




**U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20416**

Management Advisory
Report No. 17-08

DATE: March 13, 2017

TO: Linda E. McMahon
Administrator

FROM: Hannibal M. Ware 
Acting Inspector General

SUBJECT: *Review of SBA's Practices for Schedule C Political Appointee Initial Pay Setting*

We are currently performing an ongoing review to determine whether the Small Business Administration (SBA) pay setting practices, including salary increases and bonuses provided for Schedule C political appointees (Schedule Cs) and Senior Executive Service (SES), complied with Federal laws and regulations.¹ This memorandum is the second of three reports evaluating SBA's pay setting practices and notes that SBA did not prepare the required documentation to justify the higher pay determinations for Schedule C appointees. In a prior report, we noted that SBA incorrectly set the pay for politically appointed SES employees.² We previously furnished copies of the draft advisory and requested written comments on the recommendations. Appendix II contains SBA management's comments, which we considered in finalizing the advisory.

This advisory contains two recommendations that SBA agreed to implement. Please provide us your progress in implementing the recommendations within 90 days.

Background

We initiated this review based on a complaint submitted through the SBA Office of Inspector General Hotline. Specifically, the complaint included concerns regarding the use of superior qualifications pay setting for Schedule Cs.

The Office of Human Resources Solutions (OHRS) is responsible for providing SBA's human resources services. Executive Resources, a part of OHRS, oversees the Agency-wide executive resources function, which includes providing advisory services to SBA leadership on executive and political personnel. Executive Resources also manages most aspects of the staffing and pay setting for Schedule Cs.

The Office of Personnel Management (OPM) grants hiring authority under Schedule C on a case-by-case basis in situations for which political appointments are appropriate. In addition, Schedule Cs are exempt from the criteria associated with competitive service hiring practices due to their

¹ Schedule C is a position designation for politically appointed employees with confidential or policy-determining duties.

² OIG Management Advisory 16-20, *Review of SBA's Practices for Senior Executive Service Initial Pay Setting* (August 22, 2016).

confidential or policy-determining character.³ Most such positions are at grade 15 or lower of the General Schedule pay scale.

In an effort to compete for top quality candidates, SBA may use the superior qualifications pay setting authority for Schedule Cs, other excepted service appointments, and competitive service positions. Using this authority allows SBA to set basic pay above the step 1 rate for the General Schedule grade to which the employee is appointed. SBA may determine that a candidate has superior qualifications based on one or more of the following:⁴

- Level, type, or quality of the candidate's skills or competencies demonstrated or obtained through experience, and/or education
- The quality or superiority of the candidate's accomplishments compared to others in the field
- Other factors supporting a superior qualifications determination, such as significantly higher qualifications than the minimum required

Furthermore, the Agency must consider one or more factors to determine the advanced rate of pay for each candidate. For example, SBA may use the candidate's level, type, or quality of skills or competencies, existing salary, or significant pay disparities between Federal and non-Federal pay rates.⁵

Federal regulations require an agency to sufficiently document each use of the superior qualifications authority to allow reconstruction of actions taken.⁶ Documentation must include the superior qualifications of the individual and an explanation of the factors used to support the higher rate. Further, SBA's standard operating procedure (SOP) *Superior Qualifications and Special Needs Pay-Setting Authority* requires additional supporting documentation evidencing the review and approval process for using the superior qualifications authority.⁷

Objective

The overall objective of our ongoing review is to determine whether SBA's pay setting practices, including salary increases and bonuses provided for Schedule Cs and SESs, complied with Federal laws and regulations. This memo addresses only our review of initial pay setting for Schedule Cs. (See Appendix I for a detailed discussion of scope and methodology.)

Results

While we determined that all 10 Schedule C appointees SBA hired in 2014 met the criteria supporting superior qualifications for higher pay, SBA did not prepare the required documentation to justify the higher pay determinations. This occurred because Executive Resources personnel were not aware of the documentation requirements delineated in the Federal regulations and SOP applied to Schedule C excepted service appointments. By not complying with all documentation requirements, SBA lacked transparency of pay setting practices and was susceptible to improperly

³ OPM provides excepted service hiring authorities to fill special jobs or to fill any job in unusual or special circumstances. These excepted service authorities enable agencies to hire when it is not feasible or not practical to use traditional competitive hiring procedures and can streamline hiring.

⁴ 5 CFR § 531.212(b)(1), *Superior qualifications and special needs pay-setting authority*.

⁵ 5 CFR § 531.212(c), *Superior qualifications and special needs pay-setting authority*.

⁶ 5 CFR § 531.212(e)(2), *Superior qualifications and special needs pay-setting authority*.

⁷ SOP 33 01 1, Appendixes C & D, *Superior qualifications and special needs pay-setting authority*.

using the superior qualifications authority, which could have resulted in potential salary overpayments for Schedule C hires.

Federal regulations require an agency to document each use of the superior qualifications authority to set pay above the step 1 rate.⁸ However, Executive Resources hired a Schedule C appointee at the GS-15 grade step 8 rate without a written analysis of the employee's superior qualifications or an explanation of the factors used to support the higher pay rate in the appointee's personnel file. Additionally, the file did not contain the required supporting documentation outlined in the SOP. For instance, the file did not include the Superior Qualifications/Special Needs Checklist and Approval Form. This checklist ensures that management has met all the technical requirements for the superior qualifications authority and that the appropriate Agency officials have approved its use.

Because SBA did not prepare the required documentation to support its hiring decisions for Schedule C appointees, we evaluated the qualifications for each of the 10 Schedule Cs to ensure they met the superior qualifications determination requirements. Our evaluation included reviewing each appointee's résumé to determine whether the experience and education aligned with the position description and contained aspects of superiority above the minimum qualifications. Based on the education, experience, and professional affiliations of the appointees, we determined that all 10 Schedule Cs met the criteria that support a superior qualifications determination.

According to Executive Resources personnel, the OHRs Payroll division notified them in the beginning of 2015 of the documentation requirements. Subsequently, Executive Resources began including justification memorandums in personnel files for all appointees who received advanced rates. For the six Schedule Cs hired under the superior qualifications authority during 2015 and 2016, we verified that a justification memorandum was included in each file. These memorandums documented the appointees' superior qualifications and explanation of factors to justify the rate at which each employee's pay was set. However, the personnel files still did not contain certain documents outlined in Appendixes C and D of the SOP to support using the superior qualifications authority. For example, a majority of the files did not include the salary history documentation needed in cases where the Agency used previous salary as a factor to justify the pay step provided to the employee. In addition, the six personnel files did not include the Superior Qualifications/Special Needs Checklist and Approval Form. Maintaining the necessary documents such as the ones mentioned will allow the Agency to support the action taken in each case and comply with Federal regulations.

Executive Resources personnel did not receive fundamental training on use of the superior qualifications authority, according to an Executive Resources employee who assisted in setting pay for Schedule Cs. The employee relied on "on-the-job" training, which did not include the criteria outlined in the SOP. Additionally, during our review, an official from Executive Resources stated that SBA should update the current SOP to ensure that all employees within OHRs are aware of the superior qualifications requirements for Schedule C excepted service appointments.

We recognize that some requirements in the SOP regarding the review and approval of superior qualifications are not applicable to Schedule Cs due to the nature of excepted service appointments. For example, the requirement to document a comparison of the candidate's qualifications with those of other qualified candidates is not applicable to Schedule Cs because excepted service positions are not subject to competitive hiring evaluation. In another example, regulations restrict

⁸ 5 CFR 531.212 (e), *Superior qualifications and special needs pay-setting authority*.

Schedule Cs from obtaining recruitment bonuses; however, the SOP requires OHRS to include a reason for requesting a superior qualifications appointment instead of a recruitment bonus. We believe the lack of formalized training and insufficiently detailed policies may have led to the confusion and misinterpretation of policy for the superior qualifications authority. In order to provide Executive Resources with better procedural guidance on using the superior qualifications authority, the SOP should have a section that specifically addresses Schedule C excepted service appointments. Furthermore, SBA should train all OHRS personnel on the updated policies and procedures.

Without systematic controls in place to assure compliance with all documentation requirements, SBA is susceptible to improperly using the superior qualifications authority resulting in potential salary overpayments for future Schedule C hiring. While we acknowledge that SBA completed justification memorandums for pay settings under the superior qualifications authority, we believe it is important that the Agency comply with all documentation requirements to support each determination of use.

Recommendations

To improve SBA's management of pay setting practices, we recommend that the Chief Operating Officer (COO) implement the following actions:

1. Ensure current and future Executive Resources personnel complete training incorporating the requirements for the superior qualifications authority.
2. Update the *Superior Qualifications and Special Needs Pay-Setting Authority* SOP to include a section specifically for Schedule C excepted service appointments.

Analysis of Agency Response

SBA management provided formal comments that are included in their entirety in Appendix II. SBA management agreed to implement our two recommendations by June 30, 2017.

Summary of Actions Necessary to Close the Report

The following provides the status of each recommendation and the necessary action to either resolve or close the recommendation.

1. **Resolved.** The COO concurred with our recommendation and plans to complete final action on this recommendation by April 30, 2017. This recommendation can be closed upon the Office of the Chief Operating Officer providing evidence that it trained current and new Executive Resources personnel on the superior qualifications authority.
2. **Resolved.** The COO concurred with our recommendation and plans to complete final action on this recommendation by June 30, 2017. This recommendation can be closed upon the Office of the Chief Operating Officer providing evidence that it updated the *Superior Qualifications and Special Needs Pay-Setting Authority* SOP, reflecting the inclusion of Schedule C excepted service appointments.

Please contact us if you would like to discuss this memorandum or any related issues.

cc: Mary Anne Bradfield, Chief of Staff
Joseph P. Loddio, Chief Operating Officer
Elias Hernandez, Chief Human Capital Officer
Eric S. Benderson, Acting General Counsel
Martin Conrey, Attorney Advisor, Legislation and Appropriation
Timothy E. Gribben, Chief Financial Officer and Associate Administrator for
Performance Management
LaNae Twite, Director, Office of Internal Controls

Appendix I: Objective, Scope, and Methodology

The overall objective of our ongoing review is to determine whether SBA's pay setting practices, including salary increases and bonuses provided for Schedule Cs and SESs, complied with Federal laws and regulations. This memorandum addresses only our review on initial pay setting for Schedule Cs.

In conducting this evaluation, we reviewed Federal laws and regulations and SBA policies and procedures governing the superior qualifications pay setting authority for Schedule Cs. We also interviewed personnel from OHRs and OPM to gain an understanding of Schedule C pay setting practices. Additionally, we obtained the universe of 36 Schedule C political appointees hired during the period January 1, 2014, to March 31, 2016. We evaluated initial pay setting and reviewed the Standard Form 50, Notification of Personnel Action, and personnel file for all 36 individuals to ensure pay setting complied with Federal laws, regulations, and policies.

We conducted this evaluation in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*. These standards require that we adequately plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our objectives.

SBA
CHIEF OPERATING OFFICER'S
RESPONSE TO MANAGEMENT ADVISORY



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

Date: February 17, 2017

To: Hannibal M. Ware
Acting Inspector General

From: Joseph E. Loddo
Chief Operating Officer

Elias Hernandez
Chief Human Capital Officer

Subject: Review of SBA's Practices for Schedule C Political Appointee Initial Pay Setting,
Project: 15013-A

We are in receipt of the draft management advisory from your office regarding the findings and recommendations to improve SBA's practices for Schedule C Political Appointee initial pay setting. We thank you and welcome the opportunity to meet with the Office of the Inspector General (OIG) to improve SBA's practices and procedures for setting Schedule C initial pay.

We are substantively in agreement with the findings and recommendations in the discussion draft and are taking corrective actions on both recommendations:

1. Ensure current and future Executive Resources personnel complete training incorporating the requirements for the superior qualifications authority.
2. Update the *Superior Qualifications and Special Needs Pay-Setting Authority* SOP to include a section specifically for Schedule C excepted service appointments.

We plan on taking the appropriate actions to correct the findings of the review.

1. To satisfy recommendation 1: OHRS Executive Resources staff will attend pay setting courses that address the use of superior qualifications by April 30, 2017. New Executive Resources staff members will attend a refresher pay setting course if the training occurred in a prior agency or a full pay setting course if new to HR pay setting.
2. To satisfy recommendation 2: The Superior Qualifications and Special Needs Pay-Setting SOP will be updated by June 30, 2017 to reflect the inclusion of Schedule C excepted service appointments.

We appreciate the work of your staff in conducting this review and share your commitment to strengthening the Agency's internal controls regarding Schedule C initial pay setting.