

STAFFING

- 1. REASON FOR ISSUE:** To revise Department of Veterans Affairs (VA) procedures regarding staffing and recruitment.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook contains mandatory VA procedures on staffing. This revision provides procedures for regularizing erroneous appointments. The pages in this issuance replace the corresponding page numbers in VA Handbook 5005. Revised text is contained in [brackets]. These changes will be incorporated into the electronic version of VA Handbook 5005 that is maintained on the [Office of Human Resources Management \(OHRM\)](#) Web site.
- 3. RESPONSIBLE OFFICE:** The Recruitment and Placement Policy Service (059), Office of the Deputy Assistant Secretary for Human Resources Management.
- 4. RELATED DIRECTIVE:** VA Directive 5005, Staffing.
- 5. RESCISSIONS:** None

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

/s/Stephen W. Warren
Acting Assistant Secretary for
Information and Technology

/s/Rafael A. Torres
Acting Assistant Secretary for
Human Resources and Administration

ELECTRONIC DISTRIBUTION ONLY

CONTENTS-CONTINUED

PARAGRAPH PAGE

SECTION B. PART-TIME CAREER EMPLOYMENT PROGRAM

| | |
|---------------------------------------|------|
| 1. <u>GENERAL</u> | I-25 |
| 2. <u>PROGRAM DESCRIPTION</u> | I-25 |
| 3. <u>REVIEWING POSITIONS</u> | I-26 |
| 4. <u>PUBLICIZING VACANCIES</u> | I-27 |

SECTION C. TEMPORARY ASSIGNMENT OF EMPLOYEES UNDER THE INTERGOVERNMENTAL PERSONNEL ACT (IPA)

| | |
|----------------------------------|------|
| 1. <u>GENERAL</u> | I-29 |
| 2. <u>POLICY</u> | I-29 |
| 3. <u>RESPONSIBILITIES</u> | I-32 |
| 4. <u>PROCEDURES</u> | I-33 |

APPENDIX

| | |
|--|--------|
| I-A. <u>OUTSIDE RECRUITING ASSISTANCE FROM COMMERCIAL RECRUITING FIRMS AND NONPROFIT EMPLOYMENT SERVICES</u> | I-A-1 |
| I-B. <u>DELEGATED EXAMINING (DE)</u> | I-B-1 |
| [I-C. <u>REGULARIZING ERRONEOUS TITLE 5 APPOINTMENTS</u> | I-C-1 |
| I-D. <u>TITLE 5 STAFFING VARIATION REQUESTS</u> | I-D-1] |

12. IMPROPER SELECTION DURING THE SELECTION PROCESS

a. If an improper selection is discovered during the audit of a certificate but before the selectee has entered on duty, the selecting official and the appointing officer must be notified immediately. Any further selections from the certificate of eligibles for which the selectee was selected must be placed “on hold” until after a correction is made (before the selectee enters on duty, if possible).

b. If improper selection is discovered during an audit of a certificate and the selectee that was erroneously selected has entered on duty, the DEU must notify the servicing HR office immediately. The servicing HR office in consultation with the selecting official must immediately pursue regularization of the appointment of the individual erroneously appointed. The individual who should have been selected will be notified by the DEU and the DEU will advise the individual of her or his eligibility for priority consideration for the next vacant position in the same occupational series, grade and geographical location. The case file must be thoroughly documented with all facts of the case and follow-up actions must be taken to preclude any recurrence of the error.

c. If the erroneous appointment is regularized, the servicing HRO must submit a variation request [for service credit for the period of time the employee served in the position erroneously]. If the erroneous appointment is not regularized, the servicing HRO must submit a variation request to retain the employee as a result of an administrative error [and for service credit for the period of time the employee served in the position erroneously]. Both types of variation requests must be submitted to OPM via the Recruitment and Placement Policy Service (059), OHRM. The request should include:

(1) A cover memo that includes the name(s) of the affected employee(s); the name of the HR specialist that posted the job opportunity announcement, evaluated the applicants, and certified the certificate of eligibles; explains how and when the erroneous appointment was made; explains how the erroneous appointment was regularized; and explains what steps have been taken to ensure no recurrence of such error; and

(2) All documentation used to support the erroneous appointment and used to regularize the appointment, i.e., application, job opportunity announcement, certificate of eligibles, DD 214, SF 15, SF 50, transcript, passport, driver’s license, required letters of eligibility, PCS orders, licenses, certifications, etc.

[NOTE: *For additional guidance on regularizing erroneous appointments and submitting staffing variation requests, see VA Handbook 5005, Part I, Appendices C and D.*]

13. OBJECTIONS AND PASS OVERS

a. **Objection of a Non Preference Eligible.** Occasionally, an appointing official may have adequate and proper reasons to remove one or more of the highest ranking eligibles from consideration and may wish to select a certified eligible who is not among the highest ranking eligibles.

(1) The appointing official must evaluate each objection on its own merit and may sustain the objection if it is based on proper and adequate reasons, some examples are: age, education, intentional

[APPENDIX C. REGULARIZING ERRONEOUS TITLE 5 APPOINTMENTS

In accordance with Appendix B, paragraph 12 of this part, if an illegal appointment of an employee (e.g., reinstated improperly; appointed noncompetitively when ineligible for noncompetitive appointment, etc.) is discovered, the servicing Human Resources (HR) office must attempt to place the erroneously appointed employee on a legal appointment. To regularize (correct/legalize) an erroneous appointment, follow the steps below:

Step 1 – If the employee is in a bargaining unit, notify the union and employee, in writing, of the erroneous appointment. The notice must include: (1) a summarized description of the erroneous appointment; (2) what steps the servicing HR office will take to regularize the appointment; (3) what the ramifications are if the servicing HR office is unable to regularize the appointment; and (4) MSPB rights.

Step 2 – HR officer/manager should meet with the employee to explain: (1) that her/his placement into the position was erroneous; (2) what steps the servicing HR office will take to regularize the appointment; and (3) what role the employee will play in regularizing the appointment. The servicing HR office should also advise the employee that if the servicing HR office cannot regularize the appointment and OPM does not grant a variation to retain the employee, the servicing HR office must then terminate the employee.

Step 3 – The HR officer/manager should discuss with the employee and research all the employee's documents (in eOPF) to determine whether the employee has any special noncompetitive appointment eligibilities, such as VRA, 30% service-connected disabled veteran, Schedule A - 5 CFR 213.3102(u), etc.

Step 4 – If the employee had special noncompetitive appointment eligibility at the time of the erroneous appointment, the servicing HR office may place the employee in the position using the appropriate appointment authority. If so, the servicing HR office must correct the appointment SF 50 to reflect the appropriate appointment authority along with the appropriate remarks.

Step 5 – If the employee does not have special noncompetitive appointment eligibility, the HR officer/manager must make further efforts to give the employee a legal appointment via competitive examining through a Delegated Examining Unit (DEU).

Step 6 – The HR officer/manager should ask its designated DEU if any certificates existed from the date of the erroneous appointment to the present that mirror the occupational series and grade of the position to which the employee was erroneously appointed. If any have existed, the DEU may be able to reconstruct the certificate and amend it to add the employee.

Step 7 – If the employee is within reach on the reconstructed DEU certificate of eligibles, the facility should select the employee and use that action to regularize the appointment.

Step 8 – If the employee is not within reach on the *RECONSTRUCTED* Delegated Examining (DE) certificate of eligibles, the DEU should publish a new vacancy announcement to allow the employee to apply. The HR officer/manager should notify the employee of the vacancy announcement, its opening and closing dates, and qualification requirements. The HR officer/manager should also consult with the employee to answer any questions regarding the vacancy announcement and/or the application process.

**PART I
APPENDIX C**

This would be the FIRST ATTEMPT to regularize the erroneous appointment by publishing a competitive examining vacancy announcement.

NOTE: *The servicing HR office is strongly encouraged to make only two attempts to reach the employee on a DE certificate of eligibles.*

Step 9 – If the FIRST ATTEMPT results in the employee being within reach on the DE certificate of eligibles, the facility should select the employee and use that action to regularize the appointment. After regularizing the appointment, the HR officer/manager must prepare a staffing variation request for service credit for the period of time the employee served in the position erroneously. Follow the steps in Appendix D, *Title 5 Staffing Variation Requests*, to submit a staffing variation request.

Step 10 – If the employee is not within reach on the DE certificate of eligibles after the FIRST ATTEMPT, the servicing HR officer/manager should have the DEU advertise a vacancy announcement a second time after the required amount of time has passed (confer with your designated DEU). If the employee is within reach on the certificate of eligible after the SECOND ATTEMPT, the facility should select the employee and use that action to regularize the appointment. Then, the servicing HR office should follow the steps in Appendix D, *Title 5 Staffing Variation Requests*, to submit a staffing variation request.

Step 11 – If the employee is not within reach on the DE certificate of eligibles after the SECOND ATTEMPT, the servicing HR office should prepare a staffing variation request to retain the employee and for service credit for the period of time the employee served in the position erroneously. The servicing HR office should follow the steps in Appendix D, *Title 5 Staffing Variation Requests*, to submit a staffing variation request.]

[APPENDIX D. TITLE 5 STAFFING VARIATION REQUESTS

The Office of Personnel Management (OPM) has authority under 5 CFR 5.1 to permit variation (i.e., an exception) from the strict letter of the regulations whenever precise compliance with them would impose practical difficulties and unnecessary hardship and when no other remedy exists within the regulations.

OPM may grant a variation if it is within the spirit of the regulations and adequately meets the objectives of and accomplishes the purpose of the regulation as far as the Government and the competitive service are concerned. Staffing variation requests **may only** be submitted to OPM through the Office of Human Resources Management (OHRM) Recruitment & Placement Policy Service (R&PPS) (059). R&PPS will submit appropriately documented requests to OPM and communicate outcomes to facility officials.

OPM may approve Title 5 staffing variations (1) to alleviate hardship to individuals resulting from department/agency errors in effecting personnel actions, e.g., erroneous appointments; or, (2) to permit a department/agency to take action in unusual situations which the letter of the regulation cannot accommodate, e.g., extension of term appointments, beyond 4 years.

While 5 CFR 5.1 authorizes variations that affect requirements established by personnel regulations, OPM has no legal authority to modify requirements established by law, Executive order, or court decision, e.g., citizenship or Veterans Recruitment Appointment (VRA). A variation cannot regularize an action that violated such requirements (e.g., appointment of a noncitizen in the competitive service and the employee is still a noncitizen or a VRA appointment of someone who did not meet the eligibility requirements). In these cases, if the servicing HR office cannot identify a proper appointment authority, termination is the only recourse. For such an OPM-instructed termination, per Rule 55, Table 31-B, Chapter 31, Guide to Processing Personnel Actions, use NOAC 357, Termination, with Authority Code A3M, CS Rule V.

To prepare a staffing variation request for submission and consideration, follow the steps below:

Step 1 - Gather copies of documents that confirm events (i.e., SF 50s showing error and corrections, vacancy announcements, Merit Promotion referral certificates, Delegated Examining Certificates of Eligibles, Defense Department 214s, transcripts, licenses/certifications, etc.). If a promotion, change in position, transfer, etc., has occurred since the initial error, include the documentation for that personnel action, too.

Step 2 - Prepare a memorandum to the Director, R&PPS (059) from the facility Director which explains the chain of events, in chronological order, that relate to the specific request. Be sure to include the name of the impacted employee; the title, series, and grade of the impacted position; and, an explanation of corrective action management has taken to ensure such an error does not occur in the future.

Step 3 - Packages should be assembled and labeled to correlate with the chronological order of events. Once assembled, the package (i.e., memorandum and supporting documents) must be forwarded from the facility through its respective Administration/Staff Office-level Human Resources program office to confirm proper package construction (i.e., completeness and appropriate documentation) before forwarding to: Director, Recruitment and Placement Policy Service (R&PPS) (059), OHRM, VA Central Office, 810 Vermont Avenue, N.W., Washington, DC 20420.

TITLE 5 STAFFING VARIATION REQUEST PACKAGE CHECKLIST

| ITEM NEEDED | ITEM DESCRIPTION |
|--|---|
| Memo requesting variation (1 memo per case) | <p>Memo must:</p> <ol style="list-style-type: none"> 1. Clearly state what is being requested, i.e., service credit, retention, or both. 2. Explain chain of events from erroneous appointment to present, in chronological order. 3. Include what steps have been taken to ensure that errors in making appointments do not occur again. |
| Erroneous Appointment Documents | <ol style="list-style-type: none"> 1. Vacancy announcement used in the initial erroneous appointment. 2. Certificate(s) that resulted from the initial announcement. NOTE: <i>Certificates should be complete with the documented action taken on each of the eligibles as well as the printed name, signature, address, and phone number of the selecting and appointing officials.</i> 3. SF 50 for erroneous appointment. |
| Documents for Other Actions | <p>If a promotion, change in position, transfer, etc., has occurred since the initial error, include the documentation for that personnel action also.</p> <ol style="list-style-type: none"> 1. Vacancy announcement used, if applicable. 2. Certificate(s) that resulted, if applicable. <p>NOTE: <i>Certificates should be complete with the documented action taken on each of the eligibles as well as the printed name, signature, address, and phone number of the selecting and appointing officials.</i></p> <ol style="list-style-type: none"> 3. SF 50 for any change. |
| Documentation for Regularization Attempts NOTE: <i>Include documents for EACH attempt made to regularize the appointment via competitive examining for which the employee was blocked or not within reach.</i> | <ol style="list-style-type: none"> 1. Vacancy announcement(s) used in attempt to regularize the erroneous appointment. 2. Certificate(s) that resulted from announcement(s) used in attempt to regularize the erroneous appointment. <p>NOTE: <i>Certificates should be complete with the documented action taken on each of the eligibles as well as the printed name, signature, address, and phone number of the selecting and appointing officials.</i></p> |
| Regularized Appointment Documents | <ol style="list-style-type: none"> 1. Vacancy announcement(s) used to regularize the erroneous appointment. 2. Certificate(s) that resulted from announcement(s) used to regularize the erroneous appointment. NOTE: <i>Certificates should be complete with the documented action taken on each of the eligibles as well as the printed name, signature, address, and phone number of the selecting and appointing officials.</i> 3. SF 50 for the regularized appointment. |
| Bargaining Unit Status | <p>If employee(s) included in bargaining unit, you must:</p> <ol style="list-style-type: none"> 1. Notify union official(s); and, 2. Include copy of such notification with request. |

| ITEM NEEDED | ITEM DESCRIPTION |
|---|---|
| Discovery of Erroneous Appointment | Include copy of the written notice given to each affected employee at initial stage of discovery, informing each employee of: <ol style="list-style-type: none"> 1. The identified error; 2. Steps to be taken to regularize the appointment, and request a variation to waive the error; 3. Implications of not being able to regularize the appointment or acquire a variation waiver; and, 4. MSPB rights. |
| <p>NOTE: <i>OPM is not able to grant a variation to waive compensation/salary received by the employee while in the position erroneously; therefore, you will need to work with your finance office to submit a bill of collection to the employee on behalf of the Department. So that the employee is not adversely impacted, it is recommended that the servicing HR office submit a request to the finance office stating that the error(s) were caused by the servicing HR office and asking for a waiver of the debt.]</i></p> | |