COMSECY-07-0039

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

REQUEST REPLY BY: ~~December 19, 2007~~ 1/8/08

Approved with comments.

Dale E. Klein 03/20/08

MEMORANDUM TO: Chairman Klein
Commissioner Jaczko
Commissioner Lyons

FROM: Luis A. Reyes
Executive Director for Operations

SUBJECT: POLICY AND PROCEDURES FOR IMPLEMENTATION OF AUTHORITY TO WAIVE PENSION OFFSET

In response to Staff Requirements Memorandum, COMDEK-07-0005, "FY 2009 Budget Proposal," dated August 31, 2007, the staff has prepared the enclosed memorandum which updates and clarifies guidance about the policy and procedures for implementation of NRC's authority to waive pension offset.

The guidance was revised based on questions raised through Chairman Klein's October 2, 2007, memorandum, "Use of Pension Offset Waiver Authority," advice from the Federal Employees Pay Comparability Act Senior Management Review Panel, input from the executives participating in the Senior Leadership Meeting in November of this year, and recommendations from the staff of the Office of Human Resources.

Section 624 of the Energy Policy Act of 2005 (EPAct) authorized the NRC to eliminate pension offset, on a case by case basis, for the reemployment of a Federal civilian retiree in a position for which there is exceptional difficulty in recruiting or retaining a qualified employee, or when a temporary emergency hiring need exists. The EPAct also required that the NRC establish procedures for the exercise of this authority, including the criteria and procedures for any delegation of the authority.

This guidance is intended to help ensure that NRC uses its authority prudently to meet agency needs in accordance with the criteria provided in EPAct, develops strategies to fill its needs long term, and uses the authority as an incentive for individuals to return to employment rather than as an incentive to retire. The guidance also clarifies and provides examples of existing interpretations of an "emergency," adds general guidelines for the appropriate duration of appointments, and requires that a person be retired before the request for re-employment is submitted.

I will issue the memorandum as soon as the Commission signifies its approval.

SECY, please track.

Enclosure: As stated

cc: SECY
OGC
OCA
OPA
CFO

CHAIRMAN'S COMMENTS ON COMSECY-07-0039

Although I approve COMSECY-07-0039 as a step in the right direction, I would have preferred that the staff had adopted more definitive procedures and more precise definitions of the terms "temporary emergency hiring need" and "exceptional difficulty in recruiting or retaining a qualified employee," as I suggested in my memorandum of October 2, 2007. While I understand the desire to retain some flexibility in the policy and guidance to meet special needs that may arise from time to time, I am concerned that, without more definitive guidance, the NRC will not be in a position to assure the Congress that the agency is using its authority prudently and that deciding officials may not have the necessary information to make informed determinations on pension offset waiver requests.

As I view the proposed revised guidance contained in this COMSECY, the staff is proposing to enhance the requirements for how justification statements for pension offset waiver requests should be prepared, a step I approve, but leaving the two basic terms contained in section 624 of the Energy Policy Act of 2005 undefined and relying on the specific descriptive language provided by the requesting office to establish the merit of each pension offset waiver request. Defining the basic terms will provide more rigor to the process and help ensure that a pension offset waiver request will only be approved when it clearly meets on of the threshold criteria contained in section 624 of the Energy Policy Act of 2005.

Consequently, I propose the following changes to the policy and procedures proposed in COMSECY-07-0039:

1. Add the following definition for a "temporary emergency hiring need." A "temporary emergency hiring need" is defined as the absence of a skill necessary to complete or initiate specific mission-required work within the next 12 months and caused by the departure of an employee with such skills or a new or substantially expanded work requirement. Any other basis for requesting a pension offset waiver as a "temporary emergency hiring need" will be considered an exception to the policy and must be fully justified. In addition, an intensive recruitment effort should have been recently completed, be underway at the time the request to use pension offset waiver authority is submitted, or be expected to be initiated within a reasonable time from the date of the pension offset waiver request. Requests for pension offset waivers should describe this recruitment effort or fully justify why no such effort has been undertaken or planned (for example, B5b inspections). Requests to extend a current pension offset waiver justified as a "temporary emergency hiring need" will be considered an exception to the policy and will not be authorized beyond a few additional months unless they can be fully justified and documented. A "temporary emergency hiring need" justified solely as a knowledge transfer activity should have a "not to exceed date" of six months or less and will normally be for part-time or intermittent work.

2. Add the following definition for "exceptional difficulty recruiting or retaining a qualified employee." "Exceptional difficulty recruiting or retaining a qualified employee" is defined as the inability to fill a vacancy by recruitment with an individual possessing the required skills or to retain a recently hired employee with such skills. Historical difficulty in finding qualified candidates is not

sufficient to meet this requirement in the absence of an ongoing recruitment effort but may be included in the justification statement as background information. A waiver request based on the "exceptional difficulty" standard may be renewed annually for up to three years. Longer periods will be considered an exception to the policy and will be authorized only when fully justified and documented.

3. Justification statements must contain sufficient narrative information to explain the office director's request to rehire a retired annuitant as either a consultant or non-consultant and whether employment will be intermittent, part-time, or full-time.

4. The Office of Human Resources and the FEPCA Panel should provide comments to deciding officials to support their determinations that a request meets the criteria for the use of pension offset waiver authority and/or recommendations to approve or disapprove the request. In that regard, the format on page 3, section III, should be revised to include the option that the FEPCA Panel Chair "recommends" or "does not recommend " that the request be approved.

5. The proposed memorandum to Office Directors and Regional Administrators should be revised to delete the sentence "OHR may determine in a particular instance that the FEPCA panel review is either unnecessary or inappropriate." No pension offset waiver request should be forwarded to a deciding official without a FEPCA panel review and recommendation. If the sentence is intended to mean that in cases where OHR determines that a request does not meet the criteria for a pension offset waiver, OHR will return the package to the originating office for revision or other appropriate action, then the sentence should be revised to make this point clear.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

REQUEST REPLY BY: 1/8/02

December 19, 2007

Approved w/subject comments attached

Gregory B. Jaczko 2/22/08 Date

MEMORANDUM TO: Chairman Klein
Commissioner Jaczko
Commissioner Lyons

FROM: Luis A. Reyes
Executive Director for Operations

SUBJECT: POLICY AND PROCEDURES FOR IMPLEMENTATION OF AUTHORITY TO WAIVE PENSION OFFSET

In response to Staff Requirements Memorandum, COMDEK-07-0005, "FY 2009 Budget Proposal," dated August 31, 2007, the staff has prepared the enclosed memorandum which updates and clarifies guidance about the policy and procedures for implementation of NRC's authority to waive pension offset.

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Section 624 of the Energy Policy Act of 2005 (EPAct) authorized the NRC to eliminate pension offset, on a case by case basis, for the reemployment of a Federal civilian retiree in a position for which there is exceptional difficulty in recruiting or retaining a qualified employee, or when a temporary emergency hiring need exists. The EPAct also required that the NRC establish procedures for the exercise of this authority, including the criteria and procedures for any delegation of the authority.

This guidance is intended to help ensure that NRC uses its authority prudently to meet agency needs in accordance with the criteria provided in EPAct, develops strategies to fill its needs long term, and uses the authority as an incentive for individuals to return to employment rather than as an incentive to retire. The guidance also clarifies and provides examples of existing interpretations of an "emergency," adds general guidelines for the appropriate duration of appointments, and requires that a person be retired before the request for re-employment is submitted.

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SECY, please track.

Enclosure: As stated

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OGC
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Commissioner Jaczko's Comments on COMSECY-07-0039
Policy and Procedures for Implementation of Authority to Waive Pension Offset

While I approve of the guidance updating and clarifying the policy and procedures for implementing NRC's authority to waive pension offset, I am concerned that the guidance does not go far enough in ensuring that the agency appropriately defines and limits the use of its authority in this area. This is a useful tool provided to the agency, and with it comes an obligation to ensure that this authority will be seriously scrutinized and sparingly applied. If the agency does not do so, the agency risks losing this tool altogether. Without more detailed definitions and guidance, the agency may not be able to defend its use of this authority or have the necessary documentation to demonstrate its prudent use in particular circumstances. Therefore, I believe that the agency should consider an independent review of the program to ensure that the program has been appropriately used up to now, and I also believe the staff should supplement this guidance and provide additional direction in several areas to ensure its appropriate use in the future.

First, the supplemental guidance should define a "temporary emergency hiring need" so that, only in rare cases should the assignment last more than 12 months. The definition and guidance should make it clear that an "emergency", by definition, means just that and thus, should be the result of an unanticipated departure of an employee with the necessary skill set or a new and unanticipated work assignment. In order to ensure these assignments are appropriately limited to no more than 12 months, no pension offset should be authorized without the staff initiating recruitment to find a permanent replacement for the temporary individual.

Additionally, "exceptional difficulty recruiting or retaining a qualified employee" should be defined to clearly limit the application of this category to instances where intensive ongoing recruitment efforts have not been successful. A waiver should not be granted based upon historical difficulty in filling a position, but instead there should be recent and documented efforts that demonstrate the exceptional difficulty involved in hiring. Without requiring this to be spelled out in more detail and appropriately documented, we risk an undisciplined decision-making process.

Moreover, the forms that are used to process these requests must be useful and must contain the level of detail that would explain how the request clearly falls within these limited exceptions. Thus, more emphasis should be placed on the specific case-by-case circumstances that are believed to exist in each instance to justify the request and less emphasis on simply checking a box. The current check-the-box format should be eliminated or, at a minimum, each check should require written explanation.

Unfortunately, the current forms appear more of an afterthought than a useful and necessary tool to document this decision-making process. For example, the Chair of the FEPCA panel signing the form currently approves of the request even if he or she decides that the request does not meet agency policy. These forms are not only important for reviewing officials trying to make the determination in the specific case documented, but they must also be useful for the agency to track and assess how it is doing in implementing the program. Thus, when modifying the forms and determining the nature and format of the information that would be useful, staff should consider both

the use of the form for documenting the rationale behind the case specific request and the use of the form for future tracking purposes.

Finally, the guidance should delete the sentence which states that OHR may determine in a particular instance that the FEPCA panel review is either unnecessary or inappropriate. Without specific criteria as to why either of those would be the case, then this introduces unnecessary subjectivity.

After the staff revises and supplements this guidance, it should resubmit it for Commission approval as a "red band" paper consistent with Internal Commission Procedures. This is an important topic and I believe it merits Commission discussion and subsequent additional direction in this area.

2/22/08

Gregory B. Jaczko Date

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

REQUEST REPLY BY 1/8/07

December 19, 2007

MEMORANDUM TO: Chairman Klein
Commissioner Jaczko
Commissioner Lyons

Approved.

Peter B. Lyons 1/9/08
Date

FROM: Luis A. Reyes
Executive Director for Operations

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