

# CRS Report for Congress

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## Federal Employees: Human Resources Management Flexibilities in Emergency Situations

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### Summary

Federal executive branch departments and agencies have available to them various human resources management flexibilities which can be utilized in emergency situations, such as those which resulted from Hurricane Katrina. The Office of Personnel Management has issued guidance on these flexibilities, which supplement the basic policies governing staffing, premium pay, and leave sharing in Title 5 of the *United States Code*.

In the aftermath of the devastation wrought by Hurricane Katrina in Alabama, Louisiana, and Mississippi, the Office of Personnel Management (OPM) issued a memorandum reminding the heads of federal executive departments and agencies of the various human resources (HR) flexibilities available to them to facilitate management in emergency situations.<sup>1</sup> (OPM issued similar guidance following the September 11, 2001, terrorist attacks.) Executive agencies across the government might be expected to utilize these flexibilities, since, reportedly, all of the cabinet agencies and many independent agencies are involved with hurricane recovery efforts.<sup>2</sup> In the three states with areas devastated by the hurricane, there are 55,253 federal (including Postal Service) workers: 3,028 employees are in Alabama; 31,896 employees are in Louisiana; and 20,329

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<sup>1</sup> U.S. Office of Personnel Management, *Memorandum for Heads of Executive Departments and Agencies; Emergency Hiring Situation Resulting from Hurricane Katrina*, from Linda M. Springer, Director, Sept. 6, 2005. (Hereafter referred to as OPM Sept. 6, 2005, Memorandum.) As the 2005 hurricane season began, OPM's Acting Director, Dan G. Blair, sent a June 28, 2005, memorandum to the executive department and agency heads on "HR Flexibilities Available to Assist Federal Employees Affected by Severe Weather Emergencies and Natural Disasters." (Both memorandums are available at [www.opm.gov].)

<sup>2</sup> Peter Bell, "No Agency Left Behind in Hurricane Relief Effort," *Government Executive*, Sept. 9, 2005.

employees are in Mississippi.<sup>3</sup> These workers are employed by some 47 federal agencies. In the affected areas of the three states, the largest number of federal employees work for the Postal Service, the Department of the Army, and the Department of Homeland Security in Alabama and the Postal Service, the Department of Veterans Affairs, and the Department of the Army in Louisiana and Mississippi.<sup>4</sup>

The HR flexibilities relate to staffing, premium pay, and leave transfer. **Table 1**, below, provides information on the flexibilities.

**Table 1. HR Flexibilities for Emergency Situations**

| Flexibility and Authority  | Brief Description  |
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| Excepted Service <sup>5</sup> Appointment — 30-Day Critical Hiring Need [5 C.F.R. 213.3102(i)(2)]  | Agencies can 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 may determine the qualification requirements. (For both senior-level and lower-level positions.) |
| Excepted Service Appointment — Temporary Emergency Need [5 C.F.R. 213.3102(i)(3)]  | OPM has authorized agencies to appoint individuals for up to 1 year to fill positions affected by or needed to respond to the devastation of Hurricane Katrina. (For both senior-level and lower level positions.) <sup>6</sup>  |
| 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 can contract for up to 120 workdays with private sector temporary help service firms to quickly provide specific services (but not for the SES, managerial, or supervisory positions). A contract may be extended for an additional 120 workdays. The firm is the legally responsible employer for all aspects of employment.                                       |

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<sup>3</sup> U.S. Office of Personnel Management, Federal Employees Affected by Katrina, Based on Mar. 31, 2005, Central Personnel Data File, Report Updated Sept. 7, 2005. Data provided to CRS by OPM by electronic mail on Sept. 8, 2005.

<sup>4</sup> In Alabama, the Postal Service employs 1,254 employees, the Department of the Army 761 employees, and the Department of Homeland Security 403 employees. In Louisiana, the Postal Service employs 10,483 employees, the Department of Veterans Affairs (DVA) 4,519 employees, and the Department of the Army 3,588 employees. In Mississippi, the Postal Service employs 4,375 employees, the DVA 3,499 employees, and the Department of the Army 2,863 employees.

<sup>5</sup> Excepted Service positions are not covered by the procedures governing the competitive service. Qualification standards and requirements for these positions are established by the individual agencies. The Title 5 rules on appointment (except for veterans preference), pay, and classification do not apply. Excepted service agencies include the Central Intelligence Agency, the Defense Intelligence Agency, the Federal Bureau of Investigation, and the National Security Agency.

<sup>6</sup> OPM Sept. 6, 2005, Memorandum.

| Flexibility and Authority  | Brief Description  |
|--|--|
| Reemployment Priority List (RPL) <sup>7</sup><br>[5 C.F.R. Part 330, Subpart B]                                | Agencies can 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 exception to choosing someone from the RPL may be granted when an individual on the RPL or with a higher ranking cannot assume duties without undue interruption to the agency. |
| Competitive Service <sup>8</sup> Appointment — 120-Day<br>[5 C.F.R. Part 330, Subparts F and G]                | Agencies can 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 federal employees available for immediate employment.  |
| Direct-Hire Authority<br>[5 U.S.C. §3304; 5 C.F.R. Part 337, Subpart B]  | OPM may authorize agencies (government-wide or individually) to appoint candidates directly to positions without regard to 5 U.S.C. §§3309-3318. In approving the direct hire of candidates, OPM must determine that a severe shortage of candidates or a critical hiring need exists. OPM has approved the direct hire of medical officers, nurses, diagnostic radiologic technicians, and pharmacists at all grade levels and in all locations.                              |
| Senior Executive Service (SES) <sup>9</sup> — Limited Emergency Appointments<br>[5 C.F.R. Part 317, Subpart F] | Upon agency request, OPM may authorize agencies to appoint career employees to the SES for up to 18 months to meet a bona-fide, unanticipated, urgent need. The appointment cannot be renewed.   |
| Reemploying Annuitants and Waiving Dual Compensation Restrictions<br>[5 U.S.C. 5532(g), 8344(I), 8468(f)]      | Upon agency request, OPM may authorize agencies to reemploy retirees. OPM, upon request, will grant agency heads the authority to waive the restrictions that prohibit federal retirees from getting the full combined value of their salary and annuity upon reemployment.  |

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<sup>7</sup> The Reemployment Priority List (RPL) is the mechanism agencies use to give reemployment consideration to their former competitive service employees separated by reduction in force (RIF) or fully recovered from a compensable injury after more than one year.

<sup>8</sup> Competitive Service 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 the Office of Personnel Management. Employees are to be selected from among the best-qualified and without discrimination.

<sup>9</sup> Senior Executive Service (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 policy-making, policy-determining, or other executive functions.

| Flexibility and Authority   | Brief Description  |
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| <p>Reemploying Recipients of Voluntary Separation Incentives (commonly referred to as buyouts)<br/>           [Various statutes authorized buyouts; general authority was provided through December 30, 1997, in Sec. 663 of the Treasury, Postal Service, and General Government Appropriations Act, 1997, enacted as P.L. 104-208, Sept. 30, 1996, 110 Stat. 3009-383, 5 U.S.C. 5597 note. This law required full repayment if reemployment occurred within five years after leaving the government.]</p> | <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 repayment waiver.</p>   |
| <p>Premium Pay for Emergency Overtime Work<br/>           [5 U.S.C. 5547(b); 5 C.F.R. 550.106]</p>  | <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>  |
| <p>Emergency Leave Transfer Program<sup>10</sup><br/>           [5 U.S.C. §6391; 5 C.F.R. Part 630, Subpart K]</p>  | <p>OPM, at the President's direction, may establish an emergency leave transfer program to assist employees affected by an emergency or major disaster (including floods, earthquakes, tornadoes, and bombings) which severely adversely affects substantial numbers of employees. Under the program, executive agency employees could donate unused annual leave to affected employees in their own or other agencies. The President has authorized OPM to establish such an emergency leave transfer program to assist employees affected by Hurricane Katrina if such is needed.<sup>11</sup></p> |
| <p>Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, as amended)<br/>           [88 Stat. 149-150; 42 U.S.C. 5149]</p>  | <p>Authorizes the hiring of temporary staff, 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 Title 5 of the <i>United States Code</i> provisions on appointments in the competitive service and to employ experts and consultants in accordance with 5 U.S.C. §3109.</p>  |

<sup>10</sup> For OPM's guidance on the emergency leave transfer program, see U.S. Office of Personnel Management, *Emergency Leave Transfer Program*, available at [<http://www.opm.gov/oca/leave/HTML/emerg.htm>].

<sup>11</sup> U.S. Office of Personnel Management, *Memorandum for Heads of Executive Departments and Agencies; Emergency Leave Transfer for Federal Employees Affected by Hurricane Katrina*, from Linda M. Springer, Director, Sept. 2, 2005. The memorandum authorizes agencies affected by the hurricane to (1) determine whether, and how much, donated annual leave is needed by affected employees; (2) as appropriate, approve leave donors and leave recipients in their agencies; (3) facilitate the distribution of donated annual leave from approved leave donors to approved leave recipients within their agencies; and (4) determine the period of time for which donated annual leave may be accepted for distribution to approved leave recipients.