

**HHS 531-I, Setting Pay Based on Superior Qualifications and Special Needs
Effective Date 08/13/2024**

Material Transmitted:

Department of Health and Human Services (HHS) Instruction 531-I, Setting Pay Based on Superior Qualifications and Special Needs, dated August 13, 2024.

Material Superseded:

HHS Instruction 531-I, "Setting Pay Based on Superior Qualifications and Special Needs," 12/10/2010

Background:

This Instruction is established to provide guidance to Operating Divisions and Staff Divisions on criteria for setting pay for General Schedule employees at rates above step one (1) based on candidates' superior qualifications and/or because candidates meet a special need of the agency.

Changes include (1) deletion of the requirement that students are ineligible for superior qualifications, (2) deletion of the requirement that if a candidate is not within reach for selection consideration at a higher grade level due to veterans preference the eligible OpDiv may only approve a limited rate of pay if candidate is selected, (3) added definitions, and (4) in accordance with regulations issued by OPM on January 30, 2024 salary history (existing or prior), or a competing job offer cannot be considered when setting pay.

This policy is effective immediately and must be carried out by HHS Operating and Staff Division HR Centers in accordance with applicable laws, regulations, bargaining agreements, and Departmental policy.

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531-I-00 SECTIONS

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531-I-10 PURPOSE

This Instruction implements the Department of Health and Human Services requirements for setting basic pay at rates above the minimum rate of the highest applicable rate range for an employee's position, if a candidate has superior qualifications and/or fills a special agency need.

When provisions of this policy differ from changes in applicable law or regulation, the changes in law or regulation apply.

531-I-20 COVERAGE AND EXCLUSIONS

A. Coverage.

The superior qualifications and special needs pay-setting authority may be used for:

1. A first appointment (regardless of tenure) as a civilian employee of the Federal Government; or
2. A reappointment that is considered a new appointment under the following conditions:
 - a. When an employee has had a break in service of at least 90 days from the last period of civilian employment with the Federal Government; or
 - b. When employment with the Federal Government during the 90-day period immediately preceding the appointment was limited to one or more of the following (except as provided for in paragraph 3 below):
 - i. Employment under a time-limited appointment in the competitive or excepted service;
 - ii. Employment under an appointment as an expert or consultant under [5 U.S.C. § 3109](#) and [5 C.F.R. Part 304](#);
 - iii. Employment under a provisional appointment designated under [5 C.F.R. § 316.403](#);
 - iv. Employment under a non-permanent appointment in the competitive or excepted service;
 - v. Employment under an Internship Program appointment under [5 U.S.C. § 213.3402\(a\)](#);

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- vi. Employment with the government of the District of Columbia (DC) when the candidate was first appointed by the DC government on or after October 1, 1987; and/or
 - vii. Employment as a Senior Executive Service limited term appointee or limited emergency appointee as defined in [5 U.S.C. § 3132\(a\)\(5\) and \(a\)\(6\)](#), respectively.
3. An OpDiv/StaffDiv may not apply an exception in paragraph 2 of this section if the candidate's civilian employment with the Federal Government during the 90-day period immediately preceding the appointment was in one or more of the following types of positions:
- a. A position to which an individual is appointed by the President, by and with the advice and consent of the Senate;
 - b. A position in the Senior Executive Service as a noncareer appointee (as defined in [5 U.S.C. 3132\(a\)\(7\)](#))
 - c. A position excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character;
 - d. A position to which an individual is appointed by the President without the advice and consent of the Senate;
 - e. A position designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members;
 - f. A position in which the employee is expected to receive an appointment as the head of an agency; or
 - g. A position to which an individual is appointed as a Senior Executive Service limited term appointee or limited emergency appointee (as defined in [5 U.S.C. 3132\(a\)\(5\) and \(a\)\(6\)](#), respectively) when the appointment must be cleared through the White House Office of Presidential Personnel.
4. The appointment of a former member of a uniformed service (including the Commissioned Corps of the Public Health Service) as a first time Federal civilian is considered a new appointment for the purpose of this Instruction. This is true without regard to the length of time between the former member's exit from the uniformed service and his or her appointment as a civilian employee, to include those who may be appointed to a civilian position while on terminal leave pending retirement from the uniformed service.
- B. Exclusions. This policy does not apply to Federal Wage employees. HHS Instruction 532-I, Pay Setting – Federal Wage System (FWS), contains information regarding similar provisions for employees under the FWS.
- C. The Department will follow all requirements of [5 U.S.C Chapter 71](#) involving bargaining conditions of employment for bargaining unit employees. To the extent that provisions of this policy are in specific conflict with a Collective Bargaining Agreement (CBA), the provisions of the CBA govern for bargaining unit positions only.

531-I-30 REFERENCES

- A. [5 U.S.C. §5333](#) (Minimum rate for new appointments)
- B. [5 C.F.R. §531.212](#) (Superior qualifications and special needs pay-setting authority)

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531-1-40 DEFINITIONS

- A. **Advanced Rate of Pay.** An employee receives an advanced rate of pay when their payable rate of basic pay is set above the minimum rate of the highest applicable rate range for his/her position of record due to his/her superior qualifications or the Department's or OPDIVS's special needs. This is another term used to refer to superior qualifications or special needs as defined in paragraphs B & C below.
- B. **Conversion.** The changing of an employee from one appointment to another appointment (under either the same or a different authority) in the same agency with no break in service or with a break of 3 days or less.
- C. **Reappointment.** Being appointed to a GS position after a break in service of 90-days or more. (See 5 CFR 531.212(a)(3) for exceptions to the 90-day break in service requirement regarding superior qualifications pay setting).
- D. **Superior Qualifications.** A determination may be made that a candidate has superior qualifications based upon the level, type, or quality of the candidate's skills or competencies demonstrated or obtained through experience and/or education, the quality of the candidate's accomplishments compared to others in the field, or other factors that support a superior qualifications determination. The candidate's qualities must also be significantly higher than that needed to be minimally required for the position and/or be of a more specialized quality compared to other candidates.
- E. **Special Needs.** The candidate fills a special agency need. An OpDiv/StaffDiv may determine that a candidate fills a special agency need if the type, level, or quality of skills and competencies or other qualities and experiences possessed by the candidate are relevant to the requirements of the position and are essential to accomplishing an important agency mission, goal, or program activity. A candidate also may meet the special needs criteria by meeting agency workforce needs, as documented in the agency's strategic human capital plan.

531-1-50 RESPONSIBILITIES

- A. HHS Assistant Secretary for Administration, Office of Human Resources (ASA/OHR):
 - 1. Develops Department-wide human resources guidance and policy consistent with HHS and Office of Personnel Management (OPM) policies and procedures, and all applicable federal laws and regulations.
 - 2. Updates and maintains this policy.
 - 3. Advises Operating Divisions and Staff Divisions (OpDivs/StaffDivs) Human Resources offices on the administration of the authority to set pay based on superior qualifications and/or special need.
 - 4. Coordinates any requested HHS reports to OPM on the administration of this authority.
 - 5. Periodically reviews OpDiv/StaffDiv procedures, actions, and reports to assure conformance with HHS and OPM policy and guidance, and all applicable federal laws and regulations.
- B. OpDiv and StaffDiv Human Resources Centers (HR Centers):

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1. Complies with this Instruction, and applicable federal laws and regulations.
2. Establishes procedures to ensure that all requirements for authorizing pay based on superior qualifications and/or special needs are properly approved, recorded, and documented.
3. Establishes documentation and record-keeping requirements that are sufficient to allow reconstruction of the action taken in each case. Records must be maintained for a minimum of three years. Additionally, they should ensure that superior qualification or special need requests include: (1) a description of the superior qualifications of the individual or the special need of the agency; (2) an explanation of the factors used to justify the rate at which the employee's pay was set and how the factors directly relate to the rate approved; and, (3) the reasons for authorizing an advanced rate instead of (or in addition to) a recruitment incentive.
4. Advises and consults with their OpDivs/StaffDivs on the use of this authority and alternative incentives.
5. Verifies candidates are eligible to receive an advanced rate of pay under this authority.
6. Makes official salary offers to candidates for appointment.

531-1-60 POLICY

- A. Upon initial employment with the Federal Government, the rate of basic pay for most employees is expected to be the rate for step one (1) on the applicable salary schedule for the grade level for the position being filled.
- B. An OpDiv/StaffDiv may determine that a candidate has superior qualifications based on the level, type, or quality of the candidate's skills or competencies demonstrated or obtained through experience and/or education, the quality of the candidate's accomplishments compared to others in the field, or other factors that support a superior qualifications determination. The candidate's skills, competencies, experience, education, and/or accomplishments must be relevant to the requirements of the position to be filled. These qualities must be significantly higher than that needed to be minimally required for the position and/or be of a more specialized quality compared to other candidates.
- C. An OpDiv/StaffDiv may determine that a candidate fills a special agency need if the type, level, or quality of skills and competencies or other qualities and experiences possessed by the candidate are relevant to the requirements of the position and are essential to accomplishing an important agency mission, goal, or program activity. A candidate also may meet the special need criteria by meeting agency workforce needs, as documented in the OpDiv's/StaffDiv's strategic human capital plan.
- D. To determine the step at which to set an employee's payable rate of basic pay using the superior qualifications and special needs pay-setting authority, an OpDiv/StaffDiv must consider:
 - I. The step at which pay has been set for employees who had similar qualifications (based on the level, type, or quality of the candidate's skills or competencies or other qualities and experiences) and who have been newly appointed to positions that are similar to the candidate's position (based on the position's occupational series, grade level, organization, geographic location, or other job-relevant factors), if applicable; and one or more of the following factors, as applicable in the case at hand:
 - a. The level, type, or quality of the candidate's skills or competencies;
 - b. Significant disparities between Federal and non-Federal salaries for the skills and competencies required in the position to be filled;

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- c. Existing labor market conditions and employment trends, including the availability and quality of candidates for the same or similar positions;
 - d. The success of recent efforts to recruit candidates for the same or similar positions;
 - e. Recent turnover in the same or similar positions;
 - f. The importance/criticality of the position to be filled and the effect on the agency if it is not filled or if there is a delay in filling it;
 - g. The desirability of the geographic location, duties, and/or work environment associated with the position;
 - h. OpDiv/StaffDiv workforce needs, as documented in the OpDiv's/StaffDiv's strategic human capital plan; and/or
 - i. Other relevant factors, except that an OpDiv/StaffDiv may not consider the candidate's salary or other compensation history (i.e. existing salary, prior salary, or monetary or non-monetary compensation such as a bonus or a benefit not otherwise available in the Federal Government). Further, a superior qualifications and special needs pay determination cannot be based on the proposed salary from a competing job offer.
- E. In determining whether to use the superior qualifications and special needs pay-setting authority and the level at which the employee's payable rate of basic pay should be set, an OpDiv/StaffDiv must consider the possibility of authorizing a recruitment incentive under [5 CFR part 575, subpart A](#) instead of, or in addition to, an advanced rate of pay. Documentation of the pay-setting decision must include the reasons for authorizing an advanced rate instead of (or in addition to) a recruitment incentive.
- F. An official with delegated approval authority must approve each determination to use the superior qualifications and special needs pay-setting authority prior to the candidate entering on duty. (See Section 531-1-20 for coverage). Once an employee has entered on duty, an advanced rate of pay under these procedures cannot be made prospectively or retroactively.
- G. Each determination must be made in writing and reviewed and approved by an official of the OpDiv/StaffDiv HR Center who is at least one-level higher (e.g. a higher-grade level (or equivalent)) than the employee's supervisor, unless there is no official at a higher level in the OpDiv/StaffDiv HR Center. Each approval will include an explanation of the factors considered in setting the rate, including supporting documentation, based on the criteria described in paragraph C and D of this section. This explanation must also describe how these factors relate directly to the approved salary.

531-1-70 DOCUMENTATION AND ACCOUNTABILITY

- A. Records, including all documentation sufficient for third party reconstruction purposes, must be retained according to the record disposition schedule. Generally, records created in a given year must be retained for a total of three (3) full years. Records involved in litigation and grievance processes may be destroyed only after official notification is received from OPM, Department of Justice, courts, the Office of the General Counsel, etc. that the matter has been fully litigated, or

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resolved, and closed.

- B. Records involved in litigation and grievance processes may be destroyed only after official notification is received from OPM, Department of Justice, courts, or the Office of the General Counsel, etc. that the matter has been fully litigated, or resolved and closed.
- C. ASA/OHR may conduct periodic accountability reviews to analyze compliance with this Instruction, HHS and OPM policy and guidance, and applicable federal laws and regulations.