DEPARTMENT OF DEFENSE
CIVILIAN PERSONNEL MANAGEMENT SERVICE
1400 KEY BOULEVARD
ARLINGTON, VA 22209-5144

April 2, 2004

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Employment of Civil Service Annuitants in Nonappropriated Fund Positions

The Department of Defense has new authority regarding hiring and compensating civil service annuitants. Section 9902(j) of title 5, United States Code, as enacted by section 1101 of the National Defense Authorization Act for 2004, Pub. L. 108-136 (November 24, 2003), authorizes DoD to employ civil service annuitants without reducing salary or annuity. This new authority affects Nonappropriated Fund (NAF) Instrumentalities' hiring of annuitants who elected to remain in the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS) upon moving between the NAF and civil service personnel systems. Under retirement portability provisions in title 5, Code of Federal Regulations, Parts 837 and 847, the elected retirement system's rules apply in periods of service as a reemployed annuitant. Consistent with the new DoD authority, CSRS and FERS reemployed annuitants are not subject to salary or annuity offsets when hired in DoD NAF positions on or after November 24, 2003.

The Under Secretary of Defense (Personnel and Readiness) recently issued the attached policy memo implementing the new authority as it applies to hiring annuitants in appropriated fund (APF) positions on or after November 24, 2003. Although the restrictions and requirements in the policy apply only to annuitants hired in APF positions, NAF employers must be cognizant of the restrictions and use similar restraint and judgment in reemploying CSRS and FERS annuitants. Employers are responsible for reporting these reemployments to OPM in accordance with paragraph C.6 of the attached procedures. NAF employers are accountable for the use, oversight, and monitoring of these reemployments and for ensuring appropriate documentation and tracking to enable employers to meet any future reporting requirements.

Questions related to employing CSRS or FERS annuitants may be directed to Donna Tranum at 703-696-6568, DSN 426-6568.

Barton K. Kuhns
Chief, NAF Personnel Policy Division

Attachment:
As stated

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PERSONNEL AND READINESS

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
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DIRECTOR FORCE TRANSFORMATION
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DEFENSE FIELD ACTIVITIES

SUBJECT: Employment of Annuitants

Section 9902 of title 5 United States Code (U.S.C.), as enacted by section 1101 of the National Defense Authorization Act for Fiscal Year 2004, Pub.L.108-136, 117 Stat. 1392, 1629 (November 24, 2003), provides the Department of Defense with critical flexibilities to attract, develop and maintain an agile civilian workforce to meet the challenges of the 21st century. This new legislation provides the Department with the ability to attract and retain talented men and women with the expertise and corporate knowledge to fill critical positions or to temporarily mentor the next generation of civil servants. This critical hiring flexibility will help address the challenges of "retirement-driven talent drain" as our current generation of dedicated civil servants become eligible to retire.

The Secretaries of the Military Departments, and heads of Defense Agencies and DoD Field Activities with independent appointing authority for themselves and their serviced organizations are hereby redelegated the authority delegated to me by Deputy Secretary of Defense memorandum, dated February 19, 2004, to hire and compensate annuitants consistent with the attached policy. These designees will further delegate this authority to managers and supervisors for the appointment of annuitants at grades 15 and below (and equivalent).

The attached guidance implements DoD policy and procedures for hiring annuitants under the provisions of 5 U.S.C. 9902(j) allowing newly appointed employees receiving an annuity from the Civil Service Retirement and Disability Fund to receive full salary and annuity benefits.

David S. C. Chu

Attachment:
As stated

Department of Defense

Reemployment of Annuitants
Guidance and Procedures

A. General Information

1. Section 1101 of the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108-136, 117 Stat. 1392, 1629 (November 24, 2003), amends title 5, United States Code (U.S.C.), by adding a new Chapter 99 entitled Department of Defense (DoD) National Security Personnel System (NSPS).

2. Section 9902(j) of title 5, U.S.C., gives the Secretary of Defense authority to hire and set the salary of newly appointed annuitants, i.e., individuals receiving an annuity from the Civil Service Retirement and Disability Fund, at the appropriate pay rate for the position without a reduction in pay or of the annuity. As a result, the salary of the annuitant is not offset by the amount of the annuity received for the period of employment. There is no retroactive application of the new authority.

3. This guidance implements the new Secretary of Defense authority for the employment of annuitants in the Department of Defense and establishes criteria for its use.

4. This guidance applies to annuitants employed in appropriated fund positions on or after November 24, 2003.

5. An annuitant may not be employed in the same position held prior to retirement, except as provided by policy contained in this guidance.

6. <u>Designees</u>.

   a. Executive-Level Positions. Secretaries of the Military Departments and heads of Defense Agencies and DoD Field Activities with independent appointing authority for themselves and their serviced organizations may appoint an annuitant to an executive-level position (i.e., Senior Executive Service (SES), Scientific and Professional (ST), Senior-Level (SL), Defense Intelligence Senior Executive Service (DISES), Defense Intelligence Senior Level (DISL), and pay band positions above the GS-15 level) in accordance with this guidance. This authority may not be further delegated.

b. Positions at Grades 15 and Below. Secretaries of the Military Departments and heads of Defense Agencies, and DoD Field Activities with independent appointing authority for themselves and their serviced organizations may appoint annuitants at grades 15 and below (and equivalent) without a reduction in pay. These designees will redelegate this authority to managers and supervisors for use in accordance with this guidance.

7. These positions may be filled on a time-limited or indefinite basis depending on the individual circumstances. The rationale for hiring should be a factor in determining the type of appointment. For example, a time-limited appointment would be most appropriate to fill a position where there is a critical need resulting from an unforeseen circumstance of an anticipated short duration. An indefinite appointment may be more appropriate to fill a continuing position when there is a severe shortage of candidates and the organization has historically had difficulty in recruiting after extensive recruitment efforts.

8. The provisions of 5 U.S.C. 9902(j) apply to new appointments or conversions to new appointments made on or after November 24, 2003. Annuitants hired prior to November 24, 2003, who are currently serving in a position and receiving full salary and annuity based on an exception approved by the Office of Personnel Management (OPM) or by DoD under delegated authority, will continue to receive full salary and annuity for the time specified by the waiver. An example of an exception approved by DoD includes a waiver granted with respect to a former Federal employee hired under 9-11 emergency hiring flexibilities.

9. Annuitants hired before November 24, 2003, and subject to salary offset may continue to serve in their positions in accordance with the provisions of their appointment. However, these annuitants will continue to have their salary offset by the amount of the annuity received for the period of employment. When a position encumbered by such annuitant becomes vacant, the position must meet DoD established criteria below to be refilled by an annuitant under the policy contained herein.

10. An employee who separated under authority of the Voluntary Separation Incentive Pay (VSIP) Program is prohibited from reemployment within the Department for 12 months after separation unless the Secretary of Defense or his designee approves a waiver on a case-by-case basis. An employee may not be reemployed within 5 years unless he/she repays the separation incentive. Reemployment restrictions are specified in 5 U.S.C. 9902(i) of NSPS and implementing DoD VSIP guidance and procedures.

11. An annuitant hired under this policy serves at the will of the appointing authority.

B. Employment of Annuitants

1. Designees may elect to reemploy annuitants, subject to the following criteria:

   a. In positions that are hard-to-fill as evidenced by historically high turnover, a severe shortage of candidates or other significant recruiting difficulty; or positions that are critical to the accomplishment of the organization's mission; or to complete a specific project or initiative;

   b. Who have unique or specialized skills, or unusual qualifications not generally available; or

   c. For not more than 2087 hours (e.g., one year full time, or two years part time) to mentor less experienced employees and/or to provide continuity during critical organizational transitions. Extensions beyond 2087 hours are not authorized.

2. If a supervisor or manager who is delegated authority to appoint annuitants to positions at Grades 15 or below elects to reemploy an annuitant in the same organization in the same (or substantially similar) position as the position from which the annuitant retired, the action must have prior approval from next level supervisor. The next level manager or supervisor must certify in writing that one or more of the above conditions exist. If the time between retirement and reemployment is brief (less than 90 days), the certification must also indicate that retention options (e.g., retention allowance, flexible work schedule, telework) were considered and offered before the employee retired. Designees, as identified in paragraph A.6.a., must execute the required certification when appointing annuitants to executive-level positions, as defined in such paragraph.

C. Procedures Applying to All Positions Filled with Annuitants

1. The provisions of the DoD Priority Placement Program apply.

2. The provisions of the Interagency Career Transition Assistance Plan for Displaced Employees and the DoD Reemployment Priority List apply, as appropriate.

3. Organizations will make appointments of annuitants in accordance with the provisions of the particular type of appointment action being taken, e.g., reinstatement or temporary appointment based on reinstatement, as specified in the OPM Guide to Processing Personnel Actions.

4. Organizations will use the appropriate annuity indicator that reflects the annuitant is not subject to salary reduction, e.g., annuitant indicator G or 6.

5. The Defense Civilian Personnel Data System (DCPDS) currently contains the functionality required to appoint reemployed annuitants. These appointments will be tracked in DCPDS by data element, to include the reason for the appointment of the annuitant.

6. Notification of the appointment to OPM is required for appropriate processing of an annuitant's benefits resulting from reemployment. Notification is provided by forwarding to OPM a copy of the "Notification of Reemployment of an Annuitant" or other appropriate form and a copy of Standard Form 50, "Notification of Personnel Action."

D. Documentation

1. Organizations must document the basis and criteria for employment of annuitants on the Standard Form (SF) 52, Request for Personnel Action. Components will retain documentation for two years after employment is terminated.

2. The certification from the approval official required in B2 above must be attached to the SF-52.

E. Reporting Requirements

The Deputy Under Secretary of Defense (Civilian Personnel Policy) will monitor the effective use of this appointment authority and may establish reporting requirements, as necessary. DCPDS will be used to obtain information on the employment of annuitants to assist in meeting any reporting requirements.

F. Accountability

Managers and supervisors throughout the Department are responsible for the appropriate use of this authority to support mission requirements. Designees are accountable for the use and oversight of this authority. The authority may not be used solely to benefit employees or retirees.