

Memorandum



Subject

Delegated Personnel Authority to Make
Appointments Above the Minimum Rate
Based on Superior Qualifications

Date

AUG 10 1994

To

Bureau Personnel Officers

From

Henry Romero
Henry Romero, Director
Personnel Staff
Justice Management Division

In accordance with our delegation agreement with the Office of Personnel Management to approve superior qualifications appointments, Bureau Personnel Officers are hereby delegated personnel authority to make appointments above the minimum rate based on superior qualifications for nonattorney positions. This authority may not be redelegated and is effective on the date of this memorandum.

This authority can only be used to make appointments that are not more than 20 percent higher than a candidate's current existing pay. All requests that exceed 20 percent of a candidate's existing pay, cases based on a special need to the Department, or cases based on a reasonable expectation of employment, i.e., candidates who have no current income or bona fide job offer, must be forwarded to my office for approval. Attorney cases must be approved by the Director, Office of Attorney Personnel Management.

To assist you in your use of the superior qualifications authority, we have included at:

- Attachment 1: A copy of procedural guidance material previously issued by my staff on appointments above the minimum rate.
- Attachment 2: A checklist for your use when reviewing requests for advanced hiring rates.
- Attachment 3: A sample format for transmitting approved cases.
- Attachment 4: A sample format for cases that are not approved.

Questions concerning the use of this delegation may be referred to Joliette Spencer, Staffing Group, on (202) 514-6782.

Attachments

Memorandum

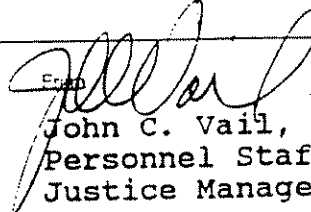
Subject

Date

Changes in Procedures for Requesting
Appointments Above the Minimum Rates

To

Bureau Personnel Officers
Executive Officers of the
Offices, Boards and Divisions


John C. Vail, Director
Personnel Staff
Justice Management Division

By memorandum dated January 2, 1992, you were provided information concerning the final regulations which revised and expanded the authority for agencies to appoint superior candidates at above the minimum rates. These regulations became effective on November 21, 1991, and included the following regulatory changes:

- (1) Expanded authority to make appointments above the minimum rate at any General Schedule grade level based on the candidates superior qualifications or a special need of the agency;
- (2) Removal of the requirement that OPM approve advanced rates exceeding a candidate's existing pay by more than 20 percent;
- (3) Authority to make superior qualifications appointments for DC Government employees who were first hired by DC on or after October 1, 1987;
- (4) Authority to use the superior qualifications authority to set pay for cooperative education students upon conversion from Schedule B to competitive appointment;
- (5) Requirement that agencies consider the possibility of authorizing a recruitment bonus instead of or in addition to a superior qualifications appointment; and
- (6) Requirement that agencies establish appropriate internal guidelines for use of the superior qualifications appointment authority and to keep sufficient documentation to permit reconstruction of the action taken in each case.

Since the final regulations require agencies to consider the possibility of authorizing a recruitment bonus as an alternative to a superior qualifications appointment, components are now required to explore the prospects of authorizing a recruitment bonus prior to requesting approval of an above the minimum rate.

Under 5 U.S.C. 5753 and C.F.R. Part 575, subparts A and B, a newly appointed employee or an individual to whom a written offer of employment has been made by the agency, may be given a recruitment bonus of up to 25 percent of his/her basic pay. The payment of the recruitment bonus is based on the fact that the candidate is highly qualified to perform the duties of the position and that considerable difficulty would be encountered in filling the position with a high quality candidate if a recruitment bonus were not paid. Determinations to pay recruitment bonuses must be made prior to a candidate's entrance on duty.

Effective immediately, all requests for appointments above the minimum rates must clearly explain the reason for requesting an advanced hiring rate instead of or in addition to a recruitment bonus. A copy of the Department's recruitment bonus plan, which was previously provided to the heads of Department components, is attached for your information.

Since the 20 percent limit for agencies to make superior qualifications appointments has been removed, agencies now have the authority to approve requests for advanced rates above 20 percent of a candidate's existing pay. To ensure proper use of this authority, requests for advanced rates that exceed 20 percent of a candidate's existing pay will only be considered for candidates who would have an exceptional value to the Department, i.e., candidates who possess unique qualifications that are directly related and crucial to the Department's mission, or candidates for shortage-category positions who will perform work that is critical to the program activities of the component.

Components should continue to confine their requests to advanced rates at no more than 20 percent above the candidates's existing pay. As a reminder, requests for appointments above the minimum rate should only be made for candidates who possess unusually high or unique qualifications and would be forfeiting income that would justify a salary above the base pay for the grade or for candidates who have a unique combination of education and experience that meets a special need of the Department (this situation rarely occurs).

In order to provide internal guidance on applying and evaluating candidates for superior qualifications appointments, a Departmental Order setting forth the policies and procedures for making superior qualifications appointments will be developed by the Personnel Staff. In the interim, components should adhere to the above requirements and continue to follow the procedures outlined in my February 28, 1991 memorandum (copy attached) for preparing requests for appointments above the minimum rate. A copy of the final regulations on appointments above the minimum rate and recruitment bonuses is also attached.

If there are any questions regarding the above requirements, Executive Officers should contact their servicing personnel specialists, and Bureau Personnel Officers should contact Fred Schilling or Jolliette Spencer, Staffing Group, on (202) 514-6782.

Attachments

Rules and Regulations

Federal Register

Vol. 56, No. 204

Tuesday, October 22, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206-AE25

Expanded Authority to Make Appointments Above Minimum Rates

AGENCY: Office of Personnel
Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations revising and expanding the authority for agencies to appoint superior candidates above the minimum rate of their General Schedule grade. These final regulations reflect changes resulting from both the Federal Employees Pay Comparability Act of 1990 (FEPCA), which permits appointments at advanced rates to be made at any grade, and the District of Columbia Home Rule Act, which led to establishment of a separate pay system for DC Government employees.

EFFECTIVE DATE: November 21, 1991.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 606-0960 or FTS 266-0960.

SUPPLEMENTARY INFORMATION:

Removal of previous GS-11 grade limit

Under 5 U.S.C. 5333, agencies may set pay for new appointees to General Schedule (GS or GM) positions above step 1 of the grade based on the appointees' superior qualifications, existing pay, or a special need of the agency. The Federal Employees Pay Comparability Act of 1990 (FEPCA), enacted November 5, 1990, permits appointments of superior candidates above the minimum rate at any General Schedule grade (removing the previous limit of GS-11 and above). Interim regulations implementing this change

were published February 14, 1991 (56 FR 6204). Those regulations also asked for comments on other policy changes that might be appropriate, particularly removal of the requirement that OPM approve all rates that exceed a candidate's existing pay by more than 20 percent.

Six Federal agencies and one employee organization responded. Of those commenting on the proposal to remove the pay limit on agencies' delegated authority, three supported removing the restriction for all cases, one supported removing it for special need cases, and one recommended leaving it in place. Most of the agencies recommending removal of the 20 percent limit commented that they expected to approve rates above that limit only in rare instances. Those comments reinforce OPM's experience under the current regulations. Very few agencies have requested approval of rates exceeding the limit, and personnel management evaluations have shown that most pay rates approved by agencies are below the maximum allowed by the regulation.

We find, therefore, that requiring OPM approval for rates more than 20 percent higher than a candidate's existing pay is not necessary to ensure prudent use of this authority. We have also noted that the need to comply with the 20 percent limit may lead agencies to give undue weight to existing pay in justifying and documenting advanced rates. In fact, the candidate's qualifications in relation to other candidates and specialized job requirements, or to a special need of the agency, carry equal weight under the law. The final regulations remove the 20 percent limit but require agencies to document both the candidate's superior qualifications or agency special need that justified use of the authority in 5 U.S.C. 5333 and the basis for approving a rate that exceeds the candidate's existing pay.

One agency suggested that approval of advanced rates under 5 U.S.C. 5333 be permitted based solely on the candidate's existing pay. We have not adopted this suggestion, which would exceed the intent of the law. The legislative history indicates that the authority was intended to match existing pay only when necessary to recruit specific candidates who possess unusually high or unique qualifications.

When an agency finds that there is a general shortage of well-qualified candidates for particular positions and that its ability to recruit such candidates is severely hampered because Federal pay scales are not competitive, or for other reasons, it should consider seeking OPM approval for special pay rates, as provided in 5 U.S.C. 5305.

Other comments and suggestions

One agency suggested that an exception to the 90-day break in service requirement be made for cooperative education students who become eligible for conversion to competitive appointment. This change is fully consistent with the intent of both FEPCA and the superior qualifications authority, and we have adopted it. Agencies appoint co-op students with the intent of converting those who successfully complete their work-study program to permanent appointments upon graduation. They cannot use the superior qualifications authority at that point, however, because most students have not yet acquired minimum (much less superior) qualifications for the target positions, nor are they usually forfeiting income that would justify an advanced pay rate. Upon graduation, a student who has successfully combined formal coursework with practical experience in the agency may well be a superior candidate for an entry level job. Such a candidate may also attract higher-paying offers from nonfederal employers. If the Federal agency cannot compete with those offers, it may lose both the employee and its training investment. Permitting co-op students to receive superior qualifications appointments immediately following their excepted employment would carry out the statutory intent to facilitate recruitment of high-quality personnel.

The same agency suggested that an exception to the 90-day break in service requirement be made for any temporary appointment that is made pending completion of the competitive examining process. We have not adopted this suggestion. Unlike co-op students, temporary appointees awaiting certification are appointed to the same positions they would fill under permanent appointments. They could, therefore, be appointed at an advanced rate initially, and that rate could be used to set their pay upon conversion under the highest previous rate provisions of 5

CFR 531.203(c). The fact that a candidate accepts employment at step 1 with no assurance that the salary will be increased (and, in the case of a candidate pending certification, no assurance that the appointment can be made permanent) indicates that a higher rate was not needed as a recruiting incentive.

Under 5 CFR 531.203(c), an employee's highest previous rate may have been earned under any appointment that was not limited to 90 days or less. The only commonly-used temporary appointing authority that would be limited to 90 days or less is the special need authority. A special need appointment may be appropriate when it is essential that the candidate begin urgent work before the examining process can be completed. That situation occurs rarely. The special need authority is not to be used routinely to bring selected candidates on board before they are reached on an appropriate register. Situations requiring use of an initial temporary appointment can be met using other appointing authorities. A regulatory change to accommodate initial special need appointments would, therefore, produce no real benefit and would be inconsistent with the intent of the special need authority.

The employee organization recommended removing the requirement that agencies consider use of a recruitment bonus as an alternative to an advanced pay rate. We agree that a bonus alone is not likely to attract a candidate whose current salary is higher than the step 1 rate. However, when an additional recruiting incentive is needed, use of a bonus may be an alternative to setting pay at a step higher than that needed to match the candidate's salary. The final regulations retain the requirement that agencies document the factors considered in approving an advanced rate, including the possibility of using a recruitment bonus. The regulations also require agencies to establish guidelines for use of the superior qualifications appointment authority. Such guidelines, combined with those required by the regulations governing use of recruitment bonuses, should clarify the relationship between the two authorities.

Recordkeeping requirements

Reviews conducted by OPM and the General Accounting Office have shown that agencies' records do not always contain sufficient information to permit reconstruction of decisions to pay advanced rates. The final regulations clarify the recordkeeping requirement contained in the interim regulations by stating that both pay and qualifications

factors must be documented. OPM will provide further guidance on recordkeeping in the Federal Personnel Manual.

Eligibility of District of Columbia Government employees for appointment at advanced rates

Currently, OPM's regulations require that superior qualifications appointments be made by new appointment or by reappointment after a break in service of at least 90 days from the candidate's latest employment in either the Federal or the District of Columbia Government. District Government employees who entered the DC Government before October 1, 1987, may be appointed in the Federal service at rates matching their DC salaries under 5 U.S.C. 5334 and 5 CFR 531.203(c). However, OPM regulations do not permit the salaries of DC employees who were first hired on or after October 1, 1987, to be used as a basis for setting Federal pay.

Proposed regulations that would permit DC Government employees hired since October 1, 1987, to receive superior qualifications appointments were published on September 14, 1990 (55 FR 37881). Three agencies commented, all supporting the proposal. We are, therefore, adopting those proposed regulations in these final regulations.

With the changes discussed above, we are adopting the interim regulations as final.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined in E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal employees and agencies.

List of Subjects in 5 CFR Part 531

Government employees, Wages, Administrative practice and procedure. Office of Personnel Management
 Constance Berry Newman,
 Director.

PART 531—[AMENDED]

Accordingly, OPM's interim regulations under part 531 published February 14, 1991, at 56 FR 6204, are adopted as final with the following changes:

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5338, and chap 54; E.O. 12748; subpart A issued under sec 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-504 104 Stat. 1462, and E.O. 12730; subpart B issued under 5 U.S.C. 5333, 5402, and 7701(b)(2); subpart D also issued under 5 U.S.C. 7701(b)(2); subpart E also issued under 5 U.S.C. 5336.

2. In § 531.203, paragraph (b) is revised to read as follows:

§ 531.203 General provisions.

(b) **Superior qualifications appointments.** (1) A "superior qualifications appointment" means an appointment made at a rate above the minimum rate of the appropriate General Schedule grade under authority of section 5333 of title 5, United States Code, because of the superior qualifications of the candidate or a special need of the agency for the candidate's services.

(2) An agency may make a superior qualifications appointment by new appointment or by reappointment except that when made by reappointment, the candidate must have a break in service of at least 90 calendar days from his or her last period of Federal employment with the District of Columbia (other than—

(i) Employment with the Government of the District of Columbia when the candidate was first appointed by the DC Government on or after October 1, 1987

(ii) Employment under an appointment as an expert or consultant under section 3109 of title 5, United States Code;

(iii) Employment under a temporary appointment effected primarily in furtherance of a postdoctoral research program, or effected as part of a predoctoral or postdoctoral training program during which the employee receives a stipend, or employment under a temporary appointment of a graduate student when the work performed by the student is the basis for completing certain academic requirements for an advanced degree;

(iv) Employment in a cooperative work-study program under a Schedule E appointment made in accordance with section 213.3202 of this chapter;

(v) Employment as a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration or the Commissioned Corps of the Public Health Service;

(vi) Employment which is neither full time employment nor the principal employment of the candidate; or

(vii) Employment under the Intergovernmental Personnel Act).

SUPPLEMENTARY INFORMATION

Objective

The objective of this rule is to amend the regulations and Rules of Procedure of the Board of Contract Appeals, Department of Agriculture, 7 CFR part 24, to reflect changes in jurisdiction and underlying authority which have occurred since publication in 1982. The regulations, at § 24.4(d), previously provided for appeals of debarment actions by authorized officials of (1) the Commodity Credit Corporation (CCC) under 7 CFR 1407.8(d); (2) the Department of Agriculture under 41 CFR 4-1.804-1(b); and (3) the Farmers Home Administration (FmHA) under 7 CFR chapter XVIII, part 1918, subpart C.

The Agriculture Acquisition Regulation (AGAR), at 48 CFR 408.470, authorizes the Board to hear appeals by procurement contractors from both suspension and debarment actions by Department debarment officials. The regulations of the CCC, at 7 CFR 1407.2, make the provisions of 48 CFR 409.403 *et seq.* applicable to all CCC suspension and debarment proceedings. The amendment of § 24.4(d)(1) reflects the Board's jurisdiction, under the AGAR, over suspensions as well as debarments.

Forest Service regulations, at 36 CFR 223.138(b)(8), authorize the Board to hear appeals by timber purchasers from debarment actions by officials of the Forest Service. The addition of § 24.4(d)(2) reflects this jurisdiction.

Section 3017.515 of the Governmentwide Debarment and Suspension (Nonprocurement) regulations, as adopted by the Department of Agriculture, 54 FR 4729 (1989), 7 CFR part 3017, establishes jurisdiction over nonprocurement debarment and suspension appeals in the Office of Administrative Law Judges. Accordingly, the reference to the Board's review of debarment actions by the FmHA is deleted.

Procurement contractors must appeal suspension and debarment actions by officials of the Department of Agriculture and the CCC within 90 days of their receipt of a decision to this effect. Timber purchasers must appeal debarment actions by the Forest Service within 30 days of receipt of a decision. Accordingly, the amendment of § 24.5 reflects these times.

With regard to the conduct of hearings for appeals considered under the Contract Disputes Act, Rule of Procedure 20 refers to an "examiner." Amended § 24.3 clarifies the role of this individual. Additionally, this amendment corrects minor typographical errors and omissions and removes the Board's telephone number pending change to FTS 2000.

The Board's former regulation part 2400, were superseded effective September 25, 1974, but continue published for application to appeals pending on that date. The Board no longer has any cases pending under CFR part 2400. Accordingly, that is deleted.

The Board published its proposed amendments in the Federal Register May 31, 1991, 56 FR 24738. No substantive comments were received. They, therefore, are adopted as proposed.

Regulatory Impact

This action reflects jurisdiction changes that already have been adopted, and it is therefore exempt from the requirements of Executive Order 12291. This action is not a rule as defined by the Regulatory Flexibility Act, so it is also exempt from the provisions of that Act. This action relates to delegations of authority internal management of the Department of Agriculture, and it does not constitute a major federal action affecting the quality of the human environment. Finally, the rule imposes no additional paperwork requirements on individuals or groups who appeal to the Board of Contract Appeals.

List of Subjects in 7 CFR Part 24

Administrative practice and procedure; Agriculture; Government contracts; Organization and functions (Government agencies)

For the reasons set forth in the Preamble, and under the Secretary authority, 5 U.S.C. 301, part 24, title Code of Federal Regulations is amended as follows:

PART 24—BOARD OF CONTRACT APPEALS, DEPARTMENT OF AGRICULTURE

1. The authority citation for part revised to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 714g, and 714h; 16 U.S.C. 551; 40 U.S.C. 41 U.S.C. 601-613.

Subpart A—Organization and Functions

2. Section 24.2 is amended by re the third sentence to read as follows:

§ 24.2 Composition of the Board.

*** Except as provided in Rule the Small Claims (Expedited) Proc and rule 12.3 the Accelerated Proc of appendix A to § 24.21, and in rule Accelerated Procedure of appendix § 24.21, decisions of the Board will rendered by a panel of three

(3) In determining whether an employee should receive a superior qualifications appointment and, if so, at what level the employee's pay should be set, the agency must consider the possibility of authorizing a recruitment bonus as provided in Part 575 of this chapter.

(4) Each agency that makes superior qualifications appointments must establish documentation and recordkeeping procedures sufficient to allow reconstruction of the action taken in each case. Documentation must include—

(i) The superior qualifications of the individual or special need of the agency that justified use of this authority;

(ii) The factors considered in determining the individual's existing pay and the reason for setting pay at a rate higher than that needed to match existing pay; and

(iii) The reasons for authorizing an advanced rate instead of or in addition to a recruitment bonus.

(5) Each agency using the superior qualifications authority must establish appropriate internal guidelines and evaluation procedures to ensure compliance with the law, these regulations, and agency policies.

[FR Doc. 91-25326 Filed 10-21-91; 8:45 am]
2025 RELEASE UNDER E.O. 14176

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 24 and 2400

Amendment of Regulations and Rules of Procedure, Agriculture Board of Contract Appeals

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Agriculture Board of Contract Appeals (Board) amends the regulations and Rules and Procedure governing appeals before it, 7 CFR part 24, so that they properly reflect the Board's jurisdiction and underlying authority. The amendment also clarifies the role of the hearing examiner, corrects minor typographical errors, and removes 7 CFR part 2400, which has been superseded.

DATES: Effective on October 22, 1991.

FOR FURTHER INFORMATION CONTACT: Marilyn M. Eaton, Vice Chair, Board of Contract Appeals, room 2912, South Building, U.S. Department of Agriculture, Washington, DC 20250.

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employee, unless recovery is accomplished under subpart K of this part and a longer period for recovery is necessary to avoid exceeding the limitation described in § 550.1104(i) of this part.

(c) If an employee transfers to another agency or employment with an agency is terminated for any reason, the remaining balance of an advance in pay not yet repaid is due and must be repaid to the Federal Government unless repayment is waived in whole or in part under § 550.206 of this part.

(d) Any remaining balance of an advance in pay that has not been waived under § 550.206 of this part or repaid by an employee upon transfer or termination of employment must be recovered by an agency using procedures for salary offset under subpart K of this part and/or by such other method as is provided by law.

§ 550.206 Waiver of repayment.

The head of an agency may waive in whole or in part a right of recovery of an advance payment under 5 U.S.C. 5524a and this subpart if he or she determines that recovery would be against equity and good conscience or against the public interest under criteria established by the agency.

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

6. A new part 575 is added to read as follows:

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

Subpart A—Recruitment Bonuses

- Sec. 575.101 Purpose.
- 575.102 Delegation of authority.
- 575.103 Definitions.
- 575.104 Agency recruitment bonus plans; higher level review and approval; and criteria for payment.
- 575.105 Payment of recruitment bonus.
- 575.106 Service agreement.
- 575.107 Repayment of recruitment bonus.
- 575.108 Internal evaluation.
- 575.109 Records and reports.

Subpart B—Relocation Bonuses

- Sec. 575.201 Purpose.
- 575.202 Delegation of authority.
- 575.203 Definitions.
- 575.204 Agency relocation bonus plans; higher level review and approval; and criteria for payment.
- 575.205 Payment of relocation bonus.
- 575.206 Service agreement.

- Sec. 575.207 Repayment of relocation bonus.
- 575.208 Internal evaluation.
- 575.209 Records and reports.

Subpart C—Retention Allowances

- Sec. 575.301 Purpose.
- 575.302 Delegation of authority.
- 575.303 Definitions.
- 575.304 Conditions for payment.
- 575.305 Agency retention allowance plans; higher level review and approval; and criteria for payment.
- 575.306 Payment of retention allowance.
- 575.307 Reduction or termination of retention allowance.
- 575.308 Internal evaluation.
- 575.309 Records and reports.

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; E.O. 12748.

Subpart A—Recruitment Bonuses

§ 575.101 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5753, which authorizes payment of a recruitment bonus of up to 25 percent of basic pay to a newly appointed employee or an individual to whom a written offer of employment has been made by the agency, provided there is a determination that, in the absence of such a bonus, difficulty would be encountered in filling the position with a high quality candidate.

§ 575.102 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency may pay a recruitment bonus to an employee who is newly appointed to—

(1) A General Schedule position paid under 5 U.S.C. 5332, including a position under the Performance Management and Recognition System established under chapter 54 of title 5, United States Code;

(2) A senior-level or scientific or professional position paid under 5 U.S.C. 5376;

(3) A Senior Executive Service position paid under 5 U.S.C. 5383;

(4) A position as a law enforcement officer within the meaning of 5 U.S.C. 8331(20) or 8401(17);

(5) A position under the Executive Schedule established under subchapter II of chapter 53 of title 5, United States Code, or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule; or

(6) An executive branch position filled by Presidential appointment (with or without the advice and consent of the Senate).

(b) The delegation of authority under paragraph (a) of this section shall not apply to the payment of a recruitment bonus to—

(1) The head of an agency, including an agency headed by a collegial body composed of two or more individual members; or

(2) An employee appointed to a position in the expectation of receiving an appointment as the head of an agency.

(c) When OPM finds that an agency is not paying recruitment bonuses in conformance with the agency's recruitment bonus plan and the criteria established under § 575.104 of this part or otherwise determines that the agency is not using this authority selectively and judiciously, it may—

(1) Direct the agency to revoke or suspend the authority granted to any organizational component of the agency; and with respect to any category or categories of employees and require that prior approval be secured at headquarters level before paying a recruitment bonus to such employees; or

(2) Revoke or suspend the authority granted to the head of the agency by paragraph (a) of this section for all or any part of the agency and with respect to any category or categories of employees and require that prior OPM approval be secured before paying a recruitment bonus to such employees.

§ 575.103 Definitions.

In this subpart: Agency has the meaning given that term in 5 U.S.C. 5102.

Commuting area means the geographic area that normally is considered one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities where people live and reasonably can be expected to travel back and forth daily to work.

Employee means an employee in or under an agency who is newly appointed without time limitation or for a minimum period of 2 years or more or an individual who has received a written offer of employment without time limitation or for a minimum period of 2 years or more.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Involuntarily separated refers to a separation initiated by an agency against the employee's will and without his or her consent for reasons other than cause on charges of misconduct or delinquency. An involuntary separation includes a separation resulting from the employee's actual inability to do the work following genuine efforts to do so, but does not include a separation under

part 752 of this chapter or an equivalent procedure for reasons that involve culpable wrongdoing on the part of the employee. In addition, when an employee is separated because he or she declines to accept reassignment outside the commuting area, the separation is involuntary if the employee's position description or other written agreement does not provide for such reassignment. However, an employee's separation is not involuntary if, after such a written mobility agreement is added, the employee accepts one reassignment outside the commuting area, but subsequently declines another such reassignment.

Newly appointed refers to the first appointment, regardless of tenure, as an employee of the Federal Government or an appointment following a break in service of at least 1 year.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is or will be newly appointed before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or interim geographic adjustments under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509).

Service agreement means a written agreement between an agency and a newly appointed employee under which the employee agrees to a specified period of employment of a minimum of 12 months with the appointing agency in return for payment of a recruitment bonus.

§ 575.104 Agency recruitment bonus plans; higher level review and approval; and criteria for payment.

(a) *Agency recruitment bonus plans.*

(1) Before paying a recruitment bonus under this subpart, the head of an agency shall establish a recruitment bonus plan.

(2) A recruitment bonus plan shall include the following elements:

(i) The designation of officials with authority to review and approve payment of recruitment bonuses;

(ii) Criteria that must be met or considered in authorizing bonuses, including criteria for determining the amount of a bonus;

(iii) Procedures for paying bonuses;

(iv) Requirements for service agreements; and

(v) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action.

(b) *Higher level review and approval.*

(1) Except as provided in paragraph

(b)(2) of this section, each determination

to pay a recruitment bonus, including the amount of such bonus, shall be reviewed and approved by an official of the agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.

(2) When necessary to make a timely offer of employment, a higher level official may establish criteria in advance based on identification of qualifications typically possessed by high quality candidates for a specific position or other similar positions and authorize the recommending official to offer a recruitment bonus (in an amount within a pre-established range) to any high quality candidate without further review or approval.

(c) *Criteria for payment.* (1) Each bonus paid under this subpart shall be based on a written determination that, in the absence of such a bonus, the agency would encounter difficulty in filling the position with a high quality candidate. Each such determination shall be made before the employee actually enters on duty in the position for which he or she has recruited. In determining which employee may receive a recruitment bonus, an agency may target groups of positions that have been difficult to fill in the past or that may be difficult to fill in the future. However, any determination to pay a bonus shall be made on a case-by-case basis for each employee.

(2) In determining whether a recruitment bonus should be paid and in determining the amount of any such payment, an agency shall consider the following factors, as applicable in the case at hand:

(i) The success of recent efforts to recruit high quality candidates for similar positions, including indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;

(ii) Recent turnover in similar positions;

(iii) Labor-market factors that may affect the ability of the agency to recruit high quality candidates for similar positions now or in the future;

(iv) Special qualifications needed for the position; and

(v) The practicality of using the superior qualifications appointment authority provided by 5 U.S.C. 5333 and § 531.203(b) of this chapter alone or in combination with a recruitment bonus.

§ 575.105 Payment of recruitment bonus.

A recruitment bonus shall be calculated as a percentage of the employee's rate of basic pay (not to exceed 25 percent) and paid as a lump

sum. It shall not be considered part of an employee's rate of basic pay for purpose.

§ 575.106 Service agreement.

(a) Before a recruitment bonus is paid, an agency shall require that an employee sign a written service agreement to complete a specified number of months of employment at the agency.

(b) The minimum period of employment to be established under service agreement for a recruitment bonus shall be 12 months.

§ 575.107 Repayment of recruitment bonus.

(a) Except as provided in paragraph (d) of this section, an employee who fails to complete the period of employment established under a service agreement shall be indebted to the Federal Government and shall repay recruitment bonus on a pro rata basis. The amount to be repaid shall be determined by providing credit for a full month of employment completed by the employee under the service agreement.

(b) Failure to complete the period of employment established under a service agreement occurs when the employee's service with the appointing agency terminates before the employee completes the period of employment specified in the service agreement.

(c) Amounts owed by an employee under paragraph (a) of this section shall be recovered from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and Subpart K of Part 550 of this chapter.

(d) Paragraph (a) of this section does not apply when an employee fails to complete a period of employment established under a service agreement because the employee is involuntarily separated.

(e) A right of recovery of an employee's debt under 5 U.S.C. 5514 may be waived in whole or in part by the head of the agency if he or she determines that recovery would be against equity and good conscience against the public interest.

§ 575.108 Internal evaluation.

(a) Each agency shall evaluate the effectiveness of recruitment bonuses to ensure the recruitment bonus plan conforms to requirements established under this subpart and that the payment of recruitment bonuses conforms to the criteria established under this subpart.

(b) Before January 1st of each year, each agency shall prepare a written

report on its use of recruitment bonuses during the previous fiscal year. Each report shall include the number of employees to whom a recruitment bonus was offered during the fiscal year, the percentage of salary offered, the number of employees who accepted the offer of a recruitment bonus during the fiscal year, and an evaluation of the overall effect of the payment of recruitment bonuses on the ability of the agency to fill key positions with high quality candidates. Each agency shall make its annual report available for review upon request by OPM.

§ 575.109 Records and reports.

(a) Each agency shall keep a record of each determination required by § 575.104(c) of this part and make such records available for review upon request by OPM. Each agency shall promptly submit a report of each such determination as a part of its regular submission to OPM's Central Personnel Data File.

(b) So that OPM can evaluate agencies' use of this authority and provide the Congress and others with information regarding the use of recruitment bonuses, each agency shall maintain such other records and submit to OPM such other reports and data as OPM shall require.

Subpart B—Relocation Bonuses

§ 575.201 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5753, which authorizes payment of a relocation bonus of up to 25 percent of basic pay to an employee who must relocate to accept a position in a different commuting area, provided there is a determination that, in the absence of such a bonus, difficulty would be encountered in filling the position with a high quality candidate.

§ 575.202 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency may pay a relocation bonus to an employee appointed to—

(1) A General Schedule position paid under 5 U.S.C. 5332, including a position under the Performance Management and Recognition System established under chapter 54 of title 5, United States Code;

(2) A senior-level or scientific or professional position paid under 5 U.S.C. 5378;

(3) A Senior Executive Service position paid under 5 U.S.C. 5383;

(4) A position as a law enforcement officer within the meaning of 5 U.S.C. 8331(20) or 8401(17);

(5) A position under the Executive Schedule established under subchapter II of chapter 53 of title 5, United States Code, or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule; or

(6) An executive branch position filled by Presidential appointment (with or without the advice and consent of the Senate).

(b) The delegation of authority under paragraph (a) of this section shall not apply to the payment of a relocation bonus to—

(1) The head of an agency, including an agency headed by a collegial body composed of two or more individual members; or

(2) An employee appointed to a position in the expectation of receiving an appointment as the head of an agency.

(c) When OPM finds that an agency is not paying relocation bonuses in conformance with the agency's relocation bonus plan and the criteria established under § 575.204 of this part or otherwise determines that the agency is not using this authority selectively and judiciously, it may—

(1) Direct the agency to revoke or suspend the authority granted to any organizational component of the agency and with respect to any category or categories of employees and require that prior approval be secured at headquarters level before paying a relocation bonus to such employees; or

(2) Revoke or suspend the authority granted to the head of the agency by paragraph (a) of this section for all or any part of the agency and with respect to any category or categories of employees and require that prior OPM approval be secured before paying a relocation bonus to such employees.

§ 575.203 Definitions.

In this subpart: *Agency* has the meaning given that term in 5 U.S.C. 5102.

Commuting area means the geographic area that normally is considered one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities where people live and reasonably can be expected to travel back and forth daily to work.

Employee means an employee in or under an agency who is appointed without a break in service and without time limitation to a position in a different commuting area or who is serving under an appointment without time limitation and whose duty station is changed temporarily to a different commuting area.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Involuntarily separated refers to a separation initiated by an agency against the employee's will and without his or her consent for reasons other than cause on charges of misconduct or delinquency. An involuntary separation includes a separation resulting from the employee's actual inability to do the work following genuine efforts to do so but does not include a separation under part 752 of this chapter or an equivalent procedure for reasons that involve culpable wrongdoing on the part of the employee. In addition, when an employee is separated because he or she declines to accept assignment outside the commuting area, the separation is involuntary if the employee's position description or other written agreement does not provide for such reassignment. However, an employee's separation is not involuntary if, after such a written mobility agreement is added, the employee accepts one reassignment outside the commuting area, but subsequently declines another such reassignment.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is being relocated, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or interim geographic adjustments under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509).

Service agreement means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment of a minimum of 12 months with the agency at the new duty station to which relocated in return for payment of a relocation bonus.

§ 575.204 Agency relocation bonus plans; higher level review and approval; and criteria for payment.

(a) *Agency relocation bonus plans.* (1) Before paying a relocation bonus under this subpart, the head of an agency shall establish a relocation bonus plan.

(2) A relocation bonus plan shall include the following elements:

(i) The designation of officials with authority to review and approve payment of relocation bonuses;

(ii) Criteria that must be met or considered in authorizing bonuses, including criteria for determining the size of a bonus;



Subject

Expanded Authority to Make Appointments
Above the Minimum Rate

Date

FEB 28 1991

To

Bureau Personnel Officers

From

John C. Vail, Director
Personnel Staff
Justice Management Division

The Office of Personnel Management (OPM) recently issued interim regulations to implement several features of the Federal Employees Pay Comparability Act of 1990. One of these features is the expanded authority to make appointments above the minimum rate. The interim regulations, which became effective on February 14, 1991, remove the GS-11 and above limit on superior qualifications appointments and permit agencies to appoint superior candidates above the minimum rate at any General Schedule grade level. The new regulations also contain a specific reference to the use of advanced rates to meet a special need of the agency. A copy of the interim regulations was provided to you at the last Personnel Officers meeting.

As a result of the new regulations, components will now be able to request approval of appointments above the minimum rate for candidates with superior qualifications at any General Schedule grade level. As Director, Personnel Staff, I will continue to exercise the authority to act on all nonattorney requests for advanced hiring rates. The Director or Deputy Director, Office of Attorney Personnel Management (OAPM), will continue to approve above minimum rates for attorney candidates. Nonattorney requests should be submitted to the Staffing Group, Room 401, Indiana Building, and attorney requests to OAPM in Room 4311, Main Justice Building.

Attached are revised procedures on preparing requests for appointments above the minimum rate and a revised sample format for your immediate use in submitting nonattorney cases. We ask that you ensure that each case is complete, with all required attachments, prior to its being forwarded to the Staffing Group.

Questions may be directed to Joliette Spencer, Staffing Group, on (202) 514-6782.

Attachments

U.S. Department of Justice
Guidance for Submitting Requests for
Appointments Above the Minimum Rate

Effective February 11, 1987, the Office of Personnel Management (OPM) delegated to the Department the authority to make appointments to positions in grade 11 or above of the General Schedule (or equivalent GM positions) at rates higher than the minimum rate for the grade when the candidate has superior qualifications for the position. Effective February 14, 1991, OPM expanded the authority to make appointments above the minimum rates, as a result of the Federal Employees Pay Comparability Act of 1990. The new regulation permits appointments of superior candidates above the minimum rate at any General Schedule grade, and removes the previous limit of GS-11 and above. The Director, Personnel Staff exercises the authority to make appointments above the minimum rate for nonattorney positions.

The instructions described below apply only to nonattorney actions. Attorney actions are handled by the Office of Attorney Personnel Management.

1. Requests for above the minimum rates for non-attorney candidates should be prepared on the attached form (or similar format).
2. If the proposed position is covered by a special salary rate, the request should indicate the special rate salary table number.
3. The request should indicate the legal appointing authority that will be used to appoint the proposed candidate. For example, if the candidate will be appointed from an OPM Certificate of Eligibles, the request should cite the certificate number and date issued. If the candidate is being appointed under an OPM direct-hire authority, the OPM Bulletin which authorizes the authority and the date issued should be indicated in the request. The legal authority for excepted service appointments should be fully indicated, i.e. Schedule A, 213.3102 (11).
4. Justification Statements.
 - (a) Justification statements should be as brief and concise as possible, discussing the facts which support the proposed salary determination. Statements should not repeat the candidate's entire academic and employment history, much of which may not directly support the above the minimum rate recommendation.

- (b) Superior qualifications and existing pay must be considered jointly in arriving at an appropriate salary rate. Federal Personnel Manual (FPM) Chapter 338, Subchapter 6, "Appointment Above the Minimum Rate Because of Superior Qualifications" discusses the specific requirements for evaluating qualifications and pay.
- (c) A complete, signed Standard Form 171 which clearly documents the candidate's superior qualifications must be attached.
- (d) A verification of existing pay, i.e., recent earnings/pay statement must be attached to support the requested salary rate. In cases of consulting pay, a recent salary history must be attached.
- (e) In addition, the following circumstances require additional information:
 - (1) If the candidate will be appointed from an OPM Certificate (including certificates issued by a Department component under delegation agreement with OPM), a copy of the certificate and SF-39 must be attached. The justification must compare the qualifications of all eligibles within reach and available for appointment, and make clear why the proposed candidate has superior qualifications.
 - (2) If the candidate will be appointed from a Merit Promotion Certificate, a copy of the certificate and any selective and/or quality ranking factors used must be attached, and the justification must include an analysis of the best qualified and available eligibles' qualifications (as in 4.e. (1) above).
 - (3) If a current, bona fide offer(s) of employment at a higher salary rate than the candidate's existing salary is used to justify the proposed above minimum rate, the offer(s) of employment must be in writing, on letterhead stationery, and must be attached to the request. Usually, written bona fide job offers will include specific information on the job title, salary or salary range, location and suggested reporting date. A letter which contains no specific information (for example, an invitation to "discuss employment opportunities") would not constitute a bona fide job offer.

- 3
- (4) If the proposed salary is more than 20 percent above the candidate's existing salary, the justification must explain the exceptional or unusual circumstances which serve as the basis for the recommendation. Please note that the Department cannot approve a rate of pay which is more than 20 percent above the candidate's existing pay. Requests of this nature are approved by the U.S. Office of Personnel Management, and must be submitted through the Personnel Staff, Justice Management Division.
 - (5) In the extremely rare instance of a "special need" of the Government for a particular candidate's services, the justification must provide information documenting the Department's program objective(s) and how the program will be adversely affected without the special experience, knowledge or skills of the particular candidate. (See FPM Chapter 338, S6-6 a.(4) and 6-7h. for additional information.)
5. Required Attachments for each case:
 - a. Signed copy of Standard Form 171.
 - b. Copy of SF-52, indicating the date received in the personnel office.
 - c. Copy of Official Position Description.
 - d. Copy of OPM Certificate of Eligibles, SF-39 or Merit Promotion Certificate, and any selective factors or quality ranking factors, if applicable.
 - e. Copy of written employment offer(s), if applicable.
 - f. Copy of recent earnings/pay statement, if applicable.
 6. The Bureau Personnel Officer must certify on the above the minimum request that he/she has reviewed the recommended appointment above the minimum rate and has assured that no current employees will be adversely affected by the proposed action; that the candidate possesses high or unique qualifications which are markedly superior to those expected of a well-qualified candidate for the position to be filled; and that the authority for superior qualifications appointments is not being used to circumvent any other salary restriction of law, rule, or regulation.
 7. Questions regarding the preparation of above the minimum rate requests may be directed to the appropriate servicing personnel office or to the Staffing Group, Personnel Staff, Justice Management Division, on (202) 514-6782.