



UNDER SECRETARY OF DEFENSE  
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PERSONNEL AND  
READINESS

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
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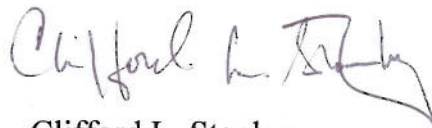
SUBJECT: Revised Policy Guidance– Hiring of Highly Qualified Experts (HQEs)

Attached is revised policy guidance for the appointment of HQEs in the Department of Defense (DoD). It consolidates three existing policy guidance memoranda and fills gaps identified by an audit of HQE appointments late this past summer. This revised guidance cancels USD(P&R) memorandum dated June 27, 2006, subject “Employment of Highly Qualified Experts,” as amended by Under Secretary of Defense memorandum dated September 12, 2007, subject “Employment of Highly Qualified Experts – Policy Addendum” (Attachment 1), and replaces it with the policy guidance contained herein.

The attached revised guidance implements DoD policy and procedures for appointing, compensating and retaining HQEs pursuant to section 9903 of title 5, United States Code (U.S.C.). This section provided DoD with the authority 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 appoint as HQEs experts in critical occupations for up to five years, with the possibility of a one-year extension, and to prescribe the appropriate compensation.

This revised policy guidance permits the basic pay of an HQE within the range from GS 15 step 1 (or equivalent) up to the statutory limit of Level II of the Executive Schedule, as long as the Department’s Pay and Performance Management System is

certified by the Office of Personnel Management (OPM). However, pay above Level III would be under very limited circumstances. If at any time the Department's Pay and Performance Management System is not certified by OPM, pay may not exceed Level III of the Executive Schedule. Further, the new guidance requires pre-appointment review of certain appointments by the Deputy Under Secretary of Defense (DUSD) (CPP) to ensure compliance with all applicable civil service laws, rules, regulations and policy. The pre-appointment reviews would involve infrequent occurrences in which the HQE would possess rare or unique skills. Finally, the policy provides for an annual adjustment to basic pay, other additional payments authorized by section 9903 of title 5, U.S.C., and requires the development of performance standards linked to mission.

A handwritten signature in dark ink, appearing to read "Clifford L. Stanley". The signature is written in a cursive, somewhat stylized font.

Clifford L. Stanley

Attachments:  
As stated

# ATTACHMENT 1

## DEPARTMENT OF DEFENSE EMPLOYMENT OF HIGHLY QUALIFIED EXPERTS GUIDANCE AND PROCEDURES

### A. GENERAL INFORMATION

1. Section 9903 of Title 5, United States Code (U.S.C.) gives the Secretary of Defense authority to establish a DoD program to attract Highly Qualified Experts (HQE). This guidance implements that authority.
2. Appointments under this authority must be made from personnel outside the civil service and uniformed services (as such terms are defined in 5 U.S.C., section 2101). Exceptions to this policy are allowed only as established in paragraph A3.
3. The required expertise generally gained through experience in private industry or academia could, in rare circumstances, be obtained through prior civil or uniformed service during which the HQE gained an uncommon level of expertise. In these cases, a minimum 30-day break in service is required for appointment. These types of appointments should occur only in exceptionally compelling instances and are subject to the pre-appointment staffing review requirements of this Policy.
4. Appointments may be made without regard to any competitive service requirements under Title 5, U.S.C.

### B. POLICY. It is Department of Defense policy that:

1. HQEs shall be appointed to bring enlightened thinking and innovation to advance the Department's national security mission. HQEs are a temporary infusion of talent and provide non-permanent support for short-term endeavors. Short-term is generally 5 years or less.
  - a. HQEs contribute in a variety of occupational fields, such as soft and hard sciences, engineering, technology, human resources, business, transformation, education, medicine, languages, and logistics.
  - b. HQEs may be hired to mentor, lead, oversee, direct, manage, and or consult on DoD programs and initiatives, including high profile and fast track assignments.

2. HQEs shall be used, as needed, to support mission requirements and help meet the Department's workforce planning challenges. The authority to appoint annuitants shall not be used to solely benefit an HQE.
3. The number of HQE appointments within the Department shall not exceed 2,500 at any time in accordance with Section 9903 of Title 5, U.S.C.
4. 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 HQEs 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 re-delegated in writing only to persons in positions that report directly to the Secretaries or the Agency or Field Activity Heads.
5. 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.
6. HQEs who are retired Federal employees shall continue to receive full annuity and salary upon appointment and shall not be considered employees for the purposes of Subchapter III of Chapter 83 or of Chapter 84 of Title 5, U.S.C.
7. HQEs serve at the pleasure of the Appointing Official and may be terminated at any time. When practicable, they should be given no less than 3-days' advance notice.
8. HQE appointments shall not be used to:
  - a. Appoint any person to a position as the head of a Component.
  - b. Replace a member of the Senior Executive Service in a continuing Department function, or to bypass or undermine the hiring of a career member of the Senior Executive Service for a permanent position.
  - c. Provide any person temporary employment in anticipation of a permanent appointment.

- d. Provide employment to any personnel formerly within the civil service or uniformed service without at least a 30-day break in such service and without the qualifying credentials as defined by this policy.
  - e. Provide employment to a Federal annuitant as an HQE when such employment would be more appropriate under the provisions of DoD Instruction 1400.25, Volume 300, December 10, 2008, "DoD Civilian Personnel Management System: Employment of Federal Civilian Annuitants in the Department of Defense."
9. A pre-appointment staffing review shall be conducted for certain HQE appointments as defined in Section 2. "PRE-APPOINTMENT STAFFING REVIEW REQUIREMENTS" of Attachment 2 of this policy. These types of appointments should occur only in exceptionally compelling instances and this staffing review will ensure compliance with all applicable civil service laws, rules and regulations.
10. Retired civil servants who do not possess an uncommon level of expertise and recognition required for an HQE appointment shall be appointed as Reemployed Annuitants under the provisions of DoD Instruction 1400.25, Volume 300, December 10, 2008, "DoD Civilian Personnel Management System: Employment of Federal Civilian Annuitants in the Department of Defense."
11. An employee who separated under authority of the Voluntary Separation Incentive Pay (VSIP) Program shall be prohibited from reemployment with the Department for 12 months after separation, and shall 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(f) of Title 5, U.S.C., and implementing DoD VSIP guidance and procedures.

### **C. 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").

## D. RESPONSIBILITIES

1. The Under Secretary of Defense for Personnel and Readiness (USD)(P&R). The USD(P&R) shall set policy and provide oversight of its HQE policy and implementation.
2. The Deputy Under Secretary of Defense (Civilian Personnel Policy (DUSD)(CPP)). The DUSD(CPP), under the authority direction and control of the USD(P&R), shall:
  - a. Approve all appointments pursuant to this policy.
  - b. Distribute and manage HQE allocations 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. As the need arises, under-utilized authorizations may be re-allocated and additional allocations may be requested, with justification, for approval by the DUSD(CPP).
  - c. Monitor and oversee the efficacy and integrity of the policy, program administration and implementation.
  - d. Conduct periodic audits or evaluations and levy reporting requirements as necessary.
3. The Heads of the DoD Components. The Heads of the DoD Components shall:
  - a. Ensure compliance with this policy within their Components.
  - b. Ensure appropriate and effective use and oversight of this authority to support mission requirements.
  - c. Respond to reporting requirements as appropriate.

## E. 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.

Designee: A person or persons in positions that report directly to the Secretaries or the

Agency or Field Activity Heads, to whom the Secretaries of the Military Departments and the Heads of Defense Agencies and DoD Field Activities with independent appointing authority have delegated authority.

Appointing Official: The Secretaries or the Agency or Field Activity Heads, to whom the Secretaries of the Military Departments and the Heads of Defense Agencies and DoD Field Activities with independent appointing authority, or Designee to whom the authority has been delegated.

Performance Plan: A signed, written document that describes the expected, results-driven performance requirements which are aligned to the organization's goals. The Performance Plan must state the basis for any performance-based increases for extraordinary accomplishments.

Performance Requirement: Written statements of measurable results expected to be achieved during the performance appraisal period. Typically, there are between one and four SMART-Q written performance requirements for each performance element. They describe both “what is expected” and “how it is to be accomplished,” and are written at the “In Good Standing” performance rating level. These are the standards of performance against which HQEs will be evaluated.

SMART-Q: A framework used for developing measurable results-driven performance requirements. The acronym stands for: Specific (define results to be accomplished within the scope of the job), Measurable (define quality, quantity, and/or effectiveness), Aligned (support specific strategic goals), Realistic/Relevant (requirements are achievable yet challenging), Timely (define a deadline/timeframe for achieving the requirements), and Quality (identify the degree of excellence expected).

**F. PROCEDURES.** Attachment 2 provides procedures and requirements for appointment of HQEs in the Department of Defense.

**G. EFFECTIVE DATE.** This policy is effective immediately.

## ATTACHMENT 2

### PROCEDURES

**GENERAL INFORMATION.** When delegated, managers and supervisors shall apply the authority to appoint HQEs to carry out mission requirements in accordance with this policy memorandum. Supporting human resources offices shall follow the procedures outlined herein when using the HQE authority.

#### 1. QUALIFICATION REQUIREMENTS

- a. Personnel must possess an uncommon level of expertise and recognition to be appointed as an HQE. Such expertise is generally not available within the Federal workforce at the time of need nor is it typically gained within the civil service or uniformed service.
- b. HQE appointees generally gain such expertise through experience in private industry or academia. As such, it is typical for HQEs to have an intervening period of service between their former civil or uniformed service and their appointment as an HQE. However, in situations where HQEs are hired in support of DoD mission requirements, the required expertise could be obtained through prior civil or uniformed service during which they gained an uncommon level of expertise. In these cases, a 30-day break in service is required for appointment. These types of appointments should occur only in exceptionally compelling instances and are subject to the pre-appointment staffing review requirements as set forth in Section 2., below.

#### 2. PRE-APPOINTMENT STAFFING REVIEW REQUIREMENTS

- a. The Deputy Under Secretary of Defense (DUSD) Civilian Personnel Policy (CPP) will conduct pre-appointment staffing reviews of appointments of the following categories of candidates to HQE positions:
  1. Appointment of a former political appointee converted noncompetitively using the Schedule A appointing authority or a former political appointee noncompetitively converted using any appointing authority or Schedule C Executive Branch employee who held the position within the last five years.



2. Appointment of a former Non-career SES Executive Branch employee who held the position within the last five years to an HQE position.
  3. Subsequent, consecutive appointment to a new position of an HQE who has already served on an HQE appointment beyond the five-year statutory limitation, plus a one-year extension.
  4. Appointment or conversion of any current HQE into a non-HQE position in the competitive or excepted service.
  5. Appointment of any former Schedule C, Non-Career Senior Executive Service (SES) employee, former Federal employee, or member of the Uniformed Services under those exceptionally compelling instances when the break in service is such that it does not provide for an intervening period of employment.
- b. These types of appointments should occur only in rare instances and this staffing review will consider the rationale that merits the exceptionally compelling type of appointment, as well as ensure compliance with all applicable civil service laws, rules, and regulations. Supporting documentation requirements are defined below in 3, “APPOINTMENT REQUIREMENTS,” below.

### 3. APPOINTMENT REQUIREMENTS

- a. All appointments of HQEs must include written documentation that clearly identifies the following:
  1. The individual’s qualifications (requisite knowledge, skills and experience) for an HQE appointment as defined by 1, “QUALIFICATION REQUIREMENTS,” above;
  2. The short-term (five years or less) nature of the work, or, if work is anticipated to extend beyond that time period, a succession plan for the position;
  3. The scope of results-driven work, project, program, or task; schedule for delivery; strategic mission or goal supported (Performance Plan); and
  4. Factors and criteria used in setting initial pay, and basis for future pay adjustments.

- b. Appointees should be advised of appropriate ethics and reemployment restrictions that apply at the time of their appointment.
- c. 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).

#### 4. PERFORMANCE MANAGEMENT

- a. HQEs shall be subject to a performance management process that establishes performance requirements and provides for additional compensation for extraordinary results as defined below.
- b. HQEs shall not be subject to the requirements of a DoD formal Performance Management system, such as the “Senior Executive and Senior Professional Performance Management System.” In lieu thereof, HQEs will be covered by an appointment-specific Performance Plan.
- c. The Performance Plan must be part of the Appointment Documentation and meet the following criteria:
  - 1. Specify the Periods of Performance and Appraisal. The periods of performance and appraisal can be for any length of time that is deemed sufficient to deliver and review the expected results, e.g., 90 days, annually, or multi-year). The Performance Plan must be reviewed at least once during the Period of Performance to ensure it is current and relevant. The Performance Plan must be changed or updated based upon job requirements and organizational needs.
  - 2. Specify the Performance Factor and Performance Requirements. There is one Mandatory Performance Factor: Mission Accomplishment. Mission Accomplishment is defined as:
    - i. Executes the position’s assigned duties in a manner that contributes to the successful outcome of strategic goals and objectives. Ensures that the accomplishments of the organization or program managed can be directly tied to mission need. Specifies the results or commitments to be achieved during the rating period.
    - ii. There must be at least one, but generally not more than 4 Performance Requirements. All performance requirements shall be results-driven, written at the “In Good Standing” level, in the

SMART-Q framework, as defined in Section C., "DEFINITIONS," and specify measurable results and outcomes Of a particular performance element. In Good Standing Level results are characterized as:

- Uncommon, Proficient, Exceptional, Outstanding
- Demonstrative of efficiencies and cost savings

- iii. The President's Annual Executive Pay (PAEP) increases are used to recognize performance at this level of achievement.
  - iv. There are no other levels of performance. HQEs serve at the will of the appointing official. Performance that does not meet expectations or is not determined to be at the "In Good Standing Level," must be terminated.
  - v. Performance Requirements must be developed and discussed in consultation with the HQE and reflect the duties, responsibilities, and expected outcomes.
  - vi. Supervisors must monitor performance during the performance appraisal period as set forth in the performance plan and communicate feedback to the HQE on progress in accomplishing the performance elements and performance requirements described in the performance plan.
  - vii. Relative to the performance plan, the rating official shall provide ongoing feedback as necessary. Feedback aims to reinforce, acknowledge, anticipate, and remedy performance. Feedback can be provided at any time during the performance period. In addition, HQEs may request periodic feedback on performance.
- d. Specify the basis for pay increase based upon extraordinary results. Extraordinary results are a high bar standard and characterized as:
1. Significantly advance the Department's mission or program objectives. (e.g., Game changing);
  2. Demonstrative of significant efficiencies and or cost savings; and
  3. Pay increases above the PAEP level are reserved for those who deliver extraordinary results.

## 5. DURATION OF APPOINTMENT

- a. Employment under this authority may not exceed five years.
- b. Designees may, on a case-by-case basis, extend appointments for up to one additional year, not to exceed a total of six years. Justification for the extension must include:
  1. The need to retain the services and expertise of the HQE
  2. The role in promoting DoD's national security mission.
- c. 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):
  1. The termination of the program will not terminate the employee's employment in that position before the expiration of the lesser of:
    - i. The period for which the employee was appointed; or
    - ii. 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
  2. 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.

## 6. PAY ADMINISTRATION

- a. Pay-Setting Upon Initial Appointment.
  1. 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:
    - i. Labor market conditions
    - ii. Type of position

- iii. Work schedule
  - iv. Organizational needs
  - v. Personal qualifications
  - vi. Type of degree
  - vii. Experience (currency)
  - viii. Budget considerations;
  - ix. Organizational equity/pay considerations
  - x. Mission impact of work assignments.
2. Pay is set based on labor market/qualifications/scope of duties to be performed and cannot exceed the maximum limit established by 5 U.S.C. 9903(b)(2). Basic pay for an HQE typically will be within the range from GS 15 step 1 (or equivalent) up to the statutory limit of Level II of the Executive Schedule as long as DoD's Performance Pay and Management system is certified by the Office of Personnel Management (OPM). If at any time, DoD's Performance Pay and Management is no longer certified by OPM, pay may not be exceed Level III of the Executive Schedule. Since the total pay cannot exceed these limits of the Executive Schedule for certified systems, when the HQE is eligible for locality-based comparability pay, basic pay must be adjusted to ensure it is within the statutory caps. Pay setting above Level III should be reserved for unique circumstances of rare occurrence. All initial pay set above EX-III will be reported to the Deputy Under Secretary of Defense (DUSD)(CPP) on annual basis at the end of each calendar year to ensure consistent pay setting practices across the Department.
3. The HQE's basic pay will not be further supplemented for any reason, except as provided in b.3., below, to include position-based special rates. In addition, the HQE will not be eligible for any type of premium pay (e.g., overtime, danger, etc).
- b. Pay Increases. Within the range set by 5 U.S.C. 9903, Designees may adjust an HQE's basic pay, at any time, for the following reasons:

1. The HQE's extraordinary level of accomplishment as documented by the Performance Plan. Accomplishments must be related to projects, programs, or tasks that contribute to the Department or Component strategic mission, requirements, and goals; or
  2. Significant change in the HQE's duties or responsibilities which warrant an increase. Market factors or other benchmarks to ensure competitiveness for the work required will be used to support the increase. Written documentation must describe the basis of the increase; or
  3. At the discretion of the Component Head, HQEs may receive some or all of the President's Annual Executive Pay (PAEP) increase. Considerations for the PAEP include, but are not limited to, time in the position, cost-of-living adjustment, performance and/or other whether any other pay increases were provided for under this policy.
- c. Additional Payments. Designees may authorize an additional payment only to recognize specific accomplishments, contributions, or performance as provided for in paragraph 6.b., above, or, as a recruitment, relocation, or retention incentive, in paragraph 6.e., below, subject to the following limitations established under 5 U.S.C. 9903(d):

The total of all additional payments made under these provisions during any 12-month period may not exceed the lesser of (1) \$50,125, which may be adjusted annually thereafter by the Secretary, with a percentage increase equal to one-half of 1 percentage point less than the percentage by which the Employment Cost Index, published quarterly by the Bureau of Labor Statistics, for the base quarter of the year before the preceding calendar year exceeds the Employment Cost Index for the base quarter of the second year before the preceding calendar year; or (2) the amount equal to 50 percent of the employee's annual rate of basic pay. These additional payments may be paid to an HQE who works a full-time, part-time or intermittent work schedule.

- d. 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.
- e. If a payment is authorized as a recruitment, relocation, or retention incentive, the following conditions apply:

1. Recipient must sign a written service agreement documenting a minimum period of employment commensurate with the incentive prior to receiving the payment.
2. HQEs are eligible to receive a retention incentive when the organization has a special need for the employee's services that makes it essential to retain the employee. HQEs are eligible to receive a relocation incentive when the organization has a special need for the employee's services that would require temporarily relocating the employee at any time during the HQE's period of employment, and when the HQE would be required to relocate for a minimum of one year. Retention and Relocation Incentives may be paid in a single lump sum payment after completion of the full service period or in installments after completion of specified periods of service.
3. The method used in determining installment payments must be documented before the initial payment occurs.
4. A written service agreement documenting a minimum period for employment that is commensurate with the incentive amount is required prior to receipt of payment.

## 7. DOCUMENTATION

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