



U.S. Department of Justice

Justice Management Division

Human Resources

Washington, D.C. 20530

JUN 24 2010

MEMORANDUM FOR HUMAN RESOURCES OFFICERS

FROM: Monica Doyle
Assistant Director
HR Policy and Advisory Services

A handwritten signature in blue ink that reads "Monica Doyle".

SUBJECT: Implementing Instructions for Dual Compensation Waivers under the National Defense Authorization Act (NDAA) for FY 2010, Public Law (P.L.) 111-84

Public Law 111-84 allows the heads of agencies to grant their own dual compensation (salary offset) waivers on a temporary basis under certain specified circumstances. Accordingly, through Order Number 3163-2010, dated June 4, 2010, the Attorney General has delegated to the Assistant Attorney General for Administration (AAG/A), the authority to approve dual compensation waivers for Federal annuitants reemployed in the Department of Justice (DOJ).

The above Order and detailed instructions are attached. Together with this memorandum they serve as the policy for the implementation and administration of this authority throughout the Department.

Please be aware that there are restrictions on the total percentage of hires allowed under this authority. DOJ may not exceed 2.5 percent of the full-time workforce at any time. Additionally, if 1 percent is exceeded, DOJ is required to provide an explanation and justification to the Congress and the Office of Personnel Management (OPM). Accordingly, the number of reemployed annuitants throughout DOJ shall not exceed 1,100 at any one time. Individual components may exceed the 1 percent threshold of their respective workforces only with the prior approval of the AAG/A.

For questions regarding this policy, your staff should contact the following individuals. Rachel Villare is the point of contact for questions regarding the use of this authority and the approval process. She can be reached either by telephone on (202) 616-3707 or via electronic mail at rachel.villare@usdoj.gov. Lorraine Stevens is the point of contact for questions regarding benefits procedures. She can be reached either by telephone on (202) 514-5781 or via electronic mail at lorraine.stevens@usdoj.gov.

Attachments



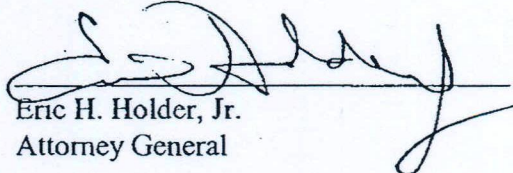
Office of the Attorney General
Washington, D.C. 20530

ORDER NO. 3163-2010

DELEGATION OF AUTHORITY TO GRANT DUAL COMPENSATION
WAIVERS FOR REEMPLOYED CIVILIAN ANNUITANTS

By virtue of the authority vested in me as Attorney General, including 5 U.S.C. § 301 and 28 U.S.C. §§ 509 and 510, I hereby delegate to the Assistant Attorney General for Administration (AAG/A) the authority to approve dual compensation waivers for reemployed annuitants, under the terms and conditions of 5 U.S.C. § 8344, as amended by the National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84, § 1122, 123 Stat. 2190, 2505-2509 (2009). I also delegate to the AAG/A the responsibility for complying with the reporting requirements imposed by the statutes set forth above. These authorities may not be redelegated.

June 4, 2010
Date


Eric H. Holder, Jr.
Attorney General

Implementing Instructions for Dual Compensation Waivers under the National Defense Authorization Act for FY 2010, Public Law 111-84

I. Statutory Criteria

A. Appointments

1. Annuitants reemployed under this authority will serve under appointments limited to one year or less.
2. Hours worked by any annuitant reemployed under these provisions are limited to:
 - a. 520 hours during the first 6 months of the individual's annuity commencement with a maximum of 1040 hours during the first year after retirement;
 - b. 1040 hours during any twelve month period;
 - c. 3,120 total hours worked under this authority per annuitant.
3. Annuitants reemployed under these provisions will not be entitled to any additional annuity benefits based upon this employment.
4. Components are responsible for ensuring that the hours of each reemployed annuitant do not exceed the amounts described above.
5. Hours of training or mentoring of employees by any annuitant shall not be included in the hours of service performed for the purposes above (unless that was the primary purpose of the appointment), but those hours of training or mentoring may not exceed 520 hours in total throughout the annuitant's reemployment.
6. The authority expires on October 27, 2014. No new appointments under this authority may be made after this date.

B. Criteria

The authority may be used when it is determined that use is necessary to:

1. Fulfill functions critical to DOJ's or the component's mission;

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2. Assist in the implementation or oversight of the American Recovery and Reinvestment Act of 2009 (PL 111-5) or the Troubled Asset Relief Program (under title 1 of the Emergency Economic Stabilization Act of 2008);
3. Assist in the development, management, or oversight of DOJ procurement actions;
4. Assist the DOJ inspector general in the performance of its mission;
5. Promote appropriate training or mentoring programs of employees;
6. Assist in the recruitment or retention of employees; or
7. Respond to an emergency involving a direct threat to life of property or other unusual circumstances.

II. Approval Process

A. Approving Official

1. The AAG/A is the approving official for all requests for the reemployment of annuitants under this authority. Approval must be obtained prior to the effective date of each appointment made under this authority.
2. Requests will be in writing with original signatures and forwarded to the Justice Management Division, Director, Human Resources (JMD HR) through the JMD HR Policy and Advisory Services office for review, approval/disapproval recommendation and transmittal to the AAG/A.
3. Requests to exceed the 1 percent full-time workforce threshold must be submitted in writing for AAG/A approval as described in paragraph II. A. 2.

B. Documentation

1. Each waiver request will address the information below.
 - a. Statement explaining why employment of the annuitant is necessary as it relates to the appropriate criterion in paragraph I. B.
 - b. Describe efforts to use other reasonable staffing options and/or pay flexibilities and why they are insufficient in this case.

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2. Each waiver request will contain the following information in addition to the criteria listed above:
 - a. Annuitant's full name and Retirement Claim Number (CSA number);
 - b. Retirement date and type of retirement action (optional, voluntary early out, discontinued service, etc.);
 - c. Annuitant's resume;
 - d. Position title, series, grade, pay plan, proposed NTE date, and geographic location;
 - e. Appointment authority and proposed effective date;
 - f. A statement from the annuitant confirming that he/she is not currently employed by the Federal government and a statement that he/she declines reemployment without a dual compensation waiver;
 - g. How the appointment and hours will be tracked to ensure compliance; and,
 - h. Approval/disapproval/discuss section for AAG/A's signature.
3. In certain circumstances, the Department may request additional documentation (e.g., a succession plan) in support of a specific component request.

III. Guidance on Benefits Procedures

It is expected that HR specialists responsible for hiring will coordinate with their component's benefits officer and those individuals responsible for processing personnel actions to ensure that such actions are properly coded for input into the personnel system of record. It is equally important to ensure that reemployed annuitants are counseled regarding the various benefits they receive and the impact of their appointments under this authority on those benefits. Consequently, benefits officers may need to be more involved in counseling such individuals prior to entry on duty for some issues (e.g., the impact on health benefits and continuity of coverage) as well as during and after the orientation process.

A. Retirement and TSP

1. The retirement code is FICA. Annuitants reemployed under a dual compensation waiver are excluded from the provisions of 5 U.S.C. Chapters 83 and 84. Such service is never creditable towards a retirement benefit. Therefore, the retirement code in block 30 of the Notification of Personnel Action, SF-50, is FICA.

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2. The Annuitant Indicator (block 28, SF-50) codes for reemployed annuitants hired under this authority are as follows.
 - a. Federal Employees Retirement Systems (FERS):
 - (i) G: Reemployed Federal Employees Retirement System (FERS) annuitant whose annuity under FERS continues after appointment and is not subject to salary reduction under 5 U.S.C. 8468;
 - (ii) H: Retired uniform services officer and reemployed FERS annuitant not subject to salary reduction under 5 U.S.C. 8468; or,
 - (iii) J: Retired uniformed service enlisted member and reemployed FERS annuitant not subject to salary reduction.
 - b. Civil Service Retirement System (CSRS):
 - (i) 6: Reemployed CSRS annuitant whose annuity under CSRS continues after appointment and salary is not subject to reduction under 5 U.S.C. 8344;
 - (ii) 7: Retired uniform service officer and reemployed CSRS annuitant not subject to salary reduction; or,
 - (iii) 8: Retired uniformed service enlisted member and reemployed CSRS annuitant not subject to salary reduction.
3. Previous retirement should be "P – Previous". In most cases, this information is displayed via the "IRIS" screens in the National Finance Center personnel/payroll system.
 - a. Retirement coverage is FICA, therefore:
 - (i) The TSP status field code is I – Ineligible;
 - (ii) The TSP Status Date is blank;
 - (iii) The TSP Eligibility Date field is blank;
 - (iv) The TSP SCD field is blank.
4. An annuitant reemployed under this authority receives both full annuity and full salary and, therefore is not eligible to participate in TSP.

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B. Health Benefits, Life Insurance and Flexible Spending Accounts – General

1. Federal Employees Health Benefits (FEHB) and Federal Employees' Group Life Insurance (FEGLI) and Flexible Spending Account (FSA) coverage as a reemployed annuitant is based on the type of appointment upon reemployment and continuity of coverage.
2. Continuity of Coverage Rule: This rule allows reemployed annuitants to retain previous benefits coverage (FEHB, FEGLI) while in an appointment excluded from coverage (such as appointments under this authority which are appointments limited to one year or less).
3. For continuity of coverage for FEHB, FEGLI and FSA, the annuitant must have been covered under FEHB, FEGLI and FSA, as appropriate, prior to his/her appointment under this authority. If the break in service is 3 days or less, the employee retains benefits coverage and the applicable premiums are deducted from the annuitant's salary. If the annuitant's break in service is more than 3 days, the employee retains benefits coverage and the applicable premiums are deducted from the annuity and are administered by OPM.

C. FEHB

1. FEHB premiums for a reemployed annuitant who is enrolled in FEHB as a retiree and who has a break in service of 3 days or less will be deducted from the annuitant's salary. The annuitant also will be eligible for premium conversion.
2. A reemployed annuitant, who is enrolled in FEHB as a retiree and who has a break in service of more than 3 days, may elect to transfer his/her health benefits from OPM to the employing component. FEHB premiums may be withheld from the reemployed annuitant's salary rather than his/her annuity so that the reemployed annuitant can take advantage of the premium conversion program. Annuitants need to be aware that if FEHB is transferred into the employing component and the annuitant is on a part-time schedule, then part time premium rates will be applied. If an annuitant wants to maintain his/her FEHB with OPM, he/she needs to submit a premium conversion waiver to the employing component.
3. Procedures for reemployed annuitants who elect to participate in premium conversion (See BAL 01-105 dated April 26, 2001, excerpts provided below):
 - a. Component will notify OPM of the effective date of the reemployment, via e-mail at HBPremiums@opm.gov, including the individual's name, date of birth, social security number, retirement claim number and effective date of reemployment.

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- b. OPM will respond with the current FEHB enrollment code and a confirmation that the FEHB premiums withheld from the annuity will end the day before the effective date of reemployment.
- c. Component will prepare Standard Form 2810 transferring current FEHB enrollment as of date of reemployment.

D. FEGLI

- 1. If an annuitant is reemployed in an appointment under this authority (i.e., one that is excluded from coverage) with a break in service of more than 3 days, his/her FEGLI elections taken into retirement will be administered by OPM and FEGLI premiums will be withheld from the annuity.
- 2. If the annuitant is reemployed with a break in service of 3 days or less, the insurance premiums are deducted from the reemployed annuitant's salary.
 - a. The FEGLI coverage is based on what the individual chose to carry into in retirement.
 - b. Basic, Option A and/or Option C are suspended for reemployed annuitants.
 - c. If a reemployed annuitant chooses to waive Basic (waive all life insurance coverage), Option A and/or Option C, the annuitant is not eligible to regain the coverage once he/she separates from his/her reemployed annuitant position (i.e., it is a permanent decision). FEGLI elections/waivers are made through submission of a Standard Form 2817 to the employing component.
 - d. If an annuitant has Option B, he/she can choose whether to retain Option B as an annuitant or as an employee.
 - e. Upon separation, reemployed annuitants are not eligible to continue the coverage acquired during the period of reemployment.
- 3. The employing component must submit an OPM Form 1482 - Agency Certification of Status of Reemployed Annuitant - Federal Employees Group Life Insurance to OPM for each annuitant reemployed under this authority.

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E. Flexible Spending Accounts (FSA)

1. A reemployed annuitant is eligible to participate in a Health Care Flexible Spending Account (HCFSA) if he/she meets the continuity of coverage rule (see paragraph III. B.).
2. Reemployed annuitants are eligible to participate in the Dependent Care Flexible Spending Account (DCFSA) immediately upon their entry on duty, except if they are on an intermittent work schedule. An employee must have eligible dependents to qualify for DCFSA.

F. Sick Leave

Sick leave is used to determine the reemployed annuitant's length of service for annuity computation purposes; therefore, it cannot be re-credited to the reemployed annuitant's account except as follows. If a FERS reemployed annuitant separated prior to October 28, 2009 his/her sick leave can be re-credited as it was not used in the computation of his/her FERS annuity.

G. References

1. 5 USC 8344 (a) and 8468(b)
2. 5 CFR 870.701
3. 5 CFR 892.401
4. CSRS and FERS Handbook, Chapter 100

IV. Program Oversight and Evaluation

- A. Components will ensure that they comply with all applicable laws, rules, regulations, and policies when administering this authority, such as compliance with public notice requirements, temporary employment, CTAP and ICTAP requirements, RPL, veterans' preference, and buyout repayments, etc.
- B. Annual, calendar year reports on the use of this authority are required. Reports are due to JMD HR on January 20th of each year. The report will consist of:
 1. Number of reemployed annuitants hired with this authority;
 2. Name, series, grade level, position title, geographic location of each annuitant;

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3. Status – i.e., part-time or full time, hours worked; and
4. The criterion (see paragraph I. B.) and appointment authority used to reemploy the annuitant.