

Reemployment of Civilian Retirees to Meet Exceptional Employment Needs

Questions and Answers

The regulations guiding *Reemployment of Civilian Retirees to Meet Exceptional Employment Needs* are found in the Code of Federal Regulations (CFR). The citation is 5 CFR part 553. The questions and answers listed here are not meant to be a substitute for reading the regulations. We hope this information will be helpful to your agency's managers and human resources specialists.

- RECENT CHANGES
- GENERAL PROVISIONS
- EMERGENCY HIRING NEED
- SEVERE RECRUITING DIFFICULTY
- NEED TO RETAIN A PARTICULAR INDIVIDUAL
- OTHER UNUSUAL CIRCUMSTANCES
- DELEGATION OF WAIVER AUTHORITY

Recent Changes

Q. What are the new changes to the regulations pertaining to salary offset (dual compensation) waivers?

The final regulations clarify that it is possible to grant a waiver on the grounds of "other unusual circumstances" that do not rise to the level of a true emergency. To do this we restricted 5 CFR 553.201(c) to emergencies and added a new paragraph, "Requests based on other unusual circumstances" at 5 CFR 553.201(f).

Similarly, for agency requests for delegated authority, we modified 5 CFR 553.202(b)(1) to separate other unusual circumstances from emergencies.

Q. Why were these changes made?

OPM made these changes to provide ourselves with the same flexibility the statute affords. In essence we wanted to clarify that OPM may grant or delegate to agencies the authority to grant salary offset waivers in situations resulting from emergencies posing immediate and direct threat to life or property or situations resulting from other unusual circumstances that do not rise to the level of a true emergency.

General Provisions

Q. Where are the regulations pertaining to salary offset (dual compensation) waivers located?

Regulations pertaining to salary offset (dual compensation) waivers can be found in the Code of Federal Regulations, 5 CFR part 553. These regulations implement statutory provisions codified at 5 U.S.C. 8344(i) and 8468(f).

Q. Under what conditions may agencies request salary offset (dual compensation) waivers from OPM?

Agencies may request approval from OPM for individual waivers (i.e., on a case-by-case basis) or delegated authority to grant waivers.

Q. Will OPM delegate waiver authority to agencies without an agency request for delegated authority?

No. OPM will not delegate waiver authority without a request from the agency. OPM will only delegate waiver authority upon the request of an agency head or official at the headquarters level of an agency.

Q. What are the different types of situations for which agencies may request waivers on a case-by-case basis from OPM?

The regulations contain four types or categories of case-by-case waivers:

- Emergency hiring need;
- Severe recruiting difficulty;
- Need to retain a particular individual uniquely qualified for a specific project; and
- Requests based on other unusual circumstances not rising to the level of an emergency.

Q. What information must agencies submit when requesting waivers on a case-by-case basis from OPM?

The answer will depend upon the justification submitted. (See discussion below.)

Q. Is OPM required to approve any salary offset (dual compensation) waiver request that meets the regulatory criteria for approval?

No. OPM authority to grant dual compensation waivers, or delegation of waiver authority, is discretionary, not mandatory. OPM always retains the discretion to deny a request even if the agency establishes that regulatory criteria are met. In essence, the criteria in part 553 are simply a threshold that must be met before OPM may act; they do not establish a requirement to act, however.

Q. Do annuitants earn additional retirement benefits when reemployed with a salary offset (dual compensation) waiver?

No. Annuitants who are reemployed with a salary offset (dual compensation) waiver are not eligible for additional retirement coverage (other than Social Security coverage).

Q. May individuals who are re-employed with a salary offset (dual compensation) waiver earn health and life insurance benefits?

Generally, if the re-employment is for more than one year benefits coverage is available, regardless of whether the individual has coverage as an annuitant.

Q. Do reemployed annuitants earn annual and sick leave?

Yes, reemployed annuitants may earn both annual and sick leave during the period of their reemployment.

Q. Do reemployed annuitants have reduction in force (RIF) protections or can they be let go at any time?

Reemployed annuitants under a salary offset waiver do not have reduction in force (RIF) protection. These individuals are at-will employees who can be terminated without RIF protections whenever their employing agency chooses to terminate the employment.

Q. May an agency seek an extension for a waiver which has expired?

No, once an initial waiver has expired, agencies must request a new waiver. Agencies should follow the same procedures as when requesting an initial waiver or delegation of waiver authority.

Emergency Hiring Need

Q. What constitutes an “emergency” for purposes of 5 CFR 201(c) and 202?

An emergency could be a military threat, natural disaster, or other unforeseen occurrence (e.g., an outbreak of pandemic influenza). Emergencies must be sufficiently significant that they involve direct threats to life or property.

Q. May agencies request waivers under the emergency criteria in advance of an actual emergency, or must the request be made for emergencies that have already occurred?

Agencies may only request waivers for emergencies that have already occurred.

Q. What documentation must agencies submit in order to receive consideration from OPM under the “emergency hiring need” criteria?

Agencies MUST submit the following documentation, for requests based on emergency hiring needs, which describes:

- A statement confirming that the person whom the agency wishes to employ is not currently a Federal employee, i.e., is already a Federal annuitant;
- A statement that the annuitant whom the agency wishes to reemploy will not accept the offer without a waiver;
- The name of the individual for whom the waiver is being requested;
- The appointing authority the agency intends to use to reemploy the annuitant;
- The position to which the agency intends to reemploy the annuitant;
- The military threat, natural disaster, or unforeseen occurrence;
- The date it occurred;
- The expected duration of the emergency response work; and
- How the individual is uniquely qualified for the emergency response work or that the number of positions to be filled and/or urgency of response justifies making the appointment without further delay.

Severe Recruiting Difficulty

Q. Is public notice (i.e., a USAJOBS vacancy announcement) always required before OPM will consider an agency request under “severe recruiting difficulty”?

Public notice is required whenever the position the agency is seeking to fill via waiver requires it (i.e., positions in the competitive service or Senior Executive Service). Agencies are not required to describe the results of public notice in their waiver requests for excepted service positions because these positions do not require public notice prior to being filled.

When public notice is required, OPM recommends agencies describe all methods of recruiting (e.g., newspaper ads, notices in professional journals, or in-house recruiting) in their requests. Such information may strengthen an agency’s case for a severe recruiting difficulty.

Q. Must an individual for whom a waiver is being sought be the only qualified candidate or can he/she be one of several qualified candidates?

The individual for whom an agency is seeking a waiver based on a severe recruiting difficulty must be the only qualified candidate described in the agency’s recruiting efforts. For these purposes, a minimally qualified candidate is a qualified candidate.

Q. What documentation must agencies submit in order to receive consideration from OPM under the “severe recruiting difficulty” criteria?

Agencies MUST submit documentation, for requests based on a severe recruiting difficulty, which describes:

- A statement confirming that the person whom the agency wishes to employ is not currently a Federal employee, i.e., is already a Federal annuitant;
- A statement that the annuitant whom the agency wishes to reemploy will not accept the offer without a waiver;
- The name of the individual for whom the waiver is being requested;
- The appointing authority the agency intends to use to reemploy the annuitant.;
- The position to which the agency intends to reemploy the annuitant;
- The length of the agency's recruiting efforts;
- The breadth of the agency's recruiting efforts;
- The results of the agency's recruiting efforts; and
- Any other factors (e.g., unusual qualification requirements or working conditions) which demonstrate that a legitimate recruiting need cannot be met without the requested waiver.

Agency requests should contain the specific dates during which vacancy announcements were open; the number of applicants for each vacancy announcement advertised; the number of applicants referred to the selecting official; and an explanation as to why none of these candidates was selected.

Need to Retain a Particular Individual

Q. May OPM approve waivers under the “need to retain” criteria for individuals who no longer work for the requesting agency?

No. OPM cannot grant waivers under “need to retain” for individuals who are no longer on the agency's rolls.

Q. May OPM approve waivers under the “need to retain” category to retain an individual to perform all of the duties of the position he or she held prior to retirement?

No. Section 553.201(e) provides for retention of an individual uniquely qualified for an on-going project. Section 553.201(e) does not provide for retention of an individual to perform all of the duties of the position that he or she held prior to retirement. For these purposes, a project may encompass a subset of the duties performed by the individual prior to retirement, but should, in fact, be properly describable as a “project” within the usual sense of that word.

OPM will not grant waivers under the “need to retain” category merely to avoid delay in scheduled completion of on-going work.

Q. What documentation must agencies submit in order to receive consideration from OPM under the “need to retain a particular individual” criteria?

Agencies MUST submit documentation, for requests based on a need to retain a particular individual, which describes each of the following:

- A statement confirming that the person whom the agency wishes to retain is currently working for the agency;
- A statement that the employee whom the agency wishes to retain intends to retire (or, in the case of an annuitant currently reemployed without a waiver, intends to resign) and will not stay on without a waiver.
- The name of the individual for whom the waiver is being requested;
- The appointing authority the agency intends to use to retain the person;
- The position in which the agency intends to retain the annuitant;
- Critical nature of the project
 - The importance of the project to the agency’s mission;
 - Potential costs of project failure or delay;
 - Any legislative or Presidential deadlines;
 - Any other factors demonstrating that the project is unusually critical
- Candidate’s unique qualifications
 - The knowledge, skills, and abilities possessed by the candidate that are essential for successful completion of the project;
 - Justification that these knowledge, skills, and abilities could not be acquired by another appointee within a reasonable amount of time
- Other staffing options
 - Why the work could not be assigned to other employees involved with the same project

Other Unusual Circumstances

Q. The final regulation adds a new category under which OPM may grant case-by-case waivers or delegate the authority to grant such waivers called “Other unusual circumstances.” Why is this term used?

The term “other unusual circumstances” is contained in the authorizing statutes, 5 U.S.C. 8344 and 8468.

Q. In what types of situations may OPM approve waivers or delegations of waiver authority under the “other unusual circumstance” category?

Unusual circumstances may include, but are not limited to, the following types of situations:

- The need to conform to a congressional or other mandate to meet new or expanded mission requirements by a particular date; or

- Instances when an annuitant is needed on a temporary basis because he or she possesses a security clearance, authorization, or other similar credential needed to perform mission critical work which cannot be obtained by other employees in a reasonable amount of time in order to complete or continue the work.

Q. What documentation must agencies submit in order to receive consideration from OPM under the “other unusual circumstances” criteria?

Agencies **MUST** submit documentation, for requests based on other unusual circumstances, which describe each of the following:

- A statement confirming that the person whom the agency wishes to employ is not currently a Federal employee, i.e., is already a Federal annuitant;
- A statement that the annuitant whom the agency wishes to reemploy will not accept the offer without a waiver;
- The name of the individual for whom the waiver is being requested;
- The appointing authority the agency intends to use to reemploy the annuitant;
- The position to which the agency intends to reemploy the annuitant;
- The unusual circumstance;
- When the unusual circumstance first occurred;
- The length of time the agency expects the unusual circumstance to last;
- How the waiver request directly supports the agency’s mission;
- An explanation as to how or why the unusual circumstance could not be avoided/anticipated/addressed prior to the waiver request;
- How the individual is uniquely qualified for responding to the unusual circumstance or that the urgency of response justifies making the appointment without further delay

Delegation of Waiver Authority

Q. Under what circumstances may OPM grant a delegation of waiver authority?

OPM may grant a delegation of waiver authority for the following situations:

- emergencies posing immediate and direct threat to life or property; or
- other unusual circumstances

Q. What constitutes an emergency or an unusual circumstance for purposes of 5 CFR 553.202?

OPM applies the same criteria and guidelines for case-by-case waivers with respect to emergencies and other unusual circumstances when considering delegations of waiver authority.

Q. What documentation must agencies submit in order to receive consideration from OPM for a delegation of waiver authority?

Agencies' request for delegation MUST include documentation which describes:

- The situations for which the delegated authority is being requested;
 - Situations must be emergencies posing immediate and direct threat to life or property or other unusual circumstances;
- Identification of the occupations, grades, and locations of positions that might be filled under the delegated authority;
- A statement of the expected duration of the reemployment the agency will approve under the delegation.

Q. What must an agency show in order to obtain an extension of an existing waiver?

The agency must show that the same conditions justifying the original waiver still exist. For example, if the basis for the original request was an emergency, conditions surrounding the original emergency must still exist. If the basis for the original request was severe difficulty in recruiting, the agency should demonstrate that new efforts to recruit have been made, and that the agency was again unable to recruit and appoint a qualified candidate. If the basis for the original request was the need to retain a current employee for an ongoing project, the agency must demonstrate that project is not complete and that the other factors supporting retention still exist.