

HHS Transmittal 95.2
Personnel Manual
Issue Date: 1/30/96

Material Transmitted

HHS Instruction 338-2, Appointments Above the Minimum Rate Because of Superior Qualifications (pages 1-3)

Material Superseded

HHS Instruction 338-2 (pages 1-6 and Exhibit, dated March 1, 1983 and as amended)

Background

This Instruction has been revised in accordance with the OASPER revitalization effort to streamline the HHS human resource policy issuance system.

Previous delegations of the authority to approve appointments above the minimum rate from ASPER to the Heads of Operating Divisions and the Regional Directors are superseded. To the extent that existing redelegations of this authority are in accordance with the provisions of this delegation they may remain in effect.

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HHS INSTRUCTION 338-2

APPOINTMENTS ABOVE THE MINIMUM RATE BECAUSE OF SUPERIOR QUALIFICATIONS

REFERENCES

- 5 USC 5333, Minimum Rate for New Appointments
- 5 CFR 531, Subpart B, Determining Rate of Basic Pay
- 5 USC 5532, Employment of Retired Members of the
Uniformed Services; Reduction in Retired or
Retainer Pay
- 5 CFR 553, Reemployment of Military and Civilian
Retirees to Meet Exceptional Employment Needs

338-2-00 PURPOSE AND COVERAGE

- A. This Instruction outlines the requirements for approving appointments above the minimum salary rate of the appropriate grade because of superior qualifications or a special need of the agency for a candidate's services.
- B. This Instruction covers the filling of temporary or permanent competitive and excepted service positions in DHHS with candidates who are not currently Federal employees. Former Federal employees may qualify for an appointment above the minimum rate because of superior qualifications if they meet the requirements in 5 CFR Part 531 Subpart B. This Instruction does not apply to members of the Senior Executive Service.

HHS :

338-2-10 POLICY AND GUIDANCE

- A. An appointment above the minimum rate may not be effected until the advanced rate is approved by an official with delegated approval authority.
- B. In setting the appropriate step, consideration should be given to the availability of highly-qualified candidates, the existing compensation of the candidate (including any bona fide fringe benefits not offset by Federal benefits), and legitimate and confirmed competing offers.

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- C. In determining the forfeited compensation which is to be offset by the advanced rate, only the candidate's existing compensation may be considered. Any income from outside employment which forms a regular, continuing portion of the candidate's total income and which the candidate will not be able to continue as a

Federal employee may be considered in setting the pay rate. A written statement signed and dated by the candidate stating that the compensation will be forfeited must be included with the request for approval of an above the minimum appointment. Salary claims must be verified to ensure that only actual earnings are included. Income from other sources that will continue during Federal employment may not be considered.

- D. A candidate who has retired or resigned from a uniformed service may not qualify for an advanced rate on the basis of former uniformed service pay. Pay must be based on a current non-Federal employment offer. Once the candidate has retired or resigned from active service, he/she would be considered to not be earning any income from the previous employment. A superior qualifications appointment is not to be used to counteract the reduction in uniformed service retirement pay provisions of 5 USC 5532.
- E. It is not appropriate to use the salary earned as a former expert or consultant for the Federal Government appointed under 5 USC 3109 to justify an advanced rate when an individual's last position is that of an expert or consultant for the Federal Government. Income forfeited at the time the individual became an expert or consultant may be used for determining the appropriate step.
- F. An advanced rate may be based on earnings as an expert or consultant outside the Federal government. The advanced rate should take into account average income earned by the candidate over the past few years and other legitimate and confirmed consulting offers the candidate may have.
- G. An appointment above the minimum based on superior qualifications can be made for special experts appointed under specific legislative authority, e.g., the Public Health Service Act, Title 42 USC, only if the expert has a 90-day break in service.
- H. A rate that was earned on a part-time basis or for only part of a year cannot be annualized to justify the advanced rate.
- I. Retroactive appointment above step one because of superior qualifications cannot be made once the candidate has been appointed at step one. In rare cases, the Department may request a variation from the U.S. Office of Personnel Management (USOPM) to permit the employee's salary to be prospectively raised to a higher step. USOPM publishes descriptions of variations which they approve, and these become precedents.

HHS :

338-2-20 DOCUMENTATION AND RECORD-KEEPING

- A. Each Operating Division must establish documentation and record-keeping requirements and internal guidelines and evaluation procedures to ensure compliance with the law and regulations.
- B. Written documentation sufficient to allow reconstruction of the action taken in each case must be maintained for a minimum of three years. Each request must include: (1) a description of the superior qualifications of the individual or the special need of the agency; (2) 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, (3) the reasons for authorizing an advanced rate instead of (or in addition to) a recruitment bonus.

HHS :

338-2-30 DELEGATION OF AUTHORITY

- A. The authority to approve an appointment at a rate above the minimum rate of the appropriate grade, under 5 USC 5333 based on the superior qualifications of the candidate or a special need of the agency for the candidate's services, is hereby delegated to the Heads of Operating Divisions and the Regional Directors for employees and positions within their appointing authority. Further redelegation is authorized.
- B. Previous delegations of the authority to approve appointments above the minimum rate from ASPER to the Heads of Operating Divisions and the Regional Directors are superseded. To the extent that existing redelegations of this authority are in accordance with the provisions of this delegation they may remain in effect.