

ORDER NO. 3216

SIGNATURE DATE: August 17, 2000

Subject: Delegation of Authority to Waive Dual Compensation Limits and Waiver of Repayment of Voluntary Separation Incentive Payments

Sec. 1 **Purpose.** The purpose of this Order is to delegate authority to waive salary reduction requirements (Dual compensation limits) and repayment of Voluntary Separation Incentive Payments (VSIP) for temporary rehires of former federal employees to fight fires posing immediate and real threat to life and property and to support those firefighting operations.

Sec. 2 **Authority.** This Order is issued under the authority of Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), and in accordance with the provisions of the letter of August 11, 2000 (August 11, 2000 letter) from the Director of the Office of Personnel Management: 1) delegating to the Secretary authority to waive dual compensation limits when reemploying civilian annuitants to fight fires or directly support firefighting operations in the western United States that pose an immediate and real threat to life and property; and 2) approving a waiver of the repayment requirement that applies to certain former Federal employees who received VSIP at the time of their separation from the service within the past five years where such individuals are temporarily rehired to perform critical specialized work in direct support of the suppression of fires in the western United States. A copy of the August 11, 2000 letter is appended to this Order and is hereby incorporated by reference.

Sec. 3 **Delegation of Authority to Waive Dual Compensation Limits and Waiver of Repayment of VSIP.** The authorities and the requirements of the August 11, 2000 letter are hereby delegated to the Director of the Office of Fire and Aviation Policy of the Bureau of Land Management (Director).

Sec. 4 **Limitations.**

- a. This authority may not be redelegated.
- b. In order for the Office of Personnel Policy to fulfill the Department of the Interior's (Department) reporting responsibilities to the Office of Personnel Management regarding those individuals covered by the waiver of VSIP repayment requirements, the Director must submit to the Office of Personnel Policy not later than February 15, 2001, the information the Department is required to provide the Office of Personnel Management.
- c. The Director must provide the Office of Personnel Policy on a monthly basis statistical data on the numbers of employees hired using the waiver of VSIP repayment requirements.

Sec. 4 **Effective Date.** This Order is effective immediately. Its provisions shall remain in effect until March 31, 2001, although the authorities and requirements provided to the Secretary in the August 11, 2000 letter are subject to the time limits set forth in the August 11, 2000 letter.

/s/ Bruce Babbitt
Secretary of the Interior

Attachment
(August 11, 2000 letter)

Attachment to SO #3216

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-0001

August 11, 2000

Honorable John Berry
Assistant Secretary,
Policy, Management, and Budget
Department of the Interior
Office of the Secretary
Washington, DC 20240

Dear Mr. Berry:

We are pleased to help you deal with the devastating fires in our western states.

I approve your August 10, 2000 request, on behalf of the Secretary of the Interior, for delegated authority to waive the salary reduction required when reemploying Federal civilian annuitants. This waiver applies to individuals reemployed to fight fires that pose an immediate and real threat to life and property and to support directly those fire-fighting operations. I am also approving your request for a waiver of the repayment requirement that applies to certain former Federal employees who received Voluntary Separation Incentive Payments (VSIP) at the time of their separation from the service within the past five years.

Waiver of Dual Compensation Limitations

Relevant laws and regulations allow us to grant delegated authority to a headquarters official to waive dual compensation limits for temporary positions only if, and for so long as, the authority is necessary due to an emergency involving a direct threat to life and property or other unusual circumstances. @ 5 U.S.C. 8344 and 8468 and 5 C.F.R. part 553. Accordingly this delegated authority is subject to the following conditions:

1. You may redelegate this authority to a senior official familiar with problems in staffing fire-fighting and support

functions.

2. You may approve requests for waivers on a case-by-case basis only for temporary positions with not-to-exceed dates of December 31, 2000 or earlier, located in the western United States fighting fires or directly supporting fire-fighting operations.

3. Your approval authority is limited to mission-critical positions (as described in the previous paragraph) where no other qualified individual is available who does not require a waiver in spite of appropriate recruiting efforts.

4. The annuitant must have declined an offer to take the position without a waiver.

5. Your approvals must be in writing (e-mail is acceptable) and include the following:

(a) the annuitant=s full name, civil service retirement number and his or her statement declining employment without a waiver;

(b) the position=s title, series, pay plan, grade and location;

(c) a brief description of the recruiting efforts and results; and

(d) for non-fire-fighting jobs, a brief statement describing how the duties support directly and solely critical fire fighting operations.

6. You must maintain a record of each approval and make these records available to the Office of Personnel Management (OPM) upon request for 3 years following the approval date.

Waiver of Repayment of Voluntary Separation Incentive Payments

For the effort to control forest fires in the western United States, you are also granted a waiver of Repayment of Voluntary Separation Incentive Payments. This allows the Department of the Interior to temporarily rehire, without repayment of VSIP funds, only those former Federal employees who perform critical specialized work in direct support of the fire suppression efforts described above.

Your waiver covers any former Federal employee who received a VSIP within the last 5 years under an authority that permits OPM to waive the VSIP repayment requirement under 5 C.F.R. part 576 of OPM=s regulations.

Your waiver begins with the approval date of this letter, and terminates on December 31, 2000, or the date the western fire crisis is stabilized, if that date is earlier.

No later than March 1, 2001, you must submit a report to OPM identifying: (1) the name, grade, title, and classification series of each employee covered by this waiver; (2) the period the employee worked under this waiver; (3) the reason(s) why the employee was essential to Interior=s fire suppression mission, and (4) the name and location of the agency that paid the VSIP to the employee, as well as the agency=s statutory basis for the VSIP.

Regulatory Variation for Repayment of Voluntary Separation Incentive Payments

The authority for OPM to waive the repayment of VSIP is based in law. Public Law 103-226, Section 3(d)(2)(A). Regulations at 5 C.F.R. 576 require that waivers of repayment be authorized only on an individual basis. It is not feasible for the Department of the Interior to provide OPM with advance information on individuals who must be hired quickly to fight the devastating fires in our western states.

After careful consideration of the special circumstances presented in this case, we have determined that a variation is justified to allow a 5 C.F.R. 576 waiver on a blanket basis. A variation is within the spirit of the regulations because: (1) the underlying law does not require preapproval on an individual basis; (2) as stated in the Federal Register when 5 C.F.R. 576 was published, the intent of having OPM preapprove waivers was to maintain reasonable controls that paralleled provisions in regulation for the waiver of dual compensation limits and those provisions allow for special treatment of cases involving an emergency involving a direct threat to life and property; (3) the Department of the Interior is facing such an emergency; (4) waivers allowed by this variation would be limited to the duration of the emergency; and (5) controls are still maintained by requiring the Department to report detailed information on each individual waiver to OPM after the fact, as outlined above.

Accordingly, I authorize a variation from OPM's regulations requiring an agency to make an advance request to OPM on an individual basis when requesting the waiver of repayment of voluntary separation incentive payments. Like the waiver, this variation also terminates on December 31, 2000, or the date the western fire crisis is stabilized, if that date is earlier.

Again, we appreciate the importance of your request. Please do not hesitate to contact me if the Office can be of further assistance to you.

Sincerely,

/s/ Janice R. Lachance
Director

SO#3216 8/17/00