

Material Transmitted:

HHS Instruction 304-1, Appointment of Experts and Consultants (pages 4 and 5)

Material Superseded:

HHS Instruction 304-1 (pages 4 and 5)

Background:

The transmitted material makes one major change and two minor changes in HHS Instruction 304-1. The major change on page 4 is the elimination of the last sentence of 304-1-40.B.3 because it has no legal basis. The sentence being eliminated is as follows: "The highest rate that may be paid is the rate for Level IV of the Executive Schedule."

The two minor changes on page 5 involve clarity issues. Both changes are made in paragraph 304-1-40.C. The first change clarifies the second sentence of paragraph C as follows: "Appointments under 5 U.S.C. 3109 usually are for 1 year or less." The following clarification is made in the next sentence: "However, if part-time or intermittent appointees do not work more than 130 days in any service year, their appointments can be for longer than a year." The first and last sentences of paragraph C were not changed. Following is the corrected version of paragraph C:

Experts and consultants may be appointed on a full-time, part-time, or intermittent basis. Appointments under 5 U.S.C. 3109 usually are for 1 year or less. However, if part-time or intermittent appointees do not work more than 130 days in any service year, their appointments can be for longer than a year. Appointments under other statutes may be for more than a year regardless of how many days in a year the expert or consultant works.

The major change above brings HHS Instruction 304-1 into conformance with the applicable law.

Any reference to "OPDIV" in this Instruction now includes AHCP, ATSDR, CDC, FDA, HRSA, IHS, NIH, SAMHSA, the Office of the Secretary, the Program Support Center, HCFA, ACF, and AoA.

Implementation of this issuance must be carried out in accordance with applicable laws, regulations, and bargaining agreements.

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Personnel Manual
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INSTRUCTION 304-1

Experts and consultants appointed under 5 U.S.C. 3109 are subject to appointment restrictions contained in CFR 304. Experts and consultants appointed under other statutes are not subject to those limitations. However, OPDIVs making such appointments must ensure that appointments are continued only as long as necessary.

304-1-40 PAY, LEAVE, TRAVEL, AND OTHER BENEFITS

A. General

Several different factors or conditions of employment determine the amount of pay an expert or consultant receives for his/her services, and the individual's entitlements under pay, leave, travel, and other laws and regulations. These factors or conditions are discussed in the subsections which follow.

B. Rate of Compensation

1. Heads of OPDIVs, or persons to whom they have delegated authority, will determine the appropriate rate of pay in each case (HHS Instruction 250-2 on setting rates of pay no longer applies to experts and consultants). Factors to be considered include:
 - a. The level and difficulty of the work to be performed;
 - b. The qualifications of the expert or consultant;
 - c. The pay rates of comparable individuals performing similar work in the Federal or non-Federal sectors; and
 - d. The availability of qualified candidates.
2. In accordance with the HHS appropriations act, the highest rate that can be paid to an expert or consultant appointed under 5 U.S.C. is Level IV of the Executive Schedule.
3. The rate of compensation for consultants appointed under 42 U.S.C. 209(f) may be set by the OPDIV head or his/her designee.
4. The basis for compensation levels shall be documented in the Official Personnel Folder.

5. Experts and consultants may also serve without compensation, provided the individuals agree in advance in writing to waive any claim for compensation for those services. 31 U.S.C. 1342 does not permit acceptance of voluntary service—that is, service furnished on the initiative of the person rendering the service without request from the Department. There is, however, no prohibition against requesting gratuitous service provided the individual serving without compensation is not assigned duties of a classified position (see Comptroller General decision 27 CG 194).

Personnel offices must make sure that the invitation and acceptance to serve without compensation are in the record. Form SF 50 to document and terminate the appointment will be prepared even though no compensation is to be paid.

C. Duty Basis

Experts and consultants may be appointed on a full-time, part-time, or intermittent basis. Appointments under 5 U.S.C. 3109 are usually for 1 year or less. However, if part-time or intermittent appointees do not work more than 130 days in any service year, their appointments can be for longer than a year. Appointments under other statutes may be for more than a year regardless of how many days in a year the expert or consultant works.

D. Pay Basis

1. Experts and consultants may be paid on an hourly basis or on a daily basis. The basic difference between these two pay bases is that an expert or consultant paid on an hourly basis is paid at his/her hourly rate for each hour worked, whereas an expert or consultant paid on a daily basis is paid at his/her full daily rate for each day worked, regardless of the number of hours involved. At the time of appointment, experts and consultants may be assigned a daily or an hourly pay basis. Pay basis is documented on the SF 50 as a daily rate followed by "PD" or as an hourly rate followed by "PH." (See 304-1-40E.2 and F.2.) Pay must be on an hourly basis for any expert or consultant approved to perform duties away from the work site.
2. Regardless of the pay basis of an expert or consultant, his/her biweekly pay is still limited by law to an amount which does not exceed the biweekly rate of pay for Level IV of the Executive Schedule. For example, an expert or consultant being paid the maximum daily rate cannot be paid for work in excess of 10 days per pay period, since such pay would exceed the statutory

