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Federal Employees: Human Resources Management Flexibilities for Emergency Situations

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Summary

Federal executive branch departments and agencies have available to them various human resources management flexibilities for emergency situations involving severe weather, natural disaster, and other circumstances. At various times, the Office of Personnel Management issued guidance on these flexibilities, which supplements the basic policies governing staffing, compensation, leave sharing, and telework in Title 5 of the *United States Code* and Title 5 of the *Code of Federal Regulations*. Some examples of when issuances have occurred include following the September 11, 2001, terrorist attacks; in the aftermath of Hurricanes Katrina and Rita in 2005; in response to pandemic influenza in 2006; and in the aftermath of Hurricane Harvey in 2017.

Human Resources Management (HRM) Flexibilities for Emergency Situations

The Office of Personnel Management (OPM) has issued guidance for federal executive branch departments and agencies on various flexibilities available to facilitate HRM for emergency situations involving severe weather, natural disaster, and other circumstances multiple times since 2001. Notably, these issuances occurred following the September 11, 2001, terrorist attacks; in the aftermath of Hurricanes Katrina and Rita, which occurred back-to-back in the Gulf Coast region of the United States in late summer 2005; and as part of fulfilling OPM's responsibilities under the President's national strategy on pandemic influenza in 2006.¹ Most recently, OPM issued guidance in a memorandum titled, "Human Resources Flexibilities for Hurricane Harvey² and its Aftermath," issued on August 27, 2017. The memorandum "remind[s] agencies of the wide range of Human Resources (HR) policies and flexibilities currently available to assist Federal employees."³ On September 1, 2017, OPM, in consultation with the Office of Management and Budget (OMB), established an emergency leave transfer program for federal employees who were adversely affected by Hurricane Harvey.⁴ Seven days later, on September 8, 2017, as Hurricane Irma⁵ tracked toward Florida, OPM authorized departments and agencies to hire individuals under excepted service appointments and on a temporary basis for up to one year (with an extension up to one year). The individuals "will be directly involved with the recovery and relief efforts associated with Hurricane Harvey or Hurricane Irma."⁶

¹ U.S. Office of Personnel Management (OPM), Memorandum for Heads of Executive Departments and Agencies, "Excused Absence and Assistance to Federal Employees Affected by the Attacks at the World Trade Center and the Pentagon," from Kay Coles James, Director, September 13, 2001, at <http://www.opm.gov/oca/COMPMEMO/2001/2001-08.asp>. OPM, Memorandum for Heads of Executive Departments and Agencies, "Emergency Hiring Situation Resulting from Hurricane Katrina," from Linda M. Springer, Director, September 6, 2005, at <https://www.chcoc.gov/content/emergency-hiring-situation-resulting-hurricane-katrina>. OPM, Memorandum for Chief Human Capital Officers, "Recruitment and Retention Flexibilities for Gulf Coast Employees," from Linda M. Springer, Director, December 18, 2006, at <http://www.opm.gov/oca/compmemo/2006/2006-21.asp>. OPM, *Human Capital Planning for Pandemic Influenza; Information for Agencies and Departments*, August 3, 2006 and updated September 12, 2006, at <https://www.hsdl.org/?view&did=478011>.

² Harvey, a Category 4 major hurricane, made landfall near Corpus Christi, Texas, on August 25, 2017, and resulted in catastrophic flooding in the Greater Houston Metropolitan Area.

³ OPM, Memorandum for Chief Human Capital Officers, from Kathleen M. McGettigan, Acting Director, "Human Resources Flexibilities for Hurricane Harvey and its Aftermath," August 27, 2017, at <https://www.chcoc.gov/content/human-resources-flexibilities-hurricane-harvey-and-its-aftermath>. OPM also published reports titled "Human Resources Flexibilities and Authorities in the Federal Government," August 2013, (<https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/handbooks/humanresourcesflexibilitiesauthorities.pdf>) and "Handbook on Pay and Leave Benefits for Federal Employees Affected by Severe Weather Conditions or Other Emergency Situations," June 2008 (<https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/handbooks/emergencybenefits.pdf>).

⁴ OPM, Memorandum for Heads of Executive Departments and Agencies, from Kathleen M. McGettigan, Acting Director, "Emergency Leave Transfer for Federal Employees Adversely Affected by Hurricane Harvey," September 1, 2017, at <https://www.chcoc.gov/content/emergency-leave-transfer-federal-employees-adversely-affected-hurricane-harvey>. On August 25, 2017, President Donald Trump "declared that a major disaster exists in the State of Texas." The declaration is at <https://www.whitehouse.gov/the-press-office/2017/08/25/president-donald-j-trump-approves-texas-disaster-declaration>.

⁵ Irma was a Category 4 major hurricane when it made first landfall in Florida near Cudjoe Key on September 10, 2017.

⁶ OPM, Memorandum for Chief Human Capital Officers, from Kathleen M. McGettigan, Acting Director, "Emergency Hiring Situation Resulting From Hurricane Harvey and Hurricane Irma," September 8, 2017, at <https://www.chcoc.gov/> (continued...)

Subject to guidance from the OPM Director, Federal Executive Boards (FEBs) are available to assist the agency with matters related to emergency operations, such as operations under hazardous weather conditions.⁷ The FEBs were established by a presidential memorandum issued by President John F. Kennedy in November 1961, to “provide means for closer coordination of Federal activities at the regional level.”⁸ Currently, FEBs operate in 28 metropolitan areas.⁹ A goal of the FEBs is “to create effective collaboration on emergency readiness and recovery, and to educate [the] Federal workforce on issues in emergency situations.”¹⁰

Table 1, below, provides information on selected flexibilities related to staffing, compensation, leave transfer, and telework¹¹ in Title 5 of the *United States Code* and Title 5 of the *Code of Federal Regulations*.¹² The table refers to several HR terms, which are explained as follows:

- **Competitive service positions** are civil service positions in the executive branch, except positions which are specifically excepted from the competitive service by or under statute; positions to which appointments are made by nomination for confirmation by the Senate, unless the Senate otherwise directs; and positions in the Senior Executive Service (SES).¹³ Such positions require applicants to compete against one another in open competition based on job-related criteria to obtain employment. The positions are subject to the civil service laws codified at Title 5 of the *United States Code* and to oversight by OPM. Employees are to be selected from among the best-qualified candidates and without discrimination.¹⁴
- **Excepted service positions** are civil service positions which are not in the competitive service or the SES.¹⁵ Qualification standards and requirements for these positions are established by the individual agencies. The Title 5 rules on

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⁷ 5 C.F.R. §960.107(c)(6).

⁸ U.S. President (Kennedy), Memorandum for Heads of Departments and Agencies, November 13, 1961, at <http://www.presidency.ucsb.edu/ws/index.php?pid=8439&st=federal+executive+boards&st1=>.

⁹ Federal Executive Boards are located in Atlanta, GA; Baltimore, MD; Boston, MA; Buffalo, NY; Chicago, IL; Cincinnati, OH; Cleveland, OH; Colorado; Dallas-Ft. Worth, TX; Detroit, MI; Honolulu-Pacific, HI; Houston, TX; Kansas City, MO; Los Angeles, CA; Minnesota; New Mexico; New Orleans, LA; New York, NY; Newark, NJ; Oklahoma; Oregon; Philadelphia, PA; Pittsburgh, PA; St. Louis, MO; San Antonio, TX; San Francisco, CA; Seattle, WA; and South Florida. (Federal Executive Boards, “Locations,” at <https://www.feb.gov/board-locations/>.)

¹⁰ OPM, Federal Executive Board, Strategic and Operational Plan 2013-2017, p. 3, at <https://www.feb.gov/plans-reports/federal-executive-board-strategic-plan-2013-2017.pdf>.

¹¹ Telework.gov is the official website for the federal government’s telework program and includes guidance on emergency telework at <https://www.telework.gov/guidance-legislation/telework-guidance/emergency-telework/>. OPM guidance on telework is included in a report titled, “Guide to Telework in the Federal Government,” April 2011, at <https://www.telework.gov/guidance-legislation/telework-guidance/telework-guide/guide-to-telework-in-the-federal-government.pdf>.

¹² An authority in Title 42 of the *United States Code* which relates to the Robert T. Stafford Disaster Relief and Emergency Assistance Act is also included in Table 1. See also CRS Report R41981, *Congressional Primer on Responding to Major Disasters and Emergencies*, by Jared T. Brown, Bruce R. Lindsay, and Jaclyn Petruzzelli.

¹³ 5 U.S.C. §2102(a).

¹⁴ 5 U.S.C. Chapter 33. OPM regulations on the Competitive Service include those codified at 5 C.F.R. Parts 212, 330, and 332.

¹⁵ 5 U.S.C. §2103(a).

appointment (except for veterans’ preference), pay, and classification do not apply.¹⁶

- **SES positions** are classified above grade 15 of the General Schedule or in level IV or V of the Executive Schedule, or an equivalent position, and are not filled by presidential appointment by and with the advice and consent of the Senate. Members of the SES, among other duties, direct the work of an organizational unit and exercise important policymaking, policy-determining, or other executive functions.¹⁷
- The **Reemployment Priority List** is the mechanism agencies use to give reemployment consideration to their current and former competitive service employees who will be, or were, separated by reduction in force or who are fully recovered from a compensable injury after more than one year.¹⁸

Table I. Human Resources Management Flexibilities for Emergency Situations

Flexibility and Authority	Brief Description
Excepted Service Appointment—Appointments in Remote or Isolated Locations [5 C.F.R. §213.3102(i)(1)]	Agencies may appoint individuals for up to one year to work up to 1,040 hours per year. Such appointments can be extended indefinitely in one-year increments. A remote or isolated location is “outside the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather or road conditions which are normal for the area.”
Excepted Service Appointment—30-Day Critical Hiring Need [5 C.F.R. §213.3102(i)(2)]	Agencies may appoint individuals for 30 days and may extend the appointment for up to an additional 30 days if continued employment is essential to the agency’s operations. The same individual may not be employed for more than 60 days in a 12-month period. The agency determines the qualification requirements. The authority may be used to fill senior-level and lower-level positions.
Excepted Service Appointment—Temporary Emergency Need [5 C.F.R. §213.3102(i)(3)]	The Office of Personnel Management (OPM) may authorize agencies to appoint individuals to other positions for which OPM determines that examining (applying the qualification standards and requirements established for the competitive service) is impracticable. OPM has authorized agencies to appoint individuals for up to one year to fill positions which will be directly involved with the recovery and relief efforts associated with Hurricane Harvey or Hurricane Irma. Appointments may be extended in increments up to one year. Agencies must apply the provisions on employment in the excepted service, including veterans’ preference, (5 C.F.R. Part 302) in using the authority.

¹⁶ OPM regulations on the Excepted Service include those codified at 5 C.F.R. Parts 213 and 302.

¹⁷ 5 U.S.C. §3132(a)(2).

¹⁸ 5 C.F.R. §330.201.

Flexibility and Authority	Brief Description
Excepted Service Appointment—Appointment of Faculty Members [5 C.F.R. §213.3102(o)]	Agencies may appoint faculty members to scientific, professional, or analytical positions. Appointees must be bona fide faculty members from accredited colleges and universities, have special qualifications for the position, and not work more than 130 days per year.
Use of Private Sector Temporary Help Service Firms [5 C.F.R. Part 300, Subpart E] (Conditions for using private sector temporaries are at 5 C.F.R. §300.503.)	Agencies may contract for up to 120 workdays with private sector temporary help service firms to quickly provide specific services (but not for Senior Executive Service [SES], managerial, or supervisory positions). A contract may be extended for an additional 120 workdays. Services furnished by temporary help firms must be performed by their employees who are not considered or treated as federal employees for any purpose.
Reemployment Priority List (RPL) [5 C.F.R. Part 330, Subpart B]	Agencies may use the RPL as a source of qualified individuals who are available for temporary appointments (generally, one year with up to one additional year), term appointments (more than one year but not more than four years), or permanent appointments in the competitive service. An agency may apply an exception to choosing someone from the RPL from the list of exceptions at 5 C.F.R. §330.211.
Competitive Service Appointment—Temporary Appointments, 120 Days or Less [5 C.F.R. §330.609(c) and 5 C.F.R. §330.707(e)]	Agencies may make appointments of 120 days or less without first selecting a surplus or displaced employee who is eligible for appointment under an Agency Career Transition Assistance Plan (CTAP) or an Interagency Career Transition Assistance Plan (ICTAP). For appointments of longer duration, the CTAP and the ICTAP may be used to identify well-qualified displaced federal employees who are available for immediate employment. OPM regulations governing CTAP and ICTAP are at 5 C.F.R. Part 330, Subparts F and G.
Competitive Service Appointment—Direct-Hire Authority [5 U.S.C. §3304(a)(3); 5 C.F.R. Part 337, Subpart B]	OPM may authorize agencies to appoint candidates directly to permanent or nonpermanent positions in the competitive service without regard to 5 U.S.C. §§3309-3318; 5 C.F.R. Part 337, Subpart A; and 5 C.F.R. Part 211 (which include, among others, veterans' preference and competitive rating of applicants). In approving direct hire, OPM must determine that a severe shortage of candidates or a critical hiring need exists for a specific position or group of positions. Public notice must be given for any position to be filled by direct hire. OPM has approved the direct hire of medical officers, nurses, diagnostic radiologic technicians, and pharmacists at all grade levels and in all locations. In addition, OPM has also approved direct hire for positions in information technology management at GS-9 and above in all locations and Veterinary Medical Officers at GS-11 through GS-15 nationwide. Through September 30, 2017, OPM has approved direct hire for selected federal acquisition positions. Individuals in the occupations listed above may receive competitive service career, career-conditional, term, or temporary appointments.

Flexibility and Authority	Brief Description
Senior Executive Service (SES)—Limited Appointments [5 C.F.R. Part 317, Subpart F]	<p>Agencies may appoint career employees to limited term or limited emergency appointments provided such appointments are within the space allocations limit previously authorized by OPM. If not within that limit, an agency may request a temporary space allocation. Agencies may request authority from OPM to appoint noncareer employees to limited term or limited emergency appointments.</p> <p>A limited term appointee is an individual appointed under a nonrenewable appointment for a term of 3 years or less to an SES position the duties of which will expire at the end of such term. A limited emergency appointee is an individual appointed under a nonrenewable appointment, not to exceed 18 months, to an SES position established to meet a bona fide, unanticipated, urgent need. (5 U.S.C. §3132(a)(5)(6))</p>
Reemploying Annuitants [5 U.S.C. §8344(l), §8468(i)]	<p>Agencies, without OPM approval, may reemploy retirees without applying the dual compensation salary offset which prohibits federal retirees from getting the full combined value of their salary and annuity upon reemployment. Appointments are for one year or less. Reemployed annuitants may work 520 hours during the first 6 months of retirement and 1,040 hours during any 12-month period.</p>
Reemploying Recipients of Voluntary Separation Incentives (commonly referred to as buyouts) [Various statutes authorized buyouts. See Voluntary Separation Incentives at 5 U.S.C. 5597 note.]	<p>Upon agency request, OPM may authorize agencies to rehire federal employees who retired or separated with buyouts. Laws authorizing buyouts may have included a requirement that the buyout be repaid upon government reemployment. Agencies may request that OPM grant a waiver of any buyout repayment.</p>
Premium Pay for Emergency Overtime Work [5 U.S.C. §5547(b); 5 C.F.R. §550.106]	<p>Agencies may make exceptions to the biweekly limitation on premium pay. When an agency head determines that an emergency posing a direct threat to life or property exists, an employee performing overtime work in connection with the emergency will generally be covered by an annual, rather than a biweekly, pay limitation. Under the annual limitation, the total of basic and premium pay in a calendar year may not exceed the greater of the annual rate of pay for GS-15, step 10 (including any applicable special rate or locality rate), or Level V of the Executive Schedule.</p>
Recruitment Bonuses [5 U.S.C. §5753; 5 C.F.R. Part 575, Subpart A] OPM guidance is at https://www.opm.gov/policy-data-oversight/pay-leave/recruitment-relocation-retention-incentives/fact-sheets/recruitment-incentives/ .	<p>Agencies may pay recruitment bonuses to newly appointed employees (first appointment, former employees following break in federal government service of at least 90 days, or certain employees with federal government service of less than 90 days) after determining that it is likely to be difficult to fill positions in the absence of such incentives. A service agreement of at least six months is required.</p>

Flexibility and Authority	Brief Description
<p>Relocation Bonuses [5 U.S.C. §5753; 5 C.F.R. Part 575, Subpart B] OPM guidance is at https://www.opm.gov/policy-data-oversight/pay-leave/recruitment-relocation-retention-incentives/fact-sheets/relocation-incentives/.</p>	<p>Agencies may pay relocation bonuses to current employees who must permanently or temporarily relocate to accept positions in different geographic areas after determining that it is likely to be difficult to fill positions in the absence of such incentives. Establishing and maintaining residency and a service agreement of up to four years are required. Generally, relocation bonuses are approved on a case-by-case basis.</p>
<p>Retention Bonuses [5 U.S.C. §5754; 5 C.F.R. Part 575, Subpart C] OPM guidance is at https://www.opm.gov/policy-data-oversight/pay-leave/recruitment-relocation-retention-incentives/fact-sheets/retention-incentives-likely-to-leave-the-federal-service/ and https://www.opm.gov/policy-data-oversight/pay-leave/recruitment-relocation-retention-incentives/fact-sheets/retention-incentives-likely-to-leave-for-a-different-federal-position/.</p>	<p>Agencies may pay retention bonuses to current employees after determining that the employees' unusually high or unique qualifications or a special need for the employees' services makes it essential to retain the employees who likely would leave federal service in the absence of such incentives or would likely leave for a different federal position. Groups or categories of employees may be authorized to receive retention bonuses.</p>
<p>Emergency Leave Transfer Program [5 U.S.C. §6391; 5 C.F.R. Part 630, Subpart K] OPM guidance is at https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/emergency-leave-transfer-program/. P.L. 109-229, enacted on May 31, 2006 (120 Stat. 390), authorizes OPM, after consultation with the Administrative Office of the U.S. Courts, to provide for judicial branch employees to participate in any emergency leave transfer program for disasters and emergencies.</p>	<p>In the event of a major disaster or emergency as declared by the President that results in severe adverse effects for a substantial number of federal employees, OPM may establish an emergency leave transfer program. Under the program, federal employees may donate annual leave to affected employees in their own or other agencies (or the judicial branch). OPM, in consultation with the Office of Management and Budget (OMB), established an emergency leave transfer program for federal employees who were affected by Hurricane Harvey on September 1, 2017.</p>
<p>Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. §5149(b)]</p>	<p>Authorizes the hiring of temporary personnel, experts, and consultants to provide disaster relief during emergencies declared by the President. Authorizes federal agencies to appoint and fix the compensation of temporary personnel without regard to provisions in Title 5 of the <i>United States Code</i> on appointments in the competitive service and to employ experts and consultants in accordance with 5 U.S.C. §3109.</p>
<p>Telework [5 U.S.C. Chapter 65]</p>	<p>OPM encourages greater use of telework—working at a location other than an employee's "official duty station"—during emergency situations to ensure continuity of operations and to reduce fuel consumption and traffic congestion.</p>

Sources: U.S. Office of Personnel Management, Memorandum for Chief Human Capital Officers, from Kathleen M. McGettigan, Acting Director, "Human Resources Flexibilities for Hurricane Harvey and its Aftermath," August 27, 2017, at <https://www.chcoc.gov/content/human-resources-flexibilities-hurricane-harvey-and-its-aftermath>. Examination by CRS of the statutes and regulations referenced in the table.

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