



2120 L Street, NW, Suite 700
Washington, DC 20037

T 202.822.8282
F 202.296.8834

HOBBSSTRAUS.COM

February 10, 2017

GENERAL MEMORANDUM 17-016

Department of Health and Human Services Issues Hiring Freeze Guidance

This Memorandum updates our General Memorandum 17-014 (February 3, 2017) on the Presidentially-ordered federal hiring freeze with information about the guidance issued this week by the Department of Health and Human Services (HHS) detailing the occupational exemptions that may be granted to the federal hiring freeze, including for the Indian Health Service (IHS).

On February 6, HHS Acting Deputy Secretary Colleen Barros signed a Memorandum (HHS Memorandum), which added welcome detail to the President's January 23 hiring freeze order and the two subsequent guidance documents regarding the categories of HHS personnel to be exempted from the hiring freeze. *We attach as one document the HHS Memorandum, the previous Office of Management and Budget/Office of Personnel Management (OMB/OPM) guidance of January 31, and the HHS listing of occupations exempt from the hiring freeze.*

The OMB/OPM guidance of January 31 had, via reference to a 1981 OMB Memorandum, exempted from the freeze personnel undertaking "medical care of inpatients and emergency outpatient care" but with no further detail. The February 6 HHS Memorandum attached a list of 78 occupations which goes beyond direct medical care and includes critical support such as food service, housekeeping, medical records administration, security, and social services. The HHS Memorandum notes that it "specifically includes Indian Health Service Critical Hire appointments, which are temporary excepted service appointments under Schedule A, section 213.3102(i)(2)."

There are seven occupations which require pre-approval from HHS to ensure that the work is for "recruitment and placement activities directly related to public safety and national security" and they are also listed in the attached chart. The HHS Memorandum notes that the Commissioned Corps is in the exempted category (they had been listed as exempt in previous guidance as well). HHS also notes that "additional guidance for requesting further exemptions will be forthcoming."

The HHS Memorandum should go a long way in helping IHS programs make plans during the duration of the hiring freeze. There is, at this time, no end point specified for the hiring freeze. The President's Memorandum of January 31 provides that it would end upon implementation of a plan to reduce the size of the federal government's workforce through attrition.

Please let us know if we may provide additional information regarding the hiring freeze.

###

Inquiries may be directed to:
Karen Funk (kfunk@hobbsstrauss.com)



TO: OpDiv Heads
StaffDiv Heads

FROM: Colleen Barros, Acting Deputy Secretary

SUBJECT: 2017 HHS Hiring Freeze Exemptions

The purpose of this memorandum is to provide Department of Health and Human Services' (HHS) implementation guidance related to the January 23, 2017 Presidential Memorandum directing a freeze on the hiring of Federal civilian employees and subsequent Office of Management and Budget (OMB) and Office of Personnel Management (OPM) implementation guidance (memoranda M-17-17 and M-17-18). These memoranda provide a number of exemptions, including specific mention of the Commissioned Corps of the U.S. Public Health Service.

Among the exemptions in OMB-17-18 (Attachment A), agency heads may exempt any positions that are deemed necessary to meet national security or public safety responsibilities (including essential activities to the extent that they protect life and property) (see provision at 3(r)). Agencies were asked to refer to longstanding guidance provided in OMB Memorandum, "Agency Operations in the Absence of Appropriations" dated November 17, 1981, as a guide in identifying positions that pertain to the covered activities. At HHS, based on input from the operating divisions (OpDivs) and staff divisions (StaffDivs), as well as the various OMB memoranda, a number of position types have been identified as meeting these exemptions from the hiring freeze. The exempted positions and series listed in Attachment A fall within the parameters of public safety and national security, as outlined below. Some of these positions are broad in nature and will require HHS preapproval, as noted on Attachment B.

1. Patient Care and Health Related Research – In this grouping, the positions identified consist of both direct and indirect patient care services. Patient care service positions such as physicians, clinical fellows, nurses, therapists, and other healthcare providers are critical to the mission of the Department to provide effective health and human services in the hospitals and clinics it operates. Equally critical are scientific, research, and program positions that oversee clinical and/or public health programs.

A small number of ancillary mission critical support positions, without which patient care providers can neither function nor clinical program monitoring and oversight be effectively managed, are also included, such as food service, housekeeping, and medical records administration positions. This specifically includes Indian Health Service (IHS) Critical Hire appointments, which are temporary excepted service appointments under Schedule A, section 213.3102(i)(2).

2. Public Health Safety and Emergencies – The HHS Secretary has a number of legal authorities to prepare for and respond to public health and medical emergencies under several statutes, primarily including the Public Health Service (PHS) Act, Federal Food,

Drug and Cosmetic Act, and the Social Security Act. Such public health emergencies might include responses to pandemic influenza, Ebola, and the Zika outbreak. HHS also has responsibility for ensuring public health safety through programs such as food, drug and medical device safety; the care and safety of unaccompanied children crossing our borders; and other responses to national public health emergencies, such as the Opioid epidemic.

3. National Security – HHS is responsible for addressing the security of the Nation, as it relates to potential and actual threats to public health. In addition, as the coordinator for Emergency Support Function (ESF) No. 8 – Public Health and Medical Services, HHS is responsible for coordinating Federal assistance to supplement State, tribal, and local resources in response to a public health and medical disaster, potential or actual incidents requiring a coordinated Federal response, and/or during a developing potential health and medical emergency.

HHS is also responsible for the safety and security of staff and equipment in government facilities and hospitals across the world. We must ensure sufficient personnel in security functions including logical and physical access, intelligence, and counterintelligence in order to assess potential threats and to appropriately vet new and existing employees and contractors by conducting background investigations and suitability adjudications.

In addition, the healthcare sector has become the number one target for cyber-attacks, and the HHS information systems cumulatively house a wealth of identifiable patient health information and other personally identifiable information. The combination of patient, hospital, and employee information, in an agency as large as HHS, requires essential cyber security operations. The growing need to “unlock” health information can ultimately lead to increased risk, and HHS must be equipped to adequately mitigate threats and address cyber emergencies as they occur.

4. Critical Infrastructure – The landholding entities within HHS are responsible for the operations and maintenance of numerous facilities. Exemptions are necessary to ensure the engineering and building operations staff required for facilities to become or remain operational, so as to meet safety and health standards required by law are met. HHS must be staffed to protect essential facility functions, information systems, patients, veterinary and animal support services, and program operations at its sites.

In addition to the above categories, HHS manages programs involving positions that are directly linked to M-17-18 exemptions at 3(b) and (j):

1. Part 3(b) exempts “positions under programs where limiting the hiring of personnel would conflict with applicable law,” which at HHS includes positions such as Special Government Employees (SGEs), and specific positions within the Office of Medicare Hearings and Appeals (OMHA) and Departmental Appeals Board (DAB).

With respect to SGE appointments, experts and advisors are appointed to Federal Advisory Committee Act (FACA) chartered committees that facilitate decision-making

related to public health and public safety. During this 90-day period, appointments will only be considered for those committees that are legally mandated, but not for those that are discretionary. OpDivs and StaffDivs should submit SGE names and associated committees for prior review and approval.

2. Part 3(j) exempts, “time limited positions in support of fellowship or professional/industry exchange programs,” which are similar to various HHS professional fellowship and training programs. OpDiv and StaffDiv mission critical training and fellowship programs require advance submission for approval with a description of the program, as it relates to the critical mission requirements and number of participants anticipated not exceeding the previous FY 2016 program size.

HHS will be implementing a review and reporting process to ensure that this guidance is followed. Reporting instructions and additional guidance for requesting further exemptions will be forthcoming. In the interim, please assure records are maintained on hiring actions to facilitate future reporting. We will provide further guidance, as we receive it, through the Human Resource Directors and the Executive Officer channels. Please contact your servicing Human Resource Director with questions.



Colleen Barros, Acting Deputy Secretary



Date

Attachments:

- A - OMB 17-18
- B - List of positions for exemption approval

cc: OpDiv Executive Officers
StaffDiv Executive Officers
Human Resource Directors



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.

HHS positions that meet the criteria outlined in M-17-18 and are exempt from the hiring freeze

OCCUPATION	SERIES
Safety and Occupational Health Management	0018
Chaplain	0060
Personnel Security Specialist	0080
Fire Protection and Prevention	0081
Police	0083
Security Guard	0085
Personnel Security Assistant	0086
Emergency Management	0089
Mental Health Technical	0102
Intelligence Analyst	0132
Psychology	0180
Social Work	0185
Social Services Aid and Assistant	0186
Social Services Aid and Assistant	0187
Recreation Specialist (Clinical Settings only)	0188
Animal Facilities Specialist	0301
Emergency Response	0303
Biologist	0401
Microbiologist	0403
Pharmacology	0405
Physiology	0413
Toxicology	0415
Environmental Health and Safety	0601
Health Scientist Safety Specialist - Bio-risk	0601
Epidemiologist	0601
Medical Officer	0602
Staff Clinician	0602
Physician's Assistant	0603
Nurse	0610
Practical Nurse	0620
Nursing Assistant	0621
Medical Supply Aide and Technician	0622
Dietitian and Nutritionist	0630
Occupational Therapist	0631
Physical Therapist	0633
Recreation/Creative Arts Therapist	0638
Health Technician	0640
Nuclear Medicine Technician	0642
Medical Technologist	0644
Medical Technician	0645
Histopathology/Pathology Technician	0646
Diagnostic Radiologic Technologist	0647
Medical Instrument Technician	0649
Respiratory Therapist	0651
Pharmacist	0660
Pharmacy Technician	0661

Federal Civilian Hiring Freeze

HHS positions that meet the criteria outlined in M-17-18 and are exempt from the hiring freeze

OCCUPATION	SERIES
Optometrist	0662
Speech Pathology and Audiology	0665
Podiatrist	0668
Medical Records Administration	0669
Health System Administration - Medical Center Director	0670
Hospital Housekeeping Officer	0673
Medical Records Technician	0675
Medical Support Assistance	0679
Dental Officer	0680
Dental Assistant	0681
Dental Hygiene	0682
Industrial Hygiene	0690
Consumer Safety Officer	0696
Environmental Health Technician	0698
Veterinarian	0701
Animal Health Technician	0704
General Engineering	0801
Mechanical Engineering	0830
Nuclear Cyclotron Engineer	0840
Biomedical Engineering	0858
Realty Specialist	1170
Health Physicist	1306
Chemist	1320
Criminal Investigator	1811
Quality Assurance Specialist	1910
Cybersecurity - Information Security	2210
High Voltage Electrician	2810
Housekeeping Aid/Custodial Worker	3566
Maintenance Mechanic	4749
Boiler Plant Operator	5402
Cook (Clinical Settings only)	7404
Food Service Worker (Clinical Settings only)	7408
OCCUPATIONS REQUIRING PREAPPROVAL	
*Due to the broad nature of work performed within these positions, HHS preapproval will be required to ensure only recruitment and placement activities directly related to public safety and national security are approved.	
	SERIES
Social Science (Behavioral and Mental Health)*	0101
Health Scientist Administrator*	0601
Public Health Advisor*	0685
Contracting Officer*	1102
Grants Management Specialist*	1109
Mathematical Statistics*	1529
Contact Representative*	0962