



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

Friday, September 12, 2003

MEMORANDUM FOR: Heads Of Executive Departments And Agencies

FROM: Kay Coles James, Director

Subject: Extension of 9-11 Emergency Hiring Flexibilities

In response to the President's announcement to extend the state of national emergency, the Office of Personnel Management (OPM) is also extending your authority to use the four emergency hiring flexibilities that were provided to deal with the aftermath of the terrorist attacks of September 11, 2001.

To the extent that these authorities require OPM approval, you have the commitment of our team to provide expeditious review and response. I have directed OPM executive staff to make any such request an absolute priority and to stand by to provide all possible assistance to any technical questions or concerns you or your staff may have with respect to any emergency situation that may develop.

You have the authority to use the following flexibilities for the duration of the state of national emergency, unless terminated earlier:

1. Emergency Temporary Appointments under Schedule A,
2. SES Limited Emergency Appointments,
3. Salary Offset Waivers to Reemploy Annuitants, and
4. VSIP Buyout Repayment Waivers.

You have the authority to continue to continue to make new appointments under the temporary Schedule A authority. Further, OPM stands ready to consider requests for extensions of appointments that were made previously under this Schedule A authority and have met the 24-month maximum service limit.

In addition to these flexibilities, we want to remind agencies of the option to use direct-hire authority, with OPM approval, when there is a critical hiring need or a severe shortage of candidates. Please consider your ongoing requirements with respect to positions you may have filled using the Schedule A emergency hiring authority to determine whether filling these positions under a direct-hire authority would be appropriate.

Direct-hire authority is one of several new flexibilities included in the Homeland Security Act of 2002; OPM published implementing regulations in the Federal Register on June 13, 2003. For additional information on direct-hire authority, please refer to the Delegated Examining

Operations Handbook at www.opm.gov/deu or contact Suzy Barker, Strategic Human Resources Policy Division, at 202-606-0830.

The attached information will help you use these flexibilities during the state of national emergency. OPM's Human Capital Leadership staff is available to assist you and to answer any questions you may have on these flexibilities or other staffing matters. They may be reached by calling your agency's Human Capital Officer.

Attachment

cc: Human Resources Directors

Attachment 1

Extension of 9-11 Emergency Hiring Flexibilities

The Office of Personnel Management (OPM) has extended the four 9-11 emergency hiring flexibilities until the President or Congress terminates the national emergency originally declared in September 2001 under 50 U.S.C. 1622 and most recently extended by the President on September 10, 2003. The following guidance replaces guidance issued on September 13, 2001, and August 2, 2002.

1. *Emergency Temporary Appointments under Schedule A*

Background: On September 13, 2001, OPM gave all executive agencies Schedule A authority 5 CFR 213.3102(i)(3) to fill positions needed to respond to the terrorist attacks on a temporary emergency basis for up to 1 year. On August 2, 2002, OPM extended this Schedule A authority for the duration of the state of national emergency.

Transition Guidance: You may extend Schedule A appointments made under this authority for up to 1 year. However, all actions must meet the definition of temporary found in 5 CFR 213.104, and therefore appointments under this Schedule A authority may not exceed a total of 2 years for an individual. This authority remains available to fill Senior Level positions, as well as positions at lower levels. You may use a Senior Level space allocation on a one-for-one basis, as required, to effect immediate appointment of an individual using these flexibilities. You must report each Senior Level space allocation to OPM within 10 days of the appointment. You may use this authority to replace an employee called to active duty.

If you anticipate any continuing need for a position beyond the 2-year limit, please review your competitive and excepted service appointing options, including direct-hire authority under 5 CFR part 337, subpart B, and initiate appropriate staffing actions as soon as possible. For rare and unusual circumstances, you may request an extension of temporary appointments beyond the 2-year limit in accordance with 5 CFR 213.104(b)(3)(iii).

2. *SES Limited Emergency Appointments*

Background: Under 5 CFR 317.601(c)(1), executive agencies are provided a pool of limited appointment authorities equal to 3 percent of their Senior Executive Service (SES) allocation, or one authority, whichever is greater. An agency may use the pool to make a limited appointment only of an individual who has a career or career-conditional appointment (or an appointment of equivalent tenure) in a permanent civil service position outside the SES. The Strategic Human Resources Policy Division (SHRP) has provided immediate processing under 5 CFR 317.601(c)(2) for executive agency requests for limited appointment of individuals other than current career or career-conditional (or equivalent) employees to positions established to respond to the national emergency.

Extension: SHRP will continue to process immediately agency requests for limited appointment of individuals who are other than current career or career conditional (or equivalent) employees to positions established to deal with the national emergency and will also consider temporary

space allocations when you identify this as essential to support their appointments. Special handling will continue until the President or Congress terminates this emergency. We encourage you to make limited emergency appointments for the shortest time possible as opposed to automatically making 18 month appointments.

Transition Guidance: If a SES limited emergency appointee's work becomes a longer-term project, such as establishing procedures or an infrastructure to deal with future terrorist attacks, you may ask OPM to approve a new SES limited term appointment for that individual. You must describe the project nature and the expected duration of the assignment. Note that no individual can serve more than 36 months in any 48 month period under any combination of SES limited emergency and term appointments. If you expect the work to become permanent, you should initiate staffing actions needed to permanently hire employees to accomplish the work.

3. Salary Offset Waivers to Reemployed Annuitants

Background: OPM offered executive agencies delegated authority to waive the dual compensation reduction (salary offset) to hire retirees when necessary to respond to the terrorist attacks.

Extension: OPM has extended the ending date of delegated authorities approved to respond to the 9-11 terrorist attacks for the duration of the state of emergency. Employment under waivers must be consistent with the provisions of the temporary appointment unless a longer period is specifically permitted by your delegation. You may use this delegated authority to replace an employee called to active duty when you have no other reasonable staffing option.

Transition Guidance: The law, 5 U.S.C. 8344 and 8468, limits waivers approved under delegated authority to "a temporary basis, but only if, and for so long as, the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances. "For work of a continuing nature or likely to exceed 2 years, you should initiate appropriate staffing actions to hire and/or train a qualified individual not requiring this waiver. Further, you must periodically ensure no other reasonable staffing option exists.

You may request extensions of individual waivers or request a new or modified delegation under criteria in 5 CFR 553. Except for project work with a known end date, extension requests should describe your all sources recruiting efforts, the lack of available qualified candidates and your plans to use other flexibilities and incentives to hire and/or train an employee not requiring this waiver. We encourage you to offer hiring incentives under 5 CFR 572 and 575, when appropriate, before requesting a salary offset waiver.

4. VSIP Buyout Repayment Waivers

Background: OPM granted waivers for VSIP (Voluntary Separation Incentive Payment) buyout repayment to the following 10 departments and agencies: Departments of Commerce, Defense, Justice, State, Transportation, Treasury and Veterans Affairs; General Services Administration; Nuclear Regulatory Commission; and the Executive Office of the President. These waivers were to expire on September 30, 2002, and required a report to OPM within 60 days thereafter.

Extension: OPM has extended the ending date of these 10 waivers for the duration of the state of emergency and reminds the 10 departments and agencies above to report on the repayment waivers granted by November 30. You may extend the not-to-exceed date of individual waivers for up to 1 year on a case-by-case basis if you have no other reasonable staffing option and the work is necessary to respond to the terrorist attacks or to combat terrorism. In addition, you may approve new repayment waivers consistent with your agency's letter. The total employment under waivers you grant to any individual may not exceed 2 years. Please report for each waiver granted the individual's name, SSN, organization, job title, series, grade, appointment authority, duty station and duration (effective date of appointment and not-to-exceed date). Please fax your annual report to Ronald P. Sanders at (202) 606-2329, by November 30, each year, including 2003. Negative reports are requested.

Transition Guidance: We encourage you to initiate appropriate actions to accomplish continuing work without this waiver. In unusual circumstances, you may request further waivers under criteria in 5 CFR 576.202.