UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

PERSONNEL AND
READINESS

SEP 12 2007

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
COMMANDERS OF THE COMBATANT COMMANDS
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
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ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, PROGRAM ANALYSIS AND EVALUATION
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DEFENSE FIELD ACTIVITIES

Subject: Employment of Highly Qualified Experts - Policy Addendum

This memorandum amends the procedures in the "Revised policy - Employment of Highly Qualified Experts," June 27, 2006 (attached).

Section G.3. of the policy is amended to permit authorization under 5 USC 9903 of a retention incentive to retain a highly qualified expert when the organization has a special need for the employee's services that makes it essential to retain the employee, and the employee would likely leave the Federal service in the absence of the incentive (e.g., employee receives an offer of employment from a private firm). Retention incentives may be paid in a single lump-sum payment after the completion of the full service period or in installments after the completion of specified periods of service. The method used in determining installment payments must be documented before the initial payment occurs. A written service agreement documenting a minimum period for employment that is commensurate with the incentive amount is required prior to receipt of payment.

David S. C. Chu

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JUN 27 2006

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
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DIRECTOR, NET ASSESSMENT
DIRECTOR FORCE TRANSFORMATION
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DEFENSE FIELD ACTIVITIES

SUBJECT: Revised Policy - Employment of Highly Qualified Experts

This memorandum cancels DoD memorandum dated February 27, 2004, subject, "Employment of Highly Qualified Experts," and replaces it with the policy contained herein.

Section 9903 of title 5, United States Code (U.S.C.), as enacted by section 1101 of the National Defense Authorization Act, for Fiscal Year 2004, Pub. L.108-136, 117 Stat. ' 1632-1633 (November 24, 2003), provided the Department of Defense with the ability to attract eminent experts with state-of-the-art knowledge in fields of critical importance to the Department. Specifically, this legislation authorized DoD to develop a program to hire highly qualified experts in critical occupations for up to five years, with the possibility of a one-year extension, and to prescribe the appropriate compensation.

The Secretaries of the Military Departments, and heads of Defense Agencies and Field Activities with independent appointing authority for themselves and their serviced organizations (herein referred to as Component Heads) are hereby redelegated the authority delegated to me by Deputy Secretary of Defense memorandum, dated February 11, 2004, to hire and compensate highly qualified experts consistent with the attached policy. DoD Component heads may further delegate this authority in writing to an

individual reporting directly to them. The Secretaries of the Military Departments may further delegate this authority to Directors of those Defense Laboratories not excluded by statute from the National Security Personnel System.

The attached revised guidance implements DoD policy and procedures for appointing and compensating highly qualified experts as authorized under 5 U.S.C. 9903. The Deputy Under Secretary of Defense (Civilian Personnel Policy) will provide allocations for this fiscal year under separate cover.

David S. C. Chu

Attachment:
As stated

Department of Defense

Employment of Highly Qualified Experts Guidance and Procedures

A. General Information

1. Section 1101 of the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108-136, 117 Stat. 1632-1633 (November 24, 2003), amends title 5, United States Code (U.S.C.), by adding a new Chapter 99 entitled Department of Defense (DoD) National Security Personnel System (NSPS).

2. Section 9903 of title 5, U.S.C., gives the Secretary of Defense authority to establish a DoD program to attract highly qualified experts. This guidance implements this authority.

B. Applicability.

This policy applies to the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, the Office of the Inspector General, the Combatant Commanders, the Defense Agencies, the DoD Field Activities, and all other organizational entities of the Department of Defense (the "DoD Components").

C. Definitions

Highly Qualified Expert (HQE). An individual who possesses uncommon and recognized knowledge, skills, and experience in an occupational field, and judgment that is accorded authority and status by peers or the public. An HQE has substantive experience and/or education, is generally credentialed, and has proven ability in a particular field or fields.

D. Policy

1. It is the policy of the Department of Defense to hire Highly Qualified Experts to bring enlightened thinking and innovation to help advance the Department's national security mission. These eminent experts are a temporary infusion of talent and provide non-permanent support for short-term endeavors that will maintain an enduring DoD capability. The expert knowledge or skills are generally not available within the Department and are needed to satisfy an emerging and relatively short-term (5 years or less), non-permanent requirement.

2. Highly Qualified Experts contribute in a variety of occupational fields, such as soft and hard sciences, engineering, technology, human resources, business,

transformation, education, medicine, languages, and logistics. They may contribute by mentoring, leading, overseeing, directing, managing, and or consulting on DoD programs and initiatives, including high profile and fast track assignments.

3. Highly Qualified Experts will not be hired to positions as the head of a Component or to replace a member of the Senior Executive Service in a continuing Department function, or to by pass or undermine the hiring of a career member of the Senior Executive Service for a permanent position.

4. The authority to employ experts shall not be used to provide any one person temporary employment in anticipation of a permanent appointment.

5. (a) The Secretaries of the Military Departments and the Heads of Defense Agencies and DoD Field Activities with independent appointing authority on behalf of themselves and their serviced populations may appoint highly qualified experts from outside the civil service and uniformed services to positions with any work schedule (i.e., full-time, part-time, or intermittent) without regard to any other provisions of title 5, U.S.C. This authority may be redelegated in writing only to persons in positions that report directly to the Secretaries or the Agency or Field Activity Heads.

   (b) The Directors of the Defense Laboratories may appoint highly qualified experts from outside the civil service and uniformed services to positions in their organizations with any work schedule (i.e., full-time, part-time, or intermittent) without regard to any other provisions of title 5, U.S.C. This authority may not be further re-delegated.

E. Guidance

1. This authority is in addition to the authority to appoint experts and consultants under 5 U.S.C. 3109 and section 1101 of the NDAA for FY 1999, as amended. Currently employed experts may continue to serve in their positions in accordance with the provisions of their appointments.

2. Employment under this authority may not exceed five years. Designees may, on a case-by-case basis, extend appointments for up to one additional year. Justification for the extension must include a statement of the need to retain the services of the employee, as well as the employee's expertise, and a discussion of the extension's role in promoting DoD's national security mission.

3. The hiring of, and pay setting for, highly qualified experts shall be in accordance with the procedures prescribed in this guidance. Designees may set the pay upon

initial appointment of highly qualified experts, increase pay, and pay bonuses and incentives as prescribed in this policy.

4. The total number of highly qualified experts DoD-wide may not exceed 2,500 at any time. The Deputy Under Secretary of Defense (Civilian Personnel Policy (DUSD)(CPP)) will oversee and manage allocation reserves and approve cross leveling of allocations. At the beginning of each fiscal year, the DUSD(CPP) will apportion a share of the allocations based on civilian end strength, prior-year usage, and the needs of the DoD Components.

5. As the need arises, underutilized authorizations may be re-allocated and additional allocations may be requested, with justification, for approval by the DUSD(CPP).

6. In the event the Secretary of Defense terminates this program, the following provisions will apply to an employee who, on the day before the program terminates, is serving in a position pursuant to an appointment under 5 U.S.C. 9903(b):

   (a) The termination of the program will not terminate the employee's employment in that position before the expiration of the lesser of:

      (1) The period for which the employee was appointed; or

      (2) The period to which the employee's service is limited under 5 U.S.C. 9903(c) and this policy, including any extension made before the termination of the program; and

   (b) The rate of basic pay prescribed for the position may not be reduced as long as the employee continues to serve in the position without a break in service.

F. Appointment Procedures

1. An employee who separated under authority of the Voluntary Separation Incentive Pay (VSIP) Program is prohibited from reemployment with the Department for 12 months after separation, and may not be reemployed within five years unless the employee repays the separation incentive. Appointment under this policy constitutes reemployment with the Department and all prohibitions and repayment requirements apply. Reemployment restrictions are specified in Section 9902(i) of title 5, U.S.C., and implementing DoD VSIP guidance and procedures.

2. Individuals employed under this policy will be given Excepted Not To Exceed appointments (up to five years) using Nature of Action Code 171, Authority Code ZLM, and legal authority 5 U.S.C. 9903. The pay plan will be EE (Experts Other).

3. Appointees should be advised of appropriate ethics and reemployment restrictions that apply at the time of their appointment.

G. Pay Administration

1. Pay-Setting Upon Initial Appointment. Compensation for an HQE should reflect the salary paid in the labor market for comparable positions, taking into account such factors as applicant's skills, professional and educational accomplishments, and the complexity of the work the applicant is asked to perform. Other relevant factors, such as those listed below may also be considered:
    - Labor market conditions
    - Type of position
    - Work schedule
    - Organizational needs
    - Personal qualifications
    - Type of degree
    - Experience (recency)
    - Budget considerations;
    - Organizational equity/pay considerations
    - Mission impact of work assignments.

Pay for an HQE cannot exceed the maximum limit established by 5 U.S.C. 9903(b)(2) Level IV of the Executive Schedule, plus locality-based comparability pay, to a total not to exceed Level III of the Executive Schedule. Typically, pay will be within the range of a GS-15, Step 1 (or equivalent) up to the statutory maximum limit.

The employee's basic pay will not be further supplemented for any reason, except as provided in the memorandum, to include position-based special rates. In addition, the employee will not be eligible for any type of premium pay (e.g., overtime).

2. Pay Increases. Within the range set by 5 U.S.C. 9903, Designees may adjust an employee's basic pay because of the employee's exceptional level of accomplishment related to projects, programs, or tasks that contribute to the Department or Component strategic mission, requirements, and goals; or because of a change in the employee's duties or responsibilities.

3. Additional Payments. Designees may authorize an additional payment only as a recruitment or relocation incentive, or to recognize specific accomplishments, contributions, or performance subject to the following limitations established under 5 U.S.C. 9903(d):

   (a) The total of all additional payments made under these provisions during any 12-month period may not exceed the lesser of (1) $50,000, which may be adjusted annually by the Under Secretary of Defense for Personnel and Readiness; or (2) the amount equal to 50 percent of the employee's annual rate of basic pay.

   (b) The employee's total compensation in any calendar year, including basic pay and any additional payments, may not exceed the total annual compensation payable at the salary set under 3 U.S.C. 104.

   In addition, if a payment is authorized as a recruitment or relocation incentive the recipient must sign a written service agreement documenting a minimum period of employment commensurate with the incentive prior to receiving the payment.

H. Documentation

1. Components will use the Defense Civilian Personnel Data System (DCPDS) to record the employment of highly qualified experts. Components must maintain written documentation of the criteria used for each appointment, as well as the factors and criteria used in setting initial pay, pay increases, and additional payments. Components will retain documentation for three years after employment is terminated.

2. The DUSD (CPP) will monitor and oversee the effective use of this appointment authority and may establish reporting requirements, as necessary. DCPDS will be used to obtain information on the employment of highly qualified experts to assist in meeting any reporting requirements.

I. Accountability

Designees are responsible for the appropriate and effective use and oversight of this authority to support mission requirements.