressional and DoD stakeholders. DoD is experienced at implementing EHA, having successfully applied the hiring authority for nearly a decade.<sup>37</sup> Because of this popularity and familiarity, reorienting EHA to support hiring to fill critical skill gaps appears more practical than creating a new hiring authority. If EHA can be adapted to address competency shortfalls as effectively as it addressed overall employee shortfalls, it would become an even more powerful tool for the AWF. An effective policy would modify

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<sup>34</sup> Air Force Personnel Center email to Section 809 Panel, January 23, 2018. In FY 2015, 2016, and 2017, the Air Force used EHA to hire 4,556 new external employees out of 7,374 total external hires.

<sup>35</sup> Department of Defense Acquisition Workforce Development Fund, 10 U.S.C. § 1705. Under the original statutory authority of EHA, DoD's authority was more narrowly tailored to exclusively hire “highly qualified” applicants for positions experiencing a “severe shortage of candidates.” In subsequent years, Congress expanded EHA to permit the hiring of all qualified applicants, rather than merely highly qualified applicants, and to encompass positions facing a “critical hiring need” as well as a shortage of candidates. Congress also changed EHA's status from a temporary to a permanent hiring authority in 2015. See CRS, *The Civil Defense Acquisition Workforce: Enhancing Recruitment Through Hiring Flexibilities*, November 2016, accessed August 14, 2017, <https://fas.org/sgp/crs/natsec/R44695.pdf>.

<sup>36</sup> DoD official, meeting with Section 809 Panel, December 6, 2017. DoD official, meeting with Section 809 Panel, January 25, 2018.

<sup>37</sup> OSD Memorandum, *Extension of Expedited Hiring Authority for Select Defense Acquisition Workforce Positions – Removal of Sunset Date*, September 6, 2017, accessed May 8, 2018, [http://www.hci.mil/docs/Policy/OUUSD\(AT&L\)%20Memoranda/09-06-2017\\_JointATL\\_PR\\_Memo-Expedited\\_Hiring\\_Auth\\_Permanence.pdf](http://www.hci.mil/docs/Policy/OUUSD(AT&L)%20Memoranda/09-06-2017_JointATL_PR_Memo-Expedited_Hiring_Auth_Permanence.pdf).

EHA to meet the challenges of the moment while maintaining the characteristics that have made it so valuable since its creation.

## **Conclusions**

The existing framework of hiring authorities for the AWF fails to support DoD's efforts to address critical skill gaps through the hiring process. The Section 809 Panel's proposed response is twofold: streamlining the total number of hiring authorities used by the AWF, and introducing a new element to expedited hiring authority specifically designed to confront the AWF's critical skill deficiencies. The two parts of the proposal pursue the same objective and complement each other. Streamlining would simplify use of hiring authorities and allow DoD to emphasize hiring authorities that exist to mitigate present-day critical skill gaps. Broader authority under EHA would allow DoD to quickly respond to emerging critical skill gaps within this familiar framework. Streamlining hiring authorities strengthens DoD's ability to realize the potential of its current hiring tools; broadening EHA provides DoD with the flexibility it needs to adapt hiring tools for the future. The two elements work together to ensure hiring authorities target critical skill gaps, the primary challenge confronting today's AWF hiring process. The proposed recommendations are structured to avoid unintended consequences. They are designed to increase flexibility in the AWF hiring process and broaden EHA, yet maintain existing flexibilities.

### ***A Streamlined List of Hiring Authorities for the Acquisition Workforce***

DoD aspires to maximize use of its hiring authorities to eliminate critical skill gaps within today's AWF. Its efforts are undermined by a framework that features too many applicable hiring authorities and too many statutory constraints. The solution to these problems requires action on the part of both DoD and Congress. DoD should act on its own initiative to streamline the hiring authorities available to the AWF. At the same time, Congress should act to lift the limitations on the hiring authorities that remain. By acting in tandem, AWF hiring authorities can be simultaneously simplified and enhanced, with a small number of hiring authorities providing greater speed and flexibility to the AWF hiring process in addressing competency shortfalls. Simplicity and scope can be complementary, rather than contradictory, for AWF hiring authorities.

A streamlined framework for DoD's AWF hiring authorities, with fewer hiring authorities, would offer greater latitude for DoD in addressing critical skill gaps and supporting general AWF hiring. The central element of this framework should be a master list of primary hiring authorities, established through DoD regulatory guidance, which would elevate the selected authorities to a paramount position in the hiring process for civilian external hires. DoD's guidance would direct human resources agencies and hiring managers to use the primary hiring authorities to the greatest extent possible when filling AWF positions through external hires. Under the guidance, hiring officials would be required to consult the list of primary hiring authorities first when attempting to hire externally.

As part of its regulatory guidance, DoD could support human resources personnel and hiring managers charged with implementing the master list. The guidance should explain why the hiring authorities were included on the master list and direct employees to training resources that are generated by the Office of the Secretary of Defense (OSD), Defense Acquisition University (DAU), or the Military Services.

Only after determining that no primary hiring authority could feasibly be used would other, nonprimary hiring authorities provide a last resort. Congress should act in concert with DoD by expanding the scope of primary hiring authorities, where necessary, by lifting caps that limit the number of annual hires and repealing existing sunset dates. Congressional action to remove the restrictions on key AWF hiring authorities would ensure DoD’s streamlined set of authorities would still provide the hiring speed and flexibility essential to addressing critical skill gaps. DoD stakeholders are amenable to both regulatory action to streamline AWF hiring authorities and statutory action to eliminate restrictions. Regulatory action to create a list of primary AWF hiring authorities is preferable to streamlining through the statutory repeal of nonprimary authorities. The reason is straightforward: Hiring authorities that are redundant or unnecessary for DoD’s AWF may nonetheless serve important functions for other elements of the DoD workforce, and other departments and agencies throughout the federal government. In seeking to avoid unintended consequences, DoD regulatory guidance is the most tailored mechanism to achieve the benefits of streamlining.

Primary AWF hiring authorities should prioritize mitigating competency shortfalls throughout the AWF while maintaining the general hiring rate. The logical focus of DoD’s master list of AWF hiring authorities lies in directing flexible hiring authorities toward desirable applicant categories and positions suffering from critical skill gaps. These goals shaped the panel’s assessment of existing AWF hiring authorities. The following table details the seven AWF hiring authorities the panel supports for inclusion on the master list for civilian external hires, as well as any recommended statutory changes to those hiring authorities:

**Table 2-1. Master List of Primary AWF Hiring Authorities**

Primary Hiring Authority	Rationale for Inclusion	Recommended Statutory Changes
Expedited Hiring Authority	EHA is vital to general AWF hiring.	See EHA section, below
“Super-DHA”: A new, consolidated hiring authority encompassing five existing DHAs (Technical Acquisition Experts; Financial Management Experts; Post-Secondary Students and Recent Graduates; Domestic Defense Industrial Base Facilities, Major Range and Test Facilities Base, and Office of DOT&E; Business Transformation and Management Innovation) and an existing pilot program (Enhanced Personnel Management System for Cybersecurity and Legal Professionals)	The Super-DHA would unite six different hiring authorities targeting specific gaps in the civilian AWF and establish a consistent set of hiring flexibilities for all of them. As a result, a single DHA would become the focal point for the hiring flexibilities intended to address critical skill gaps, and the use of DHA would be streamlined for the hiring process. The existing requirements governing applicable categories of positions and applicants would remain unchanged.	Consolidate statutory authorities into one hiring authority  Technical Acquisition Experts DHA: Lift Annual Hiring Cap; Repeal Sunset  Financial Management Experts DHA: Lift Annual Hiring Cap; Repeal Sunset  Post-Secondary Students and Recent Graduates DHA: Lift Annual Hiring Cap; Repeal Sunset; Harmonize Title 5 Exemption with other DHAs  Domestic Defense Industrial Base Facilities, Major Range and Test Facilities Base, and Office of DOT&E DHA: Repeal Sunset; Harmonize Title 5 Exemption with other DHAs



Primary Hiring Authority	Rationale for Inclusion	Recommended Statutory Changes
		<p>Business Transformation and Management Innovation DHA: Lift Overall Hiring Cap; Repeal Sunset</p> <p>Cybersecurity and Legal Professionals Pilot Program: Convert into permanent DHA for Cyber and IT positions in civilian AWF with no hiring cap and similar Title 5 exemption as other DHAs</p>
<p>DoD ST: A new, DoD-unique Scientific and Professional Positions (ST) hiring authority</p>	<p>A DoD-unique ST hiring authority would provide greater flexibility to DoD in using ST to hire for advanced scientific research positions, which is a critical competency for DoD. The current rules governing ST would remain unchanged, but would be administered by the Secretary of Defense rather than OPM.</p>	<p>Provide Title 10 statutory authority</p> <p>Enable Secretary of Defense to oversee ST positions and qualifications</p> <p>Establish position cap equivalent to the number of ST positions currently allocated to DoD by OPM</p>
<p>Pathways Program</p>	<p>Even after the creation of the Post-Secondary Students and Recent Graduates DHA, Pathways internships remain critical to DoD’s recruitment of certain types of applicants, including high school graduates and vocational school graduates.</p>	<p>No change</p>
<p>Science, Mathematics, and Research for Transformation (SMART) Defense Education Program</p>	<p>The SMART Scholarship Program is an important recruitment tool for STEM undergraduate and graduate students, which represents an ongoing critical skill gap for the AWF.</p>	<p>No Change</p>
<p>Cyber Scholarship Program</p>	<p>The Cyber Scholarship Program is an important recruitment tool for IT undergraduate and graduate students. They represent an ongoing critical skill gap for the AWF.</p>	<p>No Change</p>
<p>AcqDemo</p>	<p>AcqDemo possesses unique hiring authorities that pertain solely to positions covered by the demonstration project. At the same time, positions covered by AcqDemo can still use the full suite of hiring authorities available to the broader AWF. This distinct arrangement should remain unchanged at present.</p>	<p>No change (see the AcqDemo proposal in this chapter for recommended statutory changes to the AcqDemo program and further discussion of AcqDemo hiring authorities)</p>

The master list consolidates existing AWF hiring authorities. The Section 809 Panel advocates several substantial changes, but none of the seven primary hiring authorities have been invented wholesale, and each of them is based in existing hiring authorities. The panel selected these hiring authorities for two broad reasons: their ability to introduce greater speed and flexibility into the AWF hiring process, particularly in regards to critical competencies, and the large extent to which they render other AWF hiring authorities redundant or unnecessary, in turn facilitating streamlining and easing the complexity of the hiring process. The benefits of the primary hiring authorities in terms of addressing critical skill gaps are highlighted above. Those benefits would be diminished if other, similarly useful hiring authorities were excluded from common use.

The Section 809 Panel sought to ensure the primary hiring authorities, despite their small number, still encompassed the entire range of necessary hiring flexibilities that currently serve the AWF. For example, different types of applicants to scientific and engineering positions at DoD Science and Technology Reinvention Laboratories (STRL) currently benefit from DHA hiring flexibilities. Comparable flexibility for those STRL positions in the AWF is conveyed through the Technical Acquisition Experts DHA, which is consolidated into the Super-DHA and therefore renders the STRL DHAs redundant. A DHA for positions involved in Iraqi reconstruction efforts has existed for more than a decade and focuses solely on relevant linguistic skills at a time when the scale of DoD's acquisition requirements in Iraq have dramatically declined. Finally, the highly qualified experts (HQE) hiring authority is simply underused due to confusion surrounding its requirements on the part of hiring managers.<sup>38</sup> These examples represent the large number of hiring authorities that offer insufficiently unique value to the AWF, increase the complexity of the hiring process, and undermine the small number of hiring authorities that should be prioritized.<sup>39</sup> By contrast, a master list would provide a simplified set of primary AWF hiring authorities that human resources personnel and hiring managers would find easier to understand and implement.

The proposed framework for AWF hiring authorities, centered on a master list of seven primary hiring authorities, offers substantial benefits to DoD. By removing dozens of AWF hiring authorities from common consideration, the framework would ease the complexity of the hiring process, minimize confusion for officials involved in hiring decisions, and elevate use of DoD's preferred hiring authorities. By promoting use of the seven primary hiring authorities described above, the framework would emphasize the speed and flexibility of the AWF hiring process for critical skill positions (such as STEM and financial management) and desirable categories of applicants (such as college and graduate students). Setting clear regulatory guidance to create a set of paramount hiring authorities, would allow DoD to send a strong message to human resources personnel regarding the priorities for AWF hiring. The message would help to ensure that human resources entities are aligned with DoD hiring objectives by assisting human resources and hiring offices in using the tools provided to them in support of those objectives.

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<sup>38</sup> CRS, *The Civil Defense Acquisition Workforce: Enhancing Recruitment Through Hiring Flexibilities*, November 2016, accessed August 14, 2017, <https://fas.org/sgp/crs/natsec/R44695.pdf>.

<sup>39</sup> A comprehensive table of hiring authorities applicable to the AWF can be found in Appendix C.

### ***A Broader Orientation for Expedited Hiring Authority***

EHA occupies a unique position in the current framework of AWF hiring authorities. It is the single most important hiring authority for AWF general hiring and must remain in any reorganization. As the AWF hiring process confronts the fundamental challenge of the present moment—the need to eliminate critical skill gaps by hiring the right candidates, with the right skill sets, to the right positions—EHA should be equipped to play an even larger role. To do so, EHA must be updated to reflect the current priorities of the AWF hiring process. To fully realize its potential, EHA must do more than accelerate the pace of general AWF hiring; it must also provide DoD with the adaptability it needs to quickly direct hiring flexibilities toward emerging competency shortfalls as they are identified. EHA can provide the AWF with the necessary hiring tools to overcome unexpected problems of the future, as well as acknowledged shortcomings of the present.

EHA can be reoriented to prioritize AWF critical skill gaps by adding a new category designation to the EHA statutory authority: *critical skill deficiency (CSD)*. Unlike the two existing EHA category designations, which cover AWF positions that are experiencing a *shortage of candidates* or a *critical hiring need*, CSD authority would explicitly focus on the characteristics of the applicants rather than the hiring conditions of the position. Under the proposal, Congress would authorize DoD to designate up to 10 CSDs within each Military Service and the 4th Estate on an annual basis.<sup>40</sup> The CSD designation would permit the Military Services and the 4th Estate to use EHA to hire applicants who possess the identified critical skill. A single CSD designation would cover much more than a single hire; each CSD could encompass a broad swath of the AWF, depending on the nature of the critical skill and its value to different kinds of positions within the AWF. The CSD designation could be applied across different occupational series, position categories, and career fields, as long as the critical skill was lacking. Allowing each Military Service to designate no more than 10 CSDs would be a manageable number to ensure senior DoD officials can maintain effective oversight during the authority's implementation. The number of CSDs could be reevaluated to determine if an increase would benefit DoD.

DoD would be permitted to delegate the designation authority for the 10 CSDs to the Military Services and the 4th Estate, which would allow them to define their own critical skill deficiencies according to their own AWF competency shortfalls. Under that scenario, each Military Service and the 4th Estate would be authorized to designate up to 10 CSDs annually, which would apply only to their own workforce. The number of CSDs would remain 10 for each year, regardless of the previous year's activity; if a Military Service or the 4th Estate failed to designate the maximum 10 CSDs in a given year, it would not be able to roll over the unused CSDs to the following year, but it would also not be at risk of losing the unused CSDs permanently. The purpose of the CSD designation process would be to identify critical skill deficiencies in the AWF and create a set of criteria related to the respective critical skills, such as educational credentials or professional experience, which could be used during the hiring process to evaluate whether an applicant possessed the critical skill. Beyond that requirement, however, the Military Services and 4th Estate would possess considerable latitude to develop the annual CSD designation process in accordance with their own internal structures. Each Military Service and the 4th Estate would be able to select its own office to oversee the process, create its own method for identifying critical skill deficiencies in the AWF, and forge its own consultative practices to ensure

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<sup>40</sup> The 4th Estate encompasses the DoD components outside of the Military Services and consists of 33 separate Defense Agencies.

that hiring offices and senior leaders reached a consensus regarding the qualifications of a critical skill. Freedom for the Military Services and 4th Estate in implementing the CSD authority would allow them to develop a nimble process that would be capable of rapidly responding to AWF skill gaps.

The Military Services and 4th Estate would also be free to apply CSD authority creatively. A variety of skill gaps exist in the AWF, some of which might not be considered conventional acquisition skill sets. Through the CSD designation process, DoD would possess a tool to use EHA to address both orthodox and unorthodox AWF skill gaps. Thus, CSD authority could assist the AWF in recruiting candidates with skills that are widely acknowledged as desirable, such as private-sector negotiating experience and quantitative data competence. At the same time, it could also assist the AWF in recruiting candidates with skills that fill emerging or less obvious gaps, such as experts from the commercial innovation sector, or individuals with experience in the use of cloud computing services, or skilled supply chain managers, or even talented writers. The need for these kinds of critical skills exists throughout the AWF. For example, a CSD designation for supply chain management expertise could benefit positions in multiple acquisition career fields such as contracting, program management, purchasing, and business. The CSD designation process would allow each Military Service and the 4th Estate to broaden its assessments of critical skills for the AWF and take tangible action to acquire those skills.

After a Military Service or the 4th Estate had designated its annual CSDs, the organization would declare which types of positions stood to benefit from employees who possess corresponding critical skills. Those declared positions, which could extend across multiple occupational series, position categories, and career fields, would subsequently be covered by that CSD. A single position could be covered by multiple CSDs if it would benefit from multiple critical skills. For the remainder of that year, if an office had a job opening in a CSD-covered position, EHA would be available to fill the position. The decision to use EHA would belong solely to the hiring manager.

If a hiring manager opted to use EHA for a CSD-covered position, human resources personnel would be required to accept the use of EHA for that position and would not possess any leeway to suggest otherwise. From that point on, the process could proceed on one of two different tracks. If a hiring manager was prepared to directly select a candidate, which is permitted under EHA, human resources personnel would simply be required to verify the candidate possessed the relevant critical skill, as defined by the aforementioned critical skill criteria. If a hiring manager was not prepared to directly select a candidate and requested the assistance of human resources in generating a group of candidates to choose from, human resources personnel could only advance those applicants who possess the relevant critical skill. The hiring manager could then select a candidate from the group produced by human resources. In either case, the candidate selected by the hiring manager would subsequently be processed by human resources, and the hiring process would be complete. The CSD process would ensure that offices could harness the benefits of EHA for the sake of hiring particularly qualified candidates with precisely the skill sets required for the open position. It would guarantee that for CSD-covered positions, hiring managers would be able to prioritize applicants with desirable skill sets and act on those priorities.

An expansion of EHA to include CDS authority would benefit the AWF. In a meeting with the Section 809 Panel, one senior AWF official argued in favor of “a blanket hiring authority for the critical skills

we need,” because skill gaps can extend across the AWF and pose “larger issues across career fields” than the current hiring process is equipped to address.<sup>41</sup> CSD authority is designed to provide such capability. The structure of EHA would be reoriented toward the applicants’ qualifications, which would align the hiring authority more effectively with the goals of the current AWF hiring process. Rather than emphasizing the need to hire for certain positions, CSD authority would emphasize the need to hire certain types of candidates. The Military Services and the 4th Estate would possess the capability to identify their own AWF hiring needs and quickly redirect hiring flexibilities to address them. By extension, they would also gain a stronger incentive to develop more effective mechanisms for measuring competency shortfalls in the AWF, as well as a rationale for using them systematically and frequently to take full advantage of the CSD authority.

The scope of EHA would expand as well, because every AWF position would enjoy the possibility of benefiting from CSD authority in any given year, based on the annual CSD designations. Hiring managers would be empowered through the CSD process. CSD designations would provide hiring managers with a simple framework for using EHA: Positions covered by a CSD designation would be clearly defined, and if hiring managers for a CSD-covered position sought to use EHA, they would understand that they possessed the authority to do so on their own prerogative. They would also be guaranteed to review applicants who possessed the critical skills that they sought for the position. This clarity would address much of the current disconnect between hiring managers and human resources personnel over using EHA and evaluating applicants.

CSD authority is a preferred vehicle in pursuing hiring flexibility for persistent and emerging AWF skill gaps. As a part of EHA, CSD authority would benefit from the broad support among stakeholders that EHA has earned since its enactment. CSD authority would also be enhanced by the experience DoD has acquired through its successful implementation of EHA during the previous decade. The flexibility that CSD authority would provide to DoD—the ability to identify its own critical skill gaps and act on its own initiative to direct hiring flexibilities toward those areas of the AWF—would preclude the need for constant congressional action in the same sphere. Rather than requiring a new hiring authority for each critical skill gap in the AWF, DoD would possess the authority to act on its own. DoD would be capable of achieving the same ends that Congress has desired in recent years at a much faster pace, and through a permanent structure that would be agile enough to respond to new and unanticipated competency shortfalls in the AWF in the years to come.

## **Implementation**

### ***Legislative Branch***

- Consolidate six hiring authorities—Technical Acquisition Experts DHA; Financial Management Experts DHA; Post-Secondary Students and Recent Graduates DHA; Domestic Defense Industrial Base Facilities, Major Range and Test Facilities Base, and Office of DOT&E DHA; Business Transformation and Management Innovation DHA; and Enhanced Personnel Management System for Cybersecurity and Legal Professionals Pilot Program into a single

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<sup>41</sup> DoD Official, meeting with Section 809 Panel, January 31, 2018.



Super-DHA statutory hiring authority at 10 U.S.C. XXX and repeal restrictions on Super-DHA hiring flexibilities.

- Technical Acquisition Experts DHA (10 U.S.C. § 1701 note): Lift 5 percent annual hiring cap and repeal December 31, 2020 sunset date.
- Financial Management Experts DHA (10 U.S.C. Ch. 81): Lift 10 percent annual hiring cap and repeal December 31, 2022 sunset date.
- Post-Secondary Students and Recent Graduates DHA (10 U.S.C. Ch. 81): Lift 15 percent annual hiring cap, extend statutory exemption to encompass all of Subchapter I of Chapter 33 of Title 5, and repeal September 30, 2021 sunset date.
- Domestic Defense Industrial Base Facilities, Major Range and Test Facilities Base, and Office of DOT&E DHA (10 U.S.C. Ch. 81): Extend statutory exemption to encompass all of Subchapter I of Chapter 33 of Title 5 and repeal sunset date at the end of FY 2021.
- Business Transformation and Management Innovation DHA (10 U.S.C. Ch. 81): Lift 10-employee hiring cap and repeal September 30, 2021 sunset date.
- Enhanced Personnel Management System for Cybersecurity and Legal Professionals Pilot Program (10 U.S.C. Ch. 81): Convert into a permanent DHA for cyber and information technology positions in civilian AWF, exempt from Subchapter I of Chapter 33 of Title 5 and without a hiring cap.
- Create a DoD-unique Scientific and Professional Positions (ST) hiring authority, based in Title 10, under the authority of the Secretary of Defense.
  - Limit the number of DoD ST positions to the corresponding number of traditional ST positions that are allocated to DoD by OPM at the date of enactment
- Amend Expedited Hiring Authority at 10 U.S.C. § 1705(f) to add critical skill deficiency category of positions, alongside existing shortage of candidates and critical hiring need categories.
  - Authorize DoD to designate 10 critical skill deficiencies annually within each of the Military Services and the 4th Estate
  - Allow each critical skill deficiency designation to permit use of EHA for AWF positions in need of the critical skill.
  - Provide the Military Services and the 4th Estate 10 critical skill deficiency designations each year, regardless of whether they used all 10 during the previous year.

### ***Executive Branch***

- Create a master list of seven primary AWF hiring authorities within 6 months: Expedited Hiring Authority (10 U.S.C. § 1705(f)); Super-DHA (10 U.S.C. XXX); DoD Scientific and Professional Positions (10 U.S.C. XXX); Pathways Program (EO 13562 and 5 CFR Part 362); Science, Mathematics and Research for Transformation (SMART) Defense Education Program (10 U.S.C. § 2192a); Cyber Scholarship Program (10 U.S.C. § 2200a); AcqDemo (10 U.S.C. § 1762).
  - Promulgate the master list throughout Military Services and the 4th Estate
  - Direct human resources personnel and hiring managers to prioritize master list primary hiring authorities for all civilian AWF external hires.

- Instruct human resources personnel and hiring managers that non-master-list hiring authorities should only be utilized as a last resort for all civilian AWF external hires.

***Implications for Other Agencies***

- There are no cross-agency implications for this recommendation.