

U.S. Department of Energy
Washington, DC

ORDER

DRAFT
DOE O 329.2

Approved: XX-XX-XXXX

**SUBJECT: EXCEPTED SERVICE AUTHORITY FOR EXCEPTIONALLY WELL
QUALIFIED (EWQ) EQ PAY PLAN EMPLOYEES**

1. PURPOSE. To establish requirements and responsibilities for the employment and compensation of individuals when using the following DOE excepted service authority:

Section 313 division D of the Consolidated Appropriations Act of 2014 (Public Law 113-76), hereafter referred to as appointment authority EWQ and pay plan EQ.

2. CANCELLATION. None.

3. APPLICABILITY.

- a. Departmental Applicability. This Order applies to all Departmental Elements.

The Administrator of the National Nuclear Security Administration (NNSA) must assure that NNSA employees comply with their responsibilities under this directive. Nothing in this directive will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106 65 to establish Administration specific policies, unless disapproved by the Secretary.

- b. DOE Contractors. This Order does not apply to DOE Contractors.

- c. Equivalencies/Exemptions for DOE O 329.2. Requests for exemptions must be forwarded to the Senior Management Review Board (SMRB) as delegated by the Chair, Executive Resources Board (ERB) or designee. The request must be submitted to the Office of Executive Resources (OER), and include the basis for the exemption, identify the key requirement for which the exemption is sought, and request a timeframe, as applicable.

4. REQUIREMENTS.

- a. Background.

- (1) The authority is used to enhance the Department's recruitment of exceptionally well qualified (EWQ) scientific, engineering, or other critical technical positions through the temporary infusion of talented individuals. The authority is limited to 120 positions and the appointments must not exceed 4 years.
- (2) Underlying the implementation of this authority must be the commitment to apply merit system principles in accordance with 5 USC 2301 and that the Department must notify diverse professional associations and institutions of

higher education, including those serving the interests of women and racial or ethnic minorities, who are underrepresented in scientific, engineering and mathematical fields, of position openings.

- (3) Appointments made under this authority may be made without regard to the provisions of chapter 33 of title 5, United States Code. Therefore, positions under this authority may be without competition or the of vacancy announcements. However, all placement procedures must be consistent with merit principles and result in excepted service appointments.
- (4) Employees appointed under this authority serve at the pleasure of the appointing official (or designee as authorized by the Secretary of Energy) and may be terminated at any time. This appointment does not confer competitive status.
- (5) Basic pay is fixed up to Executive Schedule I (EX-I) without regard to the civil service laws, and with total annual compensation may not exceed the Vice President's salary.
- (6) The Secretary or his designee has exercised his discretionary authority to adopt regulations and procedures similar to those governing the competitive service.

b. Covered Positions.

- (1) This authority may be used for newly established scientific, engineering, or other critical technical positions that are project-oriented and term in nature to advance DOE's mission. The incumbent of an EWQ appointment must meet the technical requirements outlined below in section e.
- (2) Typically, an EWQ appointment is not used to fill a currently established position unless the nature of work changes such that its duties can be re-described to demonstrate a unique, mission-driven requirement that is time limited in nature and can be accomplished within the term appointment not to exceed 4 years. The Program Office must provide written justification clearly documenting the specific work requirements that are term in nature.
- (3) This authority cannot be used to make political appointments (temporary or permanent) or appointments to positions properly classified in the Senior Executive Service (SES), Senior Level (SL) or Scientific or Professional (ST) pay plans. The Office of Personnel Management (OPM) regulations and authorities govern the establishment, appointment process, and other matters for SES, SL and ST positions.

c. Duration of Appointments.

- (1) Appointments made under this authority are time-limited for a period up to 4 years from the date of the appointment. An appointment may be made in increments of less than 4 years; however, the total length of service cannot exceed 4 years.
- (2) EWQ employees serve at the pleasure of the appointing official (Secretary of Energy or designee), and may be terminated at any time.

d. Classification.

- (1) The occupational series of the scientific, engineering or other technical positions code will be determined in accordance with OPM position classification standards. The final classification will be determined based on the EWQ selectee's qualifications.
- (2) The position description established will be recorded at a minimum using the following format:
 - (a) Introduction
 - (b) Major Duties and Responsibilities
 - (c) Supervision and Guidance
 - (d) Qualifications and Knowledge required for the position

e. Qualification Requirements.

- (1) An individual appointed under this authority must meet the OPM minimum classification requirements and possess the level of experience and educational credentials necessary to be considered an expert or leader in their field of expertise to lead groundbreaking projects that support the Department's strategic initiatives.
- (2) Current DOE employees are ineligible for this appointment authority. Prior DOE employees must have a break in DOE employment for at least 2 years and should have a period of intervening service in private industry or academia.
 - (a) Current employees serving on an Expert or Consultant appointment without compensation or former Experts or Consultants who served without compensation with a break-in-service of less than 2 years are eligible for this appointment.
 - (b) An Intergovernmental Personnel Act (IPA) detailee who has not been appointed as a federal employee is eligible.

- (3) Typically, an incumbent of an EWQ position should possess and/or demonstrate:
 - (a) A graduate degree, significant research experience, and a national or international reputation in their field; and/or
 - (b) Authored fundamental papers in the field of expertise that are widely used and cited; and/or
 - (c) Sought as an advisor and consultant or mentor on scientific and technological problems that extend beyond their specialty; and/or
 - (d) An uncommon level of expertise and recognition typically gained through experience in private industry or academia.

f. Recruitment Requirements.

- (1) Appointments to this authority may be filled noncompetitively and without vacancy announcements.
- (2) As stipulated by the Act, the Department must notify diverse professional associations and institutions of higher education, including those serving the interests of women and racial or ethnic minorities who are underrepresented in scientific, engineering and mathematical fields, of position openings as appropriate.
- (3) A listing of notified associations or colleges and universities etc. must be provided with each appointment package or written justification explaining why such a notification was not completed.

g. Allocation and Approval.

- (1) All appointment and compensation requests require the approval of the Department's SMRB.
- (2) The program office must provide reference checks submit written documentation that clearly addresses the following information:
 - (a) Individual's qualifications (e.g. requisite technical knowledge, skills, and experience as specified above in section 4.e.(3)) for an EWQ appointment;
 - (b) Factors and criteria used in setting initial pay;
 - (c) Short-term (4 years or less) nature of the work or, if work is subsequently determined to extend beyond the current period, a succession plan for the position;

- (d) Scope of specific, results-driven work, project, program, or task, schedule for delivery, and strategic mission or goal supported project plan;
 - (e) Notification of position opening to diverse professional associations and institutions of higher education, including those serving the interests of women and racial or ethnic minorities who are underrepresented in scientific, engineering and mathematical fields or a justification documenting why a notification was not done;
 - (f) Identify the review and selection process used by the selecting official; and
 - (g) Explain why the position is critical to the Department's mission and the potential impact if the position is not filled with an EWQ candidate.
- h. Performance Management. EWQ employees follow guidelines under DOE Order 331.1C, Employee Performance Management and Recognition Program, except the directive does not apply to the award limits for the EQ pay plan.

Employees in this pay plan are subject to the additional pay limits established by Section 313 of division D of the Consolidated Appropriations Act of 2014 (Public Law 123-76) (i.e., Vice President's salary).

All performance-based awards, performance-based pay adjustments and other awards for employees must be submitted to OER for SMRB approval prior to granting, except as noted in below section (4)(c). An award cannot be a duplication of an accomplishment documented in the performance plan.

(1) Performance Appraisal and Rating Levels

- (a) EWQ employees will have written performance plans against which a performance rating will be issued on an annual basis. A plan must only contain critical elements that are specific, measurable, achievable, relevant to the work performed, linked to organizational mission and goals, and time-bound; contributing factors; and may include dates, or milestones for specific deliverables or projects.
- (b) An EWQ employee must report to an equivalent or higher grade level (e.g., EX/SES/SL/ST).
- (c) Employees will be rated against a five-level rating system as follows:

1 **Significantly Exceeds Expectations (SE)**. The highest level attainable as a summary rating level and is regarded as the

"Outstanding" level. To attain this level, all critical elements must be rated at the EE level.

- 2 **Exceeds Expectations (EE).** Performance at this level is dramatically higher than that described at the ME level in terms of work products and/or results achieved, high cost-savings or cost avoidances, and/or extremely high levels of efficiency, effectiveness, and timeliness.
- 3 **Meets Expectations (ME).** This is the "Fully Successful" level that is described for each critical element and is intended to describe the level that is reasonably expected to be achieved in terms of quality, quantity, effectiveness, and timeliness.
- 4 **Needs Improvement (NI).** A critical element rated at this level indicates that an employee has not met the expectations for that critical element and that performance at this level is clearly lower than what was reasonably expected at ME, but is not considered unacceptable.
- 5 **Fails to Meet Expectations (FME).** This is the lowest level at which a critical element can be evaluated. It indicates that the employee's performance is "Unacceptable". When one critical element is rated FME, the overall summary level rating is FME.

(d) An EWQ employee rated below ME must be terminated.

(2) Performance Appraisal Cycle

- (a) The performance appraisal cycle is October 1st through September 30th of each year.
- (b) At least one progress review must be completed during the appraisal period.

(3) Performance-Based Pay Adjustments

- (a) A performance-based pay adjustment may result in a salary increase not to exceed the maximum pay increase that is being authorized for SES members in guidance unless DOE is restricted in providing such adjustments.
- (b) EWQ employees may be considered for one pay adjustment annually based on clearly documented performance achievements reflected in the performance appraisal and written justification.

- (c) Eligibility is applicable during the performance cycle only.
- (4) Performance-Based Awards
 - (a) Based on their annual performance achievements, EWQ employees may receive lump sum cash awards ("bonuses").
 - (b) Time Off awards comparable to other pay systems in recognition of annual performance may also be granted.
 - (c) Eligibility is applicable during the performance cycle only if based upon the annual performance.
- (5) Other Awards
 - (a) EWQ employees are eligible to receive Departmental awards intended to motivate and reward or recognize excellence.
 - (b) Awards for consideration include: Special Act or Service, On-the-Spot Monetary Award, Time Off Awards, Certificate of Appreciation, Equal Employment Opportunity Award, and Departmental Honorary Awards.
 - (c) Monetary awards less than \$2000 and Time Off Awards less than 20 hours do not need SMRB approval; however, Departmental Elements must notify OER when awards are given.
- i. Pay and Leave Administration.
 - (1) Pay Setting Upon Initial Appointment
 - (a) Compensation for an EWQ employee must reflect the salary paid in the labor market for comparable positions, commensurate with the individual's skills, professional and educational accomplishments in the specialized fields of energy and science and the complexity of work being asked to perform.
 - (b) Pay may be set at any point in the pay range based on consideration of such factors as:
 - 1 Labor market conditions
 - 2 Personal qualifications and unique skills
 - 3 Education
 - 4 Experience

- 5 Salary history
 - 6 Mission impact
 - 7 Organizational equity or pay considerations (comparable competitive service position)
 - 8 Scope and type of position
- (c) The minimum rate of pay is set at Executive Schedule IV and the maximum rate is set at Executive Schedule I.

Exceptionally Well Qualified (EWQ) EQ Pay Plan	Minimum Salary (2014)	Maximum Salary (2014)	Level of Experience
Structure of EWQ Authority EQ Pay Plan System	\$157,100 (EX-IV)	\$201,700 (EX-I)	This person possesses extensive relevant experience; has demonstrated experience applying and/or developing highly advanced technologies, principles, theories, and/or concepts; is recognized nationally and internationally as an authority and leader in their specialized field; and is sought after by professional colleagues at leading institutions or industries.

- (2) Total Annual Compensation
- (a) An EWQ employee's aggregate compensation (base pay, incentives, differentials, and awards, etc.) per calendar year may not exceed the annual rate payable for the Vice President's salary.
 - (b) Any compensation exceeding the annual rate payable for the Vice President's salary does not carry-over to the next calendar year and will be forfeited.
- (3) Locality Pay Increases
- (a) Employees appointed under this authority do not receive locality pay or locality pay increases applicable to other federal employees.
- (4) Comparability Increases
- (a) Employees appointed to positions under this authority do not receive comparability increases applicable to other federal employees.
- (5) Pay Increases
- (a) A pay adjustment within the range may be effected with SMRB approval based upon one of the following:

- (a) Employees from other agencies who voluntarily transfer from the competitive service, SES, or other pay systems to this time-limited temporary excepted service authority are not afforded reinstatement rights to another position within the Department or "fall back rights" to the agency previously assigned prior to the transfer, if applicable.
- (2) Employee Status
- (a) EWQ is an excepted service appointment; therefore, this appointment does not confer career-conditional or career tenure status.
 - (b) EWQ employees must compete with other applicants in open competition to meet requirements for another federal position, unless they meet the requirements for reinstatement.
- (3) Supervisory Role and Supervisory Reporting Relationships
- (a) An appointment under this authority may include supervisory and related managerial duties; however, supervisory duties should not typically be more than 25% of the time.
 - (b) An EWQ employee must report to an equivalent or higher grade level (e.g. EX/SES/SL/ST).
- (4) Trial Period
- (a) Appointees under this authority are not required to serve a trial period.
- (5) Employee Benefits
- (a) Employees appointed under this authority for a period exceeding one year and a day are entitled to the same basic benefits (e.g., health benefits, life insurance, retirement, and leave accrual) as applicable to other employees of the Department.
- (6) Public Financial Disclosure Report
- (a) Employees under this authority are required to complete a public financial disclosure statement and receive approval clearance from the Office of General Counsel (GC) prior to initial appointment and, thereafter on May 15 of every year, and upon termination of a position that requires an employee to file.
 - (b) Employees will also have to file periodic transaction reports as necessary.

(7) Post-Employment Restrictions

- (a) All Federal employees are subject to the post-employment restrictions set forth in 18 U.S.C. § 207. Since its enactment, 18 U.S.C. § 207 has remained the primary source of post-employment restrictions for Federal employees. In general, this statute prohibits a former employee from knowingly making, with the intent to influence, any communication to or appearance before an employee of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party in which the employee was personally and substantially involved or that was pending under the employee's official responsibility, and in which the United States is a party or has a direct and substantial interest.
- (b) There are additional post-employment restrictions placed on employees who are considered "senior." A "senior" employee is someone paid at or above 86.5 percent of the rate of basic pay for Level II of the Executive Schedule for a period of one year after leaving a "senior" position, an individual may not make, with intent to influence, any communication or appearance in connection with any official action before any officer or employee of the agency (or agencies) in which he or she served within the year immediately prior to termination of service as a "senior" employee. This bar ordinarily does not prohibit appearances before or communications with Members of Congress or their staffs.

(8) Involuntary Separations

- (a) Employees appointed under this authority serve at the pleasure of the appointing official and may be terminated at any time. Total length of service under this authority is 4 years.

(9) Time-Limited Appointments

- (a) Termination of a time-limited appointment at the expiration of the appointment is not grievable or appealable.
- (b) Termination of a time-limited appointment under this authority prior to the expiration of the appointment is subject to limited appeal rights.

(10) Reduction-In-Force

- (a) Procedures governing reduction-in-force applicable to excepted service employees contained in 5 C.F.R. Part 351 are not applicable to appointments made under this authority.

- (11) Appeal Rights – Adverse Action
 - (a) Employees under this authority are not considered to be an "employee" for purposes of the rights afforded to federal employees before the Merit Systems Protection Board (MSPB) in subchapter II of chapter 75 of title 5, United States Code.
- (12) Grievance Rights
 - (a) Employees under this authority are not covered by the locally applicable Administrative or Negotiated Grievance Procedures in DOE O 342. 1.
- (13) Applicability of Other Departmental Policies
 - (a) Unless otherwise described above or in supplemental policy guidance, Departmental policies and procedures will apply to appointments and positions under this authority (e.g. subject to completion of a public financial disclosure report, postemployment restrictions, security etc.).

5. RESPONSIBILITIES.

- a. SMRB as delegated by the ERB
 - (1) Manage and assign all EWQ allocations throughout the Department, including NNSA;
 - (2) Establish and approve new positions, abolishments, reassignments, and selections into EWQ positions;
 - (3) Approve pay setting (e.g., initial, as a result of a reassignment to a position of higher responsibilities, promotions, etc.);
 - (4) Approve recruitment/relocation/retention allowances and dual compensation waivers;
 - (5) Approve performance based pay adjustments and awards;
 - (6) Approve proposals to grant non-performance based incentive awards, unless the Head of the Departmental Element has written delegation from the SMRB to approve;
 - (7) Approve exemptions to the policy, as applicable.
- b. Chief Human Capital Officer
 - (1) Provide oversight in the application of the Act; and

- (2) Provide data for reporting purposes to include:
 - (a) Ability to attract exceptionally well qualified scientists, engineers, and other critical technical personnel;
 - (b) Total compensation paid to each EWQ each calendar year; and
 - (c) Additional guidance, as applicable, to ensure authority is applied in accordance with the Act.
- c. Heads of Departmental Elements or Equivalent
 - (1) Approve all EWQ requests prior to submission to the SMRB
- d. Selecting Officials
 - (1) Comply with approved guidance;
 - (2) Notify diverse organizations, if applicable, or provide appropriate justification;
 - (3) Certify merit system principles were followed;
 - (4) Certify misuse of his/her position did not occur; and
 - (5) Collaborate with OER in relation to establishing EWQ positions, pay, recruitment, hiring, etc.
- e. Human Resources Resource Managers/Business Partners
 - (1) Ensure EWQ actions are submitted and authorized in accordance with approved guidance (e.g. DOE Order 329.1, ERB Charter, etc.); and
 - (2) Collaborate with OER in relation to establishing EWQ positions, pay, recruitment, hiring, etc.
- f. OER
 - (1) Provide technical support in application of the Act;
 - (2) Monitor use of EWQ authorities;
 - (3) Provide advice and technical assistance to program offices prior to final approval of all personnel actions that are forwarded to the SMRB for consideration; and
 - (4) Develop Departmental Instructions/Guidance.

g. Office of General Counsel

- (1) Provide legal support to ensure compliance with Section 313 of division D of the Consolidated Appropriations Act of 2014 (Public Law 113-76); and
- (2) Approve conflict of interest request, ensure compliance with financial disclosure report, ethics training etc.

6. REFERENCES.

- a. Section 313 of division D of the Consolidated Appropriations Act of 2014 (Public Law 113-76)
- b. Executive Resources Board Charter
- c. DOE N 314.1, *DOE FLEX: DOE's Telework Program*
- d. DOE M 321.1-1, *Intergovernmental Personnel Act Assignments*
- e. DOE O 322.1C, *Pay and Leave Administration and Hours of Duty* and Admin Chg to *DOE Pay and Leave Administration and Hours of Duty*
- f. DOE O 331.1C, *Employee Performance Management and Recognition Program*
- g. *DOE Handbook on Recruitment and Retention Incentives*
- h. 3 U.S.C § 104, Salary of the Vice President
- i. 5 U.S.C. Chapter 23, Merit System Principles
- j. 5 U.S.C. Chapter 33, Examination, Selection, and Placement
- k. 5 U.S.C. Chapter 43, Performance Appraisal
- l. 5 U.S.C. Chapter 45, Incentive Awards
- m. 5 U.S.C. Chapter 75, Subchapter II
- n. 5 CFR Part 430, Performance Management
- o. 5 CFR Part 451, Awards
- p. 5 CFR Part 575, Recruitment and Relocation Bonuses, Retention Allowances
- q. Office of Personnel Management Handbook of Occupational Groups and Families
- r. Office of Personnel Management Introduction to Position Classification Standards

- s. Office of Personnel Management Classifier's Handbook
- 7. CONTACT. Questions concerning the Order should be directed to the Office of Executive Resources at 202-586-2195 or 202-586-9558.

BY ORDER OF THE SECRETARY OF ENERGY:

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inserted
here after
approval

ELIZABETH SHERWOOD-RANDALL
Deputy Secretary