

Date: April 2, 2020

From: Chief Human Capital Officer (05)

Subj: Veterans Affairs (VA) Approved Direct Hire Authority (DHA) in Response to COVID-19

To: Human Capital Executives

1. Purpose. This memorandum provides guidance on the Office of Personnel Management's (OPM) approval of a Direct Hire Authority (DHA) for the Veterans Affairs (VA) in support of the COVID-19 national emergency.

2. Background. On March 13, 2020, the President issued a proclamation that the COVID-19 outbreak constitutes a national emergency, beginning March 1, 2020. On April 1, 2020, OPM approved VA's request for DHA. OPM approved the request in accordance with 5 U.S.C. § 3304(a)(3) and 5 CFR 337.205(b)(1)-(4) based on a critical hiring need resulting from the outbreak and spread of the "Coronavirus disease 2019" (COVID-19), which has caused a public health emergency. This authority will assist VA in meeting its urgent staffing needs resulting from this national emergency.

3. Coverage. This authority is effective immediately and ends April 2, 2021. Occupations, series, and grades covered are listed below.

4. Positions Authorized by OPM for VA's DHA. OPM has authorized DHA for the following positions at ALL grade levels nationwide for the duration of the COVID-19 emergency:

Industrial Hygienist, GS-0690
Plumber, WG-4206
Maintenance Worker, WG-4749
Supervisory Engineer, GS-0801
Specialty Engineer, GS-0800
Laborer, WG-3502
Cook, WG-7404
Cemetery Caretaker, WG-4754

OPM has also authorized DHA for the following occupation and at this specific grade level:

Human Resources Specialist, GS-0201-12

5. Procedures. VA-004 - DHA Authority issued on April 1, 2020 to fill mission critical positions as described above for VA nationwide. This authority is based on a critical hiring need in support of the COVID-19 national emergency. This authority will assist VA and its Components with its emergency response in dealing with this emergency. This authority expires on April 2, 2021.

Using this DHA, VA HR facilities must:

- a. VA must comply with public notice requirements in 5 U.S.C. 3327, 3330 and 5 CFR 330, subpart G, and requirements in 5 CFR 332.402 when seeking to fill positions under this authority. In addition, HR offices must comply with all relevant laws unless VA is exempt from such laws pursuant to 5 U.S.C. 3304(a)(3) and this authority.
- b. VA must identify and use the proper assessment tools for the positions being filled with this DHA to determine who is qualified for the approved positions. VA should not conduct additional ratings to determine relative degrees of qualifications when using this authority.
- c. VA must assess applicants in the order in which the applications were received and select any qualified applicant in that order.
- d. VA may give individuals appointed under this authority competitive service career, career-conditional, temporary and term appointments, as appropriate, without regard to provisions of 5 U.S.C. 3309-3318 or 5 CFR part 211 and part 337, subpart A.
- e. In making appointments using this authority, VA is required to arrange for background investigations at the appropriate tier and to undertake all appropriate adjudications relating to suitability, eligibility for access to classified information or to be employed in a position, that is, sites of varying complexity, and serving nine million Veterans each year.
- f. VA must use two authority codes when documenting personnel actions using this direct-hire authority. The first code "AYM" automatically fills in "Reg. 337.201" on the Notification of Personnel Action, Standard Form 50. The second authority code "BYO" identifies VA's use of this agency-specific authority. Using these two authority codes will help OPM to evaluate the use of these authorities without requiring agency reports.
- g. VA must ensure Administrative Careers with America (ACWA) Written Tests and ACWA Rating Schedules are being used to evaluate an applicant's job-related competencies or knowledge, skills, and abilities when filling ACWA-related positions at the GS-5 and GS-7 grade levels. Only Delegated Examining Units within VA that have been authorized to issue ACWA tests may fill positions at the GS-5 and GS-7 grade levels for ACWA-designated occupations.
- h. VA must utilize the correct job opportunity announcement (JOA) templates that have been created and may be found in the USA Staffing (Up-Grade system) template library. These templates must be used when posting JOAs using DHA.

6. Questions.

- a. Questions regarding recruitment and placement may be directed to the Recruitment and Placement Policy Service, at vatitle5staffingpoli@va.gov.
- b. Questions regarding position classification related to classification appeals and

occupations included in the consistency reviews may be directed to the Director for Compensation and Classification Service, OCHCO, at vacoclassif@va.gov.

- c. Questions regarding pay setting may be directed to the Director for Compensation and Classification Service, OCHCO, at <https://vaww.va.gov/OHRM/Pay/Contacts.asp>.

A handwritten signature in black ink, appearing to read 'T. Therit', with a stylized flourish at the end.

Tracey Therit
Chief Human Capital Officer

Attachment

1. What is the VA's Direct Hire Authority?

VA's Direct Hire Authority (DHA) is an appointing (hiring) authority that the Office of Personnel Management (OPM) granted to VA to fill 9 specific critical occupations as a result of the COVID-19 national emergency. These occupations were identified by VA as a critical hiring need. This authority does not require the application of Veterans' preference or rating and ranking.

2. When does this VA Direct-Hire Authority expire?

This VA DHA expires on April 2, 2021.

3. Can VA appoint a candidate under Direct Hire Authority after the expiration date of April 2, 2021?

No. A candidate must be appointed to VA's workforce on or before April 2, 2021.

4. What is the purpose of VA's Direct Hire Authority?

VA's DHA enables selecting officials to hire, after public notice is given, any qualified applicant without regard to 5 United States Code (U.S.C.) 3309-3318, 5 Code to Federal Regulations (CFR) part 211, or 5 CFR part 337, subpart A. VA's DHA expedites hiring by eliminating competitive rating and ranking, Veterans' preference, "rule of three," and category rating procedures.

5. Does Veteran's Preference Apply When Using VA's Direct Hire Authority?

No. Veterans' preference does not apply when selecting individuals under VA's DHA. When hiring under DHA, the law allows Hiring Managers to hire applicants without regard to sections 5 U.S.C. 3309-3318, which eliminates the requirement for applying Veterans' preference. Qualified applicants with Veterans' preference should be selected as they are referred, just as any qualified non-preference eligible candidate would fall.

6. Can VA use this Direct-Hire Authority for Time Limited Appointments?

Yes. VA may use this DHA for a time-limited appointment with a not-to-exceed (NTE) date.

7. Can VA use the Direct-Hire Authority for Title 38 and Title 38 Hybrid, Excepted Service or Senior Executive Service Positions?

No. VA's DHA may only be used for positions in the competitive service. Congress authorized direct hiring under 5 U.S.C. 3304 - Competitive service. Rules for the

competitive service is established under 5 U.S.C. 3304; direct-hire authority does not cover positions in the excepted service or the senior executive service.

8. Are VA HR Offices required to use the Direct-Hire Authority to fill the 9 critical occupational groups related to critical hiring?

No. HR Offices may use any available method to attract applicants (merit promotion, competitive examination, Veteran hiring flexibilities, and noncompetitive appointing authorities).

9. Can VA use the Direct-Hire Authority to convert an employee in the excepted service or under a time limited appointment to a permanent career or career-conditional appointment?

Yes. HR Offices may use the DHA to appoint an applicant from an excepted service or time-limited appointment to a permanent career or career-conditional appointment. However, using VA's DHA requires prior public notice, as prescribed in 5 U.S.C. 3327 and 3330, and 5 CFR 330, subpart G. The employee must meet the minimum qualification requirements for the job (e.g., experience, education, medical, licensure/certification, suitability, selective factors.). The HR office must comply with the laws and regulations of the DHA and give full consideration to all qualified preference eligible candidates. No preference in hiring will be granted.

10. Must applicants applying to the Direct-Hire Authority announcement meet all qualification requirements prior to being appointed to VA's workforce?

Yes. At the time of the appointment, the appointing official must ensure the individual selected meets all requirements of the position, including age, citizenship, medical, no nepotism, qualifications (experience, education, and license/certification), and suitability requirements. DHA does not waive qualification and eligibility requirements.

11. Are there restrictions on movement of an employee following appointment using Direct-Hire Authority?

Yes. The restriction on movement following competitive appointment in 5 CFR 330.502 applies for the first 90 days.

12. Are appointments under Direct-Hire Authority subject to a 1 year probationary or trial period?

Yes. When using DHA, an individual is appointed to the competitive service. Consistent with 5 CFR 315.801, 5 CFR 315.802 and 5 CFR 316.304, an individual is required to serve a 1 year probationary or trial period.

13. Do RPL, CTAP, or ICTAP (displaced or surplus) eligibles receive priority consideration when applicants are appointed when using VA's Direct-Hire Authority in accordance with 5 CFR Part 330?

Yes. Displaced or surplus eligibles are entitled to priority consideration when filling a position from outside VA's workforce and the position is expected to last 120 days or more. In order to receive priority consideration, displaced or surplus eligibles must meet the eligibility requirements and must apply to the JOA to receive consideration.

14. What does priority consideration mean for the purposes of displaced or surplus employees?

When a displaced or surplus eligible applies to a position, he/she meets all of the eligibility requirements, and is determined to be well-qualified for the position, in order to receive priority consideration. This means no other applicant may be considered for the advertised position unless the displaced or surplus eligible is selected or declines consideration for the position.

15. What documentation is needed when a displaced or surplus eligible declines consideration for a position?

The HR office must include the written declination in the recruitment case file for record retention purposes.

16. Does VA have any reporting requirements to OPM regarding the Direct-Hire Authority?

Yes. On a periodic basis, OPM will review the use of this DHA to ensure it is being used properly and to determine if continued use is supportable. OPM will monitor VA's use of this authority and may modify or terminate this authority as appropriate.

17. May VA's Direct-Hire Authority be used to make tentative job offers at recruitment events?

Yes. A tentative offer may be extended to an applicant at recruitment events after the HR Specialist reviews the candidate's qualifications and determines they are qualified and eligible for an appointment. However, the acceptance of the application and the extension of the tentative offer must be executed during the JOA open period.

18. May HR Offices develop their own guidance and processes when using VA's Direct Hire Authority?

No. HR Offices must follow the guidance prescribed by the regulatory guidance in 5 CFR 337.205.

19. Is VA's Direct-Hire Authority exempt from future Government-wide hiring freezes?

No. When there is a civilian hiring freeze, VA's DHA is not exempt. The DHA is a hiring authority and would be treated the same as any other hiring authority.

20. May applicants appointed under VA's Direct-Hire Authority receive a salary above the minimum rate of the grade based on superior qualifications?

Yes. HR Officers must ensure compliance with 5 CFR 531.211-212 and VA Handbook 5007 when setting pay above the minimum rate of the grade. The written justification must be sustainable.

21. May applicants appointed under VA's Direct Hire Authority receive recruitment or relocation incentives?

Yes. HR Officers must ensure compliance with 5 CFR 530, Subpart C, 5 CFR 531, Subpart F, and VA Handbooks 5005 and 5007, when offering recruitment and relocation incentives.

22. May applicants appointed under VA's Direct Hire Authority receive creditable service for annual leave accrual for non-Federal work experience?

Yes. HR Officers must ensure compliance with 5 CFR 630.205, and VA Handbooks 5005 and 5011, when granting annual leave accrual for non-Federal work experience.

23. Under VA's Direct Hire Authority may positions have a career ladder?

Yes. When recruiting under VA's DHA, a position may have a career ladder. The grade level for which the individual is appointed may only be at the approved grade level under the DHA.

24. May HR Offices establish cut-off dates during the public notice requirement?

Yes. However, VA was granted DHA because of a critical hiring need in response to COVID-19, and to arbitrarily establish a cut-off date might prevent VA from reaching highly qualified applicants. Therefore, it is recommended that HR offices post open continuous JOAs that inform applicants of the date qualified applicants will be referred to the hiring managers.

25. If an occupational series that has been approved for Direct-Hire Authority is currently under a classification appeal or consistency review can HR Offices post a JOA for that position?

No. HR Officers are responsible for ensuring that all positions that are advertised are properly classified in accordance with 5 U.S.C. 5107. In accordance with 5 U.S.C. 5107 and 5 CFR Part 511, the occupational series and grades covered by VA's DHA must comply with OPM's appeal certificates. JOAs that are non-compliant with classification appeals or consistency reviews are in a direct violation of Merit System Principles (2301(b)(3)) and results in the commission of a Prohibited Personnel Practice (2302(b)(12) since it amounts to knowingly failing to take corrective personnel actions to ensure an agency meets its statutory requirements.

26. If all applicants except for Veterans have been selected off a referral list, will a HR office be required to select the remaining Veterans before announcing the same position again?

Hiring managers should consider all qualified applicants to include Veterans. VA's DHA must comply with Merit System Principles, 5 U.S.C. 2301 and avoid violating Prohibited Personnel Practices 5 U.S.C. 2302.

27. When do Direct-Hire Authority referral lists/certificates expire?

Although DHA is not competitive examining it is a competitive process. VA has decided to closely follow the policies as identified in the delegated examining policy. DHA certificates and referral lists expire 90 calendar days from the date of issuance. Only one 30 calendar day extension may be granted per JOA.

28. Is a hiring manager obligated to interview all candidates that are referred for consideration?

No. All candidates are equally qualified, and the hiring manager may choose who they would like to interview. VA HR offices and hiring managers are not permitted to conduct additional rating and ranking to determine relative degrees of an applicant's qualifications, such as selection or interview panels, where scoring (rating/ranking) is used to distinguish superior qualifications. Hiring Managers may conduct interviews (not to be scored) with applicants that have been deemed qualified by the HR office for the purpose of confirming the applicant's qualifications only.

29. When posting a JOA using VA's Direct-Hire Authority, are HR offices required to notify applicants about their application status?

Yes. As part of the 2010 Hiring Reform, HR offices are required to notify all applicants about the status of their application.