



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

May 4, 2015

**MEMORANDUM FOR UNDER SECRETARIES, ASSISTANT SECRETARIES,
AND OTHER KEY OFFICIALS**

SUBJECT: Delegation of Authority to Approve Dual Compensation Waivers for Unusual Circumstances

- 1. DELEGATION:** This memorandum delegates to the Assistant Secretary for Human Resources and Administration the authority to waive the salary offset required under Title 5 United States Code (U.S.C.) sections 8344 and 8468 in order to reemploy an annuitant defined by 5 U.S.C. §§ 8331(9) and 8401(2) on a temporary (1 year or less) basis when it is necessary to reemploy individuals in support of establishing and implementing the Department of Veterans Affairs (VA), Office of Accountability Review.
- 2. AUTHORITY:** Office of Personnel Management (OPM) Letter dated April 16, 2015; Title 5, U.S.C. 8344; 5 U.S.C. 8468; and 5 Code of Federal Regulations 553.202.
- 3. RESTRICTIONS:** Approved waivers are subject to the limitations specified in the attached OPM delegation.
- 4. REDELEGATION:** The Assistant Secretary for Human Resources and Administration may not further redelegate this authority.
- 5. EFFECTIVE DATE:** This delegation of authority is effective upon signature and remains in effect until December 31, 2016.

Robert A. McDonald

Robert A. McDonald

Attachment



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

APR 16 2015

The Director

The Honorable Robert A. McDonald
Secretary
U.S. Department of Veterans Affairs
Office of the Secretary
810 Vermont Avenue, NW
Washington, DC 20420

Dear Mr. Secretary:

The U.S. Office of Personnel Management (OPM) has approved your February 2, 2015 request, supplemented with information provided on February 26, 2015, on behalf of the Department of Veterans Affairs (VA), for a delegation of authority for a dual compensation reduction (salary off-set) waiver under 5 CFR 553.202. The enclosed delegated authority will enable the VA to waive the salary off-set in order to reemploy up to 15 individuals for the occupations of Human Resources Specialist (Employee Relations), GS-0201-13/14/15, Health Systems Specialist, GS-0671-13/14, and Management and Program Analyst, GS-0343-13, located at various VA duty stations throughout the United States. This delegation of authority is needed to support the establishment and implementation of the newly created VA Office of Accountability Review (OAR). The purpose of this new office is to address VA senior leadership accountability and related investigations into allegations of misconduct and inappropriate scheduling and access to medical appointments for our nation's veterans.

In order to effectively establish and implement the newly created VA OAR, the VA may need to reemploy up to 15 experienced individuals as Human Resources Specialists, Health Systems Specialists, and Management and Program Analysts at various grade levels at VA duty station locations throughout the United States. These employees will help VA to address allegations and incidents of senior manager misconduct with the aim of improving overall organizational integrity and performance over time. The main purpose of the VA OAR is to improve and accelerate leadership accountability actions consistently across the Department. OAR does this by investigating allegations of inappropriate scheduling of medical care for our nation's veterans, whistleblower complaints substantiated by the Office of the Special Counsel, and other alleged senior management misconduct. OPM is granting this authority until Saturday, December 31, 2016. The VA request meets the criteria under 5 CFR 553.202, as follows:

1. *Description of the situation(s) for which the authority is requested.* As noted in its letter of February 2, 2015, and further established in supplementary material filed on February 26, the VA is faced with an unusual circumstance resulting from allegations of inappropriate management of veterans' access to health care at the Phoenix, AZ, VA Medical Center, as well as other VA Medical Centers and community-based outpatient clinics. In 2013, an employee filed a complaint with the VA Office of Inspector General (OIG), alleging that the purported successes in reducing wait times derived from manipulations of data, and that veterans were dying while waiting for medical appointments. In May 2014, these allegations were announced

to the U.S. Congress and to the general public. During the congressional hearing, Chairman Jeff Miller, House Committee on Veterans' Affairs, stated that dozens of VA patients in Phoenix, AZ, could have died while awaiting medical care.

Chairman Miller also stated that VA OIG investigators have evidence that the Phoenix, AZ, VA Medical Center kept two sets of records to conceal prolonged wait times for appointments. This congressional hearing raised concerns about the VA's ability to hold employees accountable for misconduct and/or poor performance. Initially, the OAR was established as a temporary office. Due to this congressional hearing in December 2014, however, the VA Secretary approved the establishment of OAR as a new, permanent VA Office, and expanded the office's mission to include reviewing and investigating allegations of misconduct and lack of oversight by senior leaders throughout the VA. The OAR also establishes and promulgates consistent investigative practices and procedures to determine whether allegations can be substantiated and whether discipline should be imposed. In order to respond to this highly visible congressional interest and on-going OIG investigation, the VA must successfully establish the OAR. This effort will eventually help to ensure that, in the future, VA medical centers and primary care clinics provide our nation's veterans with timely medical appointments.

As a result of these allegations, VA expects OAR to have 150-200 investigations to resolve each year. As a result of the initial allegations, VA investigated 70 cases between May 2013 and May 2014. These were investigated by 7 OAR staff members. Since May 2014, this caseload has doubled. The VA critically needs to be in a position to reemploy up to 15 employees in order to meet these needs and ensure the best quality of health care for our nation's veterans. This unusual circumstance could not be avoided because the need to hire is the direct result of the allegations concerning inappropriate conduct by VA employees and officials, including senior leadership at the VA.

2. Identification of the occupations, grades, and locations of positions that might be filled under this delegated authority. This approval allows VA to reemploy up to 15 individuals as Human Resources Specialists (Employee Relations), GS-0201-13/14/15, Health Systems Specialists, GS-0671-13/14, and Management and Program Analysts, GS-0343-13, at VA duty station locations across the United States. Between May 2013 and May 2014 approximately 70 cases were investigated. To date, these cases have doubled and the VA OIG continues to increase the number of facilities investigated for possible wrong-doing. The OAR currently has 112 open cases. Additionally, the Office of Special Counsel's VA caseload has also surged. Currently, the agency has an inadequate number of experienced Human Resources Specialists, who are trained in performing administrative investigations, to support this work. All appointees hired pursuant to this authority will be appointed to a temporary, time-limited appointment.

3. Statement of expected duration. The VA anticipates this unusual circumstance will last until December 31, 2016. The delegation is effective on the date VA signs the attached delegation of authority and ends on Saturday, December 31, 2016. No waiver granted pursuant to this delegation may continue beyond the December 31, 2016 termination date. This delegation also identifies the specific requirements and limitations related to this authority. In addition, VA

DELEGATED AUTHORITY TO THE DEPARTMENT OF VETERANS AFFAIRS FOR UNUSAL CIRCUMSTANCES

The Director, Office of Personnel Management (OPM), hereby delegates to the head or acting head of the U.S. Department of Veterans Affairs (VA), or his designee, authority to waive the dual compensation reduction (salary off-set) required of reemployed annuitants by sections 8344 and 8468 of title 5, United States Code in connection with appointments for the establishment and implementation of the new VA Office of Accountability Review (OAR). This delegation will enable the Secretary or his designee to waive the salary off-set when necessary to reemploy a Civil Service Retirement System (CSRS) or Federal Employees Retirement System (FERS) annuitant on a temporary basis, but only if, and for so long as, the authority is necessary to hire individuals in support of establishing and implementing the VA OAR. This delegation begins on the date the Secretary signs this delegation below, and ends on Saturday, December 31, 2016, and is subject to the following limitations and requirements:

1. The head or acting head or his delegate (hereafter, you) may waive the salary off-set on a case-by-case basis, when necessary to quickly hire, on temporary appointment, an annuitant with optional retirement, excluding annuitants with early voluntary and buyout retirements, for the establishment and implementation of the new VA OAR.
2. You must terminate the waiver when the conditions that make the waiver necessary change, when the annuitant leaves the position, when the position or nature of the work changes, or when the not-to-exceed date is reached. Any waiver granted pursuant to this delegation must terminate no later than Saturday, December 31, 2016.
3. You may re-delegate this authority to a senior VA human resources official at the Headquarters level familiar with the purpose and requirements of the VA OAR.
4. Waiver requests must be in writing (email is acceptable). The annuitant must have declined reappointment without a waiver in order for a waiver to be requested. The waiver request must include the following:
 - The position's title, series, pay plan, grade, work schedule (full-time, part-time, or intermittent), work location (city and state), the proposed appointing authority, the appointment's termination date, and the waiver's termination date.
 - The annuitant's full name and civil service retirement number and a recitation whether the annuitant has declined re-employment without a waiver (quoting the annuitant's words is acceptable).
 - A brief statement documenting that the position and work are of a temporary nature and, reciting that the appointment in question will be used solely to support your hiring efforts for the establishment and implementation of the newly created VA OAR and explaining how the appointment in question will directly support such efforts. Each approval of a waiver must provide a reason why the waiver is justified by criteria set forth in applicable OPM regulation.

5. Approval must also be in writing. You must maintain the record of each request and your action on any request that was approved for three years following the action date.
6. You must forward to OPM ES/RH, on a quarterly basis, copies of the waiver requests processed, and the records of the actions on these requests for the period covered by that quarter. You must also make these records available upon request.
7. You may approve requests under this delegation authority for a total of up to 15 individuals for the specific positions listed in the approval letter. These positions are located nationwide.
8. You may approve a request when the office has a temporary critical need to support the establishment and implementation of the VA OAR. For a continuing position, you must post immediately a vacancy announcement on USAJOBS.gov and use all reasonable recruitment incentives and staffing flexibilities to fill the vacancy as soon as possible. You may approve a request **only if, and for as long as, no other reasonable staffing option exists.***

*Other reasonable staffing options include doing the following **first**:

- Hiring all qualified applicants who are available to work;
- Hiring all qualified annuitants who are available to work with their salary offset;
- Offering details, reassignments, voluntary overtime or compensatory time off to qualified employees; and
- Replacing annuitants working with a salary off-set waiver.

Note: Reemployed annuitants serve at the will of the appointing official, per 5 U.S.C. 3323. Agencies may hire annuitants using any appropriate, existing appointing authority. Agencies may adjust the work schedule of annuitants without advanced notice or procedures. Annuitants with a salary off-set waiver may not make retirement contributions or participate in the Thrift Savings Plan (TSP). This delegation enables you to pay annuitants under a temporary time-limited appointment on a full-time work schedule up to 40 hours per week.



Katherine Archuleta
Director
U.S. Office of Personnel Management

APR 16 2015

Date



Robert A. McDonald
Secretary
U.S. Department of Veterans Affairs

May 4, 2015

Date