TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES
PART III - EMPLOYEES
Subpart I - Miscellaneous
CHAPTER 99 - DEPARTMENT OF DEFENSE PERSONNEL AUTHORITIES

§ 9903. Attracting highly qualified experts

(a) In General.— The Secretary may carry out a program using the authority provided in subsection (b) in order to attract highly qualified experts in needed occupations, as determined by the Secretary.

(b) Authority.— Under the program, the Secretary may—

(1) appoint personnel from outside the civil service and uniformed services (as such terms are defined in section 2101) to positions in the Department of Defense without regard to any provision of this title governing the appointment of employees to positions in the Department of Defense;

(2) prescribe the rates of basic pay for positions to which employees are appointed under paragraph (1) at rates not in excess of the maximum rate of basic pay authorized for senior-level positions under section 5376, as increased by locality-based comparability payments under section 5304, notwithstanding any provision of this title governing the rates of pay or classification of employees in the executive branch; and

(3) pay any employee appointed under paragraph (1) payments in addition to basic pay within the limits applicable to the employee under subsection (d).

(c) Limitation on Term of Appointment.—

(1) Except as provided in paragraph (2), the service of an employee under an appointment made pursuant to this section may not exceed 5 years.

(2) The Secretary may, in the case of a particular employee, extend the period to which service is limited under paragraph (1) by up to 1 additional year if the Secretary determines that such action is necessary to promote the Department of Defense’s national security missions.

(d) Limitations on Additional Payments.—

(1) The total amount of the additional payments paid to an employee under this section for any 12-month period may not exceed the lesser of the following amounts:

(A) $50,000 in fiscal year 2004, 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.

(B) The amount equal to 50 percent of the employee’s annual rate of basic pay.

For purposes of this paragraph, the term “base quarter” has the meaning given such term by section 5302 (3).

(2) An employee appointed under this section is not eligible for any bonus, monetary award, or other monetary incentive for service, except for—

(A) payments authorized under this section; and

(B) in the case of an employee who is assigned in support of a contingency operation (as defined in section 101 (a)(13) of title 10), allowances and any other payments authorized under chapter 59.

(3) Notwithstanding any other provision of this subsection or of section 5307, no additional payments may be paid to an employee under this section in any calendar year if, or to the extent that, the employee’s total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3. In computing an employee’s total annual compensation for purposes of the preceding sentence, any payment referred to in paragraph (2)(B) shall be excluded.
(e) Limitation on Number of Highly Qualified Experts.— The number of highly qualified experts appointed and retained by the Secretary under subsection (b)(1) shall not exceed 2,500 at any time.

(f) Savings Provisions.— In the event that the Secretary terminates this program, in the case of an employee who, on the day before the termination of the program, is serving in a position pursuant to an appointment under this section—

1. the termination of the program does not terminate the employee’s employment in that position before the expiration of the lesser of—
   A. the period for which the employee was appointed; or
   B. the period to which the employee’s service is limited under subsection (c), including any extension made under this section before the termination of the program; and

2. the rate of basic pay prescribed for the position under this section may not be reduced as long as the employee continues to serve in the position without a break in service.