



ADMINISTRATIVE INSTRUCTION 2

EMPLOYMENT OF EXPERTS AND CONSULTANTS

Originating Component: Office of the Director of Administration and Management

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Approved by: Regina F. Meiners, Director, Washington Headquarters Services

Purpose: In accordance with the authority in DoD Directive 5110.04 and DoD Instruction (DoDI) 5025.01, this issuance implements policy, assigns responsibilities, and provides procedures for the employment of experts and consultants consistent with Section 3109 of Title 5, United States Code (U.S.C.) and Part 304 of Title 5, Code of Federal Regulations (CFR).

TABLE OF CONTENTS

SECTION 1: GENERAL ISSUANCE INFORMATION	3
1.1. Applicability.	3
1.2. Policy.	3
SECTION 2: RESPONSIBILITIES	5
2.1. Director of Administration and Management.	5
2.2. Director, WHS.	5
2.3. Chief Human Resources Officer, Human Resources Directorate (HRD), WHS.....	5
2.4. General Counsel of the Department of Defense.	6
2.5. Special Assistant to the Secretary of Defense for White House Liaison.	6
2.6. WHS-serviced Component Heads.	6
SECTION 3: PROCEDURES	8
3.1. Appointment or Renewal.	8
3.2. Compensation.	11
3.3. Termination.....	12
GLOSSARY	13
G.1. Acronyms.	13
G.2. Definitions.....	13
REFERENCES	14

TABLE

Table 1. Requirements for an Expert or Consultant Appointment, Renewal, or Extension	8
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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

a. This issuance applies to OSD, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, and those Defense Agencies, DoD Field Activities, and other components of the DoD that receive services from the Washington Headquarters Services (WHS) for the matters covered by this issuance, referred to collectively in this issuance as “WHS-serviced Components.”

b. Does **not** apply to:

- (1) The Office of Inspector General of the Department of Defense.
- (2) The employment of experts and consultants as advisory committee members or staff, consistent with DoDI 5105.04.
- (3) The employment of experts and consultants through procurement contracts under regulations issued by the General Services Administration.
- (4) The employment of highly qualified experts appointed to the DoD pursuant to Section 9903 of Title 5, U.S.C.
- (5) Military Departments.

1.2. POLICY.

In accordance with Sections 3109 and 5542 of Title 5, U.S.C. and Parts 304 and 551 of Title 5, CFR:

a. Experts and consultants may be appointed as a legitimate and economical way to obtain highly specialized services to improve OSD services and operations. Consistent with Parts 304 and 551 of Title 5, CFR, individuals awaiting final action on a Presidential appointment may be appointed to an expert or consultant position.

b. Experts or consultants will not be appointed to:

- (1) Provide a particular person temporary employment solely in anticipation of a career appointment.
- (2) Perform managerial or supervisory work (although an expert may act as team leader or director of the specific project for which they were hired); make final decisions on substantive policies; or otherwise function in the chain of command (e.g., they will not approve financial transactions or entitlements or personnel actions). Experts and consultants are prohibited from making decisions that are the direct responsibility of a civilian employee or Service member such as routine or ongoing work of a policy, decision-making, or managerial nature.

(3) Do the work performed by regular employees.

(4) Do the work performed by regular employees during staff shortages.

(5) A position requiring Presidential appointment, except as allowed in Parts 304 and 551 of Title 5, CFR, for individuals awaiting final action on a Presidential appointment.

(6) A Senior Executive Service position, except as provided for in Part 304.103(b)(6) of Title 5, CFR. Additionally, experts or consultants, without a regularly scheduled tour of duty, are subject to the limitations defined in Section 202 of Title 18, U.S.C.

(a) Experts and consultants are categorized as Special Government Employees (SGEs), are officers or employees of the executive or legislative branch, who are retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any 365 consecutive day period. The service period commences on the first day of their initial appointment to the agency.

(b) SGEs are subject to the Federal ethics provisions, to include Sections 201, 203, 205, 208, 209, and 219 of Title 18, U.S.C.

SECTION 2: RESPONSIBILITIES

2.1. DIRECTOR OF ADMINISTRATION AND MANAGEMENT.

The Director of Administration and Management:

- a. Oversees the implementation of policy on the employment of experts and consultants for applicable WHS-serviced Components.
- b. Approves or disapproves requests to appoint experts and consultants who are also retired Service members within 180 days after retirement, in accordance with Administrative Instruction 45, DoDI 1402.01, and Section 3326 of Title 5, U.S.C.

2.2. DIRECTOR, WHS.

Under the authority, direction, and control of the Director of Administration and Management, the Director, WHS:

- a. Oversees implementation of this issuance.
- b. Approves or disapproves requests to appoint experts and consultants who are also Federal civilian annuitants in accordance with Volume 300 of DoDI 1400.25.

2.3. CHIEF HUMAN RESOURCES OFFICER, HUMAN RESOURCES DIRECTORATE (HRD), WHS.

Under the authority, direction, and control of the Director, WHS, the Chief Human Resources Officer, HRD, WHS, through the Assistant Director, Senior Executive Management Office:

- a. Reviews and approves appointment, extension, and renewal requests for experts and consultants to ensure that they meet all human resources, security, standards of conduct, and compensation requirements.
- b. Coordinates 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; however, the final approval or disapproval authority lies with the Chief Human Resources Officer.
- c. Terminates the appointment of WHS-serviced experts and consultants on the not-to-exceed date of their appointment if proper paperwork has not been received to extend such an appointment.
- d. Establishes and maintains records on each expert and consultant appointment.

2.4. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE.

The General Counsel of the Department of Defense provides legal guidance on matters related to standards of conduct or conflicts of interest in accordance with DoD Directive 5500.07.

2.5. SPECIAL ASSISTANT TO THE SECRETARY OF DEFENSE FOR WHITE HOUSE LIAISON.

The Special Assistant to the Secretary of Defense for White House Liaison, once per Presidential administration (either one or two consecutive terms), coordinates with the Chief Human Resources Officer, HRD, for the approval or disapproval of:

- a. The initial or renewal appointment of an individual awaiting final action on a Presidential appointment;
- b. Employment of a current or former political nominee or political appointee; or
- c. Employment of any individual in the immediate OSD to an expert or consultant position.

2.6. WHS-SERVICED COMPONENT HEADS.

WHS-serviced Component heads:

- a. Determine the need and number of workdays that are required for expert and consultant advisory services.
- b. Ensure that the required knowledge and skills are not already available within their workforce.
- c. Direct their servicing security office to ensure that the consultant or expert has the appropriate clearance level.
- d. Coordinate with their servicing financial office to ensure that funds are available for appointments, extensions, renewals, and increases in compensation.
- e. Coordinate with their servicing ethics official on matters related to conflicts of interest and requirements for filing financial disclosure statements.
- f. Submit the required documentation and justification for the employment of Federal civilian annuitants in accordance with Volume 300 of DoDI 1400.25, when required.
- g. Submit the required documentation and justification for approval to appoint a retired Service member within 180 days of retirement, in accordance with the requirements of Volume 300 of DoDI 1400.25.
- h. Monitor each consulting service arrangement to ensure that:

- (1) Performance is satisfactory.
 - (2) Results are assessed.
 - (3) Days worked do not exceed the number approved.
 - (4) 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 the place of residence or regular place of employment, in accordance with Chapter 2 of the Joint Travel Regulations.
 - j. Oversee implementation of the procedures of this issuance within their organization.

SECTION 3: PROCEDURES

3.1. APPOINTMENT OR RENEWAL.

a. The official requesting the appointment or renewal of an expert or consultant will submit to their servicing human resources office the required documents and additional justification (where required), to include:

(1) An appointment memorandum signed by the WHS-serviced Component head or designated official.

(2) DD Form 2292, “Request for Appointment or Renewal of Appointment of Expert or Consultant or Advisory Board Member,” available on the DoD Forms Management Program Website.

(3) OGE Form 450, “Confidential Financial Disclosure Report,” available on the U.S. Office of Government Ethics Website.

(4) SD Form 436, “Conditions of Employment for Experts and Consultants,” available on the DoD Forms Management Program Website.

(5) A current resume or *curriculum vitae* (CV). Biographies are not acceptable.

b. Table 1 details what materials are required to appoint, renew, or extend the appointment of an expert or consultant.

c. The Personnel Security Operations Division, HRD, WHS will provide guidance and direction on security clearance requirements.

Table 1. Requirements for an Expert or Consultant Appointment, Renewal, or Extension

New Appointment	Renewal/ Extension	Change in Compensation	Termination	Requirements
X	X	X		A memorandum from the organization signed by the WHS-serviced Component head
X	X	X	X	SF 52, “Request for Personnel Action,” available on the U.S. General Services Administration Website
X	X	X		DD Form 2292

Table 1. Materials for an Expert or Consultant Appointment, Renewal, or Extension, Continued

New Appointment	Renewal/ Extension	Change in Compensation	Termination	Requirements
X	X			OGE Form 450
	X		X	DD Form 2525, “Certification of Hours Worked in Service Year for Expert or Consultant,” available on the DoD Forms Management Program Website
			X	A written communication notice for early termination
X	X			A resume or CV
X				SF 61, “Appointment Affidavit,” available on the U.S. General Services Administration Website
X				USCIS Form I-9, “Employment Eligibility Verification,” available on the U.S. Citizenship and Immigration Services Website
X				OF 306, “Declaration for Federal Employment,” available on the Office of Personnel Management Website
X				SF 144, “Statement of Prior Federal Service,” available on the U.S. General Services Administration Website
X		X		SD 436

Table 1. Materials for an Expert or Consultant Appointment, Renewal, or Extension, Continued

New Appointment	Renewal/ Extension	Change in Compensation	Termination	Requirements
X				SF 256, “Self-Identification of Handicap,” available on the U.S. General Services Administration Website. This form is optional.
X				SF 181, “Ethnicity and Race Identification,” available on the U.S. General Services Administration Website. This form is optional.
X				DD Form 214, “Certificate of Uniformed Service,” available on the DoD Forms Management Program Website. This form applies only to Service members who retired within 180 days of appointment as a consultant or expert.
X				An annuity statement. This applies only to Federal civilian annuitants regardless of whether they will receive compensation as an expert or consultant.
X				Federal and State tax withholding forms
X				SF 1199A, “Direct Deposit Sign-Up Form,” available on the U.S. General Services Administration Website

3.2. COMPENSATION.

a. Experts and consultants may be employed with or without compensation. The decision to compensate should be made on an individual basis.

b. The highest rate payable is the daily rate for GS-15, Step 10 (excluding locality payment), except as otherwise provided by statute.

c. When determining the initial rate of basic pay, the appointing authority will consider:

(1) The level and difficulty of the work to be performed.

(2) The qualifications and experience of the proposed appointee.

(3) The pay rates of comparable individuals performing similar work in Federal or non-Federal sectors.

(4) The availability of qualified candidates.

d. 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.

e. Experts and consultants (whether full time, part time, or intermittent) will be compensated in accordance with Sections 304.104 and 304.105 of Title 5, CFR. Furthermore, experts or consultants may hold concurrent appointments with another U.S. Government agency.

f. 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. WHS-serviced Component heads must submit an SF 52 to their servicing human resources office to adjust expert or consultant compensation.

g. Experts and consultants paid on a daily-rate basis are not normally entitled to overtime pay, in accordance with Section 5542 of Title 5, U.S.C. However, individuals may be entitled to overtime pay, in accordance with Part 551 of Title 5, CFR, if they are classified as nonexempt. A WHS-serviced Component's authorized official must authorize and approve overtime in advance.

h. In some instances, other statutes may authorize the payment of a maximum daily rate higher or lower than the rates authorized in accordance with Sections 3109, 5542, and 9903 of Title 5, U.S.C. Experts and consultants with a regularly scheduled tour of duty qualify for premium pay if they meet the applicable eligibility requirements.

i. Experts and consultants paid on an intermittent basis will be paid for the number of hours 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.

3.3. TERMINATION.

Experts and consultants serve at the will of the appointing authority and may be terminated at any time with a minimum of 1 day's written notice.

GLOSSARY

G.1. ACRONYMS.

ACRONYM	MEANING
CFR	Code of Federal Regulations
CV	<i>curriculum vitae</i>
DD	Department of Defense (form)
DoDI	DoD instruction
GS	general schedule
HRD	Human Resources Directorate
OF	optional form (Office of Personnel Management)
OGE	Office of Government Ethics (form)
SD	Secretary of Defense (form)
SF	standard form
SGE	special government employee
U.S.C.	United States Code
USCIS	U.S. Citizenship and Immigration Services
WHS	Washington Headquarters Services

G.2. DEFINITIONS.

Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
CV	A more detailed synopsis than a resume, consisting of two or more pages, that provides the personal and professional information of an individual.
SGE	Defined in Part 202 of Title 18, U.S.C.

REFERENCES

Administrative Instruction 45, “Employment of Retired Members of the U.S. Armed Forces,”
May 19, 2017, as amended
Code of Federal Regulations, Title 5
DoD Directive 5110.04, “Washington Headquarters Services (WHS),” March 27, 2013,
as amended
DoD Directive 5500.07, “Standards of Conduct,” November 29, 2007
DoD Instruction 1400.25, Volume 300, “DoD Civilian Personnel Management System:
Employment of Federal Civilian Annuitants in the Department of Defense,”
December 10, 2008
DoD Instruction 1402.01, “Employment of Retired Members of the Armed Forces,”
September 9, 2007
DoD Instruction 5025.01, “DoD Issuances Program,” August 1, 2016, as amended
DoD Instruction 5105.04, “Department of Defense Federal Advisory Committee Management
Program,” August 6, 2007
Joint Travel Regulations, Chapter 2, current edition
United States Code, Title 5
United States Code, Title 18