

## U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)

<b>MD 10.50      PENSION OFFSET WAIVER</b>		<b>DT-13-13</b>
<i>Volume 10, Part 2:</i>	Personnel Management Position Evaluation and Management, Pay Administration, and Leave	
<i>Approved By:</i>	R. W. Borchardt Executive Director for Operations	
<i>Date Approved:</i>	July 8, 2013	
<i>Expiration Date:</i>	July 8, 2018	
<i>Issuing Office:</i>	Office of the Chief Human Capital Officer Human Resources Policy and Programs Team	
<i>Contact Name:</i>	Nancy L. Johns 301-287-0721	Servicing Human Resources Specialist (names and phone numbers are listed <a href="#">here</a> )
<b>EXECUTIVE SUMMARY</b>  Management Directive (MD) and Handbook 10.50 provide management and staff with criteria and guidance for requesting and implementing a pension offset waiver. A pension offset waiver allows a reemployed Federal annuitant to receive full salary in addition to his or her annuity rather than have the salary offset by the amount of the annuity. MD 10.50 updates policy and guidance previously issued through Yellow Announcements and memoranda. The content and order largely follow the guidance previously issued, which was informed by Commission direction.		

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## **I. POLICY**

It is the policy of the U.S. Nuclear Regulatory Commission to authorize a pension offset waiver when needed. The NRC may eliminate pension offset as necessary and appropriate under Section 624 of the Energy Policy Act of 2005, 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 NRC may also eliminate a pension offset under other Federal authorities as necessary or appropriate.

## **II. OBJECTIVES**

- Implement the pension offset waiver provisions of the Energy Policy Act of 2005.
- Ensure agencywide equity in the application of criteria.
- Encourage and promote the employment of certain Federal retirees by offering full, rather than reduced, salary when the retiree's expertise or experience is needed, and the retiree's willingness to accept work with the NRC is conditioned on elimination of pension offset.
- Ensure prudent use of NRC's authority to waive a pension offset, including ensuring that the authority is used as an incentive for employment rather than an incentive to retire.

## **III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY**

### **A. Chairman**

Approves the waiver of a pension offset for all prospective appointees not listed in Sections III.C and III.D below.

### **B. Commission**

Each Commissioner recommends a pension offset waiver, as needed, to fill positions on his or her immediate staff.

### **C. Executive Director for Operations (EDO)**

1. Approves the waiver of a pension offset for a prospective appointee of the Executive Director for Operations' (EDO) staff and offices reporting to the EDO.
2. In consultation with the Chairman, appoints the members of the Federal Employees Pay Comparability Act (FEPCA) Senior Management Review Panel. The FEPCA Panel will include a representative of the Office of the Chief Financial Officer.

3. Approves exceptions to program provisions not required by law.

**D. Inspector General (IG)**

1. Approves pension offset waiver recommendations for prospective appointees of the Office of the Inspector General (OIG).
2. Appoints members of the OIG FEPCA Panel.

**E. Chief Human Capital Officer (CHCO)**

1. Develops, implements, interprets, and evaluates program parameters and guidance.
2. Advises office directors, regional administrators, and staff on the applicability, criteria, consequences, and alternatives related to a pension offset waiver.
3. Provides technical assistance to the review panel and approving officials and technical review for individual cases to ensure compliance with law, policy, and, as applicable, regulation.
4. Evaluates program success in achieving objectives and makes adjustments, as required.
5. The OIG Human Resources Officer performs these functions for a prospective appointee to the OIG.

**F. Federal Employees Pay Comparability Act Senior Management Review Panel (FEPCA Panel)**

1. Identifies and establishes any supplemental criteria to the basic guidelines described in this handbook.
2. Reviews each request for a pension offset waiver to—
  - (a) Ensure that it meets appropriate criteria.
  - (b) Foster agencywide equity in implementation.
  - (c) Recommend approval and any limitations to the approving official.
3. The OIG FEPCA Panel performs the functions noted above for a prospective appointee to the OIG.

**G. Office Directors and Regional Administrators**

1. Recommend a waiver of a pension offset as needed to fill a position in their respective organization, ensuring that the request fully meets the criteria on which it is based.
2. Ensure that an individual's work is consistent with the request and approval for a pension offset waiver, including establishing an auditable form of documentation of work performed.

#### **IV. APPLICABILITY**

- A.** Although Federal agencies may rehire civil service annuitants, Federal law (5 U.S.C. 8344 and 8468) requires that when a Federal agency reemploys a retired Federal employee, the amount of pay received from the agency must normally be reduced by the amount of annuity received for the period of reemployment. The Energy Policy Act of 2005 authorizes the NRC to eliminate pension offset requirements, 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.
- B.** The NRC may also eliminate pension offset under other Federal authorities as necessary or appropriate. For example, Section 1122 of Pub. L. 111-84, National Defense Authorization Act for Fiscal Year 2010 (NDAA), currently permits agencies to waive a pension offset, among other reasons, to fulfill functions critical to the mission of the agency or any component of the agency; develop, manage, or oversee agency procurement actions; or promote appropriate training or mentoring programs of employees. The NDAA authority differs from NRC's Energy Policy Act authority in reporting requirements, limitations on numbers of employees and hours they may work, as well as criteria. However, this authority will expire in October 2014, unless extended by law.

#### **V. DIRECTIVE HANDBOOK**

Handbook 10.50 provides the criteria and process for requesting a pension offset waiver. This handbook describes the criteria and process under which the NRC may waive a pension offset and permit an annuitant to receive full rather than reduced pay.

#### **VI. DEFINITIONS**

##### **Approving official**

- 1. The EDO for a pension offset waiver for a prospective appointee to the EDO's staff and offices reporting to the EDO.
- 2. The Chairman for a pension offset waiver for a Commission staff member, any individual reporting directly to the Chairman (e.g., the EDO, the Chief Financial Officer), and a prospective appointee of an office reporting to the Chairman or to the Commission.
- 3. The Inspector General for a pension offset waiver request within the OIG.

##### **Requesting official**

- 1. The Commissioner for any employee on his or her immediate staff.
- 2. The office director or regional administrator for a pension offset waiver within his or her organization.
- 3. The Deputy Inspector General for a pension offset waiver request within the OIG.

**Panel**

The FEPCA Panel or the OIG FEPCA Panel for OIG positions, as appropriate, for the request under review.

**Temporary emergency hiring need**

A short-term, critical staffing need. Generally, the absence of an employee with a skill necessary to complete or initiate specific mission-required work within the next 12 months, typically caused by the departure of an employee with this skill or a new or substantially expanded work requirement.

**Exceptional difficulty recruiting or retaining a qualified employee**

A staffing need arising from unusual challenges hiring or keeping critical skills. Generally, the inability to recruit an individual possessing the required skills or degree of qualifications, or to retain an employee with these skills. In rare circumstances, this may include the inability, in the absence of a pension offset waiver, to retain the services of a particular individual who is uniquely qualified for an ongoing project.

**VII. REFERENCES*****Nuclear Regulatory Commission Documents***

SRM-COMSECY-07-0039, "Policy and Procedures for Implementation of Authority to Waive Pension Offset," March 27, 2008 (ADAMS ML080870385).

"Guidance for Appointment of Reemployed Annuitants with Pension Offset Waivers, Revised 2/14/2011," at <http://www.internal.nrc.gov/HR/pdf/pension-offset-chart.pdf>.

NRC Management Directives, Volume 10, at <http://www.nrc.gov/reading-rm/doc-collections/management-directives/volumes/vol-10.html>.

NRC procedural guidelines, at <http://www.internal.nrc.gov/HR/incentive-programs.html>.

***United States Code***

Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

Energy Policy Act of 2005, Section 624 (Pub. L. 109-58).

Energy Reorganization Act of 1974, as amended (42 U.S.C. 5801 et seq.).

Inspector General Act of 1978, as amended (5 U.S.C. App. 3 et seq.).

National Defense Authorization Act for Fiscal Year 2010 (NDAA), Section 1122 (Pub. L. 111-84).

Title 5 of the United States Code, "Government Organization and Employees," including 5 U.S.C.—

Section 3323 - Automatic separations; reappointment; reemployment of annuitants.

Section 8344 – Annuities and pay on reemployment.

Section 8468 – Annuities and pay on reemployment.

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## **I. PURPOSE OF A PENSION OFFSET WAIVER**

The purpose of a pension offset waiver is to allow the U.S. Nuclear Regulatory Commission to reemploy a Federal civilian retiree (annuitant), without reducing the annuitant's pay, in a position for which there is exceptional difficulty in recruiting or retaining a qualified employee, or when a temporary emergency hiring need exists. Management Directive (MD) 10.50 only addresses pension offset waivers under Section 624 of the Energy Policy Act of 2005 as noted in Section IV of this directive.

## **II. PENSION OFFSET WAIVER DETERMINATION**

- A.** There must be a written determination that waiving a pension offset will meet one or both of the criteria under the Energy Policy Act of 2005. A request for a waiver may be based on agency needs resulting from exceptional difficulty in recruiting or retaining a qualified employee for the position, a temporary emergency hiring need, or both criteria.
- B.** Each determination must be made on a case-by-case basis. A determination may not be made for a group of employees or a category of positions.
- C.** A request based on exceptional difficulty recruiting or retaining a qualified employee should include discussion of the following factors:
  - 1. The nature of the position and its importance to agency functions;
  - 2. Other staffing efforts that have been tried or considered or are ongoing, including attempts to recruit qualified individuals from within or outside the NRC, use of recruitment or other incentives, succession planning efforts, knowledge transfer options explored, and why these alternatives have not been, or are not anticipated to be successful; and
  - 3. A description of why the individual's knowledge, skills, and abilities are important to the agency, why these could not be acquired by another individual within a reasonable time, and why the work cannot be assigned to other employees.
- D.** A request based on temporary emergency hiring need must fully describe the exigent circumstances justifying use of the authority. The request should include—
  - 1. A description of the emergency, including nature and date of occurrence, expected duration of the response effort, and a description of how the emergency is beyond the scope of NRC's normal responsibilities. A temporary emergency hiring need encompasses response to an event or emergency or meeting work needs generated by other unusual circumstances. These circumstances might include, but are not limited to—
    - (a) The need to comply with a congressional, Commission, or other mandate to meet new or expanded mission requirements by a particular date; or



- (b) A temporary need for an annuitant because he or she has a security clearance or other credentials needed to complete or continue mission-critical work that cannot be performed by other employees within a reasonable amount of time.
- 2. Information about the proposed appointee's duties during the response or other urgent effort.

**E. A request based on either or both criteria should—**

- 1. Generally be limited to part-time or intermittent employment for periods of 1 year or less. If the specific need or project calls for full-time employment and/or a longer period of employment under a pension offset waiver, this should be clearly discussed and justified in the request.
- 2. Conform to the guidelines below for length of employment. Requests generally should not result in more than 3 years of continuous employment for a specific retiree. Longer periods may be approved, for example, for work on clearly distinguishable projects and/or for a few hours per year.
- 3. Include an indication that the individual is unwilling to be reemployed unless the waiver is granted.
- 4. Describe the means by which the office or region will address the continuing need within the timeframe covered by the pension offset waiver request, or explain why there will be no long-term need. To ensure that the NRC meets its long-term needs, recruitment efforts or training of current employees should be underway, or be planned and initiated within a reasonable time from the date of the pension offset waiver request. Requests for pension offset waiver should describe the strategy for meeting longer-term needs or justify why no effort has been undertaken or planned. For example, a recruitment effort might not be appropriate if there is only a temporary need to supplement staff to accomplish a particular project or if the long-term need will be filled after knowledge transfer to on-board staff.
- 5. Fully justify any exception to this policy.

### **III. TYPE OF APPOINTMENT, LENGTH OF EMPLOYMENT, PAYRATES, AND NATURE OF POSITION**

- A.** Although the Energy Policy Act of 2005 does not place specific limits on the duration of appointments or number of hours that annuitants may work, the NRC applies the following general guidelines:
- 1. Appointments are normally limited to 1 year or less.
  - 2. If knowledge transfer constitutes the primary purpose of the appointment, the appointment is normally limited to 6 months or less.
  - 3. Employees under pension offset waiver typically work on an intermittent or part-time work schedules.

4. Appointments may be extended if the extension is consistent with the criteria and guidelines and constitutes a prudent use of the agency's authority. A waiver based on exceptional difficulty recruiting or retaining a qualified employee may be renewed annually for up to 3 years. Requests based on temporary emergency hiring need may be extended for a few months if necessary.
- B.** All Federal rehired annuitants serve at the pleasure of the appointing agency and may be separated from employment at any time.
- C.** The position title, occupational series, grade, and pay rate are based on the duties and responsibilities of the position and the qualifications of the annuitant.
1. An employee appointed under a pension offset waiver is typically paid no more than the grade and step the employee held before retirement. Considerations in determining the grade and step to offer include the duties and responsibilities to be performed, the pay rate necessary to attract an individual with the skills needed by the agency, and prudent use of funds.
  2. The pay rate for an employee who receives a pension offset waiver at the NRC is limited to a maximum of GG-15/10, unless an exception is approved.
  3. NRC policy guidance applicable to the type of position applies to positions established with pension offset waiver. For example, the guidance in MD 10.6, "Use of Consultants and Experts," applies when the appointee will serve as a consultant. Similarly, nonconsultant positions are subject to the usual requirements for position evaluation, performance management, etc., applicable to the type and duration of appointment.
  4. Information about the benefits, ethical restrictions, and other working conditions applicable to different types of appointments with pension offset waiver is available on the Office of the Chief Human Capital Officer (OCHCO) intranet site, at <http://www.internal.nrc.gov/HR/pdf/pension-offset-chart.pdf>, and through the servicing human resources specialist.
- D.** Requests that do not conform to the guidelines above (e.g., a request for full-time employment or to extend an appointment based on temporary emergency hiring need for total employment of 2 years or more) must clearly justify and explain the reasons for the exception.

#### **IV. PROCESSING A REQUEST FOR A PENSION OFFSET WAIVER**

##### **A. Request**

The requesting official prepares the request using a standard format available through OCHCO at <http://www.internal.nrc.gov/HR/incentive-programs.html>. The request must address the criteria for authorizing a pension offset waiver discussed in Section II of this handbook. The requesting official submits requests on a case-by-case basis to OCHCO.

The requesting official ensures that the request fully meets one or both of the Energy Policy Act criteria noted in Section II of this handbook.

**B. Timing of Request**

To ensure that a pension offset waiver serves as an incentive to return to work to meet NRC needs rather than an incentive to retire, a request generally will be considered only after an individual's retirement.

**C. Technical Review**

OCHCO provides technical review of the request and technical advice and support to the Panel and approving official. OCHCO or the Panel may return requests to the originating office for revision or other appropriate action.

**D. Panel Review**

The Panel reviews the request in consideration of the criteria and to ensure the authority is applied equitably throughout the agency. The Panel forwards its recommendation to approve, disapprove, or partially approve the request to the approving official for a final decision. See Section VI, "Definitions," of this directive for the definition of Panel.

**E. Approval/Disapproval**

The approving official reviews any recommendations of the Panel and all other relevant documentation and makes a final decision. The approving official will approve, making any modifications he or she deems appropriate, or disapprove elimination of the pension offset based on all pertinent considerations, and in the overall best interests of the agency. The approving official then forwards the decision to OCHCO for implementation.

**F. Implementation**

As with other employment, OCHCO offers employment to the individual approved for a pension offset waiver.

**V. RECORDS**

- A.** OCHCO maintains files containing the documentation justifying each pension offset waiver and prepares reports as appropriate.
- B.** Office directors and regional administrators ensure that an individual's work is consistent with the request and approval for a pension offset waiver, including maintaining auditable documentation of work performed.

**VI. OVERSIGHT**

The Chief Human Capital Officer will conduct appropriate oversight and evaluation activities to ensure that the use of this authority is in conformance with law and recommend continued enhancement of the guidelines and processes.