

EMPLOYMENT OF EXPERTS AND CONSULTANTS

I. Purpose

This Directive establishes Department of Homeland Security (Department or DHS) policy, responsibilities, and requirements on the appointment and compensation of experts and consultants as federal employees under title 5 United States Code (U.S.C.) § 3109.

II. Scope

- A. This Directive applies to the hiring of individuals as federal employees under 5 U.S.C § 3109 throughout DHS, unless exempted by statutory or federal regulatory authority, or as otherwise indicated herein.
- B. This Directive does not apply to positions or appointments authorized under the Aviation and Transportation Security Act, Public Law 107-71 (ATSA).
- C. This Directive does not apply to positions or appointments by the Federal Emergency Management Agency (FEMA) authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 et seq.

III. Authorities

- A. Title 6 U.S.C. § 392, "Homeland Security Organization; Personal Services"
- B. Title 5 U.S.C. § 3109, "Employment of Experts and Consultants; Temporary or Intermittent"
- C. Title 5 Code of Federal Regulations (CFR) Part 304, "Expert and Consultant Appointments"
- D. Office of Personnel Management (OPM) Guide to Data Standards
- E. DHS Delegation 03000, "Delegation for Human Capital and Human Resources"

IV. Responsibilities

A. DHS Chief Human Capital Officer (CHCO):

1. Issues Department-wide policy, guidance and instructions (using the Directive 112-01, DHS Directives System process) for the administration of employment of experts and consultants at DHS.
2. Approves or disapproves requests for appointing new, and reappointing existing, experts and consultants.
3. Provides technical advice and assistance to Components.
4. Submits requests to the Office of Personnel Management (OPM) for approval of expert and consultant reappointments that are an exception to the limits outlined in 5 CFR § 304.103, when necessitated by unusual or unforeseen circumstances.
5. Submits Department-wide reports on the use of the expert and consultant appointing authority on an annual basis, as required by OPM.

B. Component heads:

1. Comply with this Directive, any DHS and OPM policies, procedures, guidance, and all applicable federal laws and regulations.
2. Ensure the need for expert and consultant positions, or continuing need in cases of reappointment, is appropriately justified and documented.
3. Ensure all requests forwarded to the Office of the Chief Human Capital Officer (OCHCO) for appointment and reappointment approval are complete and demonstrate that the requested appointment would comply with statutory requirements, regulatory requirements, and applicable DHS policy and guidance.
4. Ensure human resources staff receives training and information to ensure that officials and employees using the authority understand the statutory and regulatory requirements, in accordance with 5 CFR § 304.108(a)(1).
5. Set and adjust the pay of experts and consultants in accordance with 5 CFR Part 304 and [OPM's Fact Sheet on Expert and Consultant Pay](#) or, when applicable, obtain and maintain an expert/consultant's written waiver of a claim for compensation pursuant to 5 CFR § 304.104(c).

6. Ensure an annual review of, and report on, expert and consultant appointments to ensure compliance with 5 U.S.C. § 3109, 5 CFR Part 304, and this Directive.

C. **Executive Director, Headquarters Human Resources Management and Services (HRMS)** assumes the responsibilities listed under section IV.B. for all Support Components with the exception of the National Protection and Programs Directorate (NPPD), the Office of Inspector General (OIG), and the Federal Law Enforcement Training Center (FLETC).

D. **Heads of the NPPD, OIG, and FLETC** assume the responsibilities listed under the Component Heads section for their respective Support Component.

V. Policy and Requirements

A. **Policy**: Components follow 5 CFR Part 304 and this Directive to appoint, reappoint, and pay individuals hired under 5 U.S.C. § 3109, as authorized by 6 U.S.C. § 392.

B. **Requirements**:

1. Requests for approval of appointments and reappointments are forwarded, in writing, through the Component's servicing human resources (HR) office to the DHS CHCO, via OCHCO Human Capital Policy & Programs. HR offices obtain concurrence from their legal and ethics offices prior to submitting requests to OCHCO. The following information is included in request(s) for approval:

- a. Name of appointee;
- b. Title and organizational location of appointee;
- c. Rate of pay, if applicable;
- d. A description of duties with sufficient detail to demonstrate that the position needs an expert or consultant;
- e. A resumé which demonstrates that the appointee's background and qualifications meet the requirements of the position;
- f. A written justification for making the appointment under 5 U.S.C. § 3109 that includes, but is not limited to, the following information:

- (1) A detailed explanation of how the prospective employee meets the standards for an “expert” or “consultant” as defined by 5 CFR §§ 304.102(b) or (d);
- (2) The necessity for the position as an expert or consultant; OR in the case of reappointment, the continuing need for the position and the services of the individual, including a statement as to whether the duties are the same or demonstrably different as the current or previous expert/consultant appointment; which of the reappointment options under 5 CFR § 304.103(c) the Component has elected and the reasons for selecting that option; and, accordingly, the number of days or hours worked in a service year, or cumulative earnings from expert/consultant employment;
- (3) A statement whether the appointee works/will work on an intermittent or temporary appointment, as defined in 5 CFR §§ 304.102(f-g); if temporary, type of work schedule (i.e., full-time, part-time, seasonal, or intermittent); and proposed length of appointment;
- (4) A statement certifying that the expert or consultant appointment will not be used to appoint the individual to a position requiring Presidential appointment, or to a Senior Executive Service position;
- (5) A statement certifying the appointee is not/will not perform managerial or supervisory work;
- (6) A statement which certifies that the individual is not being appointed to do work being performed by the Component’s regular employees;
- (7) A statement certifying that the expert or consultant appointment will not be used to fill in during staff shortages;
- (8) A statement certifying the appointment is not being made in anticipation of giving that person a career appointment, in accordance with 5 CFR § 304.103(b)(1-6), and;
- (9) A statement that, after consultation with the relevant ethics office, if the appointee has been designated, in writing, by the proposing official as a “Special Government Employee”; with the specific certification that the appointee

is not expected to work more than 130 days (calculating any time spent performing DHS official duties during a day, no matter how short a time, as equal to a full day) within a 365 day period.

g. A Confidential Financial Disclosure Report, OGE Form 450, completed by the appointee, reviewed and conditionally certified by an agency ethics official prior to appointment;

h. Concurrence by Component human resources officials that the appointment/reappointment meets all regulatory requirements under 5 CFR 304;

i. Statement of Understanding signed by the appointee (Appendix A);

j. Name, title, and signature of requesting official; and

k. Name, title, and signature of recommending official, if different than above.

2. When processing personnel actions, the title of "Expert" or "Consultant" is used. The pay plan of ED or EF is used in accordance with the OPM Guide to Data Standards. Series "0000" and no General Schedule grade are assigned, in accordance with 5 CFR § 304.103(a)(1).

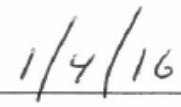
3. Components provide to OCHCO, on an annual basis, information listed in 5 CFR § 304.107. This information is provided to OCHCO by January 31, and covers experts and consultants on board for the preceding calendar year.

I. Questions

Address any questions or concerns regarding this Directive to the Office of the Chief Human Capital Officer.



Russell C. Deyo
Under Secretary for Management



Date

APPENDIX A: Statement of Understanding for Expert/Consultant Appointment

I understand that under the conditions of my appointment as an *(Expert or Consultant)* with the Department of Homeland Security (DHS) *(Component)*:

1. I do not acquire competitive status as a career federal employee.
2. I will not receive any special consideration for a career position with the federal government based on this appointment.
3. I will work on a strictly intermittent basis (i.e., no regularly scheduled tour of duty) indefinitely or for a period of time determined by *(Component)*, in accordance with 5 CFR § 304.103(a)(2);

OR

I will serve on a temporary appointment not to exceed one year and work on a full-time, part-time, seasonal, or intermittent work schedule. Eligibility for reappointment is determined by my duties, work schedule, number of days worked in a service year, and/or cumulative earnings, in accordance with 5 CFR § 304.103(c).

4. *(If applicable)* I have been advised by a DHS ethics official that I've been designated as a "Special Government Employee" (SGE). I have read the [Office of Government Ethics pamphlet entitled "To Serve With Honor."](#) which addresses SGEs serving on advisory committees, but also applies to SGEs serving on Expert or Consultant appointments, and understand it's contents. I will track the days I conduct official business to ensure that my service does not exceed the 130-day limit associated with a SGE designation (calculating any time spent at DHS during a day, no matter how short a time, as equal to a full day, within a 365 day period), and I will complete a new Confidential Financial Disclosure Report (OGE Form 450) for any subsequent reappointment and SGE designation.
5. *(If applicable; must be signed prior to appointment pursuant to 5 CFR § 304.104(c))* My service to the Government of the United States as an *(Expert or Consultant)* in the *(Component)* is provided without pay. I agree to release the Government of the United States from any claim or demands for compensation for services performed under this appointment.

The service year of my Expert or Consultant appointment commences on *(date)*.

Signature of Proposed Appointee

Date