



UNDER SECRETARY OF DEFENSE
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JAN 3 2012

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
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SUBJECT: Clarification on Pay and Leave Limitations for Highly Qualified Experts

This memorandum is to advise Components on the results of a recent review of the Department's Highly Qualified Expert (HQE) pay setting guidance. The review was prompted by questions from staff members of the U.S. Office of Personnel Management (OPM). The review closely scrutinized Department policy regarding compensation for the Department's HQEs.

The review revealed that, in some instances, the Department may not be in full compliance with the applicable statutes regarding appropriate limitations on basic pay and total compensation for the Departments HQEs, as interpreted by OPM. Steps will need to be taken to correct any resultant pay errors and to ensure that pay is set within the limits of section 9903 of title 5, United States Code.

The applicable statute requires that basic rates of pay for employees appointed under section 9903 be prescribed at rates (1) not in excess of the maximum rate of basic pay authorized for senior-level positions under section 5376 (5 U.S.C. § 5376), as (2) increased by locality-based comparability payments under section 5304 (5 U.S.C. § 5304), and as further increased by (3) additional payments made within the limits applicable to an employee under 5 U.S.C. 9903(d).

Current guidance, dated March 26, 2010, permits the basic pay of an HQE to be set "within the range from General Schedule (GS) 15, step 1 (or equivalent) up to the statutory limit of Level II of the Executive Schedule..." The appropriate range to set the basic pay for an HQE would be within the range from GS 15, step 1 (or equivalent) up to the statutory limit of Executive Level IV. Executive Level IV is the maximum basic pay allowed under 5 U.S.C. § 9903 as limited by the

Senior Professional Performance Act of 2008, Public Law No. 110-372, § 2, 122 Stat. 4043, 4045 (2008).

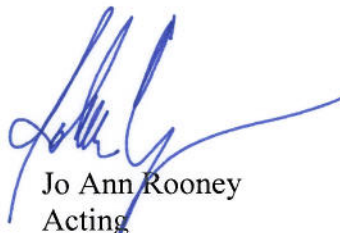
In addition to basic pay, HQEs may receive locality-based comparability payments applicable to the geographic location of their position of record as prescribed by 5 U.S.C. § 5304. However, such payments, when added to the rate of basic pay, are limited to Executive Level III (5 U.S.C. § 5304 (g)(2)(C)).

Accordingly, the current maximum rate of basic pay for an HQE may be set up to \$155,500. Appropriate locality-based comparability payments may then be added to the basic pay in an amount not to exceed \$165,300. If approved for locality pay, HQEs should receive the full amount of locality pay prescribed by 5 U.S.C. § 5304 applicable to their geographic location up to the maximum total pay cap of \$165,300.

Additional payments continue to be authorized as set forth in the March 2010 guidance, which limits such payments to recruitment, retention, and relocation (3Rs) incentives. Further, while performance may be considered as a justification for offering any such additional payments, the Department's policy on 3Rs incentive payments must be adhered to when processing them. To clarify, additional payments made within the limits applicable to an employee under 5 U.S.C. 9903(d) are not affected by the Executive Level IV cap on rates of basic pay nor the Executive Level III cap on basic pay with locality-based comparability payments added. Instead, total compensation in any calendar year, which includes the total of basic pay plus locality-based comparability payments and any additional payments, may not exceed the rate of pay set by 3 U.S.C. § 104 for the Vice President (currently \$230,700).

One additional point of clarification is with respect to annual leave accrual. HQEs are subject to the annual leave accrual provisions of 5 U.S.C. § 6304(a), which sets the maximum number of annual leave hours carried forward from one leave year to another 240 hours.

Please work closely with your Component's Senior Executive Management office and the DoD Senior Executive Management Division to review and correct any discrepancies. My POC for this matter is Mary Lamary, who may be reached at mary.lamary@cpms.osd.mil or 703-696-4802.



Jo Ann Rooney
Acting

cc:
Chief of Staff (USD P&R)