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Date

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**Acting Director for Human Resources Management and
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**DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT**

HUMAN RESOURCES (HR) BULLETIN #240, FY20

SUBJECT: Reemployment of Civilian Retirees Under the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020

EFFECTIVE DATE: December 20, 2019

EXPIRATION DATE: Effective until December 31, 2024

SUPERSEDES: HR Bulletin #219, FY18, “Reemployment of Civilian Retirees under the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015.”

BACKGROUND: On December 20, 2019, the President signed the NDAA for FY 2020. Section 1117 of the NDAA for FY 2020 extends the authority originally provided in the NDAA for FY 2010, and subsequently extended in the NDAA for FY 2015. This authority allows the head of an agency to grant dual compensation (salary offset) waivers on a temporary basis under certain specified circumstances for reemployed annuitants through December 31, 2024. The Office of Human Resources Management (OHRM) provided email notification of the NDAA extension to the Principal Human Resources Managers on January 6, 2020.

PURPOSE: The bulletin sets forth policy and guidance for requesting initial dual compensation waivers and subsequent extensions thereof, to reemploy an individual receiving an annuity from the Civil Service Retirement System or the Federal Employees Retirement System without discontinuing or reducing the individual’s salary under Title 5, United States Code (U.S.C.) §§ 8344 or 8468.

APPLICABILITY: This authority may be provided to Federal annuitants on time-limited appointments and remains in effect until its expiration on December 31, 2024. To be eligible, the annuitant’s appointments **must be limited to 1 year or less** (i.e., temporary appointments, experts/consultants, etc.) and only for positions necessary to: (1) fulfill functions critical to the mission of the Department of Commerce (Department); (2) assist in the implementation or oversight of the American Recovery and Reinvestment Act of 2009 or the Troubled Asset Relief Program under Title 1 of the Emergency Economic Stabilization Act of 2008; (3) assist with the

development, management, or oversight of the Department's procurement actions; (4) assist the Department's Inspector General (IG) in the performance of the mission of the IG; (5) promote appropriate employee training or mentoring programs; (6) assist in the recruitment or retention of employees; or (7) respond to an emergency involving a direct threat to life or property or other unusual circumstances.

Use of this authority does not alter or affect the reemployment restrictions found in Title 5, Code of Federal Regulations (CFR), Part 576 for employees who separated and received a Voluntary Separation Incentive Payment.

HOURS OF SERVICE: This authority prohibits waiving the salary offset provision of Title 5, U.S.C. §§ 8344 or 8468 to an annuitant (1) for more than 520 hours of service performed during the 6 months following the individual's annuity commencement date; (2) for more than 1,040 hours of service performed during any 12-month period; and (3) for more than a **total of 3,120 hours** of service performed by the annuitant.

If it is anticipated that the annuitant will be needed for more than 24 months, the first and second 12-month service periods must be limited to 1,039 hours (see "Appointment Restrictions"). While there is an overall limit of 3,120 hours of service performed by an annuitant, the limitation of 1,040 hours within a 12-month period cannot be combined. For example, an annuitant cannot work 2,080 hours in a 12-month period even though it is below the overall limit of 3,120 hours.

Note: The NDAA for FY 2020 extends the authority originally provided in the NDAA for FY 2010, and subsequently extended in the NDAA for FY 2015. There is no provision for the time limitations to start over under the extended authority. Therefore, the total of 3,120 hours of service performed by an annuitant must be calculated from the initial dual compensation waiver, including those approved under the previous NDAs.

Training/Mentoring – If the annuitant is reemployed for a mixed purpose that includes training and mentoring, the time he/she spends training and mentoring employees is not counted toward the time limits described above. However, the annuitant cannot spend more than a total of 520 hours in training and mentoring activities during all of his or her reemployment.

If the primary service performed by the annuitant is training or mentoring of employees, all of the time the annuitant spends training and mentoring counts toward the time limits described above.

APPOINTMENT RESTRICTIONS: Title 5, CFR § 316.401(c)(1) prohibits temporary appointments for periods of more than 1 year. Appointments may be extended up to a maximum of 1 additional year (24 months of total service). A position may not be filled using a temporary appointment if the position has previously been filled by a temporary appointment for an aggregate of 24 months, within the preceding 3-year period (Title 5, CFR § 316.401(c)(2)).

However, temporary appointments may be extended beyond the 2-year period of service for intermittent or seasonal work, provided that appointments and extensions are made in increments

of 1 year or less, and that employment in the same or successor position under this or any other appointing authority totals less than 6 months (1,040 hours), excluding overtime, in a service year (Title 5, CFR § 316.401(d)(1)(i) and (ii)).

If a supervisor anticipates the need for a reemployed annuitant's services in the same position or a position performing the same basic duties for more than 24 months, the annuitant **MUST** work fewer than 1,040 hours during each service year.

For Example:

Not Eligible for Extension Beyond 24 Months:

Annuitant works 1,040 hours in first service year

Annuitant works 1,039 hours in second service year

Annuitant is not eligible for another temporary appointment

Eligible for Extension Beyond 24 Months:

Annuitant works 1,039 hours in first service year

Annuitant works 1,039 hours in second service year

Annuitant works 1,040 hours in third service year

Totaling 3,118 hours

PROCEDURES: Initial requests to waive the dual compensation restrictions for reemployed annuitants, and requests for extensions of the initial waiver and temporary appointment under the NDAA must be submitted to the Director for Human Resources Management and Chief Human Capital Officer, OHRM, through the appropriate operating unit official. Requests must contain the required documentation listed below and will be reviewed on a case-by-case basis.

ADVERTISING POSITIONS: Current policy applies on advertising competitive service positions.

REQUIRED DOCUMENTATION:

Initial Request –

- Written documentation supporting that employment of the reemployed annuitant is necessary and meets at least one of the seven covered applicabilities;
- A copy of the annuitant's resume;
- Documentation indicating applicable policies on advertising vacant competitive service positions were met; and
- The attached "Request for Dual Compensation Waiver Under the National Defense Authorization Act for Fiscal Year 2020."

Extension Request –

- Written documentation supporting that employment of the reemployed annuitant is necessary and meets at least one of the seven covered applicabilities;
- A copy of the annuitant's resume;

- Copy of all appropriate “Statement of Earnings and Leave,” for the annuitant documenting the number of hours of service performed during the previous 12-month service period(s);
- The number of hours spent on training/mentoring, and an explanation of training/mentoring activities; and
- The attached “Request for Dual Compensation Waiver Under the National Defense Authorization Act for Fiscal Year 2020.”

PROCESSING: When processing reemployed annuitants under the NDAA, the appropriate annuitant indicator codes must be used:

0 – Reemployed CSRS annuitant
K – Reemployed FERS annuitant

You must maintain a record of each request and the action for 3 years following the action date.

DEPARTMENT RESTRICTIONS: The total number of annuitants who receive a waiver under the NDAA may not exceed 2.5 percent of the Department’s full-time workforce. If the total number of annuitants to whom a waiver is granted exceeds 1 percent of the total number of full-time employees, a report to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and OPM must be provided. The report must include an explanation that justifies the need for the waivers in excess of 1 percent, and not later than 180 days after submitting the report, a succession plan must be submitted to the same parties.

REFERENCES: National Defense Authorization Act for Fiscal Year 2020, Section 1117, *Extension of Authority for Part-Time Reemployment*; OPM, Memorandum for Chief Human Capital Officers, *Policy Guidance on the Reemployment of Civilian Retirees Under the National Defense Authorization Act (NDAA) for Fiscal Year 2010*; Title 5, U.S.C. §§ 8344 and 8468; Title 5, CFR Part 576; Title 5, CFR § 316.401

OFFICE OF POLICY AND PROGRAMS: Valerie Smith, Director, ysmith@doc.gov or on 202-482-0272

PROGRAM MANAGER CONTACT INFORMATION: Mary O’Connor, Program Manager, MOConnor@doc.gov, or on 202-482-2080

**REQUEST FOR DUAL COMPENSATION WAIVER OR EXTENSION UNDER
THE NATIONAL DEFENSE AUTHORIZATION ACT (NDAA) FOR
FISCAL YEAR 2020**

Date of request:

Full name of annuitant:

Is this an initial request or extension request?

If extension request, please provide the initial appointment date and any subsequent appointment dates, along with the number of hours of service performed in each 12-month period.

Title, pay plan, series, grade of position:

Proposed appointment date:

Not-to-exceed date:

Under which necessity (please check one):

- 1) Fulfill functions critical to the mission of the Department. _____
- 2) Assist in the implementation or oversight of the American Recovery and Reinvestment Act of 2009 or the Troubled Asset Relief Program under Title 1 of the Emergency Economic Stabilization Act of 2008. _____
- 3) Assist with the development, management or oversight of the Department's procurement actions. _____
- 4) Assist the Department's Inspector General. _____
- 5) Promote appropriate employee training or mentoring programs. _____
- 6) Assist in the recruitment or retention of employees. _____
- 7) Respond to an emergency involving a direct threat to life or property or other unusual circumstances. _____