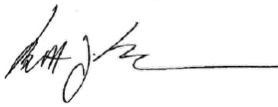




NEW MEXICO
**LAW OFFICES OF THE
PUBLIC DEFENDER**

Chief Public Defender
Bennett J. Baur

Interpretive Memorandum 2021-01

Date: August 4, 2021
To: All LOPD Employees
From: Bennett J. Baur, Chief Public Defender 
Subject: IN PAY RANGE ADJUSTMENTS ([Subsection C. of 10.12.4.12 NMAC](#))

PURPOSE: To establish guidelines for the request, approval, and administration of In Pay Range Adjustments (herein after referred to as in-range adjustment) for eligible employees of the Law Offices of the Public Defender (LOPD).

An in-range adjustment provides agency management with an opportunity to provide salary growth within a pay range for employees who demonstrate a high quality of work, career/skill development, or to address appropriate placement and/or internal pay alignment. Pay adjustments are subject to approval by the Chief public defender, and budget availability.

Required Form(s): In Pay Range Adjustment Form; and Performance Evaluations

Applicable Definitions:

- A. Appropriate Placement¹:** The elements considered when determining base pay upon hire, promotion, or reduction to include the employee's education, experience, training, certification, licensure, internal pay equity, budget availability, and, when known and applicable, employee performance.
- B. Compa-ratio:** Pay expressed as a percentage of the Market Placement Point (MPP) of a pay band.

¹ Subsection C, 10.12.4 7 NMAC

- C. In Pay Range Adjustment²:** The rule provides LOPD with a mechanism for adjusting base pay within a pay range for employees who demonstrate a high quality of work, career/skill development, and/or to address appropriate placement and/or internal pay alignment. Pay adjustments are subject to Chief approval, available budget, and must reflect appropriate placement, and may increase an employee's base pay rate up to 10% during a fiscal year.

Important Note: Only the employee's **base rate of pay will be considered**. Multiple Components of Pay (MCOP) such as Geographical Pay or temporary salary increases are not considered when calculating pay adjustments.

- D. Internal Alignment³:** Considers base pay disparities involving one employee's pay rate to other employees in the same job classification who perform with comparable levels of education, training, knowledge, skills, abilities, and competencies.
- E. Career Status⁴:** An employee hired into a position recognized by the department as permanent and attains career status, which begins the day after the end of the one-year probationary year required by Section [10.12.2.8 NMAC](#).
- F. Submission Period(s):** The department will accept requests for in-range adjustments from District Defenders, and Division Heads every **February** and **September**.
- G. Advisory Team:** A three-person panel responsible for reviewing all requests for an In-range adjustment to ensure the requests comply with the established guidelines. This team recommends approval or disapproval to the Chief Public Defender, and will consist of the following members:
- Director of Human Resources (HR) or designated HR representative
 - Deputy Chief Public Defender
 - General Counsel for the LOPD or a designated District Defender

ELIGIBILITY:

- A. Attained Career Status:** To be eligible for an in-range adjustment, an employee must have completed their probationary period.
- B. Compliance with Rules and Policies:** The employee must have demonstrated conduct that complies with all agency rules, and must have completed all required training, and acknowledged receipt/understanding of the Code of Conduct, Respectful Workplace Guidelines within the last two years.

Employees under investigation or pending discipline are not eligible until it is determined that disciplinary action (Letter of Reprimand, suspension, or demotion) is not warranted.

² Subsection C of 10.12.4.12 NMAC

³ Subsection G, 10.12.4.7 NMAC

⁴ Section 10.12.2.9 NMAC

Employees who have been disciplined (Letter of Reprimand, suspension, or demotion) are eligible for an in-range adjustment two (2) years after the effective date of their most recent disciplinary action.

- C. Achieves Performance Standards:** Employee must have earned an overall rating of Achieves or higher on their most recent annual evaluation. The employee must have demonstrated they meet the established performance expectations and is a substantial contributor to the critical job requirements.

To appropriately document such performance, performance measures and expectations must have been set on the Chief approved evaluation form and comply with [10.12.9 NMAC Performance Appraisals](#).

GUIDELINES: An in-range adjustment is an increase in an employee's salary within the current classification and salary range. In-range adjustments may be given to:

- Recognize substantial changes in duties within the classification;
 - Acquisition **and** application of additional job-related qualifications, certifications or licenses;
 - Establish equitable salary relationships (appropriate placement & internal alignment) ;
 - Pay for Performance; and/or,
 - Respond to labor market conditions.
- A. Job Responsibility Changes:** Employees may be granted an in-range adjustment to compensate for significant changes in duties and responsibilities that have occurred which:
- Are at a higher level but not substantial enough to justify a reclassification, or higher pay grade; and/or,
 - Are in the same classification but the changes significantly increase the variety and scope of duties of the employee.
- B. Additional Job- Related Qualifications, Certifications or Licenses:** Employees may be granted an in-range adjustment to compensate for the acquisition **and** application of education, qualifications, certifications or licenses that are **relevant** to the job in which they are currently classified and it is demonstrated that such additional education, qualifications, certifications or licenses has enhanced the performance of their job duties and accountabilities.
- C. Equity:** Equity is a fairness criterion that takes into consideration the relationship of one employee's salary to the salaries of other employees who have comparable education, experience and performance and perform the same or similar work within the work unit, section, or agency. Employees may be granted an in-range adjustment to adjust equitable salary relationships among comparable employees, by considering the following:
- Work experience
 - Time in Position
 - Education

- Knowledge, Skills and Abilities
- Performance (evaluation ratings)
- Equity/Appropriate Placement/Internal Alignment

D. Pay for Performance: The linkage between pay and performance is based on two key assumptions; 1) Employees hired have demonstrated, over time, they can successfully perform the job for which they were hired or are currently assigned; and 2) Employees have a clear understanding of their jobs and there is mutual agreement between the employee and their immediate supervisor as to performance expectations.

In determining pay changes based on performance, these factors will be taken into consideration:

- The employee's level of performance;
- Current pay relative to the market policy position (MPP); and
- Time in position (to recognize that with time, comes effectiveness and experience, **not** to recognize time in its own right)

The application of this will be in accordance with the following guidelines:

- For employees who are below the range MPP or Market Anchor in their assigned salary range, both a relativity to market and a pay adjustment may be made.
- For employees who are above the range MPP or Market Anchor in their assigned salary range; a pay adjustment may be made.
- For employees who are in the top quartile of their salary range and who are eligible for a performance pay increase, this pay adjustment may be made. Page five (5) contains the quartiles.

E. Labor Market Changes: Employees may be granted in-range adjustments in response to changes in the labor market or other conditions that may affect retention. Conditions to be met include:

- The work performed is LOPD mission critical;
- The work experience required of the employee are clearly difficult to recruit, there is data supporting a critical labor market shortage, or maintenance of market competitive pay is needed for retention of a key employee; and,
- The manager requesting such a change must provide supporting documentation (e.g. pay data/reports from similarly situated entities).

Amount of Increase

The amount of the in-range adjustment should be considered in conjunction with the table on page 5. The adjustment shall:

- Not move an employee's salary to greater than the salary range maximum; and,
- Not create significant salary inequities.

Salary Quartile Criteria

Salaries are commensurate with an employee's education and experience in relation to the salary range established for the classification. Salary ranges are divided into quartiles, to aid in determining appropriate salary placement within the prescribed salary range.

Establishing four quartiles is useful for determining appropriate placement of an employee's salary:

- First Quartile: This is the entry point and is usually for someone new to a position and still developing in the role.
- Second Quartile: This is the progress point and is usually for someone who is experienced and performing most or all the duties of their position. The top of the second quartile is the competitive market value.
- Third Quartile: This is the advance point (above the MPP) and is usually for a seasoned employee who is performing well in their position over a number of years.
- Fourth Quartile: This is the point up to maximum of the salary range that is usually for an employee with a level of experience and performance that significantly exceeds both the requirements of the position and the performance of most other employees.

An illustration of these quartiles is set out in the table below.

1 st Quartile		2 nd Quartile	3 rd Quartile	4 th Quartile
Range Minimum		MPP/Market Anchor		Range Maximum
Meets minimum qualifications No prior experience	Entry level	Previous related experience	Seasoned experience	Hiring above MPP/Market Anchor should be rare, but may be justified by the following: <ul style="list-style-type: none"> • Difficulty to recruit • Highly qualified • Exceptional Expertise • Experience level and performance significantly exceeds requirements
	Has minimal prior experience	Demonstrated ability to perform duties	Exhibits broad and deep knowledge of position and related areas	
	Requires additional training to build knowledge and skills	May need additional training to perform duties independently	Recognized position expertise	

PROCEDURE:

Employee Responsibilities:

- Meet eligibility criteria as required in this document
- May ask their immediate supervisor or manager to consider an in-range adjustment in accordance with this procedure.

Manager and Supervisor Responsibilities:

1. Submit requests for in- range adjustments in compliance with this memorandum.
2. Ensure employees meet the eligibility requirements prior to submitting an in-range adjustment for review and approval.
3. Provide a detailed and appropriate justification for the proposed increase. A comprehensive justification should contain the following (including but not limited to):
 - ☐ Documentation to support the in-range adjustment;
 - ☐ SMART goals, or examples of assigned work and **how well** the employee performed the duties;
 - ☐ Description of how the employee's contributions support the requested in-range adjustment;
 - ☐ A summary of employee comparison information; comparisons must be similar in job content, scope, and responsibility level (the same job classification);
 - ☐ For attorneys, a description of cases assignments, to include the types and number of cases;
 - ☐ For managers/supervisors, include examples illustrating success as managers, not just as technicians. Explain how well the manager met program/function/unit performance measures, and how well they managed their staff. Is the supervisor evaluating employee performance in accordance with department rules and training?
 - ☐ For core staff, describe the employee's performance and conduct. Specifically, the quality of work in all essential areas of responsibility, the exceptional or unique contribution in achievement of unit, department, and collaboration with colleagues, and support they provide attorneys and clients.
4. Obtain authorization and signatures from the District Defender or Division Head to forward the request to the Deputy Chief Public Defender and LOPD-HR.
5. Submit the in-range adjustment form and supporting documentation to the respective Deputy Chief Public Defender via email and copy LOPD-HR **during the months of February and/or September**. Incomplete forms or forms received by the Deputy Chief and LOPD-HR outside the designated timeframes will not be accepted.

Human Resource (HR) Responsibilities:

1. HR will perform an initial review of all requests for in- range adjustments to ensure they comply with this memorandum.
2. Ensure the In Pay Range Adjustment Form contains all required signatures. Incomplete forms will be returned to the District Defender or Division Head to address and resubmit within two (2) working days.
3. Review the employee personnel file to verify the employee meets the eligibility requirements, is up-to-date with all mandatory training, acknowledgment forms, and evaluations.
4. Notify the supervisor if items are out-of-date. These subject areas must be made current within five (5) working days of receiving notice from HR.
5. Submit the in-range adjustments and all supporting documents to Advisory Team
 - Include a current Employee Data Base (EDB)/report.
6. The HR Director or designee will schedule a meeting with Advisory Team and CFO to review the in-range adjustment.

7. Enter Chief authorized in-range adjustments into SHARE. Pay adjustments will be effective at least the two periods after receiving the Chief's approval.
8. Place a copy of the approved in-range adjustment form into the employee's personnel file.

Chief Financial Officer or Designee Responsibilities:

- ☐ Work with the Advisory Team and Chief Public Defender to determine if there is sufficient budget to award pay adjustments.

Advisory Team Responsibilities:

- ☐ Evaluate the request for employee in-range adjustments.
- ☐ Submit a written recommendation to the Chief within 60 days of the last day in February or September.
- ☐ Upon receipt of the Chief's decision, HR representative will notify the employee and District Defender or Division head via email within 10 working days.