

“(4) CONGRESSIONAL APPROVAL REQUIRED.—If Congress approves the Secretary’s proposal in the National Defense Authorization Act for Fiscal Year 2011, the Secretary may implement the proposal (subject to any changes required by law) and begin the implementation of such proposal for personnel included in the National Security Personnel System, in lieu of the transition that would otherwise be required by subsection (b), subject to paragraph (5).

“(5) RESTRICTIONS.—Notwithstanding any approval under paragraph (4), the provisions of subsection (b)(2) and (c)(4) shall apply with respect to any proposal approved under such paragraph, unless and until modified or repealed in legislation enacted after the date of the enactment of this Act.

“(6) DEFINITIONS.—For purposes of this subsection, the term ‘covered committees’ means—

“(A) the Committees on Armed Services of the Senate and the House of Representatives;

“(B) the Committee on Homeland Security and Governmental Affairs of the Senate; and

“(C) the Committee on Oversight and Government Reform [now Committee on Oversight and Accountability] of the House of Representatives.”

#### IMPLEMENTATION

Pub. L. 110-181, div. A, title XI, §1106(b), Jan. 28, 2008, 122 Stat. 356, which related to implementation of requirements of this section as amended by Pub. L. 110-181, was repealed by Pub. L. 111-84, div. A, title XI, §1113(h)(1), Oct. 28, 2009, 123 Stat. 2503.

#### CIVILIAN PAY

Pub. L. 109-13, div. A, title I, §1020, May 11, 2005, 119 Stat. 251, provided that: “None of the funds appropriated to the Department of Defense by this Act or any other Act for fiscal year 2005 or any other fiscal year may be expended for any pay raise granted on or after January 1, 2005, that is implemented in a manner that provides a greater increase for non-career employees than for career employees on the basis of their status as career or non-career employees, unless specifically authorized by law: *Provided*, That this provision shall be implemented for fiscal year 2005 without regard to the requirements of section 5383 of title 5, United States Code: *Provided further*, That no employee of the Department of Defense shall have his or her pay reduced for the purpose of complying with the requirements of this provision.”

#### PILOT PROGRAM FOR IMPROVED CIVILIAN PERSONNEL MANAGEMENT

Pub. L. 108-136, div. A, title XI, §1111, Nov. 24, 2003, 117 Stat. 1634, authorized the Secretary of Defense to carry out a pilot program using an automated workforce management system to demonstrate improved efficiency in the performance of civilian personnel management and provided that the Secretary could carry out the pilot program for a period of two years beginning not later than Mar. 1, 2004.

### § 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.

(Added Pub. L. 108-136, div. A, title XI, § 1101(a)(1), Nov. 24, 2003, 117 Stat. 1632; amended Pub. L. 112-81, div. A, title XI, § 1105, Dec. 31, 2011, 125 Stat. 1612.)

### Editorial Notes

#### AMENDMENTS

2011—Subsec. (d)(2). Pub. L. 112-81, § 1105(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “An employee appointed under this section is not eligible for any bonus, monetary award, or other monetary incentive for service except for payments authorized under this section.”

Subsec. (d)(3). Pub. L. 112-81, § 1105(2), inserted at end “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.”

### Statutory Notes and Related Subsidiaries

#### REFERENCES TO MAXIMUM RATE UNDER 5 U.S.C. 5376

For reference to maximum rate under section 5376 of this title, see section 2(d)(3) of Pub. L. 110-372, set out as an Effective Date of 2008 Amendment note under section 5376 of this title.

#### POLICY ON SENIOR MENTORS

Pub. L. 112-239, div. A, title XI, § 1105, Jan. 2, 2013, 126 Stat. 1973, provided that:

“(a) IN GENERAL.—The Secretary of Defense shall provide written notice to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] at least 60 days before implementing any change in the policy regarding senior mentors issued on or about April 1, 2010.

“(b) APPLICABILITY.—Changes implemented before the date of the enactment of this Act [Jan. 2, 2013] shall not be affected by this section.”

#### DISCLOSURE OF SENIOR MENTORS

Pub. L. 112-81, div. A, title XI, § 1124, Dec. 31, 2011, 125 Stat. 1618, provided that:

“(a) REQUIREMENT TO DISCLOSE NAMES OF SENIOR MENTORS.—The Secretary of Defense shall disclose the names of senior mentors serving in the Department of Defense by publishing a list of the names on the publicly available website of the Department of Defense. The list shall be updated at least quarterly.

“(b) SENIOR MENTOR DEFINED.—In this section, the term ‘senior mentor’ has the meaning provided in the memorandum from the Secretary of Defense relating to policy on senior mentors, dated April 1, 2010.”

#### REQUIREMENTS FOR DEPARTMENT OF DEFENSE SENIOR MENTORS

Pub. L. 111-383, div. A, title XI, § 1102, Jan. 7, 2011, 124 Stat. 4382, provided that:

“(a) IN GENERAL.—The Secretary of Defense shall issue appropriate policies and procedures to ensure that all senior mentors employed by the Department of Defense are—

“(1) hired as highly qualified experts under section 9903 of title 5, United States Code; and

“(2) required to comply with all applicable Federal laws and regulations on personnel and ethics matters.

“(b) SENIOR MENTOR DEFINED.—In this section, the term ‘senior mentor’ means a retired flag, general, or other military officer or retired senior civilian official who provides expert experience-based mentoring, teaching, training, advice, and recommendations to senior military officers, staffs, and students as they participate in war games, warfighting courses, operational planning, operational exercises, and decision-making exercises.”

### § 9904. Special pay and benefits for certain employees outside the United States

The Secretary may provide to certain civilian employees of the Department of Defense assigned to activities outside the United States as determined by the Secretary to be in support of Department of Defense activities abroad hazardous to life or health or so specialized because of security requirements as to be clearly distinguishable from normal Government employment—

(1) allowances and benefits—

(A) comparable to those provided by the Secretary of State to members of the Foreign Service under chapter 9 of title I of the Foreign Service Act of 1980 (Public Law 96-465, 22 U.S.C. 4081 et seq.) or any other provision of law; or

(B) comparable to those provided by the Director of Central Intelligence to personnel of the Central Intelligence Agency; and

(2) special retirement accrual benefits and disability in the same manner provided for by the Central Intelligence Agency Retirement Act (50 U.S.C. 2001 et seq.) and in section 18 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403r).<sup>1</sup>

(Added Pub. L. 108-136, div. A, title XI, § 1101(a)(1), Nov. 24, 2003, 117 Stat. 1633.)

### Editorial Notes

#### REFERENCES IN TEXT

The Foreign Service Act of 1980, referred to in par. (1)(A), is Pub. L. 96-465, Oct. 17, 1980, 94 Stat. 2071. Chapter 9 of title I of the Act is classified generally to subchapter IX (§ 4081 et seq.) of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

The Central Intelligence Agency Act of 1949, referred to in par. (2), is act June 20, 1949, ch. 227, 63 Stat. 208, which was formerly classified generally to section 403a et seq. of Title 50, War and National Defense, prior to editorial reclassification in Title 50, and is now classified generally to chapter 46 (§ 3501 et seq.) of Title 50. Section 18 of the Act is now classified to section 3518 of Title 50. For complete classification of this Act to the Code, see Tables.

<sup>1</sup> See References in Text note below.