DEPARTMENT OF THE ARMY
OFFICE OF THE DEPUTY CHIEF OF STAFF G-1
200 STOVALL STREET
ALEXANDRIA VA 22332

REPLY TO
THE ATTENTION OF

March 15, 2004

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Employment of Highly Qualified Experts

Section 1101 of the National Defense Authorization Act for FY 2004, provides the Department of Defense (DoD) authority to establish a program to attract highly qualified experts. The authority to hire and compensate highly qualified experts was redelegated to the Secretaries of the Military Departments and the heads of the Defense Agencies and Field Activities, who in turn, may redelegate to the Directors of those Defense Laboratories not excluded by statute from the National Security Personnel System.

A highly qualified expert is an individual possessing uncommon, special knowledges or skills in a particular occupation and is regarded by others as an authority of unusual competence and skill. Employment may not exceed five years and extensions may be approved for an additional year on a case-by-case basis.

The total number of highly qualified experts may not exceed 2,500 at any time within DoD. The Department of Army has been issued 695 expert allocations. These allocations are distributed as follows:

MACOM	ALLOCATION
U.S. Army Material Command	25
U.S. Army Training & Doctrine Command to include U.S. Military Entrance Processing Command	50
U.S. Army Medical Command	25
U.S. Army Forces Command	25
U.S. Corps of Engineers	25
Admin Assistant to the Secretary	25
U.S. Army, Europe & Seventh Army	15
Eighth, U.S. Army Seoul Korea	15
U.S. Army Pacific	15
Military Surface Deployment and Distribution	15
U.S. Army Criminal Investigative Command	15
U.S. Army Special Operations Command	25
U.S. Army Intelligence & Security Command	25
U.S. Army Space & Missile Defense Command	25
U.S. Army Military District of Washington	15

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MACOMs are responsible for reporting the usage of their expert allocations. Please provide your numbers each quarter to the Office of the Deputy Chief of Staff, G-1, Policy and Program Development Division, ATTN: DAPE-CP-PPE, 200 Stovall Street, Suite 1160, Alexandria, Virginia 77332-0300 or email your response to beth.helmer@us.army.mil.

Enclosed is a copy of the DoD guidance and procedures to be followed when employing experts.

My point of contact for this issue is Beth Helmer, who can be reached at DSN 221-9974 or (703) 325-9974.

FOR THE DEPUTY CHIEF OF STAFF, G-1:

Carole Johnson
Acting Chief, Policy and Program
Development Division

Enclosures

DISTRIBUTION:
ADMINISTRATIVE ASSISTANT TO THE SECRETARY OF THE ARMY

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US ARMY TRAINING AND DOCTRINE COMMAND
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US ARMY PACIFIC
MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND
US ARMY CRIMINAL INVESTIGATION COMMAND
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US MILITARY ENTRANCE PROCESSING COMMAND

DIRECTOR
U.S.ARMY INSTALLATION MANAGEMENT AGENCY
CIVILIAN HUMAN RESOURCES AGENCY
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CIVILIAN HR REGION, NORTH CENTRAL
CIVILIAN HR, REGION KOREA
CIVILIAN HR REGION, WEST
CIVILIAN PERSONNEL EVALUATION AGENCY

OFFICE OF THE GENERAL COUNSEL, ATTN: SAGC (MS. JOHNSON)
OFFICE OF THE JUDGE ADVOCATE GENERAL, ATTN: DAJA-LE (MS. NUGENT)

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

PERSONNEL AND
READINESS

FEB 27 2004

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

Subject: Employment of Highly Qualified Experts

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), provides 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 new legislation authorizes 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 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. 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 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 that authority. This authority does not apply to the DoD laboratories excluded from NSPS under 5 U.S.C. 9902(c).

3. Designees. 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. These authorities may not be further re-delegated, except that the Secretaries of the Military Departments may redelegate this authority to Directors of those Defense Laboratories not excluded by statute from NSPS.

4. 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 appointment.

5. 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.

6. Section 9903(b)(2) of title 5, U.S.C., authorizes the Secretary of Defense to prescribe the rates of basic pay for positions to which employees are appointed at rates not in excess of the maximum rate of

basic pay authorized for senior-level positions under 5 U.S.C. 5376, as increased by locality-based comparability payments under 5 U.S.C. 5304. Additionally, the Secretary may pay such employees amounts in addition to basic pay within certain limitations (See Pay Administration Provisions, page 4).

7. Hiring of qualified experts shall be in accordance with the procedures prescribed in this guidance. Designees may also set the pay upon initial appointment of highly qualified experts, increase pay, and pay bonuses and incentives as prescribed in this policy.

8. 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 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 Military Departments and the Fourth Estate.

9. As the need arises, underutilized authorizations may be re-allocated and additional allocations may be requested with justification. As previously indicated, these actions will be authorized by the DUSD(CPP).

10. 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.

B. Appointment Procedures

1. A highly qualified expert is an individual possessing uncommon, special knowledges or skills in a particular occupational field beyond the usual range of expertise, who is regarded by others as an authority or practitioner of unusual competence and skill. The expert knowledge or skills are generally not available within the Department and are needed to satisfy an emerging and relatively short-term, non-permanent requirement.

2. The appointment of highly qualified experts is limited to critical occupations, as determined by the Designee, necessary to promote the Department's national security mission.

3. The authority to employ experts shall not be used to provide any one person temporary employment in anticipation of a permanent appointment; to provide desired services that are readily available within the Department or another Federal agency; to perform continuing Department functions, including work of a policy, decision-making, or managerial nature; to bypass or undermine personnel ceilings or pay limitations; to aid in influencing or enacting legislation; to give former Federal employees preferential treatment; to do work performed by regular employees or to fill in during staff shortages.

4. 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 authority 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.

5. 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).

6. Components may submit requests for extension of appointment for up to one additional year to the DUSD(CPP) for approval on a case-by-case basis. Requests must include a justification 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 the Department's national security mission.

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

C. Pay Administration

1. Pay-Setting Upon Initial Appointment. When the Department hires an employee using the appointment authorities described in this policy, the Designee may set the employee's basic pay at any rate within the range between the rate for GS-15, step 10, up to 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 the rate of pay for Level III of the Executive Schedule. The employee's basic pay is determined according to factors that include but are not limited to:

   - **Labor** market conditions;
   - Type of position;
   - Location of position;
   - Work schedule;
   - Level of independence in establishing work objectives;
   - Working Conditions;
   - Organizational needs;
   - Personal qualifications;
   - Type of degree;
   - Personal recommendations;
   - Experience (recency, relevance);
   - Budget considerations;
   - Organizational equity/pay considerations; and,
   - Mission impact of work assignments.

   The employee's basic pay will not be further supplemented for any reason 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 in FY 2004 (which may be adjusted annually after FY 2004); 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.

D. 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 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.

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