

# UNITED STATES ATTORNEYS' PROCEDURES

[USAP 3-4.534.001](#)

Administratively Determined (AD) Pay

## Administratively Determined (AD) Pay Handbook: Sections 6.1 thru 6.7

**6.1. Non-Supervisory AUSA Positions - Grade AD-00 through AD-29.** The AD pay structure for non-supervisory AUSAs is divided into seven grades: AD-21, AD-24, AD-25, AD-26, AD-27, AD-28, and AD-29. Grade AD-00 is used exclusively for compensated Special Assistant United States Attorneys (SAUSAs) and Special Attorneys (SAs) appointed under 28 U.S.C. 515. Each grade represents a specific amount of professional attorney experience illustrated in the following chart:

AD Grade	Full Years of Professional Experience
29	9 or more full years of experience.
28	At least 8, but less than 9 full years.
27	At least 7, but less than 8 full years.
26	At least 6, but less than 7 full years.
25	At least 5, but less than 6 full years.
24	At least 4, but less than 5 full years.
21	Less than 4 full years.

<b>00</b>	Compensated Special Assistant United States Attorneys (SAUSAs) and Special Attorneys (SAs).
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For grades AD-00 through AD-29, United States Attorneys have the authority to evaluate "professional" experience to determine AD grade and pay levels;

- set pay upon appointment;
- review and adjust pay; and
- provide performance-based cash incentives when appropriate, i.e., Performance Payments.

**Evaluating Experience.** Upon initial hire, each attorney is assigned to an AD grade based on the number of full years of "professional" attorney experience. With few exceptions, professional attorney experience is work that requires successful completion of advanced studies at the post-graduate level in an accredited college or university law school and passage of a state bar examination.

Professional legal experience for grade setting purposes can be divided into three categories:

- Category 1 -- Experience prior to law school graduation;
- Category 2 -- Experience after law school graduation but before passing the state bar examination; and
- Category 3 -- Experience gained after passing the state bar examination

Category 1 experience is not creditable. Category 2 experience may be creditable at the discretion of each United States Attorney. Category 3 experience includes that which must be credited, i.e., professional attorney experience, and that which may be optionally credited, i.e., non-attorney experience which is related to the attorney duties to be performed. See the summary chart below.

Evaluating "Professional" Experience	
Event or Experience:	Creditable:
<b>Category 1</b> - Experience gained before graduation from law school.	No credit given for this experience.
<b>Category 2</b> - Experience gained after graduation but before passing state bar examination.	Optional credit to the extent that the experience is directly related to the attorney duties to be performed. The United States Attorney is authorized to make this determination and must document providing such credit on the AUSA Salary Worksheet.

<p><b>Category 3 - Experience</b> gained after passing the state bar examination.</p>	<ul style="list-style-type: none"> <li>- Must credit all professional attorney experience.</li> <li>- Optional credit to non-attorney experience. Same as Category 2, above.</li> </ul>
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The following examples illustrate how attorney experience should be evaluated to determine AD grade levels:

- Work experience of a recent law school graduate who has not yet passed a bar examination who performs work that is tantamount to professional attorney work in a law firm may be creditable at the discretion of the United States Attorney.
- An individual with a law degree who passed the bar, but appears before the court in the capacity of a probation officer, is not performing "professional" attorney work because probation officer work does not require law school graduation or admittance to the bar. At the discretion of the United States Attorney, credit may be given if the work is directly applicable to the attorney duties to be performed.
- Law school graduates admitted to the bar who work for the Federal Bureau of Investigation (FBI) will receive credit if the candidate was classified in the GS-905, Attorney, series. Attorneys who are FBI Special Agents or classified in any non-attorney series, e.g., Criminal Investigator, GS-1811 series, may receive credit to the extent the work is directly applicable to the attorney duties to be performed at the optional discretion of the United States Attorney.
- Vacation periods after graduation, e.g., taking time off to prepare for the state bar examination, may be credited only if the attorney holds a professional position while on vacation. If the attorney did not have a professional position before going on vacation, the time does not count.

**Calculating Professional Experience.** Districts should credit part-time, full-time, intermittent, and more than full-time professional attorney experience as full-time employment for the purpose of determining the appropriate grade level. Extended vacations or periods of leave with or without pay while employed as a professional attorney also are counted as full-time experience. Periods of unemployment cannot be credited.

The example below illustrates a calculation method to determine the amount of **creditable**, i.e., *full years*, of professional experience.

Event	Date
Estimated Enter-on-Duty (EOD) Date (April 1999):	1999 04
Law School Graduation Date (May 1991):	<u>1991 05</u>
Maximum Credible Experience (7 years, 11 months):	7 11

The first step in this example is to determine an estimated Enter-On-Duty (EOD) date, April 1999. This estimated EOD date is written using full years and then months. Days are not counted.

Next, the date of law school graduation is listed, May 1991. Subtract the older date from the more recent date. In this illustration the candidate is tentatively credited with 7 years and 11 months of professional experience. The candidate's resume, application, or SF-86 (Questionnaire for National Security Positions), must be examined further to determine if reductions are required for periods of unemployment or for periods of non-professional work.

Since only **full** years of experience may be credited, this candidate will be placed in grade AD-27, based on seven full years of professional attorney experience.

**Crediting Military Experience.** Individuals who leave civilian employment to perform military responsibilities, either voluntarily or involuntarily, are protected by 38 U.S.C. Sec. 4301, Uniformed Services Employment and Reemployment Rights Act (USERRA). The law requires under the "escalator principle" that individuals who return from service must be re-employed at the seniority, status, and pay level they would have attained had they not been serving in the military. Accordingly, military experience meeting USERRA coverage criteria should be counted as continuous "professional" attorney experience. For example, an attorney with three years of professional attorney experience is called into the military and serves for three years. Upon return, the attorney applies for a position as an AUSA. The District should credit this individual with six years of professional attorney experience and place him in AD-26.

**Recording Decisions.** Decisions regarding the amount of professional experience with which a candidate is credited at the time of appointment must be documented for verification of grade determinations and promotion eligibility dates must be documented on the attached AUSA Salary Worksheet and filed on the left hand side of the Official Personnel Folder.

Professional experience may be recorded manually and filed in the Official Personnel Folder. See the attached AUSA Salary Worksheet.

**6.2. Supervisory and SLC Positions Grades AD-31 through AD-40.** The management structure of each United States Attorney's office consists of the United States Attorney and Supervisory Assistant United States Attorneys, including First Assistant United States Attorneys, "Executive" Assistant United States Attorneys, OCDETF Core City Coordinators, Branch Office Chiefs, Senior Litigation Counsel (SLC), and various other specialized supervisory positions. See USAP 3-4.990.001, Payroll/Personnel Systems Handbook, Chapter 3-1, Authorized Titles and Master Record Numbers, for the complete list of authorized supervisory position titles. For editorial convenience, all AUSA positions above AD-29 will be referred to as "supervisory" in the guidance, below.

AD-31 through AD-40 positions are allocated and controlled by EOUSA. Positions allocated at grades AD-31 through AD-37 are based generally on two criteria:

- No more than 14 percent of each USAO's total AUSA Full Time Equivalent (FTE) allocation, including the United States Attorney, may be assigned to grades AD-31 through AD-37. The number of positions so calculated will be rounded down to the nearest whole number; and
- Each supervisor must supervise at least six AUSAs. An AUSA who supervises fewer than six AUSAs, or who otherwise does not meet any of the grade allocation criteria below, or who supervises any number of support positions, is assigned to grade AD-21 through AD-29 as

appropriate.

AD Grades	Position	Position(s) Authorized	Additional Allocation Criteria
40	<b>Presidentially Appointed United States Attorney</b>	1	
39	<b>Interim United States Attorney and Other</b>	variable	
37	<b>First AUSA</b>	1	Allocated outside 14% criterion. Need not meet supervise-six criterion.
	<b>Civil/Criminal Chief</b>	2	Need not meet supervise-six criterion.
	<b>Organized Crime and Drug Enforcement Task Force (OCDETF) Core City Coordinator</b>	variable	Allocated outside 14% criterion. Need not meet supervise-six criterion.
	<b>Appellate Chief</b>	1	Need not meet supervise-six criterion.
	<b>Executive AUSA</b>	variable	Need not meet supervise-six criterion. 1 per each 50 AUSA FTE.
	<b>Branch Office Chiefs Supervise 30 or more AUSAs</b>		Allocated outside 14% criterion.
35	<b>Undefined Supervisors</b>	variable	1 per each 25 AUSA FTE.

	<b>Branch Office Chiefs Supervise 20 -29 AUSAs</b>		Allocated outside 14% criterion.
	<b>Undefined Supervisors</b>	variable	Remainder of allocated positions.
<b>33</b>	<b>Senior Litigation Counsel</b>	1	10 - 99 AUSA FTE. Need not meet supervise-six criterion.  Allocated outside 14% criterion.
		2	100 - 149 AUSA FTE Need not meet supervise-six criterion Allocated outside 14% criterion
		3	150-199 AUSA FTE Need not meet supervise-six criterion Allocated outside 14% criterion
		4	200 - 249 AUSA FTE Need not meet supervise-six criterion Allocated outside 14% criterion
		5	250 - 299 AUSA FTE Need not meet supervise-six criterion Allocated outside 14% criterion
		6	300 - 349 AUSA FTE Need not meet supervise-six criterion Allocated outside 14%

			7	350 - 399 AUSA FTE Need not meet supervise-six criterion Allocated outside 14% criterion
	<b>Branch Office Chiefs Supervise 10-19 AUSAs</b>			Allocated outside 14% criterion.
<b>31</b>	<b>Undefined Supervisors</b>		variable	Remainder of allocated positions.
	<b>Branch Office Chiefs Supervise 3-9 AUSAs</b>			Allocated outside 14% criterion. Need not meet supervise-six criterion.

## United States Attorneys

Presidential appointees. The President appoints, and the United States Senate confirms a United States Attorney for each district. United States Attorneys are appointed in accordance with 28 U.S.C. 541 and are paid at grade AD-40, the rate for which is set at the statutory cap permitted by law. Presidentially-appointed United States Attorneys are not assigned a fixed schedule and thus do not earn or use leave while holding office. United States Attorneys are not paid locality pay because all United States Attorneys are paid Executive Level IV (EX-IV), the maximum salary permitted by law.

Acting appointees. In the absence of a Presidentially-appointed United States Attorney, the First AUSA is usually the person that automatically, by operation of law, would become Acting United States Attorney for a time limit of 210 days as stipulated by the Vacancies Reform Act (and DOJ regulations, see 29 CFR 0.137), unless the First AUSA has been in that position for less than 90 days in the 365 day period before the vacancy. Under the Vacancies Reform Act, the President could also designate someone other than the FAUSA to an official already holding a Senate confirmed position or to an official who had served in the Department for at least 90 days of the 365 day period as stated in 5 U.S.C. 3345(a)(2) or (3). AUSAs serving under acting appointments retain their First AUSA title at grade AD-37.

Interim appointees. In the absence of a Presidentially-appointed United States Attorney, Title 28 U.S.C. 546 provides for interim appointments to the office of United States Attorney. The Attorney General (AG) or the appropriate district court may appoint an AUSA or any other attorney as the interim United States Attorney until the vacancy is filled by a Presidential appointee. AUSAs serving under interim appointments earn and use leave, and are paid at grade AD-39.

**Supervisory Assistant United States Attorneys.** AUSAs are temporarily promoted to supervisory positions, i.e., positions at grades AD-31 through AD-39, until expiration of the appointment or assignment back to a non-supervisory position at the request of a United States Attorney. Supervisory assignments can be renewed in increments of up to four years upon recommendation by the United States Attorney, and approval by the Director, EOUSA or designee.

The General Counsel's Office administers position and personnel actions for supervisory AUSA positions.

**Senior Litigation Counsel (SLC).** The Senior Litigation Counsel (SLC) program was created to recognize outstanding Assistant United States Attorneys (AUSAs) based on their overall careers as litigators. To qualify, an AUSA must meet the criteria in USAM 3-4.534, Pay Under Other Systems.

AUSAs assigned to SLC positions may not supervise other attorneys. Initial assignments may be up to four years.

AUSAs selected to serve as SLC must have a performance element included in his or her performance work plan which addresses:

- "Prepares and presents at the trial level complex or difficult cases, often involving significant or novel issues."
- "Develops and implements a litigation-oriented, 'in-house' training program for the district's less knowledgeable attorneys."

Each SLC should be rated "Outstanding" on the above performance criteria in order to remain in the program.

**SF-278 Financial Disclosure Requirement.** All Supervisory AUSAs are subject to the financial disclosure provisions of the Ethics in Government Act of 1978, as amended (the "Act"). The Act requires the filing of a Public Financial Disclosure Report (SF-278) by incumbents of supervisory positions within 30 days of entering into the position, annually for each succeeding year by May 15<sup>th</sup>, and on or before the 30<sup>th</sup> day after termination of employment in such a position (unless the Supervisory AUSA has accepted employment to another covered position). Any individual who files an SF-278 more than 30 days after the due date is subject to a \$200 late filing fee. See 5 CFR 2634.201, 202, and 704.

The General Counsel's Office will contact the AUSAs entering supervisory positions, annually while a Supervisory AUSA, and leaving their paid supervisory positions, via email, to provide system access and instruction for SF-278 e-filing.

**Supervisory AUSAs on LWOP-US.** Supervisory AUSAs who are called to active duty must remain in the supervisory position while in an LWOP-US status. If necessary, the attorney's temporary promotion to the supervisory position must be extended to the end of the LWOP-US period. USAOs may request to double encumber this temporary, supervisory position for this period from the Deputy Attorney General (DAG) through the General Counsel's Office.

Upon return to duty, the Supervisory AUSA is subject to current supervisory AUSA pay policy which may include extension, termination, or change of assignment as a supervisor.

**6.3. Setting Pay.** United States Attorneys are delegated authority to:

- set pay upon initial appointment ; and
- adjust pay as part of the APR process.

**Recruitment Ranges.** Five control points are designated for each grade of the AD pay plan: the minimum rate, the Q-2 rate (25 percent), the midpoint rate (50 percent), the Q-4 rate (75 percent), and the maximum rate. In most cases, the starting salary must fall between the range minimum and the Q-4 rate of the appropriate grade for line AUSAs. Pay should be set within the minimum and Q4 pay rate of the supervisory grade, but may be set up to the maximum rate. Any rate of basic pay so selected is considered a fair and equitable salary. Within these boundaries, salaries can be set at any dollar amount, however, district managers should consider the following:

- Locality pay is added to basic pay. Therefore, if management is considering private sector salary in setting pay, comparison should be made including locality pay. To determine the appropriate basic pay, divide the total desired pay rate by the appropriate locality pay percentage.
- United States Attorneys should use initial pay setting as an opportunity to ensure salaries are distributed across the salary range at each grade level and to provide for future salary growth through the APR process.
- If pay is set at the minimum rate for a line AUSA, and he/she is rated Outstanding in their first performance evaluation, then pay will be set at the Q-2 rate for the higher grade during the subsequent Annual Pay Review (APR).
- While attorneys should receive some increase in basic pay at the time of promotion to a supervisor, pay should be set to allow further salary growth based on performance in the supervisory position.
- AUSAs are not eligible to receive Annual Pay Reviews without a rating of record as an AUSA or supervisory AUSA.
- AUSA basic pay may not be increased upon reassignment to another USAO position or upon a change in the type of appointment, i.e., a "Conversion" action. An exception can be made with the approval of the Director, EOUSA. A voluntary reduction in basic pay is subject to prior "consultation" with the Office of Attorney Recruitment and Management.
- Individuals who are paid at a rate of basic pay equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule are subject to certain post-employment restrictions in 18 U.S.C. 207(c).

**Using "Highest Previous Rate" (HPR).** Current or former federal employees who are candidates for appointment to an AUSA position may have their starting pay set higher than the Q-4 rate based on the salary earned under a prior **federal** appointment. This typically occurs when an employee either currently or previously paid under another federal pay plan or schedule (e.g. the General Schedule or Executive Schedule) is selected for an AUSA position. This pay policy is referred to as the "Highest Previous Rate" (HPR) policy. Under HPR, pay may exceed recruiting range limits or even grade maximums. HPR policy does not permit setting a salary above the maximum rate for AD-29. Salary may, however, be set above the maximum rate for AD-21 through AD-28. Salaries set above the maximum rate for AD-21 through AD-28 are "red-circled rates."

United States Attorneys are not required to use HPR. Issues to consider in using HPR include past practice and budget limitations.

Previous GS salaries should be aged using the basic pay table for the current year. For example, the starting salary for a candidate who was paid at the GS-15, step 2 rate in 1988, may be set based on the current rate of basic pay (before addition of locality pay), for GS-15, step 2. For other pay rates used for HPR, see the discussion on aging former federal salaries in the attached "Table of Aging Factors."

Decisions to use the HPR policy in pay-setting require documentation on the appointment Standard Form 50 (SF-50 or SF-50-B). General instructions are found in the "Guide to Processing Personnel Actions," specifically at Table 11-C, Rules 41 or 42. These rules include remark codes that must be used to document the use of HPR.

**Daily Rates.** Attorneys appointed under 28 U.S.C. § 543 as Special Assistant United States Attorneys (SAUSAs) or under 28 U.S.C. § 515 as Special Attorneys (SAs) may have pay set on a daily basis. Daily rates of pay are calculated by selecting an annual rate of basic pay that falls in the appropriate recruiting range, dividing it by 2087, multiplying the resulting by 8, and rounding to the nearest dollar.

SAUSAs and SAs paid a daily rate are entitled to that daily rate for any work performed on a single day, without regard to how many or how few hours such work required. SAUSAs and SAs paid a daily rate cannot receive total compensation in excess of the salary paid a United States Attorney in any calendar year.

**Red- and Green-circled Rates.** There are two special pay-setting conditions in the AD pay plan, "red-circled rates" where basic pay is set above the maximum rate of the grade, and "green-circled rates" where pay is frozen because the attorney is on a Performance Improvement Plan (PIP) and pay has fallen below the minimum rate.

**Red-circled Rates.** Red-circled rates occur when an AUSA's salary is set in accordance with HPR policy above the maximum rate. Typically this occurs because an AUSA held a previous federal appointment that paid a higher salary than the maximum rate of the assigned AD grade. Attorneys paid red-circled rates do not receive the annual structure increase in January. Increases to the locality pay are permitted up to the maximum rate. Districts paying AUSAs red-circled rates must explain these red-circled policies to the employee, preferably in writing, at the time the employee's pay is red-circled.

Red-circled rates cease whenever the attorney's pay is at, or below, the maximum rate of the appropriate AD grade level. This may occur when a pay adjustment to the AD pay structure increases the maximum rate of the grade to a sum greater than the attorney's red-circled rate, or when the attorney is promoted to a higher AD grade and the red-circled rate falls within the salary range of the higher grade.

Red-circled rates require special documentation for salary management purposes. Attorneys receiving a red-circled rate of pay are coded in the NFC system using "pay rate determinant" (PRD) code "4." Specific codes in the NFC system will generate remarks on the SF-50 that signal use of the red-circled policy in pay administration. See attached "Codes and Remarks." Once an AUSA's pay is no longer red-circled, the pay rate determinant code must be changed to "0."

**Green-circled Rates.** Green-circled rates of pay occur whenever pay is frozen because the AUSA is placed on a Performance Improvement Plan (PIP), and pay subsequently falls below the minimum rate payable for the grade, e.g., as a result of an AD structure increase. Changes in pay are not authorized while an AUSA is on a PIP. Attorneys on a PIP, however, receive authorized changes in the rate of locality pay.

Attorneys serving on PIPs are so designated by changing the PRD code from "0" to "2." This requires a Notification of Personnel Action, SF-50. Districts paying AUSAs green-circled rates must explain green-circled pay policies to the employee, preferably in writing, at the time the employee's pay is green-circled. A sample notice is attached. If the AUSA completes the PIP successfully, a personnel action must be prepared to cancel the PRD code change, thereby restoring the PRD code to "0."

If the attorney successfully completes the PIP:

- An APR will be conducted at the end of the PIP period.

- A pay increase to bring pay at least to the minimum rate of the appropriate grade must be processed effective the pay period following successful completion of the PIP. The pay increase is not retroactive.
- If the attorney does not successfully complete the PIP, no APR is conducted, and there is no entitlement to an increase in pay.

**Locality Pay.** All AUSAs with duty stations in the 48 contiguous United States receive locality pay authorized by the Attorney General under Title 28, United States Code, Section 548.

Locality pay is subject to statutory pay limits. Specifically, all attorneys receive 100 percent of the authorized basic pay and any locality pay that does not cause total pay (basic pay plus locality pay) to exceed \$100 less than the statutory maximum of Executive Level IV or an administrative maximum set by the Attorney General. Locality pay may be truncated to comply with such limits.

United States Attorneys do not receive locality pay.

#### **6.4. Pay adjustments**

**Annual Adjustments.** Annual adjustments for grades AD-21 through AD-29 are linked to pay adjustments to the General Schedule (GS). Annual pay adjustments for grades AD-31 through AD-37 are linked to pay adjustments to the Executive Schedule (EX). GS and EX increases are linked to changes in the Bureau of Labor and Statistics' Employment Cost Index survey. GS and EX increases, if any, normally occur in January.

The annual salary increase is mandatory and will be automatically processed for all AUSAs, including compensated SAUSAs paid per annum, with the following exceptions:

Individuals at grade AD-39, and all compensated SAUSAs paid other than on per annum basis must be processed manually at discretionary rates approved by the U.S. Attorney.

AUSAs with red-circled rates of pay are ineligible for the annual pay adjustment in basic pay. Servicing Human Resources Specialists will compare each red-circled rate of basic pay to the current year's maximum rates and manually process a pay increase if the red-circled rate is less than the current year's maximum for the AD grade, up to the maximum.

AUSAs with green-circled rates of pay are ineligible for the annual pay adjustment in basic pay.

**Locality Pay Adjustments.** Locality pay rates are set by the Office of Personnel Management and are linked to the cost of labor in different geographic areas. The Deputy Attorney General has approved locality pay adjustments at the same rate as the General Schedule. These adjustments will be processed automatically for all AUSAs (including those that are red- or green-circled) except those in AD-39 and AD-40. Locality pay is truncated when necessary to keep total pay for grades AD-21 through AD-37 from exceeding \$100 less than the AD-40 rate of pay.

#### **6.5. Change to Lower Grade**

**"Aging" Salaries.** Pay for AUSAs demoted from temporary promotions as supervisors is set based on applicable guidelines then in effect for "line" AUSAs. The line AUSA rate of basic pay paid at the time of the promotion will be "aged" to give the returning AUSA the benefit of any structure increases paid to other line AUSAs during the period of the temporary promotion. Aged salaries can be further adjusted by the United States Attorney based on the last performance rating of record. A table of aging factors is attached and a

worksheet is provided to assist in setting pay for AUSAs returning to non-supervisory positions.

Use the following pay-setting guidance to age rates of basic pay for an AUSA upon change to lower grade:

Step	Action
First:	Identify and date the last line AUSA grade and salary the attorney held at the time of temporary promotion.
Second:	Determine the new AD grade for the AUSA giving the attorney credit for all time spent in a supervisory or SLC position.
Third:	Age the old line AUSA salary using the factors listed in the table at Appendix 2. Age the salary beginning with the year after the temporary promotion was effective, e.g., if the temporary promotion was effective in 1994, then age the salary starting with 1995.
Fourth:	Review new salary derived in step three and adjust it in accordance with performance pay rates for the AD grade to which the AUSA is now assigned based on the attorney's last performance rating of record.

See the example below:

Step	Action
First:	USA Jones was an AD grade 26 with a rate of basic pay of \$64,000 in September 2000 when promoted to branch chief with a salary of \$93,800. She was demoted on March 31, 2006, to a line AUSA in the district office. Her salary at the time of change to lower grade was \$124,600. Her last supervisory performance rating was "Outstanding."
Second:	AUSA Jones receives credit for 6 additional years of professional experience for grade determination. Place AUSA Jones in AD grade 29.
Third:	Age AUSA Jones's last line AUSA salary. Multiply \$64,000 by the 2001 aging factor of 1.027 for \$65,728.00; multiply that by the 2002 aging factor of 1.036 for \$68,094.21; then by the 2003, 2004, 2005, and 2006 aging factors for an "aged" salary of \$75,455.15. Basic pay is rounded to \$75,455. This rate of pay falls

	between the Q-1 and Q-2 rates of the AD-29 grade range.
Fourth:	Final salary must comply with AD pay policy. Based on a rating of "Outstanding," the adjusted salary must fall within performance pay range (at least \$83,502 which is the Q-2 rate for AD-29). The United States Attorney can further adjust her salary upwards based on AUSA Jones's last supervisory performance rating of "Outstanding."

In the example above, the salary calculated in step 3 above falls below the Q-2 rate for AD-29. The United States Attorney can review and adjust the salary based on the attorney's last rating of record as a supervisor or SLC. If the attorney's most recent rating of record is "Outstanding," then pay must be set at or above the Q-2 level for AD-29. If the attorney's most recent rating of record is "Successful," then pay may be set no higher than the Q-4 rate for the grade. Upon change to lower grade, the United States Attorney can make a final salary adjustment to the aged salary in excess of the 10 percent limitation that applies to APR increases. Demotions from supervisory or SLC positions are an exception to this usual limitation. Pay upon change to lower grade may also be set based on the Highest Previous Rate rule and "red-circled" provided the AUSA held the temporary promotion for at least one year. Pay cannot be set at a rate higher than the maximum rate for AD-29.

In cases where the aged salary was at the maximum pay rate for AD-29, the resulting salary derived from using the table of aging factors may be greater than the current maximum payable salary for AD-29. In that case, salary must be set at the current maximum rate of pay for AD-29.

**Separating AUSAs While on a Temporary Promotion.** AUSAs who separate from the USAO under conditions that would otherwise entitle them to a lump sum payment for earned annual leave, and who occupy their position as a result of a temporary promotion, will not first be changed to the lower, permanent, grade. The lump sum leave payout will be based on the higher grade held as a result of the temporary promotion.

### 6.6. Annual Pay Review (APR).

AUSAs paid below the maximum rate of basic pay, whose last rating of record as an AUSA is 1) "Outstanding;" and 2) AUSAs paid below the Q4 rate of basic pay whose last rating of record is "Successful," must receive an Annual Pay Review (APR).

The effective date of APRs will be announced annually (usually in April) and may vary based on budget considerations.

The APR process includes:

- Determining promotion eligibility for AUSAs in grades AD-21 through AD-29;
- Determining APR-based pay increases, if any; and
- Determining APR-based Performance Payments, if any.

Discretionary pay adjustments, in combination with any Performance Payments received, are limited to 10 percent above the attorney's pre-APR basic salary, i.e., prior to the addition of locality pay. If the summary rating is "Successful," the total sum of the pay adjustment and/or Performance Payment cannot exceed the Q-4 rate even if it is less than the 10 percent discretionary pay adjustment. USAs may request increases greater than 10 percent for approval by the Director, EOUSA. Concurrence of the Director is not required if a

*non-discretionary* pay adjustment results in an increase greater than 10 percent, e.g., setting pay for attorneys rated "Outstanding" at the applicable minimum rate, Q-2.

**Promotions.** AUSAs in grades AD-24 through AD-28 rated "Successful" or higher who have gained credit for an additional full year of professional experience must be promoted. When determining if there is an additional full year of professional experience, **all** experience must be counted, not just experience since the last promotion. Note, however, that some attorneys appointed after the last annual pay review may not have enough additional experience necessary for promotion. In such case the attorney will remain in the current grade until the next annual pay review.

Attorneys in grades AD-24 through AD-28 are promoted to the next higher grade if they have an additional full year of professional experience as of the effective date of the APR. A pay increase, if any, at the time of a promotion is based on performance.

Except for newly-hired attorneys, most attorneys in AD grades 24 through 28 will be eligible for promotion to the next higher grade in conjunction with the APR cycle. Districts must verify that each attorney has gained the required professional experience as of the effective date of the APR, before promoting him/her.

Grade 21 represents professional experience of less than four full years. An attorney assigned to AD Grade 21 must be promoted to AD-24 during the APR cycle in which the attorney has gained four full years of professional experience. Thus, an attorney in Grade 21 could stay in that grade for several years before gaining the requisite professional experience for promotion to AD-24. AUSAs who are eligible for promotion will have pay set in the new grade range based on the performance rating of record.

Promotions to grades above AD-29 are controlled by EOUSA.

The following illustrates the strategic uses of the AD pay plan in relation to determining promotion eligibility. An AUSA candidate with seven years and five months experience at EOD date is placed in AD grade 27. April is the assumed APR month in this example.

<b>Strategic Uses of AD Pay Plan Promotion Eligibility</b>		
<b>Fiscal Year Quarters &amp; EOD (Months)</b>	<b>Promotion Eligibility and Peer Group Considerations</b>	<b>Pay Setting and Other Considerations</b>
1st (Oct-Dec)	New AUSA will not have eight full years of experience next April, and will stay in grade until the second April. Peer group includes AUSAs now in AD-26, who will move up one grade in April.	Set pay at or below midpoint, which leaves some room for a pay adjustment and/or Performance Payment in April during the APR. Put AUSA on Performance Work Plan and rate in 90 days.

2nd (Jan-Mar)	Not eligible for an APR review based on three or fewer months of service. Peer group includes AUSAs in AD-26 who will be promoted to AD-27.	Set pay in relationship to the point where peer group will be placed after promotion to AD-27. Put AUSA on performance work plan and evaluate on Dec 31st.
3rd (Apr-Jun)	Eligible for APR next April. Peer group includes other AUSAs recently promoted to AD-27.	Set pay in relationship to the peer group. Put AUSA on performance work plan and evaluate on Dec 31st.
4th (Jul-Sep)	Eligible for APR next April. Peer group includes all other AUSAs in AD-27.	Set pay in relationship to peer group. Put AUSA on performance work plan and evaluate on Dec 31st.

**APR Pay Adjustments.** United States Attorneys have the authority to adjust basic pay through APR-related pay adjustments, subject to funds availability. AUSAs whose rate of basic pay is less than the maximum rate for their grade are eligible to receive an APR-based pay increase.

The AD Pay plan includes strong links to performance. Attorneys rated "Successful" are paid a rate of basic pay between the minimum and the Q-4 rate for the grade. Attorneys rated "Outstanding" are paid a rate of basic pay between the Q-2 rate and the maximum for the grade. If an attorney rated "Successful" is already paid above the Q-4 rate, no pay increase is permitted and pay cannot be decreased. It is very important, therefore, that supervisors complete performance ratings timely.

**APR Performance Payments.** United States Attorneys may approve one APR-related Performance Payment each year for each eligible attorney, subject to funds availability. A Performance payment is a lump sum performance payment that is ratings-based, and may be authorized in addition to, or in lieu of, an APR-based increase in basic pay. Note that Performance Payments are a form of compensation authorized by 28 U.S.C. 548 and are in lieu of performance-based awards otherwise authorized by 5 U.S.C. Chapter 45, Incentive Awards.

**Documenting APRs.** All APR-related pay adjustments and/or Performance Payments must be documented by an SF-50. If the attorney is simultaneously promoted to a higher grade, the salary and grade increase can be documented on the same SF-50. All promotions and pay adjustments are filed on the right side of the Official Personnel Folder (OPF). See the attached APR form required to document all APRs. Note that an SF-52 is still required for all promotion actions and must be attached to the APR form but all other actions no longer require an SF-52. Reviews typically are conducted during the first quarter of the calendar year with pay changes effective in the beginning of the second quarter or as determined by the Director.

All Performance Payments must be documented on a separate SF-50. Performance Payment SF-50s are filed in the Employee Performance File.

An APR form, attached, documenting the entire APR will be filed on the left (temporary) side of the Official Personnel Folder (OPF).

If an attorney is not at the maximum rate for the AD grade and is rated "Outstanding" or is at the Q4 rate and rated "Successful," is not promoted, nor is given a basic pay increase, an SF-50 must be prepared to document that the attorney's grade and pay were reviewed and no change was authorized, unless the attorney receives a Performance Payment. If the attorney receives a Performance Payment and no pay increase, only one SF-50 for the Performance Payment is required. See the attached Codes and Remarks for a chart listing various natures of action and remark codes to be entered.

An SF-50 is not required to document a decision not to give a Performance Payment.

Attorneys whose basic pay is at the maximum rate for the AD grade are not eligible for an APR increase in basic pay, therefore, SF-50s are not required as part of the APR process.

**Grade and Pay Adjustments for AUSAs on LWOP- US.** AUSAs on Leave Without Pay to perform military service, i.e., LWOP-US, are generally entitled under 38 U.S.C. Sec. 4301, Uniformed Services Employment and Reemployment Rights Act, to the pay and benefits to which they would be entitled had they not served in the uniformed services. Accordingly, servicing personnel offices will:

- Fully credit LWOP-US time as professional attorney experience for promotion purposes;
- Make APR pay decisions based on the AUSA's last performance rating of record.

**Grade and Pay Adjustments, and Performance Payments for AUSAs on Detail.** AUSAs on detail will receive APR consideration based on the most recent rating of record. In many cases, the rating of record will be based on the detail memorandum of understanding which may require different rating levels, evaluation criteria, and appraisal periods. The employing USAO is responsible for processing all APR-related actions for AUSAs on detail or on extended temporary assignment away from the employing USAO.

**Pay Adjustments and Performance Payments for SAUSAs.** Compensated SAUSAs are also eligible for APR-based pay adjustments including Performance Payments based on the appropriate rating of record. Although compensated SAUSAs are assigned to grade 00, their pay is set and adjusted by the same rules as AUSAs (i.e., A SAUSA with five years of experience should have a salary somewhere between the minimum and maximum of AD-25). SAUSAs with an additional year of experience should have their salary reset within the appropriate grade range of AUSAs with the same years of experience and performance.

**APR Policy Summary.** The table below summarizes the possible results of the APR:

Annual Pay Review Outcomes		
APR Outcome	GRADE INCREASE - AD-21 through AD-28	NO GRADE INCREASE
PAY ADJUSTMENT AND BONUS PAYMENT	AUSA is promoted to next higher AD grade, pay is increased, and Performance Payment is given.	AUSA lacks sufficient experience for promotion to next higher grade or is in a supervisory position, but pay is increased on the current grade range and a Performance Payment is given

PAY ADJUSTMENT AND NO BONUS PAYMENT	AUSA is promoted to next higher AD grade, pay is increased, and no Performance Payment is given.	AUSA lacks sufficient experience for promotion to next higher grade or is in a supervisory position, but pay is increased on the current grade range and no Performance Payment is given.
BONUS PAYMENT BUT NO PAY ADJUSTMENT	AUSA is promoted to next higher AD grade, pay is not increased, and a Performance Payment is given.	AUSA lacks sufficient experience for promotion to next higher grade or is in a supervisory position, no pay is increased, however a Performance Payment is given.
NO PAY ADJUSTMENT AND NO BONUS PAYMENT	AUSA is promoted to next higher AD grade, pay is not increased, and no Performance Payment is given.	AUSA is ineligible for a grade increase and pay aligns with the performance range. No pay adjustment is made in basic pay and no performance payment is authorized.

Pay is linked to performance. Performance evaluations for the current position must be completed before grade and/or pay adjustments can be made.

Promote first; then review pay to determine if a pay increase or Performance Payment is warranted.

Discretionary pay adjustments, in combination with any Performance Payments received, are limited to 10 percent above the attorney's pre-APR basic salary.

If the summary rating is "Successful," pay must be between the minimum and the Q-4 rate for the AD grade. The total sum of the pay adjustment and/or Performance Payment cannot exceed the Q4 rate;

If the summary rating is "Outstanding" pay must be between the Q-2 and the maximum rate for the AD grade;

Total discretionary pay adjustments and/or Performance Payments above 10% above the employee's pre-APR rate of basic pay must be approved, in advance, by the Director, EOUSA; and

Pay may not be reduced to bring a salary into the performance range.

**6.7.Cash Awards.** AUSAs are not eligible for performance awards because Performance Payments under 28 U.S.C. 543 are based on the AUSA's rating of record and the outcome of the APR process, and are in lieu of performance-based awards under 5 CFR Part 451. AUSAs are, however, eligible for all other awards (e.g., special act, time off, and on the spot awards) provided that they meet applicable award criteria.