Department of Energy
Washington, DC 20585

September 5, 2024

MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS

FROM: ERIN MOORE
CHIEF HUMAN CAPITAL OFFICER

SUBJECT: Policy Memorandum #146, *Excepted Service Hiring Authorities for EJ and EK Pay Plans*

This policy memorandum (PM) establishes the Department of Energy's (DOE) requirements and responsibilities for the employment and compensation of individuals appointed in accordance with the excepted service authorities under:

a. Section 621(d) of the DOE Organization Act (42 United States Code (U.S.C.), section 7231(d)), hereafter referred to as pay plan EJ.

b. Section 3161(a) of the National Defense Authorization Act for Fiscal Year 1995 (50 U.S.C 2701) (Public Law 103-337, October 5, 1994) and renewals, hereafter referred to as pay plan EK.

This PM replaces DOE Order 329.1A Chg 3 (LtdChg), *Excepted Service Authorities for EJ and EK Pay Plans,* issued December 3, 2020, and replaces PM #74, *Fallback Rights for Eligible Employees Under Excepted Service Authorities EJ and EK*, issued September 26, 2018, as these procedures have been incorporated here. Further, this PM provides additional flexibility to include fallback rights entitlements, supervisory reporting relationships for Pay Band 5 employees, and expands the supervisory Pay Band 4 salary range to align with the EX-III pay cap.

To use these hiring authorities, please contact the Office of Corporate Executive Management. Questions concerning this PM should be directed to Antoinette Moultrie, Human Resources Specialist, at (240) 205-0502 or antoinette.moultrie@hq.doe.gov.

Copy to: Directors of Servicing Human Resources Offices and Shared Service Centers

OFFICE OF THE CHIEF Human Capital OFFICER

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Policy Memorandum #146

Excepted Service Hiring Authorities for EJ and EK Pay Plans

U.S. DEPARTMENT OF ENERGY

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PURPOSE

This policy memorandum (PM) establishes the Department of Energy's (DOE) requirements and responsibilities for the employment and compensation of individuals appointed in accordance with the excepted service authorities under:

1) Section 621(d) of the DOE Organization Act (42 United States Code (U.S.C.), section 7231(d)), hereafter referred to as pay plan EJ.
2) Section 3161(a) of the National Defense Authorization Act for Fiscal Year 1995 (50 U.S.C 2701) (Public Law 103-337, October 5, 1994) and renewals, hereafter referred to as pay plan EK.

Requests for exemptions from this PM must be approved by DOE's Executive Resources Board (ERB). The request must be submitted to the Office of the Corporate Executive Management (OCEM) and include the basis for the exemption, identify the key requirement for which the exemption is sought, and request a timeframe, as applicable.

CANCELLATIONS

This PM replaces the following:

1) DOE Order 329.1A Chg 3 (LtdChg), *Excepted Service Authorities for EJ and EK Pay Plans,* issued December 3, 2020; and
2) PM #74, *Fallback Rights for Eligible Employees Under Excepted Service Authorities EJ and EK*, issued September 26, 2018.

APPLICABILITY

1) With the exception of the Exemptions/Equivalencies listed below, this PM applies to all DOE employees appointed under the EJ or EK hiring authority, as applicable.
2) The Administrator of the National Nuclear Security Administration (NNSA) must ensure that NNSA employees comply with their responsibilities under this PM. Nothing in this PM 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.

EQUIVALENCIES/EXEMPTIONS

1) Equivalency: In accordance with the responsibilities and authorities assigned by Executive Order (EO) 12344, codified at 50 U.S.C. § 2406 and 50 U.S.C. § 2511,and to ensure consistency through the joint Navy/DOE Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this PM for activities under the Director's cognizance, as deemed appropriate.
2) Exemption: DOE Contractors.

LABOR RELATIONS OBLIGATIONS

1) Departmental Elements (DE) with employees covered by a collective bargaining agreement (CBA) must meet their labor obligations under the Federal Service Labor-Management Relations

Statute if implementation of the policy impacts the conditions of employment of bargaining unit employees.

2) Nothing in this PM shall change any CBA in effect on the date of this PM unless the change is necessary to implement new Federal statute. In the event any provisions of this PM conflict with the terms of any CBA in effect on the date of this PM, the terms of the CBA shall prevail.

3) Consult your Servicing Labor Relations Office to determine if collective bargaining obligations are required to be met prior to implementation.

BACKGROUND

This PM establishes guidance for the use of the following unique DOE excepted service authorities:

The **EJ authority** may be used to enhance the Department's recruitment and retention of highly qualified scientific, engineering, and professional administrative personnel.

The **EK authority** may be used to enhance the Department's recruitment and retention of highly qualified scientific, engineering, and technical personnel whose duties will relate to safety at defense nuclear facilities of the Department. The EK authority is time-limited by law and must be renewed by Congress.

REQUIREMENTS

A. GENERAL REQUIREMENTS

1) Appointments made under the EJ/EK hiring authorities may be made without regard to civil service laws and are excepted from the provisions of Title V, United States Code. Therefore, positions under the EJ/EK hiring authorities can be filled without competition or the use of vacancy announcements. Veterans' preference is not applicable when filling EJ/EK positions competitively or non-competitively. All placement procedures must be consistent with merit system principles.

2) Appointments made under the EJ/EK hiring authorities are in the excepted service and do not confer competitive status. Additionally, these appointments do not confer a right to further Federal employment in either the competitive or excepted service when the appointment expires, unless the employee is subject to fallback rights as outlined in Attachment 2.

3) The Secretary of Energy or designee exercises discretionary authority to adopt certain regulations. The ERB has delegated oversight of the Department's EJ/EK hiring authorities as outlined in the Delegations of ERB Authority. Prior to ERB approval, actions require approval from the Head of the Departmental Element (HDE) with Under Secretary concurrence, if applicable.

4) Unless otherwise described below or in supplemental policy guidance, Departmental policies and procedures will apply to appointments and positions under the EJ/EK hiring authorities (e.g., security and suitability).

B. COVERED POSITIONS

1) The EJ authority may be used to enhance the Department's recruitment and retention of highly qualified scientific, engineering, and professional administrative personnel.

2) The EK authority and renewals may be used to enhance the Department's recruitment and retention of highly qualified scientific, engineering, and technical personnel whose duties relate to safety at defense nuclear facilities of the Department.
   a. The EK authority is time-limited by law and must be renewed by Congress.
   b. Current EK employees are not affected if the authority expires prior to extension; however, a freeze on new appointments will be implemented.
3) These authorities may be used for filling positions expeditiously as a result of:
   a. Recruitment difficulties: Potential recruitment difficulties have delayed or are expected to significantly delay the timely filling of positions when there is a demonstrated mission-driven need to fill a key position in a timely manner with a highly qualified candidate (e.g., position offer/acceptance rates, proportion of similar positions filled, length of time required to fill similar positions, number of highly qualified candidates applying for vacancies).
   b. Urgent mission need: An urgent, mission-driven need necessitates the quick hiring of a highly qualified candidate.
   c. Retaining employees in mission-critical positions or occupations based upon scarce demand or unique combination of skills and experience required to help the Department meet its mission.
4) The EJ/EK hiring authorities cannot be used to:
   a. Make political appointments (temporary) 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; or
   b. Promote employees solely as a means of providing greater compensation.
5) Any law, EO, or regulation that disqualifies an applicant/candidate for appointment in the Executive Branch of the Federal Government, or excepted service, is also disqualifying under this hiring authority (e.g., Selective Service requirement).
6) If the candidate is leaving a non-temporary competitive service position, they must sign the tentative job offer (TJO) acknowledging the move to an excepted service position prior to appointment under these authorities.

C. APPROVAL AND ESTABLISHING POSITION REQUIREMENTS

1) All new and previously established EJ/EK positions require ERB approval prior to filling the position through competitive or non-competitive recruitment methods.
2) OPM Classification Standards are used as guidance in determining the proper occupational series and Pay Band for positions under the EJ/EK hiring authorities.
3) OPM prescribed titling for EJ/EK positions is not required. Individual occupational series may be titled at the Department's discretion. General OPM titling provisions should be adhered to in that the title prescribed should be short, meaningful, and descriptive of the work performed and not be a title prescribed by OPM to another occupational series.

4) Positions under this hiring authority must be coded with the prefix "EJ" or "EK" followed by the appropriate occupational series (e.g., EK-801) and corresponding Pay Band (e.g., EK-801-5) for positions at a level commensurate with duties performed at that band.

5) The grade-evaluation guidelines described below may be used to evaluate positions under these authorities and in determining the appropriate Pay Band:

   a. Pay Band 1: Level of duties are equivalent to grade levels GS-5 through GS-7

   b. Pay Band 2: Level of duties are equivalent to grade levels GS-9 through GS-11

   c. Pay Band 3: Level of duties are equivalent to grade levels GS-12 through GS-13

   d. Pay Band 4: Level of duties are equivalent to grade levels GS-14 and GS-15

   e. Pay Band 4 Grandfathered and supervisory: Level of duties equivalent to grade levels GS-14 and GS-15

   f. Pay Band 5: Level of duties are above GS-15 grade level but it does not meet the classification for an SES, SL or ST.

6) The position description (PD) established must use the following format and record at a minimum:

   a. Introduction;

   b. Major Duties and Responsibilities

   c. Supervision and Guidance; and

   d. Qualifications and Knowledge required for the position.

   e. All pay bands may supervise except Pay Band 5 and non-supervisory Pay Band 4.

7) An employee appointed under the EJ/EK Pay Band 5 should report to an SES position with limited exceptions outlined in b. and c.

   a. Employees under these authorities cannot report to an SL or ST position.

   b. A Pay Band 5 may report to a supervisory Pay Band 4 supervisor (or equivalent excepted service) classified as a 2 or 4 position.

   c. Typically, a Pay Band 5 should not report to a supervisory GS-15 position. However, it may be permissible on a case-by case basis. In addition, the Pay Band 5 position primary duties must be in the capacity of an advisor.

D. Recruitment Method

1) Appointments to the EJ/EK hiring authorities may be filled non-competitively and without the use of vacancy announcements. All appointments must comply with merit system principles, prohibited personnel practices, etc., in accordance with PM #111, *Compliance with Federal Hiring Principles*.

2) Veterans' preference is not applicable when filling EJ/EK positions competitively or non-competitively.

3) Individuals under consideration for a position under the EJ/EK hiring authorities who are currently on an Intergovernmental Personnel Act (IPA) assignment, or are current or former DOE

contractor, must follow guidance in accordance with PM #93, *Standards of Ethical Conduct-Reporting Prior Contracting Experience for Cooling Off Period Determination*.

4) Diverse professional associations and institutions of higher education, including those serving the interests of underserved communities, should be notified as appropriate to broad outreach.

5) Interviews are not required; however, structured interviews are strongly recommended. Reference checks are required in accordance with current ERB procedures, and if applicable must be documented in writing.

6) Unsolicited Hiring Method.

    a. No formal vacancy announcement is required.

    b. The Servicing OCEM Executive Consultant (EC) must review the candidate's resume and supporting application to confirm eligibility and minimum qualification requirements.

    c. The Hiring Manager must return the Certification of Federal Hiring Principles Form, the applicable ERB form, and if applicable, the Federal Contractor or IPA Selectee Ethics Review Certification Form to the OCEM EC.

7) Solicited Hiring Method.

    a. Vacancy announcements can be posted on USAJOBS and open to All Qualified Candidates (e.g., all U.S. Citizens) or be exclusive to Federal employees where the area of consideration may be limited (e.g., DOE Headquarters Federal employees, local commuting area, government-wide Federal employees only). The minimum length of the vacancy announcement period must be 3 business days.

    b. The standard excepted service hiring practices in PM #2, *Excepted Service Hiring Policy*, and PM #10, *Category Rating*, do not apply when filling EJ/EK positions. The EJ/EK hiring authorities' positions are exempted from the normal rating and ranking procedures. Veterans' preference does not apply.

    c. OCEM must review applicant resumes and supporting application documentation to confirm eligibility and minimum qualification requirements.

    d. Selection certificates must include all qualified applicants in alphabetical order.

    e. The Hiring Manager must return the Certification of Federal Hiring Principles Form, the applicable ERB form, and if applicable, the Federal Contractor or IPA Selectee Ethics Review Certification Form to the OCEM EC.

8) OPM Qualification Standards are used as guidance to meet the government-wide OPM-prescribed minimum qualification standard or OPM-approved agency-specific qualification standard for the position being filled. Prior to referral and certification, EJ/EK applicants must meet the qualification requirements for the position being filled in addition to any program eligibility requirements, selective placement factors, or conditions of employment.

9) Time-in-band does not apply to the EJ/EK hiring authorities.

10) Details of excepted service employees under these authorities are permissible and are subject to the following provisions.

    a. An EJ/EK employee can only be detailed to a competitive service position if the employee has competitive service status (e.g., career, career-conditional, interchange agreement); otherwise, OPM approval is required.

b. An EJ/EK employee can only be detailed to a SES Career-Reserved position if they are encumbering a:

   i. Permanent (non-time limited) EJ/EK position; or

   ii. Term EJ/EK position if the employee has reinstatement or fallback rights to the competitive service.

c. There are no restrictions to detail an EJ/EK employee to an SES General position.

d. All details must be approved in accordance with the Delegations of ERB Authority. An internal DOE detail requires the losing Departmental Element to concur on the detail action prior to effecting.

E. APPOINTMENTS AND TENURE

1) The EJ/EK hiring authorities can be used to make term or permanent appointments in the excepted service and do not confer competitive status. Term Appointments under these authorities may be made for a period up to 4 years.

2) Individuals selected under the EJ/EK hiring authorities serve a trial period of up to 2 years for the purpose of assessing the ability of an individual to adequately perform in the assigned position. Please see Attachment 2 for detailed information on trial periods.

   a. The trial period will be served unless the individual meets the definition of an "employee" in 5 U.S.C. § 7511(a)(1)(B) or (C).

   b. Non-preference eligible appointees are subject to a 2-year trial period. Preference eligible appointees are subject to a 1-year trial period.

   c. Regardless of serving a trial period, the individual may be terminated for performance or conduct matters. DEs must consult OCEM immediately when an employee's performance declines or if there is a conduct matter or concern.

3) All employees selected for an initial supervisory position must complete a 1-year supervisory probationary period.

   a. If an EJ/EK employee does not complete their supervisory probationary period, the employee must be returned to either their former position or a position of no lower grade and pay than the position from which transferred, assigned, or promoted.

   b. An employee is not entitled to placement in another position if it is the employee's initial appointment to Federal service or if they transferred from another Federal agency.

   c. An employee serves a trial period and supervisory probationary concurrently, if applicable.

   d. Regardless of serving a supervisory probationary period, the individual may be subject to management action up to and including termination at any time for performance or conduct matters. DEs must consult OCEM immediately when an employee's performance declines or if there is a conduct matter or concern.

4) Appointment of non-U.S. citizens may be permitted in accordance with PM #7B, *Appropriations Law for Selection and Compensation of United States Foreign Nationals and Acceptance of Non-U.S. Citizen Applications for Excepted Service.*

FALLBACK RIGHTS

1) Some DOE Federal employees may be eligible for fallback rights if they are appointed to a term EJ/EK position. Please see Attachment 3 for detailed information on EJ/EK fallback rights.
2) **DOE Federal Employees.** Current DOE Employees who are appointed to a term EJ/EK position (i.e., a time-limited position) and were serving on one of the types of appointments listed below immediately prior to receiving the term appointment must be placed in their former position or a position of like status, tenure, and grade upon termination of it. If the former position was supervisory, there is no requirement to place the employee into a supervisory position. The termination of the term EJ/EK appointment must have been for reasons other than misconduct, neglect of duty, performance, or malfeasance. The types of appointments are:
   a. An appointment without time limitation in the excepted service, excluding career SES;
   b. A career or career-conditional appointment in the competitive service, excluding SL and ST; or
   c. An appointment of equivalent tenure.
3) **Non-DOE Federal Employees**. Employees from other agencies who voluntarily transfer from the competitive service or other pay systems to these DOE excepted service authorities are not afforded reinstatement rights to another position within the Department or fallback rights to the agency previously assigned prior to the transfer.
4) Employees (DOE or non-DOE) who voluntarily convert from the competitive service or another pay system to a permanent EJ/EK appointment are not afforded fallback rights to the pay system previously assigned prior to the conversion.

F. PAY, LEAVE, AND BENEFITS

1) EJ/EK employees are subject to Title 5 requirements for premium pay caps and aggregate salary limitations apply. Premium payments (e.g., overtime, comp time) cannot exceed the GS-15, step 10 or EX-V, including locality pay. Once this cap is reached, any further premium pay ends and does not carry over to the next calendar year. After careful planning of work and scheduling of leave and other absences, the supervisor must approve premium pay in advance after it is determined the essential work cannot be completed during normal working hours.
2) Aggregate compensation (e.g., base pay plus locality pay, incentives, awards) cannot exceed EX-I. Any compensation exceeding EX-I must be deferred and will be paid out at the beginning of the following calendar year.
3) A broad Pay Banding system consisting of 5 levels are established and basic pay ranges are provided below. Individuals appointed under the EJ/EK hiring authorities:
   a. Receive locality pay;
   b. Are eligible for comparability increases (i.e., January pay increase) applicable to other Federal employees;
   c. Are eligible for discretionary performance-based pay increases; and
   d. Cannot exceed a maximum base pay of EX-IV or an adjusted basic pay of EX-III.

EJ/EK Pay Plan Pay Bands	Minimum Salary Equivalency	Maximum Salary Equivalency
Pay Band 1	GS-5, step 1	GS-9, step 5
Pay Band 2	GS-9, step 1	GS-12, step 5
Pay Band 3	GS-12, step 1	GS-14, step 5
Pay Band 4	GS-14, step 1	GS-15, step 10 x 103%
Pay Band 4 (Grandfathered/Supervisory)	GS-14, step 1	EX-III
Pay Band 5	EX-V	EX-III

4) Pay Setting Upon Initial Appointment

   a. Pay must be set commensurate with qualifications and experience.

   b. An individual's non-federal salary history (i.e., existing salary or prior salary) or salary from a competing job offer cannot be considered when setting pay for a new Federal employee. This is applicable to first-time Federal appointment or if reinstated on or after 90-day break-in-service.

   c. The appropriate salary rate must be based on the nature and the quality of the individual's experience, qualifications, and accomplishments as they relate to the requirements of the position, and their current responsibilities. Consideration must be given to factors directly related to the position being filled and how pay has been set for employees with similar qualifications who have been newly appointed to comparable roles, if applicable.

   d. Pay may be set at any point in the Pay Band based on consideration of such factors as:

      i. Labor market conditions;

      ii. Personal qualifications and unique skills;

      iii. Education;

      iv. Experience;

      v. Mission impact;

      vi. Organizational equity or pay considerations (comparable competitive or excepted service positions); and

      vii. Other considerations.

5) Individuals appointed under the EJ/EK pay plans accrue annual leave in accordance with 5 U.S.C. § 6303 and are eligible for service credit as outlined in PM #20C, *Crediting Directly-Related Experience for Annual Leave*. However, individuals appointed to Pay Band 5 will receive 8 hours

of annual leave upon entrance on duty or conversion regardless of years of Federal service. The maximum annual leave carry-over remains at 240 hours.

6) EJ/EK pay plan employees are eligible to earn credit hours, compensatory time-off, compensatory time-off for travel, and overtime in accordance with DOE O 322.1, *Pay and Leave Administration and Hours of Duty*.

7) Individuals appointed under the EJ/EK pay plans are eligible for recruitment, relocation, retention, and student loan repayment incentives in accordance with PM #123, *Administering Compensation Incentives.*

   a. Incentives are not entitlements. All incentives are approved on a case-by-case basis and may require ERB approval.

   b. All incentive requests must be reviewed and concurred by OCEM to ensure compliance with OPM and DOE rules and regulations.

8) Promotions are defined as movement from a position in one Pay Band to another position in a higher Pay Band (e.g., Pay Band 4 to Pay Band 5).

   a. A promotion may result in a pay increase up to 6% not to exceed the top of the new Pay Band. Pay increases more than 6% require justification (e.g., employee possessing unique knowledge, skill, or ability required to perform in the position). The HDE has discretion to offer less than 6% as applicable; however, the adjusted salary may not be less than the minimum salary established for the band to which the employee is promoted.

   b. ERB approval is required for EJ/EK promotions and pay increase requests of more than 6% in accordance with the Delegations of ERB Authority.

   c. A promotion is considered a pay increase; therefore, an employee is ineligible for a discretionary performance-based pay adjustment if a promotion has been received in the past 12 months. Exceptions to the discretionary performance-based pay adjustment require ERB approval.

   d. Typically, positions under these authorities are established at the full performance level. A new classified position description must accompany the promotion request. A career-ladder position may be established; however, it must be established at the outset with ERB approval.

   e. Typically, employees may not receive more than one promotion in a 12-month period. An exception requires ERB approval.

9) Reassignments are defined as movement from one position in a Pay Band to another position in the same Pay Band (e.g., Pay Band 4 to Pay Band 4).

   a. A reassignment to a position with greater responsibility may result in an increase up to 6% not to exceed the top of the Pay Band. Pay increases more than 6% require additional justification. The HDE has discretion to offer less than 6% as applicable.

   b. ERB approval is required for EJ/EK reassignments and pay increase requests of more than 6% in accordance with Delegations of ERB Authority. Prior to ERB approval, reassignments and any pay increase requests require approval by the HDE with Under Secretary concurrence, if applicable.

   c. A reassignment that results in a salary increase, regardless of the percentage, is considered a pay increase. Therefore, an employee is ineligible for a discretionary performance-based pay adjustment if a salary increase has been received in the past 12 months. Exceptions to the discretionary performance-based pay adjustment require ERB approval.

10) Individuals appointed under the EJ/EK hiring authorities are entitled to the same basic benefits (e.g., health benefits, life insurance, retirement, and leave accrual) applicable to other employees of the Department based upon eligibility requirements.
11) The following benefits apply to appointments greater than 90 days:
    a. Leave accrual and the Department's Voluntary Leave Transfer Program.
    b. Federal Employees Health Benefits Program (FEHB[1]).
    c. Flexible Spending Accounts (FSAFEDS).
    d. Federal Long Term Care Insurance Program (FLTCIP).
12) Appointments less than 1 year are not eligible for Thrift Savings Plan (TSP), life insurance, or retirement program.
13) Procedures governing Reduction in Force (RIF) applicable to excepted service employees contained in 5 CFR Part 351 are applicable to appointments made under these authorities.

G. Performance Management, Recognition, and Training

1) Individuals appointed to the EJ and EK pay plans are covered by DOE O 331.1D Chg 2 (LtdChg), *Employee Performance Management and Recognition Program.* They are not eligible to receive Quality Step Increases (QSI) but may be eligible for discretionary performance-based pay adjustments. They are eligible for awards and other recognition.
2) All performance-based awards must be approved by the HDE. Performance-based pay adjustments for individuals appointed to the EJ/EK pay plan must be submitted to OCEM for review and concurrence to ensure compliance with OPM and DOE rules and regulations prior to granting.
3) For EJ/EK employees assigned to NNSA, the NNSA Administrator's approval authority limitation is equivalent to HDE approval authority limitation. In addition, they are eligible for "conversion-like" bonuses unique to NNSA.
4) Performance-Based Pay Adjustments
    a. Individuals appointed to the EJ/EK pay plan can be considered for a pay adjustment annually based on clearly documented performance achievements reflected in the performance appraisal and written justification.
    b. Performance pay adjustment amounts will be established annually.
    c. A performance-based pay adjustment may result in a salary increase not to exceed the maximum pay increase authorized for their rating level unless DOE is restricted in providing such adjustments. Salary cannot exceed the top of the Pay Band.

[1] Certain contingencies apply for appointments less than 1 year where work schedules provide less than 130-hours per month.

d. Eligibility is applicable during the performance cycle only. If authorized, the pay increase is typically effective the first full pay period in January. The performance cycle begins on October 1 and ends on September 30. If an employee separates or leaves an EJ/EK position during the performance cycle, they will not be eligible.

e. Discretionary performance-based pay increases can be granted by the HDE with OCEM review prior to granting.

f. OCEM processes performance-based pay adjustments.

5) Performance-Based Awards

a. Based on annual performance achievements, individuals appointed to the EJ/EK pay plan can receive lump sum cash awards ("bonuses").

b. Award amounts will be established annually. EJ/EK employees are included in their DE's GS awards pool calculations and are submitted with their GS employees for processing.

c. Time-Off awards comparable to other pay systems in recognition of annual performance can be granted.

d. Performance-based awards up to $10,000 can be granted by HDE with review and concurrence by Under Secretary, if applicable, and Director, OCEM. Awards over $10,000 require OPM approval.

6) Other Awards

a. Individuals appointed to the EJ/EK pay plan are eligible to receive Departmental awards intended to motivate and reward or recognize excellence.

b. Non-performance based awards for consideration include Special Act or Service, On-the-Spot Monetary Award, Time Off, and Certificate of Appreciation.

c. Monetary awards can be approved by the HDE and Under Secretary, if applicable, up to $7,500 with OCEM review, and awards ranging from $7,501-$10,000 with ERB approval.

d. OCEM processes non-performance awards.

H. ETHICS REQUIREMENTS

1) EJ/EK Pay Band employees who occupy a position for which the rate of basic pay is equal to or greater than 120% of the minimum rate of basic pay payable for GS-15 must file a public financial disclosure report (OGE 278). Public financial disclosure report filers must:

a. Submit a new entrant report upon entering the covered position and annually thereafter by May 15 of every year;

b. Submit a termination report within 30 days of separating from the covered position that requires them to file the public financial disclosure report; and

c. Comply with the requirements of the Stop Trading on Congressional Knowledge (STOCK) Act, which requires the employee to submit periodic transaction reports as necessary for certain transactions during the term of the appointment.

2) EJ/EK Pay Band employees who are not required to file a Public Financial Disclosure Report must file a Confidential Financial Disclosure Report (OGE 450) if any of the following conditions are met in accordance with DOE Order 326.1B, *Confidential Financial Disclosure Reports*:

a. The employee's salary is equal to or exceeds the salary for GS-12, step 1 using the lowest locality area;

b. The employee has a position for which no grades are exempt from filing the OGE 450 in the employee's occupational series in the Confidential Financial Disclosure Report Exempted Positions list maintained by the Office of the Assistant General Counsel for Ethics and Personnel Law (GC-21);

c. The employee holds a contracting officer's warrant, serves as a contracting officer's representative or contracting officer's technical representative, or holds a purchase card with a transactional limit exceeding $3,500; or

d. The employee is deemed to be an OGE 450 filer pursuant to the regulatory provisions at 5 CFR § 2634.904.

3) If required to complete a Confidential Financial Disclosure Report (OGE Form 450), the employee must submit a new entrant report upon entering the position and annually thereafter by February 15 of every year.

4) EJ/EK Pay Band employees who are required to file either a public or confidential financial disclosure report must receive conflicts of interest clearance from GC-21 prior to initial appointment.

5) **Post Government Employment.**

a. Employees under the EJ/EK hiring authorities who are required to file a Public Financial Disclosure Report are subject to additional requirements under the STOCK Act when negotiating for or agreeing upon future employment or compensation with a non-federal entity.

b. All employees under the EJ/EK hiring authorities who are required to file either a public or confidential disclosure report are subjected to post-employment restrictions under 18 U.S.C. § 207 when they separate from DOE.

6) **Other Requirements**. All employees under the EJ/EK hiring authorities who are required to file either a public or confidential disclosure report must consult with their agency ethics official to discuss proper remedies whenever there is a conflict of interest or appearance of a conflict of interest with an entity.

7) All questions concerning the conflict-of-interest clearance process, post-employment restrictions, and financial disclosure reporting should be directed to the Assistant General Counsel for Ethics and Personnel Law.

I. RECORDS

1) OCEM is required to maintain all Program related documents, such as, but not limited to: Program approval, recruitment sources and methods, job postings, applications, and referral records, for each vacancy filled for 2 years.

2) OCEM will use USA Staffing and the USAJOBS "exclusive posting" option to streamline and track all recruitment activities and for reporting purposes.

ROLES AND RESPONSIBILITIES

A. HEADS OF DEPARTMENTAL ELEMENTS (OR DESIGNEE) WILL:

1) Approve all requests prior to submission to the ERB;
2) Approve any actions for EJ and EK positions as delegated by the ERB Chair;
3) Approve performance-based pay adjustments and awards;
4) Approve non-performance-based awards up to $7,500;
5) Obtain Under Secretary concurrence as applicable; and
6) Obtain OCEM review as required.

B. EXECUTIVE RESOURCES BOARD (ERB) WILL:

1) Approve all actions for EJ and EK positions throughout the Department, including NNSA, as identified in the ERB Charter, unless delegated or otherwise specified in communications to the HDEs;
2) Approve proposals to grant non-performance-based awards in excess of $7,500 and up to $10,000;
3) Approve requests from the HDEs (and other field organizations with personnel authority) to request national interest determinations from the Secretary of State when details and transfers to public international organizations will last more than 5 years; and
4) Approve exemptions to the policy, as applicable.

C. DEPUTY CHIEF HUMAN CAPITAL OFFICER WILL:

1) Approve details of non-DOE employees to EJ and EK positions;
2) Approve temporary outside assignments (details, IPAs); and
3) Approve dual compensation waivers.

D. OFFICE OF CORPORATE EXECUTIVE MANAGEMENT WILL:

1) Develop, promulgate, implement, and provide advice on policies, standards, and procedures consistent with applicable laws and regulations;
2) Answer inquiries and concerns related to this policy;
3) Provide technical support to organizations;
4) Review applicable personnel actions to ensure compliance with law, regulations, and DOE policy prior to effecting personnel (the final authority is the Director, OCEM); and
5) Provide advice and technical assistance to DEs prior to final approval of all personnel actions.

E. OFFICE OF GENERAL COUNSEL WILL:

1) Provide legal support for EJ and EK authorities, as applicable;

2) Perform conflict-of interest reviews for EJ and EK employees.

F. SERVICING HUMAN RESOURCES OFFICES AND SHARED SERVICE CENTERS WILL:

1) Follow all applicable policies and procedures relevant to this PM.

G. HIRING MANAGERS (OR SUPERVISORS/MANAGERS) WILL:

1) Collaborate with OCEM in relation to requests for establishing EJ/EK positions, pay, recruitment, hiring, etc.;
2) Adhere to Federal Human Capital laws, regulations, and procedures, and in accordance with Departmental policy, make final selection decisions and exercise the right to use one appointing authority over another to fill vacancies;
3) Comply with merit system principles, and avoid committing, or appearing to commit, a prohibited personnel practice (5 U.S.C. § 2302);
4) Promote diversity and equal employment opportunity principles by ensuring human resources actions are consistent with the Department's policies and goals; and
5) Return the Certification of Federal Hiring Principles Form, the applicable ERB document, and the Federal Contractor or IPA Selectee Ethics Review Certification Form, if applicable, to OCEM.

ADDITIONAL INFORMATION

Questions concerning this policy memorandum should be directed to Antoinette Moultrie, Human Resources Specialist, at (240) 205-0502 or Antoinette.moultrie@hq.doe.gov.

REFERENCES

1) 42 United States Code (U.S.C.), section 7231(d), Section 621(d) of the DOE Organization Act here after referred to as pay plan EJ.
2) 50 U.S.C 2701, Section 3161(a) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337, October 5, 1994) and renewals, hereafter referred to as pay plan EK.
3) 5 CFR Part 302 – Employment in the Excepted Service
4) 5 CFR Part 351 – Reduction in Force
5) 5 CFR Part 430 – Performance Management
6) 5 CFR Part 451 – Awards
7) 5 CFR Part 575 – Recruitment and Relocation Bonuses, Retention Allowances
8) 5 CFR Part 537 – Student Repayment
9) 5 U.S.C. § 2301 – Merit Systems Principles
10) 5 U.S.C. Chapter 33 – Examination, Selection, and Placement
11) 5 U.S.C. Chapter 43 – Performance Appraisal
12) 5 U.S.C. Chapter 45 – Incentive Awards
13) 5 U.S.C. Chapter 75 – Adverse Actions

14) 18 U.S.C. § 207 – Restrictions on former officers, employees, and elected officials of the executive and legislative branches
15) DOE O 314.1A, *Telework and Remote Work Program*
16) DOE M 321.1-1, *Intergovernmental Personnel Act Assignments*
17) DOE O 322.1C, *Pay and Leave Administration and Hours of Duty*
18) DOE O 326.1B, *Confidential Financial Disclosure Reports (OGE 450)*
19) DOE O 331.D, *Employee Performance Management and Recognition Program*
20) DOE 342.1, *Agency Administrative Grievance Policy and Procedures*
21) PM #2, *Excepted Service Hiring Policy*
22) PM #7B, *Appropriations Law for Selection and Compensation of United States Foreign Nationals*
23) PM #10, *Category Rating*
24) PM #20B, *Crediting Directly-Related Experience for Annual Leave*
25) PM #62, *Reduction in Force*
26) PM #93, *Standards of Ethical Conduct-reporting Prior Contracting Experience for Cooling Off Period*
27) PM #111, *Compliance with Federal Hiring Principles*
28) PM #123, *Administering Compensation Incentives.*
29) OPM Introduction to Position Classification Standards
30) OPM Classifier's Handbook
31) OPM Handbook of Occupational Groups and Families

LIST OF ATTACHMENTS

1) Key Terms and Definitions
2) EJ and EK Trial Period
3) Fallback Rights
4) EJ and EK Tenure Codes

ATTACHMENT 1: KEY TERMS AND DEFINITIONS

EXCEPTED SERVICE

All positions in the Executive Branch of the Federal government specifically exempted from the competitive service by or pursuant to statute, by the President, or by the Office of Personnel Management, and are not in the Senior Executive Service, in accordance with 5 CFR § 213.101(a).

EJ HIRING AUTHORITY

Section 621(d) of the DOE Organization Act (42 United States Code (U.S.C.), section 7231(d)), hereafter referred to as pay plan EJ. Appointments made under this authority may be made without regard to the civil service laws and are excepted from the provisions of Title V, United States Code. The EJ authority may be used to enhance the Department's recruitment and retention of highly qualified scientific, engineering, and professional administrative personnel.

EK HIRING AUTHORITY

Section 3161(a) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337, October 5, 1994) and renewals, hereafter referred to as pay plan EK. The EK authority and renewals may be used to enhance the Department's recruitment and retention of highly qualified scientific, engineering, and technical personnel whose duties will relate to safety at defense nuclear facilities of the Department. Appointments made under this authority may be made without regard to the civil service laws and are excepted from the provisions of Title V, United States Code. The EK authority is time-limited by law and must be renewed by Congress. Current EK employees are not affected if the authority expires prior to extension; however, a freeze on new appointments will be implemented.

FALLBACK RIGHTS

Current DOE employees who are appointed under the EJ/EK hiring authorities and were serving on an appointment without time limitation in the excepted service; a career or career-conditional in the competitive service or an appointment of equivalent tenure immediately prior to receiving a term appointment (i.e., time-limited position) must be placed in their former position or a position of like status, tenure, and grade upon termination of the term appointment. If the former position was supervisory, there is no requirement to place the employee into a supervisory position. Career SES, SL, ST and appointments of equivalent type SES, SL or ST are excluded from fallback rights.

COMPETITIVE REINSTATEMENT RIGHTS

Appointees who were previously appointed in the competitive service (career or career-conditional) and accept a permanent appointment within the Excepted Service will no longer be in the competitive service; however, they will be eligible for positions within the competitive service and may apply as a reinstatement eligible for vacancy announcements accepting applications under that category (e.g., government-wide, status candidates).

ATTACHMENT 2: EJ AND EK TRIAL PERIOD

A trial period of up to 2 years for the purpose of assessing the ability of an individual to adequately perform in his or her assigned position will be established for appointments under these authorities. Non-preference eligible appointees are subject to a 2-year trial period. Preference eligible appointees are subject to a 1-year trial period. The trial period will be served unless the individual meets the definition of an "employee" in 5 U.S.C. § 7511(a)(1)(B) or (C).

Supervisors must consult with OCEM to determine if an individual meets the statutory definition of "employee" because full procedural and appeal rights apply. In certain circumstances, individuals working in trial periods have prior or current continuous service that may qualify them to receive full procedural and appeal rights. An individual must receive full procedural and appeal rights if they are:

1) In the competitive service and has completed 1 year of current continuous service under other than a temporary appointment limited to one year or less;
2) A preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions in an Executive agency; or in the United States Postal Service or Postal Regulatory Commission;
3) An individual in the excepted service (other than a preference eligible) who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; or
4) An individual in the excepted service (other than a preference eligible) who has completed two years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two years or less.

SAME OR SIMILAR DUTIES

The classification series is reviewed first in conjunction with the employee's background and PD in conjunction with 2) and 4) above. For example, if series 301 or 340, OCEM reviews the current occupied position to determine if it is closely related to some of the new PD work. However, OCEM can also consider, if within the same office, and under restructuring if the duties have changed.

Excepted Service EJ and EK Trial Period Decision Chart

IF the EJ/EK Appointee Type is:	THEN the EJ/EK Employee Trial Period is:	Is the EJ/EK Appointee entitled to receive full procedural and appeal rights?
Non-Preference Eligible (no prior military service)		
EJ/EK appointee WITHOUT prior creditable Federal civilian service	Up to 2 years for the purpose of assessing the ability of an individual to adequately perform in their assigned position.	No
EJ/EK appointee WITH prior creditable Federal civilian service of two years continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two years or less.	Up to 1 year for the purpose of assessing the ability of an individual to adequately perform in their assigned position.	Yes
EJ/EK appointee WITH prior creditable Federal civilian service of at least one year continuous without a break in service to a position of different duties	Up to 2 years for the purpose of assessing the ability of an individual to adequately perform in their assigned position.	No
EJ/EK appointee WITH prior creditable Federal civilian service of less than one continuous year	Up to 2 years for the purpose of assessing the ability of an individual to adequately perform in their assigned position.	No
Preference Eligible (prior military service)		
EJ/EK appointee WITHOUT prior creditable Federal service and is a disabled veteran OR retired below the rank of major or its equivalent.	A trial period is 1 year for the purpose of assessing the ability of an individual to adequately perform in their assigned position.	No
Non-Preference Eligible (retired military)		
EJ/EK appointee military retiree	Up to 2 years for the purpose of assessing the ability of an individual to adequately perform in their assigned position.	No

ATTACHMENT 3: FALLBACK RIGHTS

FALLBACK RIGHTS

Current DOE employees who are appointed to a term EJ/EK position and were serving on one of the types of appointments listed below immediately prior to receiving the term appointment (i.e., time-limited) are eligible for fallback rights. DOE employees must be placed in their former position or a position of like status, tenure, and grade upon termination of the term EJ/EK appointment. If the former position was supervisory, there is no requirement to place the employee into a supervisory position.

Fallback rights cannot be waived. A detail to another position during a term EJ/EK appointment does not rescind the fallback rights entitlement. Fallback rights remain in effect regardless of budgetary restraints.

The termination of the term appointment must have been for reasons other than misconduct, neglect of duty, performance, or malfeasance. The types of appointments are:

1) An appointment without time limitation in the excepted service, excluding career SES;
2) A career or career-conditional appointment in the competitive service, excluding SL and ST; or
3) An appointment of equivalent tenure.

Fallback Requirements. The following requirements apply for an employee who is converted to an EJ/EK term appointment within their DE or in another DE. Prior to effecting the action for movement between DEs, the employee must be informed that fallback rights could entail a permanent movement to another DE within DOE. The applicable HDE must concur on all conversions. In addition, ERB approval is required prior to effecting any actions.

The examples below assume the employee meets the fallback rights eligibility (e.g., terminated for reasons other than performance).

CONVERSION WITHIN THE SAME DEPARTMENTAL ELEMENT

An employee is converted to an EJ/EK term appointment within the same DE (regardless of movement between offices, divisions, or field sites within that DE).

1. The HDE must concur on employee's entitlement to fallback rights and certify in writing the responsibility to place in a position of equivalent status, tenure, and grade prior to effecting the EJ/EK term appointment action.
2. Upon termination of the EJ/EK term appointment, the employee must be placed in a position of like status, tenure, and grade in accordance with fallback rights entitlement; however, placement may be within a different office, division, or field site in the DE other than the position of record prior to the term EJ/EK appointment.

Example A: An employee is currently on an eligible appointment within the Office of the Chief Human Capital Officer (HC) and is selected for conversion to an EJ/EK term appointment to another division within HC. Upon termination of the EJ/EK term appointment, the employee is entitled to a position of equivalent status, tenure, and grade within HC.

CONVERSION TO A DIFFERENT DEPARTMENTAL ELEMENT

An employee who has fallback rights is converted to an EJ/EK term appointment outside of their current DE.

1) Both HDEs must concur on the fallback rights, and it must be codified on the request for ERB approval.
2) The losing DE can decline, in writing, the employee's entitlement to fallback rights.
3) If a declination occurs, the gaining DE must certify the employee's entitlement to fallback rights and the responsibility to appoint the employee to a position of equivalent status, tenure, and grade within the gaining DE at the end of the EJ/EK term appointment prior to effecting the EJ/EK term appointment action.
4) If the losing DE declines to provide fallback rights, the employee must be informed prior to effecting the action that fallback rights will require permanent movement to the gaining DE.

Example B: An employee is currently on an eligible appointment within HC and is selected to an EJ/EK term appointment in the Office of Environmental Management (EM). The HC HDE may decline to provide fallback rights. If this occurs, the EM HDE is required to provide the employee with fallback rights to a position of like status, tenure, and grade within EM upon expiration of the EJ/EK term appointment. If concurrence cannot be reached between HC and EM on the employee's fallback rights entitlement, the request for the EJ/EK term appointment cannot be presented to the ERB.

CONVERSION TO A DIFFERENT EJ/EK TERM APPOINTMENT

An employee, who has fallback rights from the initial EJ/EK term appointment, moves from one EJ/EK term appointment to another EJ/EK term appointment without a break in service or intervening appointment (e.g., expert or consultant).

1) If the employee is appointed to another term EJ/EK position during the current term appointment, the employee maintains fallback rights.
2) New concurrences regarding the fallback rights from HDEs, consistent with the above, must be obtained.

Example C: An employee is currently on an EJ/EK term appointment in EM and has fallback rights to a position in HC. The employee is selected for another EJ/EK term appointment in the Office of Science (SC). The HC HDE may decline to provide fallback rights. As a result, the SC HDE is required to provide the employee with fallback rights to a position of equivalent status, tenure, and grade within SC upon expiration of the second EJ/EK term appointment. If concurrence cannot be reached between HC and SC on the employee's fallback rights entitlement, the request for the second EJ/EK term appointment cannot be presented to the ERB.

CONVERSION TO A NON-EJ/EK TERM APPOINTMENT

An employee, who has fallback rights from their initial EJ/EK term appointment, moves to a term appointment under a different pay plan (e.g., SES Limited-Term or GS position) does not maintain EJ/EK fallback rights.

1) Prior to the conversion to the non-EJ/EK term appointment, the employee must be converted in accordance with their EJ/EK fallback rights entitlement position (i.e., converted to the position of equivalent status, tenure, and grade).
2) The employee is then converted to the new pay plan term appointment.

Example D: While on an EJ/EK term appointment, an employee voluntarily applies and is selected for a temporary GS position. First, the employee must be converted under fallback rights procedures to a position of equivalent status, tenure, and grade in accordance with the EJ/EK fallback rights entitlement. Next, the employee can be converted to the new term appointment, and any fallback or reinstatement rights would be in accordance with the new term appointment.

MOVEMENT TO A POSITION WITHOUT FALLBACK RIGHTS.

An employee who moves from an EJ/EK term appointment to a position outside of the purview of the fallback rights loses entitlement to the EJ/EK fallback rights.

Example E: While in an EJ/EK term appointment, an employee voluntarily applies and is selected for a permanent GS position. The entitlement for fallback rights is terminated once the employee is placed into the permanent GS position.

SETTING PAY AFTER FALLBACK RIGHTS (DOE EMPLOYEES ONLY)

After the EJ/EK term appointment is completed, pay must be set in the position of equivalent status and grade. When moving back to the previous pay plan, an employee is ineligible for retained pay; however, pay may be set in accordance with one of the rules provided below:

1) Maximum payable rate (must have been in the EJ/EK position a minimum of 90 days); or
2) The rate of pay that the employee would have received prior to the conversion to the EJ/EK position had the employee remained in the applicable pay plan.

The new pay cannot exceed the pay range of the applicable grade level. The DE can determine which rule to apply when setting pay upon conversion back to the permanent position; however, DEs should consistently apply the same rule within their organization.

ROLES AND RESPONSIBILITIES

The following chart provides pre- and post-conversion roles and responsibilities.

Excepted Service EJ/EK Fallback Rights Roles and Responsibilities Chart		
Role	**Responsibilities (Pre-Conversion)**	**Responsibilities (Post-Conversion)**
Employee	1. Contact OCEM to discuss impact of conversion and fallback rights (e.g., if prior position was supervisory the new position under fallback rights does not have to be supervisory) 2. If term accepted, ensure receipt of letter clearly identifying the impact of the conversion. 3. Sign letter of acknowledgement	1. Contact the applicable supervisory official responsible for providing fallback rights at least six months prior to the end of the term appointment to initiate return/conversion. Discussion should include the new position and setting pay. 2. Contact OCEM with any questions or concerns regarding fallback rights (e.g., if prior position was supervisory the new position under fallback rights does not have to be supervisory)
Gaining DE	1. Contact OCEM to discuss impact of conversion and fallback rights. 2. If applicable, sign letter acknowledging the employee's fallback rights and applicable concurrence/non-concurrence. 3. If non-concurrence, collaborate with gaining supervisor to determine viable option.	1. Contact the applicable supervisory official responsible for providing fallback rights at least six months prior to the end of the term appointment to initiate return/conversion. Discussion should include the new position and setting pay. 2. Ensure position is available in accordance with fallback rights guidance, if applicable. 3. Contact employee to discuss return to a position of equivalent status, tenure, and grade at least 6 months prior, if applicable.
Losing DE	1. Contact OCEM to discuss impact of conversion and fallback rights. 2. If position is accepted ensure receipt of a letter of acknowledgement from OCEM clearly identifying the impact pre-conversion and post-conversion to a term appointment. 3. Sign letter of acknowledgment stating role in fallback rights and applicable concurrence/non-concurrence.	1. Contact OCEM at least 6 months prior to the end of the term appointment to initiate discussion for return/conversion. This applies even if the employee remained within the same office upon conversion. 2. Ensure position is available in accordance with fallback rights guidance, if applicable. 3. Contact employee to discuss return to a position of equivalent status, tenure, and grade at least 6 months prior, if applicable.
OCEM	1. Consult with employee, losing and gaining DEs to discuss conversion implications. 2. Ensure paperwork with appropriate concurrences, approvals, and signatory acknowledgment of fallback rights entitlements by all parties (losing and gaining) DEs are received. 3. Ensure ERB approval prior to effecting any action, as appropriate.	1. Consult with employee and applicable DE responsible for fallback rights entitlement to ensure adherence to policies and procedures. 2. Ensure applicable paperwork with appropriate concurrences and approvals are received prior to effecting conversion action, as appropriate.

ATTACHMENT 4: EJ AND EK TENURE CODES

Tenure Group 0	Tenure Group I	Tenure Group II	Tenure Group III
Employees who are determined to serve a term of less than one year.	Permanent employees who have completed a trial period.	Permanent/Term employees who are serving a trial period.	Term employees who have completed a trial period.