



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Friday, December 9, 2011

MEMORANDUM FOR: CHIEF HUMAN CAPITAL OFFICERS

FROM: John Berry, Director

Subject: Policy guidance on the reemployment of civilian retirees under the National Defense Authorization Act (NDAA) for Fiscal Year 2010

On January 8, 2010, the U.S. Office of Personnel Management (OPM) issued a memorandum for the heads of executive departments and agencies on the dual compensation (salary offset) authority provided under the National Defense Authorization Act (NDAA) for Fiscal Year 2010. The NDAA allows the head of an agency to grant dual compensation (salary offset) waivers on a temporary basis under certain specified circumstances, without seeking OPM approval. You can review the January 8, 2010, OPM memo at: <https://www.chcoc.gov/content/reemployment-civilian-retirees-under-national-defense-authorization-act-fiscal-year-2010>.

Agencies may use the attached "Question and Answer Fact Sheet" to assist them when using the NDAA FY 2010 dual compensation (salary offset) waiver authority. If you or members of your staff have questions or need information, please contact Michelle Glynn at (202) 606-1571.

cc: Human Resources Directors

Attachment-Questions and Answers Fact Sheet

Background:

On September 28, 2009, the President signed the National Defense Authorization Act for Fiscal Year 2010 (NDAA). The NDAA amended title 5, United States Code, to authorize the head of an agency to grant dual compensation (salary offset) waivers on a temporary basis under certain specified circumstances.

General Provisions

Appointment

Mentoring

Reporting Requirements

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General Provisions:

Q. Under what circumstances may the head of an agency grant dual compensation (salary offset) waivers under the NDAA 2010 provisions?

A. The head of an agency may authorize dual compensation (salary offset) waivers if necessary for:

Functions critical to the mission of the agency;

Implementation or oversight of the American Recovery and Reinvestment Act of 2009 or the Troubled Asset Relief Program;

Development, management, or oversight of agency procurement actions;

Support of the agency's Inspector General's mission;

Promotion of training or mentoring of employees;

Recruitment and retention of employees; or

Responding to an emergency involving a direct threat to life or property or other unusual circumstances.

Q. Are there any restrictions placed on the number of hours an annuitant may work under the NDAA dual compensation (salary offset) waiver authority?

A. Yes. Annuitants are limited to the following number of hours:

No more than 520 hours during the first 6 months of their retirement;

No more than 1040 hours during any 12-month period; or

No more than 3120 hours total during their re-employment.

Q. Are agencies limited in the number of dual compensation (salary offset) waivers they may authorize under the NDAA 2010 provisions?

A. Yes. The number of reemployed annuitants under the NDAA may not exceed 2.5 percent of the total number of full-time employees in their agency at any given time period.

Q. Are there any other limitations on agencies' authority to grant dual compensation (salary offset) waivers under the NDAA 2010 provisions?

A. Yes. If the total number of dual compensation waivers (salary offset) authorized exceeds 1 percent of an agency's full-time employees at any given time, the head of that agency must submit a justification and a succession plan to the U.S. Congress and the U.S. Office of Personnel Management (OPM).

Appointment:

Q. Do the NDAA 2010 provisions establish a special hiring authority for annuitants?

A. No, the NDAA 2010 provisions are a salary offset mechanism- not a special hiring authority for bringing annuitants on-board. Agencies must follow the same hiring rules they would use when appointing non-annuitants depending on the method with which they use to make appointments (e.g., competitive temporary appointments, SES reinstatement, etc.).

Q. What hiring authority may agencies use to re-employ an annuitant under the provisions made by the NDAA?

A. Agencies are to use temporary appointments limited to one year or less when authorizing a dual compensation (salary offset) waiver under the NDAA 2010 provisions.

Q. What Nature of Action code (NOA) and Legal Authority code (LAC) should agencies use when documenting actions using this authority?

A. Agencies should use P.L. 111-84 as the Legal Authority code (LAC) when documenting their use of the NDAA FY 2010 dual compensation (salary offset) waiver authority. There are no Nature of Action codes (NOA) to document the use of this dual compensation (salary offset) waiver authority because it is not a personnel action. However, agencies should use the appropriate NOA and LAC for the appointing authority being used.

Mentoring:

Q. If an annuitant is re-employed for the primary purpose of training and mentoring employees, how many hours of service can the annuitant perform under the NDAA dual compensation (salary offset) waiver provisions?

A. If the primary service performed by the annuitant is training or mentoring of employees, the time limitations set forth in the second Q and A above apply. All of the time the annuitant spends training and mentoring counts toward the limits described there.

Q. If an annuitant is re-employed for one of the "certain specified circumstances" provided by this dual compensation (salary offset) waiver authority, and for the purpose of training and mentoring employees, how many hours of service can the annuitant perform for the agency?

A. If the annuitant is re-employed for a mixed purpose that includes training and mentoring, the time the annuitant spends training and mentoring employees is not counted toward the time

limits described in the second Q and A above, but the annuitant cannot spend more than a total of 520 hours in training and mentoring activities during all of his or her reemployment.

Reporting Requirements:

Q. Do agencies have to report on their use of this dual compensation (salary offset) waiver authority?

A. Yes. Agencies are required to send a report to OPM on their use (or non-use) of the NDAA dual compensation (salary offset) waiver authority by February 1st of each year through 2015. Reports should be sent to:

U.S. Office of Personnel Management
Employee Services
Hiring and Recruitment
Hiring Policy Office, Room 6500
Attn: Michelle Glynn
Washington, DC 20415

Miscellaneous:

Q. Is OPM approval required before agencies can appoint annuitants under the NDAA provisions?

A. No. OPM approval is not required.

Q. Do agencies have permanent authority to grant their own dual compensation (salary offset) waivers under the NDAA?

A. No. Agencies' authority to grant dual compensation (salary offset) waivers under the provisions of the NDAA expires on October 27, 2014.

Q. May annuitants rehired under these provisions prior to the October 27, 2014, expiration date finish out the rest of their appointment, or do they terminate on Oct 27, 2014?

A. Yes. Agencies may allow annuitants rehired under this authority before the expiration date to serve the remainder of their respective appointments.

Q. Does this authority apply to both CSRS and FERS annuitants?

A. Yes. The dual compensation (salary offset) waiver provisions in the NDAA apply to CSRS and FERS annuitants.