



Department of Energy
Washington, DC 20585

MAR 20 2009

MEMORANDUM FOR: HUMAN RESOURCE DIRECTORS

FROM: SARAH J. BONILLA *Kenneth Neault for*
DIRECTOR, HUMAN CAPITAL MANAGEMENT

SUBJECT: Guidance on Using Schedule A Hiring Authority for
American Recovery and Reinvestment Act of 2009

OPM is authorizing the use of excepted service appointments under Title 5 CFR 213.3102 (i) (3) to address the needs of agencies to hire additional staff in support of the American Recovery and Reinvestment Act of 2009 (ARRA) (see attached OPM memorandum).

The Schedule A authority under 5 CFR 213.3102 (i) (3) provides agencies with the flexibility to fill positions on a temporary basis without having to follow OPM's public notice requirements and competitive examining procedures. However, these appointments are subject to 5 CFR 302.301(a), which requires agencies to "establish definite rules regarding the acceptance of applications for employment of positions covered by this part and shall make these rules a matter of record."

In order to ensure a transparent, reconstructable process for accepting applications, Servicing Human Resource Offices (SROs) must document:

- how applications were obtained, including any recruitment that was used;
- who applied;
- how minimum qualifications were determined;
- how veterans' preference was applied;
- and, how applicants were ranked for referral.

When using the Schedule A authority for ARRA, SROs must apply veterans' preference according to the provisions of 5 CFR 302. This requires the use of one of two methods: either eligible veterans receive a numerical score with an additional 5 or 10 points as appropriate, or all candidates are placed in preference categories, with veterans listed and considered before non-veterans. In addition, as a result of a recent court ruling (see attached OPM memorandum), agencies must apply competitive service rules to pass over preference eligibles with a 30 percent or more compensable service-connected disability for excepted service positions. This also means that the SRO must get approval from the Office of Personnel Management prior to selecting a non-preference applicant over a 30 percent disabled veteran. All requests to pass over 30 percent disabled veterans must be sent to OPM through the



Office of Strategic Planning and Policy, Office of the Chief Human Capital Officer (HC-10).

As a reminder, appointments under this authority can only be for a period of up to one year, but may be extended in increments of up to one year. However, no appointment may be extended beyond September 30, 2012. In addition, employees hired under Schedule A cannot be noncompetitively converted to permanent positions, should they become available.

In managing applications for these temporary appointments, SROs must be mindful that these appointments are covered by rules governing nepotism and prohibited personnel practices.

In general, ARRA envisioned temporarily filling positions needed to specifically support the program requirements outlined in the Act, since it is a time-limited appropriation. As a caution, if you are making permanent hires to meet ARRA requirements, you need to ensure that your workforce and succession management plans and analyses support this type of hiring decision to avoid exceeding your FTE and budget allocations in out-years.

Should you have any questions, please contact Vivian Clark at (202) 586-2167.

Attachments



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

March 12, 2009

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: KATHIE ANN WHIPPLE
ACTING DIRECTOR

A handwritten signature in black ink, appearing to read "Kathie Ann Whipple", is written over the printed name and title.

Subject: American Recovery and Reinvestment Act of 2009
Schedule A Hiring Authority

The U.S. Office of Personnel Management (OPM) is authorizing the use of excepted-service appointments under 5 CFR 213.3102(i)(3) to address the need for hiring additional staff in support of the American Recovery and Reinvestment Act of 2009 (ARRA). Agencies may use this authority to fill, on a temporary basis for up to one year, positions needed to carry out provisions of the ARRA. These appointments may be extended in increments of up to one year. No appointments made under this authority may extend beyond September 30, 2012. Appointments are limited to individuals who will be directly associated with ARRA efforts.

When using this authority agencies must apply the provisions of 5 CFR part 302, as well as the procedures for passover of compensably-disabled preference eligibles in accordance with the Acting Director's March 12, 2009, memorandum for Chief Human Capital Officers, (www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalId=2119). Per 5 CFR part 302, agencies must apply veterans' preference when filling positions under this authority and have procedures in place for acceptance of applications. Public notice is not required when filling jobs in the excepted service. However, OPM strongly encourages agencies to conduct some form of recruiting in order to meet their particular human capital challenges under the Act. OPM will provide additional guidance on reporting requirements in conjunction with agencies' use of this authority.

When documenting the SF-50 "Notification of Personnel Action" for such appointments, cite as the first authority "W9R/Sch. A, 5 CFR 213.3102(i)(3)" and cite "ZEA/Pub. L. 111-5" as the final authority.

As discussed at OPM's March 3, 2009, interagency forum on the Recovery Act's Human Capital Management issues, there are a number of talent strategies and authorities, to include competitive hiring, that can be used to meet your human capital challenges under the Act. Workforce planning is the critical first step to identifying which talent strategy is best suited to accomplish your human capital goals for Recovery Act implementation. OPM strongly encourages agencies to deploy hiring strategies that support our veterans.

such as the Veterans Recruitment Appointment, the Veterans Employment Opportunity Act, and the 30 percent or more disabled Veterans authority.

Your assigned OPM Human Capital Officer (HCO) is ready to assist you in reviewing your workforce plan, recruitment options and deployment strategies as you execute this authority.

cc: Chief Human Capital Officers
Human Resources Directors



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

March 12, 2009

MEMORANDUM FOR CHIEF HUMAN CAPITAL OFFICERS

FROM: KATHIE ANN WHIPPLE
ACTING DIRECTOR

A handwritten signature in black ink, appearing to read "Kathie Ann Whipple", is written over the printed name and title.

Subject: Clarification of Procedures for Passover of Compensably-
Disabled Preference Eligibles in the Excepted Service

This memorandum clarifies the guidance issued by the Office of Personnel Management on February 9, 2009, regarding the U.S. Court of Appeals for the Federal Circuit's decision in *Gingery v. Department of Defense*. In *Gingery*, the court held that OPM must apply competitive service rules to pass overs of preference eligibles with a 30 percent or more compensable service-connected disability for excepted service positions that are subject to the appointment procedures in 5 C.F.R. part 302.

OPM is still analyzing the decision and considering options. In the meantime, to pass over a preference eligible with a compensable service-connected disability of 30 percent or more for an excepted service position that is subject to the appointment procedures in 5 C.F.R. part 302, agencies must send a pass over request to OPM for adjudication. These procedures apply only to excepted service positions covered under title 5, United States Code, which have been excepted from the competitive service by the President or by OPM.

The court's ruling in *Gingery* does not affect hiring for positions (e.g., attorneys) exempt from part 302 procedures pursuant to 5 C.F.R. 302.101(c). The *Gingery* court did not overrule *Patterson v. Department of Interior*, which upheld OPM's requirement that for attorney hiring agencies must follow the principle of veterans' preference as far as administratively feasible.

Should you have questions concerning this procedure, please contact your Human Capital Officer.

cc: Human Resources Directors