



Director of Administration and Management
**ADMINISTRATIVE
INSTRUCTION**

NUMBER 2
February 22, 2012

DA&M

SUBJECT: Employment of Experts and Consultants

References: See Enclosure 1

1. PURPOSE. This Administrative Instruction (AI):

a. Reissues AI 2 (Reference (a)) in accordance with the authority in DoD Directive (DoDD) 5105.53 (Reference (b)).

b. Implements policy, assigns responsibilities, and provides procedures for the employment of experts and consultants consistent with section 3109 of title 5, United States Code (Reference (c)) and part 304 of title 5, Code of Federal Regulations (Reference (d)).

2. APPLICABILITY. This AI:

a. Applies to OSD, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the DoD that are not in the Military Departments or the Combatant Commands (referred to collectively in this AI as the "DoD Fourth Estate").

b. Does NOT apply to:

(1) The employment of experts and consultants through procurement contracts under regulations issued by the General Services Administration.

(2) The employment of experts and consultants as advisory committee members or advisory committee staff, consistent with DoD Instruction (DoDI) 5105.04 (Reference (e)).

(3) The Office of the Inspector General of the Department of Defense.

(4) The employment of experts appointed under the appointment authority granted to the Department pursuant to section 9903 of Reference (c).

3. POLICY. It is OSD policy, in accordance with References (c) and (d) that:

a. Experts and consultants may be appointed on an intermittent, part-time, or full-time work schedule basis as a legitimate and economical way to obtain highly specialized services to improve OSD services and operations. Consistent with Reference (d), individuals awaiting final action on a Presidential appointment may be appointed to an expert or consultant position.

b. Experts or consultants shall not be appointed to:

(1) Provide a particular person temporary employment solely in anticipation of a career appointment; when the desired services are readily available within the DoD or another Federal agency; or to fill in during staff shortages.

(2) Perform managerial or supervisory work (although an expert may act as team leader or director of the specific project for which hired); make final decisions on substantive policies; or to otherwise function in the chain of command (e.g., to approve financial transactions or entitlements, or personnel actions). This applies to routine ongoing work of a policy, decision-making, or managerial nature that is the direct responsibility of an OSD Component Service member or civilian employee.

(3) A position requiring Presidential appointment (except as allowed in Reference (d)), for individuals awaiting final action on a Presidential appointment) or appointment to a Senior Executive Service position (except as provided for in section 304.103(b)(6) of Reference (d)).

(4) Do the work performed by regular employees.

(5) Fill in during staff shortages.

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3. Enclosure 4 includes a table of documents required for employment of experts and consultants.

6. RELEASABILITY. UNLIMITED. This AI is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

7. EFFECTIVE DATE. This AI is effective upon its publication to the DoD Issuances Website.



Michael L. Rhodes
Director of Administration and Management

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ENCLOSURE 1

REFERENCES

- (a) Administrative Instruction 2, "Employment of Experts and Consultants," January 6, 1989 (hereby cancelled)
- (b) DoD Directive 5105.53, "Director of Administration and Management (DA&M)," February 26, 2008
- (c) Sections 3109, 5542, and 9903 of title 5, United States Code
- (d) Parts 304 and 551 of title 5, Code of Federal Regulations
- (e) DoD Instruction 5105.04, "Department of Defense Federal Advisory Committee Management Program," August 6, 2007
- (f) Administrative Instruction 45, "Employment of Retired Members of the Armed Forces," February 12, 2009
- (g) DoD Instruction 1400.25, Volume 300, "DoD Civilian Personnel Management System: Employment of Federal Civilian Annuitants in the Department of Defense," December 10, 2008
- (h) DoD Directive 5500.07, "Standards of Conduct," November 29, 2007
- (i) Joint Travel Regulations, Volume 2, "Department of Defense Civilian Personnel," current edition

ENCLOSURE 2

RESPONSIBILITIES

1. DIRECTOR OF ADMINISTRATION AND MANAGEMENT (DA&M). The DA&M shall:

a. Oversee the implementation of policy on the employment of experts and consultants for the DoD Fourth Estate.

b. Approve or disapprove each proposed appointment of a retired member of the Military Services within 180 days of retirement, in accordance with AI 45 (Reference (f)).

2. DIRECTOR, WASHINGTON HEADQUARTERS SERVICES (WHS). The Director, WHS, under the authority, direction, and control of the DA&M, shall:

a. Oversee implementation of this AI.

b. Approve or disapprove each proposed employment of a Federal civilian annuitant in accordance with DoDI 1400.25, Volume 300 (Reference (g)).

3. DIRECTOR, HUMAN RESOURCES DIRECTORATE (HRD). The Director, HRD, under authority, direction, and control of the Director, WHS, shall ensure that the following responsibilities are executed:

a. The Assistant Director, Executive and Political Personnel (AD, EPP), under the Director, HRD, shall:

(1) Review and approve appointment, extension, and renewal requests for experts and consultants to ensure that they meet all legal, security, standards of conduct, and compensation requirements. Coordinate approval or disapproval decisions with the Special Assistant to the Secretary of Defense for White House Liaison on the employment of an individual awaiting final action on a Presidential appointment to an expert or consultant position.

(2) Terminate the appointment of experts and consultants on the not-to-exceed date of their appointment, if proper paperwork has not been received from the employing WHS-Serviced Component to extend such appointment.

(3) Establish and maintain records on each expert and consultant appointment. On an annual basis, report to the Office of Personnel Management the number of days and total amount paid to each DoD Fourth Estate expert or consultant consistent with Reference (c).

b. The Assistant Director, Personnel Security Operations Division, and the Chief, Consolidation Adjudications Facility, under the Director, HRD, shall perform appropriate

security investigations and adjudications on individuals. If a Fourth Estate agency has its own servicing security office, these investigations and adjudications may be performed by that office.

4. SPECIAL ASSISTANT TO THE SECRETARY OF DEFENSE FOR WHITE HOUSE LIAISON. The Special Assistant to the Secretary of Defense for White House Liaison shall approve or disapprove the employment of an individual awaiting final action on a Presidential appointment; employment of a current or former political nominee or political appointee; or employment of any individual in the Immediate Office of the Secretary of Defense to an expert or consultant position.

5. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE (GC, DoD). The GC, DoD, shall provide legal guidance on matters related to conflicts of interest in accordance with DoDD 5500.07 (Reference (h)).

6. HEADS OF COMPONENTS IN THE DoD FOURTH ESTATE. The Heads of Components in the DoD Fourth Estate shall:

- a. Determine the need and number of workdays that will be required for expert and consultant advisory services.
- b. Ensure that the required knowledge and skills are not already available within their workforce.
- c. Direct its servicing security office, if applicable, to perform appropriate security investigations and adjudications on individuals.
- d. Coordinate with the Financial Management Directorate, WHS, or Fourth Estate agency's servicing financial office, to ensure that funds are available for appointments, extensions, renewals, and increases in compensation.
- e. Coordinate with the GC, DoD, Standards of Conduct Office (SOCO), on matters related to conflicts of interest and requirement for filing of financial disclosure statements.
- f. Submit the required documentation and justification for the employment of Federal civilian annuitants in accordance with Reference (g).
- g. Submit the required documentation and justification for approval to appoint a retired Service member within 180 days of retirement, in accordance with Reference (f), when required.
- h. Monitor each consulting service arrangement to ensure that performance is satisfactory, results are assessed, days worked do not exceed the number approved, and essential records are maintained on each expert and consultant appointment.

i. Approve or disapprove transportation and per diem expenses in connection with official travel away from place of residence or regular place of employment in accordance with the Joint Travel Regulations, Volume 2 (Reference (i)).

j. Oversee implementation of the procedures of this AI within their organization.

ENCLOSURE 3

PROCEDURES

1. APPOINTMENT OR RENEWAL

a. The official requesting the appointment or renewal of an expert or consultant shall submit the required documents, as designated in Enclosure 4, at least 30 days prior to the proposed effective date, through their Administrative Executive Office to the AD, EPP or their personnel servicing agency, including justification as required. Submitted documents will be reviewed for completeness and compliance with this AI. All approval or disapproval decisions will be documented in writing. Requesting officials shall be notified promptly when an action concerning an expert or consultant has been approved or disapproved. No action, such as allowing an individual to work, may be taken until all approvals have been granted and all necessary paperwork is in order, including proper security clearances and financial disclosure documents. This includes appointments, extensions, renewals, or change to the number of days that an expert or consultant is approved to work.

b. The requesting official shall submit the required documentation and justification for approval to appoint a retired Service member within 180 days of retirement, or a Federal civilian annuitant (see References (f) and (g), respectively, for submission guidelines).

2. COMPENSATION

a. Experts and consultants may be employed with or without compensation. The decision to compensate should be made on an individual basis and annotated on Defense Department (DD) Form 2292, "Request for Appointment or Renewal of Appointment of Consultant or Expert" and Secretary of Defense (SD) Form 436, "Conditions of Employment for Experts and Consultants." Normally, compensation should be at the salaries equivalent to a General Schedule (GS)-13 through GS-15 under the GS (excluding locality). The highest rate payable is the daily rate for GS-15, step 10 (excluding locality payment). The requesting official will recommend the rate as an hourly or daily rate. The following factors will be considered when determining the initial rate of basic pay: level and difficulty of the work to be performed; the qualifications and experience of the proposed appointee; the pay rates of comparable individuals performing similar work in Federal or non-Federal sectors; and the availability of qualified candidates. If employed without pay, the expert or consultant must agree in advance in writing to waive any claim for compensation. Generally, an individual awaiting final action on a Presidential appointment is employed without compensation.

b. A concurrent appointment may be held with another U.S. Government agency. An individual holding a part-time office or position with the U.S. Government, and receiving compensation, shall receive no additional salary for the service performed on the days worked in the part-time capability. An intermittent expert or consultant is entitled to pay for services from more than one expert or consultant position, provided the pay is not received for the same hours of the same day.

c. Pay increases are not automatic. Pay adjustments after initial appointment should be reviewed in light of job performance, contribution to mission accomplishments, and general pay increases granted to other Federal employees. Heads of Components in the DoD Fourth Estate must submit a memorandum requesting a change in compensation and a signed SD 436, if claim for compensation was previously waived.

d. Experts and consultants paid on a daily rate basis are not normally entitled to overtime pay, in accordance with section 5542 of Reference (c). Individuals may be entitled to overtime pay, according to part 551 of Reference (d), if they are nonexempt under Office of Personnel Management regulations for Federal employees. Overtime must be authorized and approved in advance by an appropriate official. Daily rates may be granted up to the daily equivalent of the GS-15, step 10 (excluding locality), in accordance with Reference (c). In some instances, other statutes may authorize the payment of a maximum daily rate higher or lower than the rates authorized by Reference (c). Experts or consultants with a regularly scheduled tour of duty qualify for premium pay if they meet the applicable eligibility requirements.

e. Individuals employed on an intermittent basis work only occasionally, without a regularly scheduled tour of duty, and do not work in excess of the number of hours or days approved, not to exceed a maximum of 130 days or 1040 hours of work during the service year that begins on the date of the individual's initial appointment in any agency. Individuals paid on an intermittent basis shall be paid for the number of hours actually worked. Periods of fewer than 8 hours a day will be computed at the rate of 1/8 of a day's pay for each hour worked. Any day or part of a day for which an expert or consultant is paid counts toward the 130-day limit.

f. Transportation and per diem expenses in connection with official travel away from their place of residence or regular place of employment is paid in accordance with Reference (i). Individuals hired on an intermittent basis may be compensated at the established rate of pay for time spent in a travel status on official business. If duty pay is authorized for time spent in travel, it should be established as a precondition of employment.

g. Retired Federal civilian annuitants may be hired as an expert or consultant and receive their full salary and full annuity in accordance with Reference (g).

h. Retired Reserve officers and enlisted members are not subject to reduction of their military pay.

i. Total hours worked for each expert or consultant employed will be recorded on DD Form 2525, "Certification of Hours Worked in Service Year for Expert or Consultant," and submitted in accordance with Enclosure 4. DD Form 2525 is available at <http://www.dtic.mil/whs/directives/>.

3. TERMINATION. A minimum 1 day written notice will be provided to experts or consultants departing before their scheduled termination date. Termination notices will be coordinated with the expert's or consultant's servicing Human Resources (HR) office before issuance. The

requesting official shall submit a completed DD Form 2525, to include a current mailing address and written notice, if applicable, for each separating expert and consultant to the servicing HR office. Submission of Standard Form (SF) 52, "Request for Personnel Action (RPA)," in the Defense Civilian Personnel Data System (DCPDS) is required only when an expert or consultant is separating before their scheduled termination date. SF 52 is available from the Office of Personnel Management (OPM) Website at <http://www.opm.gov/>.

ENCLOSURE 4EMPLOYMENT DOCUMENTS

Table. Documents for Employment of Expert or Consultant

<u>New Appt</u>	<u>Renewal</u>	<u>Change in Compensation</u>	<u>Termination</u>	<u>Forms Required</u>
X	X	X		Memo from Organization signed by WHS-Serviced Component Head
X	X	X	X	SF 52 (Request for Personnel Action) http://www.opm.gov/forms/html/sf.asp
X	X	X		DD 2292 (Request for Appointment or Renewal of Appointment of Expert or Consultant)
	X		X	DD 2525 (Certification of Hours Worked in Service Year for Expert or Consultant)
			X	Written Communication Notice for Early Termination
X	X			Resume
X				SF 61 (Appointment Affidavits) – Original http://www.opm.gov/forms/html/sf.asp
X				Form I-9 (Employment Eligibility Verification) http://www.uscis.gov/files/form/i-9.pdf
X				OF 306 (Declaration of Federal Employment) http://www.opm.gov/forms/html/of.asp
X				SF 144 (Statement of Prior Federal Service) http://www.opm.gov/forms/html/sf.asp
X				SF 256 (Self-Identification of Disability) http://www.opm.gov/forms/html/sf.asp
X				SF 181 (Ethnicity and Race Identification) http://www.opm.gov/forms/html/sf.asp
X				DD 214 (Certificate of Release or Discharge from Active Duty)
X				Annuity Statement (applies to Federal civilian annuitants if receiving compensation)
X		X		SD 436 (Conditions of Employment for Experts and Consultants)
X				Tax Withholding Forms (Federal and State) http://www.taxadmin.org/fta/link/forms.html
X				SF 1199A (Direct Deposit Sign-Up Form) http://www.fms.treas.gov/eft/1199a.pdf
X				Personnel Security Operations Division, HRD, WHS, will provide guidance and direction on security clearance requirements.
X	X			Department of Defense SOCO will provide guidance and direction on conflict of interest filing requirements.

GLOSSARY

ABBREVIATIONS AND ACRONYMS

AD, EPP	Assistant Director, Executive and Political Personnel
AI	Administrative Instruction
DD	Defense Department
DoDD	DoD Directive
DoDI	DoD Instruction
HR	Human Resources
HRD	Human Resources Directorate
GC, DoD	General Counsel of the Department of Defense
GS	General Schedule
OPM	Office of Personnel Management
SD	Secretary of Defense
SF	Standard Form
SOCO	Standards of Conduct Office
WHS	Washington Headquarters Services