



Office of the
Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

August 5, 2005

MEMORANDUM FOR CHIEF HUMAN CAPITAL OFFICERS

FROM: LINDA M. SPRINGER,
DIRECTOR

SUBJECT: Implementing Regulation for Governmentwide Direct-Hire Authority
for Certain Federal Acquisition Positions

Pursuant to the Services Acquisition Reform Act of 2003, Congress granted department and agency heads (other than the Secretary of Defense) direct-hire authority for certain Federal acquisition positions, to be exercised in accordance with regulations issued by the Office of Personnel Management (OPM). OPM is issuing an interim regulation to implement this direct-hire authority. The interim regulation applies to Federal acquisition positions covered under title 41, United States Code (U.S.C.) 433(g)(1)(A) when there is a shortage of highly qualified candidates. To determine if a shortage exists, agencies must use the supporting evidence prescribed in title 5, Code of Federal Regulations (CFR) 337.204(b)(1)-(8) and must maintain a file of the supporting evidence for documentation and reporting purposes. The supporting evidence includes information about:

- results of workforce planning and analysis;
- employment trends including the local or national labor market;
- existence of nationwide or geographic skills shortages;
- agency efforts, including recruitment initiatives, use of other appointing authorities (e.g., schedule A, schedule B) and flexibilities, training and development programs tailored to the position(s), and an explanation of why these recruitment and training efforts have not been sufficient;
- availability and quality of candidates;
- desirability of the geographic location of the position(s);
- desirability of the duties and/or work environment associated with the position(s);
and
- other pertinent information (e.g., selective placement factors or other special requirements of the position), as well as agency use of hiring flexibilities (e.g., recruitment or retention allowances or special salary rates).

Agencies using this direct-hire authority must submit to OPM a report on their implementation of section 1413 of Public Law 108-136 no later than December 31, 2006.

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The report must include:

1. A description of how the agency's implementation satisfied the requirements of 5 CFR 337.203 and 337.204(b)(1)-(8);
2. An assessment of the effectiveness of the direct-hire authority in attracting employees with unusually high qualifications to the acquisition workforce; and
3. Any recommendations on whether the authority should be extended.

Agencies must use two authority codes to document personnel actions using this direct-hire authority. The first code, "AYM", automatically fills in "Reg. 337.201" on the Notification of Personnel Action, Standard Form (SF) 50. The second authority code, "BAE", identifies agencies' use of this Governmentwide direct-hire authority. OPM will use this information in its report to Congress on the implementation and effectiveness of the direct-hire authority in attracting individuals with unusually high qualifications to the acquisition workforce and to make any appropriate recommendations regarding whether to extend the authority.

Agencies may use the interim regulation immediately upon publication in the *Federal Register* to make a temporary, term, or permanent appointment into these positions. Recruitment under this direct-hire authority is subject to the public notice requirements in 5 U.S.C. 3327 and 3330 and 5 CFR part 300, including the displaced employee procedures prescribed in 5 CFR part 330, subpart G, and requirements in 5 CFR 332.407. In addition, agencies must comply with all relevant laws to the extent they are not exempted from such laws pursuant to 5 U.S.C. 3304(a)(3). OPM encourages agencies to make employment offers to applicants with veterans' preference whenever possible.

This direct-hire authority for Federal acquisition positions under the provisions of section 1413 of Public Law 108-136, National Defense Authorization Act for fiscal year 2004, will terminate on September 30, 2007. Therefore, agencies may not appoint any individual to a position of employment using this authority after September 30, 2007.

If you have questions, please contact Daniel Fusco, Group Manager, Recruiting, Examining, and Assessment either by email Daniel.Fusco@opm.gov or by telephone (202) 606-0830.

cc: Human Resources Directors
Chief Acquisition Officers