

Material Transmitted:

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

Material Superseded:

HHS Instruction 338-2 (page 2)

Background:

Page 2 of this Instruction has been revised to eliminate 304-2-10.H because it has no legal or regulatory basis. The sentence being eliminated is as follows:

- 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.

With the elimination of item H above, item I on the superseded page becomes item H on the transmitted page.

Any reference to AOPDIV@ in this Instruction now includes AHCPR, 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.

Filing Instructions:

Remove superseded material and file new material. Post receipt of this transmittal to the HHS Check List of Transmittals and file this transmittal in sequential order after the check list.

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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 U.S.C. 5532.
- E. It is not appropriate to use the salary earned as a former expert or consultant for the Federal Government appointed under 5 U.S.C. 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 U.S.C., only if the expert has a 90-day break in service.
- H. 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 approved, and these become precedents.