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**CHAPTER 304. EMPLOYMENT OF EXPERTS AND CONSULTANTS**

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**CHAPTER 304. EMPLOYMENT OF EXPERTS AND CONSULTANTS**  
**(To Be Used With 5 CFR Part 304)****1. SCOPE**

a. **General.** This chapter contains the VA policies and procedures that apply to the employment of experts and consultants when there is an employer-employee relationship as explained in 5 CFR Part 304, and such employment is in positions excepted from the competitive service by statute or by the Office of Personnel Management. The employee's services may be obtained by contract or appointment under an appropriate appointing authority (i.e., section 3109, title 5, U.S.C.) and be in a pay or, when appropriate, a non-pay basis.

b. **Exception.** This chapter does not apply to the employment of consultants and attendings under title 38, U.S.C. ch. 74 authority.

**2. POLICY**

a. **General.** Experts and consultants will be employed only when their services are proper, legitimate, and the most practical way for the VA to accomplish its management, operational, and service responsibilities. They will be employed on a temporary or intermittent basis but not-to-exceed 1 year unless specifically provided otherwise by law or for a lesser period of time when the need for their services will be completed earlier. (See 5 CFR. 304.102(f) and (g) for definitions of temporary and intermittent employment). They will not be employed to do a job that regular employees can do as well or to perform the duties of a continuing full-time position; neither will experts and consultants be employed where their appointments circumvent competitive employment procedures or General Schedule pay limitations (see ch. 534, sec. D, this part).

Note: In accordance with 5 CFR 304.103(a)(2), experts and consultants who work on strictly an intermittent basis may be appointed without time limit and all others must receive temporary appointments. However, the above VA policy limits intermittent appointments to not-to-exceed 1 year. Also, the 5 CFR definition for temporary employment clarifies that the appointment may have a full-time, part-time, seasonal, or intermittent work schedule.

b. **Re-appointments.** The appointment of experts and consultants employed on an intermittent basis can be renewed from year to year; those serving under temporary appointments cannot except as provided for by 5 CFR 304.103(c).

**3. RESPONSIBILITIES**

a. **Office of the Secretary.** The Secretary will determine the need for experts and consultants to be appointed to the Office of the Secretary. This includes responsibility to review and certify each proposed appointment or its extension, when applicable, as provided for by paragraph 6 below.

b. **Line Management.** The authority to perform pre-appointment certifications for requests to appoint experts and consultants and for any extensions of such appointments is delegated to Administration heads, Assistant Secretaries, and other key officials for requests under their jurisdiction. (see par. 6 below).

**c. Human Resources Management Officers**

(1) Human Resources Management Officers (HRMOs) (including the Team Leader, Headquarters & Executive Resources Team, in Central Office) will insure that all procedures and requirements (e.g., dual employment, dual pay, conflict of interest, leave administration, and records documentation) for the appointment and employment of experts and consultants are followed (see 5 CFR 304.103, 104 and ch. 300, this part).

(2) HRMOs will conduct the quarterly review of the employment of experts and consultants to assure that their utilization is proper. The reviews will be documented, maintained, and signed by the HRMO as explained in paragraph 6 below.

**4. SELECTIONS OF EXPERTS AND CONSULTANTS**

All final selections of experts and consultants must be approved by the Secretary or designee, with the advice and assistance of the DAS/HRM (see par. 3a and 3b. above). Field station heads will forward their recommendations for the appointment and employment of experts and consultants to Central Office, through channels, for approval.

**5. REVIEW AND CERTIFICATION**

a. **General.** With the advice and assistance of the Office of Human Resources Management, the responsible selecting official will review and certify each proposed appointment, or the extension of an appointment, on the basis of the following considerations:

- (1) Necessity for the position;
- (2) Correctness of the judgment that the position requires the services of an expert or consultant;
- (3) Propriety of the designation of the position as temporary or intermittent;
- (4) Soundness of the decision that this is the most appropriate appointing authority to use;
- (5) Qualifications of the proposed appointee;
- (6) Appropriateness of the intended level of pay in relation to both the work to be performed and the qualifications of the proposed appointee, and
- (7) Completeness of documentation.

**b. Documentation**

(1) The selecting official will sign an individually prepared certification attesting that all the requirements in subparagraph a above have been met for each appointee. The certification will be filed with the permanent records in each appointee's Official Personnel Folder and be worded along the lines of the following example:

### CONSULTANT CERTIFICATE

"In approving the filling of this consultant position without regard to the laws and regulations governing appointments in the competitive civil service, and in approving the rate of pay set for this position without regard to the classification and pay laws, I have considered the requirements of law (5 U.S.C. 3109), and relevant Comptroller General decisions that spell out the conditions under which consultants may be appointed .

" More specifically, I have satisfied myself that:

"(a) The position is necessary;

"(b) The position is a 'consultant position' as defined in 5 CFR 304.102(b);

"(c) The work is temporary in nature, that is, will not exceed 1 year or, as appropriate'...requires services only irregularly (that is, with no regular tour of duty) or occasionally', requires a high level of expertness not available in the regular workforce, is of a purely advisory nature, and does not include the performance or supervision of operating functions;

"(d) This authority is the most appropriate appointing authority for meeting the agency's needs;

"(e) The proposed appointee meets OPM's definition of 'consultant' in 5 CFR 304.102(b) and does, in fact, possess the kind and level of expertness that will permit him to render the services the agency seeks;

"(f) The daily rate intended to be paid the proposed appointee is commensurate with the level of the work he is to perform and his qualifications for the work; and

"(g) Required documentation is in order."

(2) In some situations, it will be necessary to modify the sample certificate as, for example, when the appointment is made under authority other than 5 U.S.C. 3109, the pay is set under the General Schedule (primarily if an appointment is under schedule A), or the appointee will serve without compensation. Slight modification will also have to be made if the position is that of an expert rather than a consultant, although all the basic elements of the consultant sample must be included.

### 6. REVIEW DURING EMPLOYMENT

a. **General.** The responsible HRMO will review the utilization of each expert or consultant on a quarterly calendar basis (i.e., March 31, June 30, September 30, and December 31) to assure that in each case the:

(1) Circumstances requiring the initial employment of the expert or consultant are substantially the same;

(2) Duties performed are still those of an expert or consultant;

(3) Time limits are being observed;

(4) Documentation is kept current, and

(5) Duties of record are actually being performed.

The HRMO will obtain such documentation from the appropriate selecting officials as is deemed necessary to facilitate the review and certification.

b. **Exclusions.** The quarterly review may be omitted for those experts or consultants who worked for 10 days or less during the quarter.

c. **Documentation**

(1) Each review will be documented and signed by the HRMO. The review report will cover all experts and consultants and describe how the review was made, summarize the findings, and describe the actions taken to correct any deficiencies noted in the review. Where exclusions in subparagraph b above have made, a statement describing the extent of the exclusion will be included in the report. Records of reviews will be retained for examination by OPM.

(2) Field stations will forward a copy of each quarterly review, through channels, to the Customer Advisory and Consulting Group (051). Negative reports are not required.

**7. ANNUAL REVIEWS**

Selecting officials (see par. 4 above) will be notified by the DAS/HRM at the close of each fiscal year of their responsibilities and obligations for the proper employment and utilization of experts and consultants. See MP-5, Part I, Chapter 291, Appendix B. Annual Report on Expert and Consultant Appointments.