



DEPARTMENT OF VETERANS AFFAIRS  
DEPUTY ASSISTANT SECRETARY FOR  
HUMAN RESOURCES MANAGEMENT  
WASHINGTON DC 20420

February 2, 2017

**HUMAN RESOURCES MANAGEMENT LETTER NO. 05-17-04**

**Federal Hiring Freeze**

**1. Purpose.** The purpose of this Human Resources Management Letter (HRML) is to provide additional guidance regarding the hiring freeze imposed on Departments and Agencies in the Executive Branch via the Presidential Memorandum (PM) entitled, Hiring Freeze, dated January 23, 2017. This HRML also implements the Office of Management and Budget (OMB) and the Office of Personnel Management (OPM) Memorandum M-17-18 entitled, Federal Civilian Hiring Freeze Guidance, dated January 31, 2017.

This guidance is a supplement to the previously issued guidance, HRML No. 05-17-02, and must be used in conjunction to ensure consistency. Additional guidance will continue to be issued on a recurring basis throughout the hiring freeze.

**2. Background.** The OMB/OPM memorandum dated January 31, 2017, provides additional guidance that clarifies the coverage and expands the types of appointments that Departments and Agencies are authorized to execute during the freeze on hiring. Although the memorandum (section 3.o.) allows the reallocation of resources, the use of non-competitive reassignments, merit promotion recruitment (internal to VA), and non-competitive temporary promotions up to 120 days, is held in abeyance until further notice. HR offices will be notified when the use of these reallocations flexibilities is permitted within VA. HR offices and managers are highly encouraged to use the attached flow chart to help navigate how to move forward with filling vacancies.

**3. Actions That Require Secretary Approval.**

a. Individuals who received a tentative job offer/appointment from a human resources representative prior to January 22, 2017, and who received documentation from a human resources representative that specifies a confirmed start date after February 22, 2017, (or do not have a confirmed start date) must have their offer/appointment approved by the Secretary before entry on duty is authorized.

b. Individuals who do not have their offer/appointment approved by the Secretary will have their offer/appointment rescinded. Before approving or rescinding an offer/appointment, the Secretary must review the position and should consider: (a) merit system principles, 5 U.S.C. § 2301; (b) essential mission priorities and; (c) current resources and funding levels.

c. HR offices may not recruit and fill positions that have not been exempted by the Secretary. HR offices may continue to fill existing vacancies that are among the occupations exempted by the Secretary. See the Secretary's January 27, 2017 Memorandum entitled, Exemption to Hiring Freeze Under Presidential Memorandum, dated January 23, 2017, for occupations that are exempted.

#### **4. Approved Personnel Actions.**

a. Job offers made prior to January 22, 2017, for which the individual has a confirmed start date on or before February 22, 2017. Those individuals should enter on duty according to their respective designated start date.

b. **Detail Assignment.** Employees may be detailed temporarily to other positions at the same or lower grade at their facility, to other VA facilities or other Federal entities, in 120-day increments, in accordance with VA Handbook 5005, for up to 1 year.

c. **Internal Career Ladder Promotion.** Employees who occupy a position that allows for progression to a full performance level may be promoted.

d. **Excepted Service Appointments that confer Non-Competitive Conversion to Competitive Status.** Excepted Service employees with non-competitive conversion eligibility to competitive status may be converted. Eligible excepted service appointment authorities include Veterans Recruitment Authority, Schedule A, Pathways Program, or 30 percent or more disabled Veterans.

e. **Restorative Rights.** Employees with restorative rights as required by law (e.g., military duty, workers compensation, career transition assistance program) may be reinstated to existing positions.

f. **Reasonable Accommodation.** Actions required in compliance with the Americans with Disabilities Act and the Rehabilitation Act shall proceed as required.

g. **Actions Required to Comply with Law.** Actions required to comply with law, including decisions or orders issued by the United States Courts, the Equal Employment Opportunity Commission, Merit Systems Protection Board, and Federal Labor Relations Authority; or grievance arbitrators, shall proceed as prescribed by the decisions or orders issued by those bodies.

#### **5. Additional Approved Personnel Actions.**

a. **Settlement/Legal Actions.** Actions required to comply with settlements of legal actions, including United States Courts, Equal Employment Opportunity Commission, Merit Systems Protection Board, Federal Labor Relations Authority, or grievance arbitrations shall proceed as prescribed. This includes reemployment or reassignment

to an existing position as long as such action does not increase the level of full-time equivalents for the Department.

**b. Without Compensation Appointments (WOC) pursuant under 38 U.S.C. § 513 or 38 U.S.C. § 7405(a)(1).** Within VA, voluntary or gratuitous services may be accepted under an agreement. VA is specifically authorized by 38 U.S.C. § 513 to accept uncompensated services for the purpose of carrying out all laws administered by VA. HR offices may appoint qualified individuals who perform services that may be directly or indirectly involved in patient care activities without receiving compensation. WOC appointments shall not be used to circumvent the intent of the PM.

**c. Intergovernmental Personnel Act Appointments (IPA) pursuant 5 U.S.C. § 3371 and 5 C.F.R. part 334.** Non-Federal personnel on an IPA assignment to a Federal Department or Agency remain an employee of their permanent home organization, for most purposes. Most IPAs are constructed so that VA reimburses the non-Federal personnel's permanent home organization, which then compensates the non-Federal personnel. The hiring freeze does not impact existing or new IPAs that are structured in this manner, and HR offices may proceed using your normal process. However, IPA assignments that are constructed so that VA compensates the non-Federal personnel directly may be impacted. Prior to entering into such type of IPA, the HR offices must request approval from the Deputy Assistant Secretary for Human Resources Management (05).

**d. Term and Temporary Appointments pursuant to 5 C.F.R. § 316.** Existing employees on VA rolls who are on term or temporary appointments may be extended up to the maximum allowable time limit, consistent with the conditions/requirements of the legal authority originally used to appoint the employee.

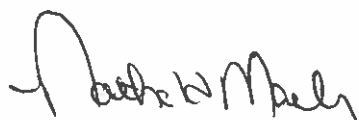
**e. Schedule D Appointments under the Pathways Internship and Presidential Fellows Programs.** HR offices may appoint students and fellows to positions (this does not include the Recent Graduates program). HR offices must ensure that individuals hired understand the provisional nature of these appointments and that conversion to a term or permanent (career-conditional or career) position is not guaranteed.

**f. Seasonal Employees.** HR offices may appoint seasonal employees and short-term temporary employees necessary to meet traditionally recurring seasonal workloads. However, Administrations/Staff Offices must obtain approval to appoint individuals to use this flexibility by submitting a request to the Deputy Assistant Secretary for Human Resources Management (05).

**g. Schedule A, 213.3102 (r) Appointments.** Appointments may be made under 5 C.F.R. § 213.3102(r) (time limited positions in support of fellowship or professional/industry exchange programs) provided that the total number of individuals employed under this authority does not exceed the number of employees on-board (hired under this authority) on January 22, 2017.

**7. Collective Bargaining Agreements.** In addition to any procedural requirements outlined in this HRML, all applicable provisions of national and local collective bargaining agreements must be followed when addressing these actions.

**8. Questions.** Questions concerning this HRML may be directed to the Director for Recruitment and Placement Policy Service (059), at [vatitle5staffingpoli@va.gov](mailto:vatitle5staffingpoli@va.gov).



Nathan H. Maenle

Attachments



U.S. Office of  
Management & Budget

U.S. Office of  
Personnel Management



January 31, 2017

M-17-18

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: MARK SANDY *Mark Sandy*  
ACTING DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET  
KATHLEEN McGETTIGAN *Kathleen McGettigan*  
ACTING DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

SUBJECT: Federal Civilian Hiring Freeze Guidance

1. **Purpose.** This memorandum provides additional guidance regarding the freeze on the hiring of Federal civilian employees as directed by the President on January 23, 2017, via Presidential Memorandum (PM) entitled "Hiring Freeze." This guidance is in addition to the initial implementation guidance issued by the Acting Director of the Office of Management and Budget (OMB) on January 25, 2017. This guidance provides information on the types of exemptions authorized under this hiring freeze as well as instructions on how departments and agencies can request exemptions from the Director of the Office of Personnel Management (OPM) for critical situations where additional exemptions may be warranted.
2. **Coverage.** This memorandum applies to all Executive departments and agencies regardless of the sources of their operational and programmatic funding and to all types of Federal civilian appointments, regardless of the length of the appointment, except as provided for below or otherwise provided in law. No vacant positions existing at noon on January 22, 2017, may be filled and no new positions may be created, except in limited circumstances. For the purposes of this memorandum, a position is not considered vacant if an individual has been given an offer of employment prior to noon on January 22, 2017, has accepted the position, and has a designated start date on or before February 22, 2017.

Contracting outside the Government to circumvent the intent of the PM shall not be permitted. For example, agencies shall not acquire by contract with a commercial vendor services that are substantially similar to those that would have been provided by a Federal civilian in a vacancy covered by the PM. However, nothing in this memorandum is intended to restrict agencies from continuing, modifying, or entering into service contracts for other purposes, consistent with law, regulation, and any applicable management direction.

The guidance in this memorandum should be implemented consistent with any lawful collective bargaining obligations that may apply.

3. **Exemptions.** The following exemptions to the Federal civilian hiring freeze are permitted:
- a. Military personnel in the armed forces and all Federal uniformed personnel, including the U.S. Coast Guard, the Commissioned Corps of the U.S. Public Health Service, and the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration.
  - b. Filling of positions under programs where limiting the hiring of personnel would conflict with applicable law.
  - c. Nomination and appointment of officials to positions requiring Presidential appointment, with or without Senate confirmation.
  - d. Appointment of officials to non-career positions in the Senior Executive Service or to Schedule C appointments in the Excepted Service, or the appointment of any other officials who serve at the pleasure of the appointing authority (i.e., "appointed" positions of a political/non-career nature).
  - e. Appointment of seasonal employees and short-term temporary employees necessary to meet traditionally recurring seasonal workloads, provided that the agency informs its OMB Resource Management Office in writing in advance of its hiring plans.
  - f. Hiring by the U.S. Postal Service.
  - g. Federal civilian personnel hires made by the Office of the Director of National Intelligence (ODNI) and the Central Intelligence Agency (CIA).
  - h. Appointments made under the Pathways Internship and Presidential Management Fellows programs (this does not include the Recent Graduates program). Agencies should ensure that such hires understand the provisional nature of these appointments and that conversion is not guaranteed.
  - i. Conversions in the ordinary course to the competitive service of current agency employees serving in positions with conversion authority, such as Veteran's Recruitment Act (VRA) and Pathways programs.
  - j. Appointments made under 5 C.F.R. § 213.3102(r) (time limited positions in support of fellowship or professional/industry exchange programs) provided that the total number of individuals employed under this authority does not exceed the number of employees onboard (hired under this authority) on January 22, 2017.

- k. Placement of persons with restoration rights accorded by law, such as restoration after absence with injury compensation and restoration after military duty.
- l. Job offers made prior to January 22, 2017, for which the individual has a confirmed start date on or before February 22, 2017. Those individuals should report to work according to their respective designated start dates.
- m. Job offers made prior to January 22, 2017, but for which the individual has a confirmed start date that is later than February 22, 2017 (or does not have a confirmed start date), should be decided on a case-by-case basis and must go through an agency-head review. The agency head should review each position to determine whether the job offer should be revoked, or whether the hiring process should continue. Agency heads should consider essential mission priorities, current agency resources, and funding levels when making determinations about whether or not to revoke job offers.
- n. Internal career ladder promotions.
- o. Reallocations (i.e., noncompetitive reassignments and details) of current Federal civilian employees within an agency to meet the highest priority needs (including preservation of national security and other essential services) are not affected. Details (reimbursable and non-reimbursable) between agencies are also not affected; however, agency leadership should ensure that any reimbursable details between agencies are not being used to circumvent the intent of the hiring freeze.
- p. Term and temporary appointments of existing Federal employees may be extended up to the maximum allowable time limit, consistent with the conditions/requirements of the legal authority originally used to appoint the employee.
- q. A limited number of voluntary transfers of current SES between agencies, as necessary to secure the leadership capacity of agencies, and where needs cannot be met by reallocation of resources within an agency's current workforce; however, filling of such vacancies is subject to OPM approval in accordance with section 4 below.
- r. The head of any agency may exempt any positions that it deems necessary to:
  - i. Meet national security (including foreign relations) responsibilities, or
  - ii. Meet public safety responsibilities (including essential activities to the extent that they protect life and property). Agencies may refer to longstanding guidance, which provides examples of such activities in OMB Memorandum, Agency Operations in the Absence of Appropriations, dated 11/17/1981 [see examples 3(a) to 3(k)].

Agency heads should consult with appropriate personnel, including the agency Chief Human Capital Officer (CHCO) or equivalent and agency counsel when

determining what positions to exempt from the hiring freeze. Agency heads are also required to consult with OPM and the agency's OMB Resource Management Office on their intent to exempt positions using their agency head authority before implementing these exemptions. Note that in the case of an Inspector General's (IG) office, the Inspector General is considered the agency head for the purposes of determining which positions in the IG office are exempt based on the definitions above, as well as for the purposes of the agency-head review of job offers in the IG office that either do not have a start date or have a designated start date beyond February 22, 2017.

4. **Exemptions Granted by the Director of OPM.** The Director of OPM may grant additional exemptions from the hiring freeze for critical situations. Accordingly, if an agency head assesses that circumstances warrant additional exemptions to the hiring freeze other than those specified above, a request must be made in writing to the Director of OPM and signed by the agency head. The request must:
  - Explain the critical need and how it relates to essential services or critical mission requirements.
  - Explain why reallocation (reassignment/detail) of existing staff within the agency is not possible to meet the needs outlined in the request.
  - Explain the urgency of the need and the consequences of not filling the position within a 3 to 6 month timeline.

Agencies must also notify their respective OMB Resource Management Office of exemption requests to OPM under this provision.

5. **Effective Dates.** The guidance in this memorandum is effective immediately. Within 90 days of the publication of the PM issued on January 23, 2017, the Director of OMB, in consultation with the Director of OPM, shall recommend a long-term plan to reduce the size of the Federal Government's workforce through attrition. The hiring freeze will expire upon implementation of the OMB plan.
6. **Inquiries.** Questions from departments and agencies regarding the instructions and guidance in this memorandum should be addressed to agency OMB Resource Management Officers and OPM contacts provided to Chief Human Capital Officers and HR Directors.



# Applying the Hiring Freeze Exception

