



U.S. DEPARTMENT OF
TRANSPORTATION

Order

Subject

Superior Qualifications or Special Needs Pay Setting Authority

**Federal Highway
Administration**

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1. **What is the purpose of this Order?** The purpose is to describe requirements and procedures for using the superior qualifications or special needs appointment authority to establish starting rates of pay above step 1 of a pay grade on the General Schedule. This directive is being updated to broaden pay setting flexibilities as a result of changes in Office of Personnel Management (OPM) regulations. This includes allowing pay for new hires to be set at any step in the grade, and allowing advance-in-hire rates for highly qualified individuals based on factors other than current salary.
 2. **Does this Order cancel an existing FHWA directive?** Yes. This Order cancels M 3000.1C, Personnel Management Manual (PMM), Part 1, Chapter 6, Section 1, Subsection 1, dated July 1, 2005.
 3. **What are the authorities governing this Order?**
 - a. Title 5, United States Code (U.S.C.), Section 5333(a).

- b. Public Law 1010-509, Federal Employees Pay Comparability Act of 1990 (FEPCA), Section 101(a) and Section 106.
 - c. Title 5, Code of Federal Regulations (CFR), Part 531.212.
4. **What is the superior qualifications authority or special needs appointing authority?** These authorities allow FHWA to set the basic rate of pay for an employee above the minimum rate of step 1 on the General Schedule, if all regulatory and Agency policy requirements are met. The rate is referred to as an advance-in-hire rate.
5. **Does the advance-in-hire rate include locality and special pay rates?** Yes, the basic rate of pay includes locality-based comparability payments and special salary rates, as applicable.
6. **What is FHWA's policy on using superior qualifications or special needs authorities?** It is FHWA's policy to use the administrative flexibilities necessary to acquire a high-quality workforce consistent with law and regulations and funding availability. FHWA management officials may use this flexibility to compete with non-Federal employers for top quality candidates; and/or match or exceed a superior candidate's actual earnings or verified competing offers.
- a. This authority may be used to recruit candidates who possess unusually high or specialized qualifications or possess a particular combination of education and experience that meets a special need of FHWA.
 - b. This authority may be used at the discretion of FHWA to pay the advanced pay rate on the presumption that the employee will be high performing and require a much shorter learning curve due to the qualifications he or she brings to the job.
 - c. An assessment of the candidate's qualifications should be made and should be based on information obtained through the interview process, reference checks and information within the candidate's application.
 - d. FHWA policy, in accordance with legislation, requires consideration of a recruitment incentive before an advance-in-hire.
 - (1) Due to the long-term budgetary impact of granting a higher pay rate, managers should consider whether a recruitment incentive, which does not impact base pay, will be sufficient to attract the candidate.
 - (2) Although management officials must consider a recruitment incentive before offering an advance in hire rate, there is no requirement to actually offer a recruitment incentive if a determination is made that it is not the right flexibility for the candidate.
 - (3) FHWA policy does not prohibit offering a recruitment incentive in addition to an advance-in-hire rate.

7. **When should an advance-in-hire rate be offered?** An advance-in-hire rate may apply in two types of situations:
- a. **A candidate has superior qualifications.** Superior qualifications may be based on the level, type or quality of the candidate's skills obtained through experience and/or education; the quality of the candidate's accomplishments compared to others in the field; or other factors. The qualifications must be relevant to the job and either significantly higher than minimum requirements for the position or be of a more specialized quality compared to other candidates.
 - b. **The FHWA has a special need for the candidate's services.** Special needs situations may include candidates whose backgrounds indicate they are especially well suited for an FHWA function, difficult to fill positions, or projects essential to accomplishing an important Agency mission, goal or program activity. A candidate may also meet the special needs criteria as a result of the Agency having difficulty filling the position or retaining qualified candidates in positions in the geographic location.
8. **Who is eligible for an advance-in-hire rate?** Advance-in-hire rates may only be granted to eligible individuals who are appointed to a General Schedule (GS) position, this includes permanent and temporary positions in the competitive and excepted service. The individual must be:
- a. A new appointee; or
 - b. Reappointed after a 90-day break in service. This means that at least 90 calendar days must have passed since the candidate last worked for the Federal Government. Exceptions to this 90-day rule are described in paragraph 10.
9. **What are the exceptions to the 90 day break in service rule for reappointed individuals?** There are three major exceptions to the 90 day break in service rule described in paragraph 8. A candidate will meet the definition of a new appointee for this flexibility, if the candidate's last civilian employment with the Federal Government was within 90 days but meets one of the following circumstances:
- a. Candidate's employment was under a time-limited or non-permanent appointment in the competitive or excepted service (e.g. Student Career Experience Program or the Federal Career Intern Program);
 - b. Candidate's employment was under an appointment as an expert or consultant in accordance with 5 U.S.C. 3109 and 5 CFR part 304;
 - c. Candidate was an employee of a non-appropriated fund instrumentality (NAFI) of the Department of Defense or Coast Guard, except for employees covered by 5 CFR 531.216.
10. **Can an advance-in-hire rate be offered to a candidate who is not currently employed?** Yes, if the candidate meets the eligibility criteria for appointment.

- a. The servicing Human Resources (HR) Office in consultation with the selecting official may consider whether the candidate has unique qualifications based on previous employment. This may include highly skilled non-Federal retirees and candidates who have taken a break in employment for family or personal reasons and are now returning to the workforce.
- b. The criteria in paragraphs 6, 7, 8 and 11 must still be considered when determining eligibility and the pay rate to be offered to the candidate.
- c. Offers above step 1 to candidates not currently employed, must be approved by the Director of HR.

11. **How is the pay rate for the offer established and who has authority to approve advance-in-hire rates?** The rate of pay may be set at any step within the pay range for the grade being considered. Of course, fiscal responsibility shall be used when determining which step is necessary to recruit the candidate. Each case must be evaluated with consideration given to the factors listed below.

- a. **Basis for setting basic pay rate.** The pay rate should be based on an assessment of actual earnings and benefits *and/or* on other factors, such as one or more of the following:
 - (1) **Value to FHWA** – consider job relevant education beyond what is expected; exceptional work experience; professional or academic leadership; special knowledge, skills, or abilities that uniquely equip the candidate to meet a specific FHWA workforce need; or other credentials not commonly available in FHWA.
 - (2) **Labor market factors** – consider the success of recent efforts to recruit candidates for the same or similar positions; scarcity of qualified candidates; desirability of geographic location; duties or work environment; demand for the candidate’s services by other employers; comparability of rates earned by all candidates for the position; or significant differences in Federal and non-Federal pay levels for the competencies required for the position.
 - (3) **Internal equity** – consider the equity between the pay of the new appointee and that of current high performing employees doing comparable work with comparable backgrounds as well as rates of pay previously authorized in similar situations. In cases for which pay is being recommended that is not in alignment with internal equity, other factors listed here should support why the added pay is necessary. For example, current labor market conditions, attrition in the position, or criticality in filling the position quickly might point to a need for a rate that is higher than one previously paid to individuals with similar backgrounds.
 - (4) **Attrition in the position** – consider whether there are high turnover rates in the same or similar positions.

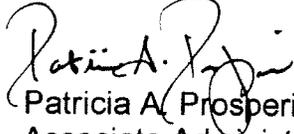
- (5) **Importance/critical nature of the position** – consider the importance of the work of the position to the Agency; its criticality in meeting workforce or succession planning needs; and the impact of delays in filling the position.
 - b. **Approval of request** – Salary determinations may be set at any step within the pay range for the grade. There is no requirement to offer step 1 of a grade first. However, only the step necessary to recruit the candidate should be offered. Considerations must include the short and long term costs associated with the proposed pay level, available funding for the position, and impact on future budgets. Approval authority is as follows:
 - (1) With concurrence of the servicing HR Office, selecting officials have authority as follows:
 - (a) To grant offers up to \$10,000 above current salary or job offer.
 - (b) To grant a higher step if an offer falls between two steps.
 - (2) This delegated authority applies to actual, not projected earnings. For example, selecting officials are not authorized to project a full-time salary for a candidate on a part-time schedule to determine the advance rate.
 - (3) The following offers must be concurred on by the servicing HR office and then submitted to the Director of HR for approval:
 - (a) Offers based on salary above delegated dollar limits;
 - (b) Offers to candidates not currently employed; and
 - (c) Offers to candidates that are not based on salary.
12. **If the offer is based on actual earnings, who is responsible for confirming earnings and what documentation is required?** The servicing HR Office is responsible for confirming proof of actual earnings. Only actual and recent/current earnings or verified competing offers can be considered in determining a pay rate based on salary.
- a. Acceptable documentation of actual earnings includes any of the following:
 - (1) A letter from a company official on company stationery confirming the candidate's current salary;
 - (2) Earnings and leave statements, or the most recent W-2 form or other support documentation to verify actual yearly earnings; or
 - (3) A letter from the candidate's employer or a competing offer confirming a firm offer of salary. A verbal or email offer is acceptable if verified

and documented in the file by the servicing HR Office. The documentation should include:

- (a) The company name and person contacted,
 - (b) Date verified, and
 - (c) Name and signature of the FHWA HR employee who verified the offer.
 - b. For purposes of this Order, actual annual earnings include:
 - (1) The candidate's salary from his/her present position;
 - (2) Income from any outside employment that forms a regular, continuing portion of the candidate's total income and which the candidate will not be able to continue to receive after becoming a Federal employee;
 - (3) Regularly received bonuses;
 - (4) Current and firm offers of a salary increase or other employment at a higher salary; and
 - (5) Fringe benefits that are substantially superior to those offered by the Federal Government.
 - c. Actual earnings do not include earnings, such as those from a single contract or consulting assignment that are significantly higher than the candidate's previous pay/current offers, ad hoc bonuses, or projected earnings.
 - d. In comparing fringe benefits, the total benefits package must be considered. The fact that one or more individual fringe benefits are in excess of comparable Federal Government fringe benefits does not necessarily mean the total benefits package is in excess of the Federal Government's *overall* fringe benefits package.
13. **Who has authority to make an official offer to a candidate?** The servicing HR Office makes all official offers to candidates. Neither selecting officials nor anyone else involved in the consideration and hiring process may make a firm offer or salary commitment to a candidate. Selecting officials or other management officials may conduct initial salary discussions with prospective appointees and gather information about the candidate's qualifications, existing pay, and salary desires or requirements. The selecting official will then consult with the servicing HR specialist who will make the official offer of an advance-in-hire rate. The servicing HR specialist is also responsible for conducting any salary negotiations up to the maximums agreed upon by the selecting official.
14. **What is the process for requesting an appointment using superior qualifications or special needs authorities?** The process includes the following three steps: (1) consultation, (2) written request, and (3) approval of the request.

- a. **Consultation to develop the offer.** The selecting official and the servicing HR Office work together to discuss requirements and develop the offer package. The consultation process, which occurs shortly after the candidate is selected, should include a discussion of the items below.
- (1) **Basis for offering a superior qualifications or special needs appointment.** The rationale, including determination of the pay rate, should be based on information referenced in the paragraphs above.
 - (2) **Candidate's interests and FHWA organizational benefits.** Ideally, the selecting official has a sense, from discussions with the candidate of the candidate's specific desires and interest with regard to direct compensation and organizational benefits. The latter might include work schedule flexibilities such as telework, transit or parking benefits, Employee Assistance or Wellness Programs, online learning, developmental programs, flexible health benefits, career advancement opportunities, paid time off, enhanced leave, a recruitment incentive, challenging work, and accessibility to public transportation.
 - (3) **The total compensation offer.** This includes all direct compensation, such as salary and pay incentives, and other organizational benefits that may be offered to the candidate.
- b. **Submission of written request.** After consulting with the servicing HR Office, selecting officials initiate the approval process by requesting a salary above step 1. The selecting official must provide a written justification to the servicing HR Office that includes:
- (1) Position title, series, grade, and duty location;
 - (2) The reason a recruitment incentive is not sufficient. If a recruitment incentive is being proposed in conjunction with the higher salary rate, the reason both are required;
 - (3) The candidate's resume or application;
 - (4) The superior qualifications of the candidate or the special need of FHWA that justifies the use of the appointment authority, as referenced in paragraph 7;
 - (5) The proposed salary and the rationale for the proposed salary; and
 - (6) The authorizing signature of approval.
- c. **Review and approval of request.** The servicing HR Office reviews the submission to ensure all regulatory and procedural requirements are met; obtains proof of actual earnings or competing offer, if applicable; concurs on the salary offer and makes offers within the delegated authority.

- d. If the official offer exceeds the delegated authority defined in paragraph 11, the servicing HR Office must submit the offer package to the Director of HR for approval. The Director of HR will review the package, concur or non-concur with the request and submit the signed package back to the servicing HR specialist.
15. **What are the recordkeeping requirements?** Each servicing HR Office will ensure that the approval memorandum and salary documentation are scanned into the electronic Official Personnel Folder of the new employee within established timeframes. These records must be available for review upon request by the Office of Human Resources, the Office of the Secretary, or the Office of Personnel Management.


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