

U. S. DEPARTMENT OF EDUCATION
PERSONNEL MANUAL INSTRUCTION

PMI 304-1

DATE December 1, 2000

APPROVED:

Veronica D. Trietsch
Director, Human Resources Group

SUBJECT: EMPLOYMENT OF EXPERTS AND CONSULTANTS

I. AUTHORITY

The Department of Education Organization Act, Public Law 96-88, Section 402, stipulates that the Secretary may, as provided in appropriation Acts, obtain the services of experts and consultants. Upon such authorization, appointments are made in accordance with the provisions of Section 3109 of Title 5, United States Code (U.S.C.), and the governing regulations of Title 5 Code of Federal Regulations (C.F.R.) Section 304. Expert and consultant appointments are not subject to the provisions of law and regulation governing:

- (a) appointments in the competitive service
- (b) position classification; and
- (c) General Schedule pay rates.

II. POLICY

It is the policy of the Department of Education (ED) to use experts and consultants when there is a legitimate need for temporary services not available from ED employees.

Neither experts nor consultants may be assigned to full-time, continuing work that regular employees otherwise would perform. The purpose of the expert and consultant authority is to allow agencies to bring in special types of employees to address special situations requiring short-term or occasional attention.

III. APPLICABILITY

This Instruction applies to all ED Principal Offices (POs) that are authorized by an appropriation Act or other statute, to appoint experts and consultants under 5 U.S.C. 3109.

IV. DEFINITIONS

- Expert - A person who is specifically qualified by education and experience to perform difficult and challenging tasks in a particular field beyond the usual range of achievement of competent persons in that field. An expert is regarded by other persons in this field as an authority or practitioner of unusual competence and skill in a professional, scientific, technical or other activity.
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- Expert position – A position that requires the services of a specialist with skills superior to those of others in the same profession, occupation, or activity to perform work on a temporary and/or intermittent basis assigned by a federal official.
- Consultant – A person who can provide valuable and pertinent advice generally drawn from a high degree of broad administrative, professional, or technical knowledge or experience. When an agency requires public advisory participation, a consultant also may be a person who is affected by a particular program and can provide useful views from personal experience.
- Consultant position - A position that requires providing advice, views, opinions, alternatives, or recommendations on a temporary and/or intermittent basis on issues, problems, or questions presented by a federal official.

V. GENERAL GUIDELINES

Experts and consultants will not be used in positions which should be filled under regular competitive appointment procedures. The position must warrant the services of an expert or consultant and the appointee must be qualified as an expert or consultant to have an appropriate appointment under 5 U.S.C. 3109.

All experts and consultants in ED must receive temporary appointments (i.e. not to exceed one year) and may be reappointed only as provided in section VIII of this PMI.

An agency must not use 5 U.S.C. 3109 to appoint an expert or consultant:

- (1) To a position requiring Presidential appointment. However, subject to the conditions of this PMI, an individual may be appointed to an expert or consultant position while awaiting final action on a Presidential appointment.
- (2) To a Senior Executive Service (SES) position.
- (3) To perform managerial or supervisory work (although an expert may act as team leader or director of the specific project for which he/she is hired), to make final decisions on substantive policies, or to otherwise function in the agency chain of command (e.g. to approve financial transactions or personnel actions).
- (4) To do work performed by the agency's regular employees.
- (5) To fill in during staff shortages.
- (6) Solely in anticipation of giving that individual a career appointment. However, subject to the conditions of this PMI, an individual may be appointed to an expert or consultant position pending Schedule C appointment or noncareer appointment in the SES.

VI. PROCEDURES FOR REQUESTING AND APPROVING APPOINTMENTS

The following procedures apply to all appointments, extensions, and reappointments.

A. Appointment Papers

1. To hire an expert or consultant, the requesting PO must submit all of the following forms:
 - Standard Form SF-52, Request for Personnel Action (through the ADP system)
 - ED Form EP-1, Supplemental Information – Expert or Consultant (Attachment I)

Note: Explain in full the services to be performed by the expert or consultant. A vague or general statement will not be accepted. The unique qualifications of the expert or consultant must also be described in detail.

- A resume, Optional Application for Federal Employment (OF-612), Standard Form SF-171, or other application format. The qualifications and experience of the proposed expert or consultant must be fully described.
- Financial Disclosure acknowledgement form signed by the proposed expert or consultant. (Attachment II)

2. For extensions or reappointments, the requesting PO must submit all of the following forms:

- SF-52
- ED Form EP-1 (if new services are to be performed, the new assignment must be fully described).
- A resume, Optional Application for Federal Employment (OF-612), Standard Form SF-171, or other application format (for reappointments only).
- Financial Disclosure acknowledgment form (for reappointments only).

Note: For intermittent appointees, the number of hours worked on the previous appointment must be entered on the SF-52 requesting the reappointment or extension (and must be on the final separation SF-52).

B. Certification and Approval

Each proposed appointment (and extension of appointment or reappointment) must be reviewed and certified by the Senior Officer of the requesting PO. The certification is to be documented on the reverse side of ED Form EP-1. The purpose of the certification is to ensure that the Senior Officer has carefully considered the requirements of law, Office of Personnel Management (OPM) regulations, and Departmental policies with respect to the appointment of experts and consultants. The Director, Human Resources Group, will review all expert and consultant requests, and will give final approval upon determination that all applicable requirements have been met.

VII. DURATION AND TYPE OF APPOINTMENT

The requesting official estimates the duration of the appointment which may be any period of time not to exceed one year. Appointments for periods shorter than one year may be extended up to one year, as needed (See VI.A.2.). The requesting official also identifies the type of work schedule for the temporary appointment:

Full Time Employment (regularly scheduled full-time tour of duty)

Part Time Employment (regularly scheduled part-time tour of duty)

Intermittent Employment (no regularly scheduled tour of duty).

VIII. CRITERIA FOR REAPPOINTMENTS

A. Reappointments to SAME POSITION

1. ED may employ an expert or consultant who works on a FULL TIME basis for a maximum of two years – on an initial appointment not to exceed one year and a reappointment not to exceed one additional year.
2. ED may reappoint an expert or consultant who works on PART TIME or INTERMITTENT schedule in accordance with one of the following two options. ED must determine which option it will use in advance of any reappointment and must base its determination on objective criteria (e.g. nature of duties, pay level, whether or not work is regularly scheduled).

(a) Option 1 – Annual service

Intermittent appointments can be renewed from year to year with no limit on the number of reappointments as long as the individual is paid for no more than 130 days or 1040 hours of work, or works for no more than that amount of time without compensation in a service year. (A service year is

the calendar year that begins on the date of the individual's initial appointment with the agency). An expert or consultant who exceeds this limit in his/her first service year may be reappointed for one additional year. Any expert or consultant who exceeds this limit during any subsequent service year may not be reappointed thereafter.

Any part time employee (i.e. one who works more than 130 days or 1040 hours in their first service year but less than on a full time basis) may be reappointed for one additional year.

Option 1 must be used when experts and consultants are appointed without compensation.

(b) Option 2 – Cumulative earnings

ED may reappoint an expert or consultant until his/her total earnings from expert or consultant employment with the agency reaches his/her lifetime limit which is twice the maximum annual rate payable under the annualized pay limitations of 5 CFR 304.105. ED may adjust this limit to reflect statutory increases in basic pay rates. Once an expert or consultant reaches his/her lifetime limit, ED must terminate the employment.

OPM may authorize reappointment of an expert or consultant as an exception to these limitations when necessitated by unforeseen and unusual circumstances.

B. Reappointment to a DIFFERENT POSITION

ED may reemploy an expert or consultant to perform demonstrably different duties without regard to the length of that individual's previous expert or consultant service with the agency.

IX. PAYMENT FOR SERVICES

A. Pay Basis

The pay basis may be daily, hourly, or without compensation as follows:

1. Daily – The daily basis is used for intermittent appointments for each day of employment which interrupts the individual's ordinary pursuits substantially the entire day.
2. Hourly – The hourly basis is used for intermittent service if the individual is not kept from his or her regular work or pursuits for the entire day.

The hourly basis is used for all full-time and part-time appointments.

3. Without Compensation – The without compensation basis is permitted when the employee agrees in advance in writing to waive any claim for compensation for his/her services. A letter of agreement must be obtained and placed on file (Attachment III gives a sample letter).

B. Setting Pay

The rate of pay is based on the work to be performed and the qualifications of the proposed expert or consultant. The requesting office recommends a pay rate, but must not make a commitment to a proposed appointee without receiving approval from the Human Resources Group.

The rate of pay will be set according to consideration of:

- The level and difficulty of the work to be performed.
- The qualifications of the expert or consultant.
- The pay rates of comparable individuals performing similar work in federal or non-federal sectors.
- The availability of qualified candidates.

C. Range of Rates of Pay

1. Maximum Daily Pay Rate – As provided in appropriation Acts, the Department's maximum daily rate for experts/consultants will not exceed Executive Schedule Level IV.

As a matter of policy, the daily rate should not exceed the grade 15, step 10 rate of the General Schedule except in very unusual circumstances which must be documented.

The rate of pay will be commensurate with the level and difficulty of work to be done, the qualifications of the appointees, and the availability of such services in the labor market.

2. Minimum Daily Pay Rate – Generally, experts or consultants will have knowledge and skills commanding rates at a level equivalent to at least the minimum rate of GS-13.
3. Exceptions – The rates of pay below the minimum rate of GS-13 or above the maximum rate of GS-15 require a written statement to be submitted with the request for appointment, giving reasons for the recommend rate. There can be no exceptions to the statutory maximum rate of pay of Executive Schedule Level IV as authorized by the Department's appropriations Acts.

4. Overtime Pay – Except for experts and consultants paid on a daily rate basis, experts and consultants qualify for premium pay, subject to any applicable eligibility requirements and pay caps. All overtime hours must be officially ordered and approved.
5. Holiday Pay – Experts and consultants with regularly scheduled tours of duty are entitled both to holiday premium pay and holiday paid time off, subject to all requirements for premium pay as well as applicable pay caps, provided those holidays fall on a work day within their regular tour of duty. Intermittent appointees are not paid for any holidays on which they do not work and are not entitled to premium pay for those holidays on which they do work.

D. Pay Plan

The pay plan is ED for expert; and EF for consultant.

E. Pay Adjustments

Pay adjustments for experts and consultants after initial appointment are not automatic. Pay of experts and consultants is fixed by administrative action. The Principal Office will request pay increases in writing and forward it to the Human Resources Group.

X. LEAVE

A. Full-time and part-time appointees with a regular tour of duty are entitled to earn and use annual and sick leave. The rates of leave accrual, the conditions under which leave may be used, and the provisions for lump-sum payment for unused annual leave are the same for temporary experts and consultants as for regular full-time and part-time employees.

B. Intermittent appointees are not entitled to annual and/or sick leave.

XI. BENEFITS

Normally, new appointments of experts and consultants are excluded from coverage under the Federal Employees Retirement System Act, the Health Benefits Act, and the Federal Employee Government Life Insurance Act.

XII. FINANCIAL DISCLOSURE

Experts and consultants are required to file either a Public Financial Disclosure Report (SF-278) or a Confidential Financial Disclosure Report (SF-450) based on the number of days he or she is expected to work during the year and the amount of compensation. The Human Resources Group will give the individuals the reports upon their entrance on duty. The reports must be completed and returned to the Office of the General Counsel within 30 days after the effective date of the appointment.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

FINANCIAL DISCLOSURE FOR EXPERTS AND CONSULTANTS

The Federal conflict of interest statute, 18 U.S.C. § 208, prohibits Federal employees, including intermittent and part-time employees, from participating personally and substantially in an official capacity in any particular matter in which, to his or her knowledge, he or she, or any person whose interests are imputed to him or her under the statute, has a financial interest. In addition, Standards of Conduct for the Executive Branch prohibit all employees from having a financial interest that raises the appearance of a conflict of interest with the employee's official duties and responsibilities.

As an expert or consultant at the Department of Education, you will be required to complete and file a financial disclosure report. The purpose of the financial disclosure report is to obtain information on the employment and financial interests of an employee, his or her spouse, and dependent children in order to permit the Department to determine if the employee has a conflict of interest or other problem under the Federal ethics laws. If a potential problem is identified, action can be taken to ensure compliance with all applicable laws and regulations. In this way, the system plays an important role in enabling the Department's ethics program to achieve its purpose; namely, to ensure the integrity of the Department's functions and public confidence in that integrity.

Depending on the number of days you will be expected to work during the year and the amount of compensation you will receive, you will be required to file either a Public Financial Disclosure Report (SF-278) or a Confidential Financial Disclosure Report (SF-450). The Executive Resources Staff of the Human Resources Group will forward a package of information to you, including the appropriate Report form and instructions, after you have been appointed.

If you have any questions about financial reporting in the Executive Branch, please feel free to call the Department's Ethics Counsel Staff at 202/401-1730.

ACKNOWLEDGEMENT: I have read the above and understand that, as an expert or consultant at the Department of Education, I will be required to complete and file a financial disclosure report.

Acknowledged

Date

SUPPLEMENTAL INFORMATION – EXPERT OR CONSULTANT

(Submit with request for Personnel Action, SF-52)

NOTE: Complete required certification on reverse.

1. NAME OF PERSON <i>(Last, first, middle initial)</i>	2. TOTAL PERIOD FOR WHICH APPOINTMENT IS REQUESTED [entire year (365 days) or a shorter period]
3. MAILING ADDRESS	4. APPROXIMATE NUMBER OF DAYS PERSON IS EXPECTED TO PERFORM SERVICES DURING THIS PERIOD
5. SERVICES TO BE PERFORMED A. EXPLAIN IN FULL THE SERVICES TO BE PERFORMED	
B. SPECIFY WHAT DUTIES WILL BE ASSIGNED THAT WILL INVOLVE THE PERSON IN THE TRANSACTION OF BUSINESS ON BEHALF OF THE GOVERNMENT WITH ANY PROFIT OR NON-PROFIT ORGANIZATION	
C. SPECIFY WHAT DUTIES WILL BE ASSIGNED THAT WILL INVOLVE THE PERSON IN THE RENDERING OF ADVICE TO THE GOVERNMENT WHICH WILL HAVE DIRECT AND PREDICTABLE EFFECT ON THE INTERESTS OF ANY PROFIT OR NON-PROFIT ORGANIZATION	
D. SPECIAL QUALIFICATIONS OF THE PERSON RECOMMENDED FOR APPOINTMENT (List those which relate specifically to the services to be performed)	

CERTIFICATION

In approving the appointment of this consultant/expert, I have considered the requirements of law, relevant decisions of the Comptroller General, and Office of Personnel Management and Department policies and instructions. More specifically, I have satisfied myself that:

1. the services of the individual are essential for effective program management
2. the duties to be performed are those of (check one)

____ a consultant (that is, they are purely advisory in nature and will not include the performance or supervision of operating functions)

____ an expert (that is, they require a high level of expertise not available in the regular work force)
3. the proposed appointee is qualified to (check one)

____ provide advisory services as a consultant

____ serve as an expert as that term is used in FPM Chapter 304-1
4. the appointment is appropriately designated as (check one)

____ full-time (the individual will work on a regularly scheduled full-time tour of duty)

____ part-time (the individual will work on a regularly scheduled part-time tour of duty)

____ intermittent (the individual will work without a regularly scheduled tour of duty)
5. the appropriate appointment authority is being used
6. the pay level is appropriate for the duties to be performed and the qualifications of the appointee
7. the record of appointment has been clearly documented to show the services to be performed and the special qualifications of the appointee which relate specifically to those services
8. a statement of employment and financial interests has been obtained and it has been determined that no conflict of interest exists.

Date

Signature of Program Manager Authorized to Obtain the Consultant's/Expert's Services

Date

Signature of Appointing Official

MEMORANDUM FOR THE RECORD:

This confirms that I have agreed to serve the Department of Education as an unpaid Consultant/Expert for the period _____ to _____. During this period I expect to actually perform work approximately _____ days.

I understand that I will _____ or will not _____ be reimbursed for travel and expenses, subject to the Federal Travel regulations.

I also understand that I am covered by applicable Federal statutes and regulations concerning Conflict of Interest and Political Activity.

Name

Date