

# TEMPLATE OF PERSONNEL FLEXIBILITIES FOR USE BY AGENCIES SELECTED FOR CONVERSION TO PERFORMANCE-BASED ORGANIZATIONS

## INTRODUCTION

A critical ingredient for the success of a Performance-Based Organization (PBO) will be the capacity to design personnel systems that clearly support the agency's mission and are compatible with its culture. This will require making optimal use of existing administrative flexibilities and making effective use of the demonstration project authority in chapter 47 of title 5, United States Code. At the same time, the personnel systems of any PBO must be grounded in some fundamental principles of effective personnel management for the Federal Government. No set of flexibilities, moreover, will substitute for effective leadership, supervision, and communication; for fair and reasonable personnel practices; and for providing timely and efficient basic personnel services to managers and employees.

This template has three parts. Part I describes specific Governmentwide interests which would be retained. These interests are important to achieving employee acceptance of the PBO initiatives and to maintaining the essential elements of the Government as a "single employer." Part II presents existing personnel flexibilities. It is important that agencies make appropriate use of these flexibilities so that initiatives can begin quickly; in some cases the PBO framework may be based entirely on existing authorities. Part III describes how the existing demonstration project authority (5 U.S.C. 4703) will be used as the vehicle by which PBO's will obtain authority to make personnel system changes that require waiving existing laws and regulations. Included in this part are descriptions of some major personnel system changes requiring demonstration authority that appear to be particularly appropriate. These system changes are based on the various proposals for civil service reform that have been extensively reviewed and discussed within the Administration and with key stakeholders. Basic consistency and similarity among the various PBO demonstration projects will conserve resources and will provide grounds for broader reform. In addition, flexibilities other than those described in Part III may be useful for one or more individual PBO's.

The Administration is pursuing Governmentwide legislation for an expanded and streamlined demonstration project authority. This authority would allow personnel system changes that are consistent with the provisions of this template. The expanded authority would enable agency PBO's to quickly make changes to their personnel systems without regard to limitations and requirements in the current demonstration project authority under 5 U.S.C. 4703. The expanded authority would operate without a limit on the number of active projects or the number of employees covered by a project; no longer require a public hearing; permit OPM to determine whether and what evaluation is appropriate; and authorize OPM to terminate, or, with appropriate notice, extend or make permanent a demonstration project. Making a project permanent would require Congressional concurrence.

The current demonstration project authority limits the number of projects active at one time to 10 and limits the number of employees covered by a project to 5,000. Consequently, it may also be appropriate for a specific PBO to request legislative authority to have a chapter 47 demonstration project that is not subject to these limitations.

## PART I — GOVERNMENTWIDE INTERESTS

For certain aspects of personnel management, conceiving of the Government as a “single employer” remains sound public policy. Consequently, it is important to retain Governmentwide approaches, authorities, entitlements, and requirements in several areas, including:

- Accountability for adherence to merit system principles;
- Employee protection from prohibited personnel practices;
- Veterans preference in employment and retention;
- A Governmentwide benefits system for retirement, insurance, and leave;
- A Governmentwide system for determining annual adjustments to the pay structures for General Schedule, Prevailing Rate System, and other employees;
- A statutory collective bargaining framework for labor management relations;
- A system of due process protections for employees related to adverse actions;
- A Governmentwide system for collecting and publishing workforce information;
- Executive management by members of the Senior Executive Service and Senior Foreign Service;<sup>1</sup> and
- Oversight by the Office of Personnel Management.

In addition, certain principles that promote the public interest must guide PBO’s as they make use of this template’s flexibilities. Such principles include:

- Making organizational improvements in partnership with employees and their representatives and in accordance with whatever bargaining and consultation rights are invoked by employee representatives;
- Maintaining budget discipline as personnel systems and authorities are changed;
- Insuring interagency mobility (i.e., policies should not inhibit or discourage movement in or out of a PBO); and
- Achieving reasonable Governmentwide internal equity (e.g., by precluding unfair compensation competition among agencies in limited labor markets).

Within these broad parameters, PBO’s are free to:

- Make immediate use of the existing personnel flexibilities listed in Part II of this template, and
- Pursue demonstration projects as described in Part III.

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<sup>1</sup>OPM’s Office of Executive Resources (OER) has developed a template of SES personnel flexibilities. Contact OER at 202-606-2246 to obtain a copy.

## PART II — EXISTING PERSONNEL FLEXIBILITIES AND AUTHORITIES

**A. STAFFING**—Federal agencies have extensive flexibilities and authorities related to staffing their functions.

[For general questions, contact the Employment Service—202-606-0800]

### 1. Recruiting and Examining [Contact: Pat Paige—202-606-0830]

- Authority to conduct competitive examining for all positions (except administrative law judges). Requires delegation agreement between OPM and the agency. [Pub. L. 104-52; 5 U.S.C. 1104(a)(2)]
- Use of commercial recruiting firms and nonprofit employment services to recruit for vacancies. [5 CFR part 300, subpart D]
- Discretion to hire from a wide array of sources.

### 2. Short-Term Staffing Needs [Contact: Pat Paige—202-606-0830]

- Use of commercial temporary help services obtained by contract to meet brief or intermittent personnel needs. [5 CFR part 300, subpart E]
- Use of temporary, part-time, job sharing, seasonal, and intermittent employment to meet temporary, fluctuating, and less than full-time workforce needs, and use of the streamlined student employment program for meeting future workforce needs. [5 CFR part 316, subpart D, part 340, and §213.3202]
- Use of term appointments for more than 1 year up to 4 years when the need for the employee's services is not permanent including, but not limited to, project work, extraordinary workload, scheduled abolishment, reorganization, or contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization. [5 CFR part 316, subpart C]
- Employment of experts or consultants for temporary or intermittent employment. [5 U.S.C. 3109; 5 CFR part 304; agency's own legislation]

### 3. Lateral and Upward Movement [Contact: Pat Paige—202-606-0830]

- Authority to determine the knowledge, skills, and abilities, and to define the specialized experience required to perform each job. Use of training agreements under which employees can be given accelerated training or on-the-job experience to gain new skills more rapidly.  
[OPM Operating Manual: "Qualification Standards for General Schedule Positions"]
- Authority to design their own merit promotion plans. [5 CFR part 335]
- Authority to establish career ladders that allow noncompetitive promotion based on performance and acquisition of appropriate knowledge and skills. [5 CFR part 335]

**4. Probationary Period** [Contact: Pat Paige—202-606-0830]

- Discretion to remove, with few procedural requirements, new appointees, supervisors, and managers during their probationary period. [5 CFR part 315, subparts H and I]

**B. CLASSIFICATION**—Although there is a single statutory classification system for General Schedule (as well as for Prevailing Rate System employees), various administrative flexibilities increase the system's utility.

[For general questions, contact the Office of Classification—202-606-2950]

**1. Generic or Job Family Standards** [Contact: John Warman—202-606-2574]

- This broader approach to job evaluation provides flexibility to organize work along mission-critical lines and to make better use of interdisciplinary procedures in staffing positions. It also allows more use of shortened position descriptions. [5 U.S.C. 5105]

**2. Automated Procedures** [Contact: Jim O'Connell—202-606-1359]

- Use of automated procedures has streamlined the development of position descriptions and the evaluation of positions.

**3. Delaying Support** [Contact: John Warman—202-606-2574]

- The revised General Schedule Supervisory Guide deleted numbers of people supervised as a factor in setting grade levels. In collaboration with agencies, OPM is developing guidelines for Team Leader positions that replaced supervisory jobs.  
[General Schedule Supervisory Guide, TS 123, April 1993]

**C. COMPENSATION**—Agencies have considerable discretionary authority to provide additional direct compensation in certain circumstances to support their recruitment, relocation, and retention efforts. Under 5 U.S.C. 5307, most payments are subject to the limitation that total aggregate pay may not exceed the rate for Executive Level I (currently \$148,400).

[For general questions, contact the Office of Compensation Policy—202-606-2880]

**1. Agency-Based Discretionary Authorities** [Contact: Bryce Baker—202-606-2858]

- Authority to pay relocation expenses for new employees or pay travel expenses for pre-employment interviews. [5 CFR part 572]
- Authority to make a lump-sum payment of up to 25 percent of basic pay based upon a determination that difficulty would otherwise be encountered in filling the position.  
[5 U.S.C. 5753; 5 CFR part 575, subparts A and B]

- Authority to make continuing payments of up to 25 percent of basic pay based upon a determination by the agency that (1) the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee, and (2) the employee would be likely to leave or retire in the absence of a retention allowance. [5 U.S.C. 5754; 5 CFR part 575, subpart C]
- Authority to make an initial appointment at a rate higher than the minimum rate for any General Schedule grade because of the superior qualifications of a candidate or a special need of the agency for the candidate's services.  
[5 U.S.C. 5333; 5 CFR 531.203(b)]
- Authority to set the rate of basic pay of an employee upon reemployment, transfer, reassignment, promotion, demotion, or change in type of appointment, by taking into account (1) the actual rate of basic pay for the highest grade and step previously held by an individual while employed in a General Schedule position; or (2) the highest actual rate of basic pay received by an individual while employed in any Federal position or the DC government (with certain exceptions).  
[5 U.S.C. 5334(a); 5 CFR 531.203(c)]

## 2. Authorities Available with OPM and/or OMB Approval

- Higher special rates of pay may be established by OPM, upon request by department headquarters and after coordination with other relevant Federal agencies, for an occupation or group of occupations nationwide or in a local area based on a finding that the Government's recruitment or retention efforts are, or would likely become, significantly handicapped without those higher rates. The minimum rate of a special rate range may exceed the maximum rate of the corresponding grade by as much as 30 percent. However, no special rate may exceed the rate for Executive Level V (currently \$108,200).  
[5 U.S.C. 5305; 5 CFR part 530, subpart C]  
[Contact: Bryce Baker—202-606-2858]
- OMB, in consultation with OPM, may use a critical pay authority to increase the rate of basic pay up to the rate for Executive Level I (currently \$148,400) for a position that requires expertise of an extremely high level in a scientific, technical, professional, or administrative field or one that is critical to the agency's successful accomplishment of an important mission. [5 U.S.C. 5377; OMB Bulletin No. 91-09]  
[Contact: Ellen Kill Kelley—202-606-2246]
- Upon the request of an agency, OPM is authorized to waive the requirement for a reduction in the retired or retainer pay of a military retiree or the civilian pay of a civilian retiree upon reemployment in a civilian position. Total pay and retirement benefits not subject to Executive Level I aggregate limitation on pay. OPM may approve waivers to meet temporary emergency hiring needs or when the agency has encountered exceptional difficulty in recruiting or retaining a qualified candidate for a particular position, and may specify a time limit for reemployment without penalty.  
[5 U.S.C. 5532(g), 8344(i), and 8468(f); 5 CFR part 553, subpart B]  
[Contact: Larry Lorenz—202-606-0830]

**D. PERFORMANCE MANAGEMENT<sup>2</sup>**—OPM has substantially deregulated performance appraisal and awards policies within the limits of existing statute and with the express intent of promoting decentralized systems and programs that conform to specific agency mission and culture. In addition, recent changes to the Government Employees Training Act added considerable flexibility for the training that employees may receive.

**[For general questions, contact the Office of Employee Relations  
and Workforce Performance—202-606-2910]**

**1. Performance Planning and Appraisal [Contact: Peggy Higgins—202-606-2720]**

- Authority to establish a flexible agency performance appraisal system and to decentralize the design and operation of specific appraisal programs, including:
  - Using as few as two and as many as five summary levels in official ratings of record;
  - Appraising employee performance using at least one critical element that addresses individual performance;
  - Flexibility to incorporate performance goals and objectives measured at team and organizational levels into performance planning; and
  - Flexibility to take group and organizational performance into account when assigning ratings above “Unacceptable.” [5 CFR part 430, subpart B]

**2. Incentive Awards and Recognition [Contact: Peggy Higgins—202-606-2720]**

- Authority to grant a cash award to an employee, individually or as a member of a group, up to \$10,000 without external approval, up to \$25,000 with OPM approval, and in excess of \$25,000 with Presidential approval. Awards based on ratings of record may not exceed 20 percent of the employee’s rate of basic pay excluding locality adjustments. Cash award payments are subject to the aggregate limitation on total pay equal to the rate of pay for Executive Level I. [5 U.S.C. 45; 5 CFR part 451]
- Awards may be based on individual and group contributions, performance ratings of record of at least “Fully Successful,” and other special acts or services. [5 U.S.C. 45; 5 CFR part 451]
- Authority to grant time off from duty without charge to leave or loss of pay as an award and to grant honorary, nonmonetary awards. [5 U.S.C. 4502; 5 CFR part 451]
- Authority to reward exceptional individual performance with faster than normal advancement in the pay range by granting “quality step increases” in a General Schedule employee’s rate of basic pay. [5 U.S.C. 5336; 5 CFR part 531, subpart E]

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<sup>2</sup>“Performance management” in the context of personnel authorities relates to the management of **employee** performance (i.e., planning, developing, appraising, and rewarding employee contributions), rather than performance-based or performance-oriented approaches to managing, measuring, and accounting for agency **program** performance. The two concepts can and should be linked and integrated, but they remain distinct in some respects, particularly regarding establishing individual accountability and dealing with poor performers.

**3. Performance Development and Training [Contact: John Zottoli—202-606-2721]**

- Authority to provide any training that will assist in achieving the agency’s mission and performance goals, with no requirement that training be directly related to “official duties.” [5 U.S.C. 4103]
- Authority to take full advantage of available training sources with no distinction made between Government and non-Government sources. [5 U.S.C. 4105]
- Authority to determine when a “continued service agreement” with an employee is appropriate and apply it to any training to protect the Government’s investment. [5 U.S.C. 4108]
- Authority to retrain employees for placement in another agency when such training is in the interest of the Government. [5 U.S.C. 4103]

**4. Poor Performance [Contact: Ken Bates—202-606-2920]**

- Authority exists to take performance-based removal or demotion actions under 5 U.S.C. chapter 43, *Performance Appraisal*. Additionally, agencies have the authority to take performance-based removal, demotion, or suspension actions under 5 U.S.C. chapter 75, *Adverse Actions*. Each method has specific procedural and evidentiary requirements that must be met. [5 U.S.C. 4303 and 7513; 5 CFR parts 432 and 752]
- Once an agency has issued a decision to remove an employee based solely on unacceptable performance, the employee may file a request for discontinued service retirement if the age and years-of-service requirements are met. However, an employee is not eligible for discontinued service retirement if the underlying reason for the removal is misconduct or delinquency, including willful refusal to perform. [5 U.S.C. 8336 and 8414]
- When an employee is determined to be unable to perform his or her duties (including situations where the agency has issued a decision to remove the employee for poor performance) and there is a medical condition that is causing the performance deficiency, the employee may seek OPM approval of disability retirement. [5 U.S.C. 8337 and 8451]

**E. DISPUTE RESOLUTION [Contact: Marjorie Marks—202-606-2920]**

- OPM has abolished the regulations prescribing features of an agency’s Administrative Grievance System (AGS). This allows agencies greater flexibility in designing an AGS. (The AGS is used to resolve disputes with non-bargaining unit employees that do not require use of a statutory grievance, complaint, or appeal process—e.g., grievances about merit promotion or performance appraisals.) [5 CFR part 771; §771.101]
- The Negotiated Grievance Procedure (NGP), used by bargaining unit employees, may be structured through collective bargaining to meet agency and employee interests. [5 U.S.C. 7121]
- In both the NGP and the AGS, agencies may use a variety of dispute resolution techniques to resolve employee disputes at the lowest possible level, thereby preventing costly and time-consuming formal processes and litigation.

## PART III — SYSTEM CHANGES BASED ON THE DEMONSTRATION PROJECT AUTHORITY

The demonstration project authority (5 U.S.C. 4703, 5 CFR part 470) will be used as the means by which PBO's will obtain authority to make personnel system changes that require waiving title 5 laws and regulations. Demonstration projects are jointly developed by the agency and OPM, require a results-oriented evaluation, are subject to Congressional review, require bargaining with affected bargaining unit employees, and require OPM approval. The authority does not permit waiver with respect to the leave and benefits systems, nondiscrimination laws, merit system principles, prohibited personnel practices, and Hatch Act provisions.

Role of Labor-Management Partnerships—Labor organizations must be involved in the process of developing a demonstration project (5 U.S.C. 4703(f)). It is also the policy of this Administration to encourage employee involvement through labor-management partnerships. Consequently, demonstration projects should be arrived at in partnership with constituent labor organizations, consistent with the directives in Executive Order 12871, "Labor-Management Partnerships." Demonstration projects provide labor and management an opportunity to "jointly" determine appropriate personnel management system flexibilities through waivers of title 5 law and regulations.

The remainder of this part describes major system changes that might be especially useful to PBO's that require demonstration authority. Other flexibilities would also be fully considered for inclusion in a demonstration project.

[For general questions, contact the Office of Merit Systems Effectiveness—202-606-2820]

### A. STAFFING

1. Competitive Examining—Permit using a category rating system instead of numerical scores to rank applicants.

- Qualified applicants are divided into two or more quality categories based on the relative level of their knowledge, skills, and abilities needed for successful performance in the job to be filled.
- Veteran preference eligibles who have a compensable service-connected disability of 10 percent or more and meet minimum qualification standards are listed in the highest quality category (not applicable to scientific and professional positions at and above GS-9, or equivalent).
- Within each quality category, preference eligibles are listed ahead of all nonpreference eligibles.
- A manager may select any candidate in the highest quality category, except that a nonpreference eligible may not be selected if a preference eligible is available in the highest category.

- If fewer than three candidates are in the highest quality category, selection may be made from a merged category consisting of the highest and second highest categories.
2. **Short-Term Staffing**—Make nonpermanent appointments of up to 4 years when the agency's need for an employee's services has a foreseeable end.
- Appointment made through the competitive examining process, including veterans preference. Public notice includes potential for permanent employment.
  - Appointment may be extended beyond 4 years only by the head of the agency to complete work essential to agency's mission.
  - For performance or conduct adverse actions, employee covered by negotiated grievance process or internal agency appeal process (but not title 5, U.S.C.) after 1 year of service in same or similar positions. No further review after internal agency appeal.
  - Employee not subject to Governmentwide reduction in force rules.
  - May be selected under merit promotion procedures for permanent appointment after employee has 2 years of current continuous nonpermanent service with acceptable performance. Use limited to position in same line of work and only when consistent with programs for surplus and displaced employees.
3. **Probationary Periods**—Permit periods longer than 1 year, up to 3 years.
- Permitted only for positions where the nature of the work is such that 1 year is insufficient to demonstrate complete proficiency in the position.
  - Applies to initial appointments in the competitive and excepted service.
  - During the period of longer probation, an employee would have very limited rights.

## B. CLASSIFICATION

1. **Broadbanding**—In job evaluation and classification of General Schedule positions, permit broad-banded systems in accordance with demonstration project criteria related to:
- The minimum and maximum number of grades that may be combined into pay bands.
  - Requirements for adjusting pay within a band.
  - Requirements for setting the pay of supervisory employees in pay bands.
  - Requirements and methods for setting pay upon conversion to a banded system, initial appointment, change of position or type of appointment, and movement between systems.
  - Means and methods for controlling costs.
  - Provisions to ensure the Government's continued ability to compare the rates of pay of employees covered by a broad-banded system with non-Federal rates of pay in each pay locality.

2. **Classification Review**—Require that when an employee requests a review of the classification of his or her position, the determination must first be reviewed by the agency before the employee may request OPM review.

## C. COMPENSATION

1. **General Schedule Pay Administration**—Simplify the pay structure and reorient the method for advancing in a General Schedule pay range to emphasize performance rather than time.
  - Eliminate the fixed 10-step framework for General Schedule positions to create a more rational and flexible pay system that resolves certain anomalies caused by the fixed step structure.
  - Redesignate "periodic step increases" (i.e., within-grade increases) as "performance increases" to emphasize their being contingent upon performance—i.e., meeting the retention standard, and establish their value as equal to one-ninth of the difference between the minimum and maximum rates of the pay range.
2. **Eligibility for Pay Increases**—Broaden eligibility criteria.
  - Authorize performance increases for nonpermanent employees in General Schedule positions.

## D. PERFORMANCE MANAGEMENT

1. **Performance Planning and Assessment**—Emphasize the objective of performance management and assessment as strengthening the effectiveness and accountability of individuals, groups, and organizations.
  - Establish individual accountability by communicating to each employee at least one retention standard for individual performance and determining whether such standards have been met; that determination to serve as the basis for:
    - possible performance-based adverse action (removal, demotion); and
    - eligibility for performance-based personnel actions (pay increases, promotion, additional retention credit in a reduction in force).
  - Broaden performance planning and assessment to support the integration of employee performance management with other performance-based management processes being implemented under the Government Performance and Results Act and the National Performance Review by permitting:
    - use of group and organizational goals and objectives; and
    - limitations on the distribution of assessments of employees who meet their retention standards.

2. **Incentive Awards**—Reorient awards and recognition programs to support improving individual, group, and organizational performance.
  - An individual award in excess of \$10,000, but not more than 25 percent of the rate for Executive Level V (currently \$27,050), may be granted without external review and approval.
  - Productivity gainsharing programs may be established.
  - Redesignate "additional step increases" (quality step increases) as "exceptional performance increases," and authorize them in amounts less than a full performance increase.
  
3. **Poor Performance**—Improve procedures and reduce disincentives for dealing with poor performers.
  - Specify that adverse actions based on failure to meet a retention standard may be taken under chapter 75.
  - Reduce the formal period of advance notice of a proposed removal or demotion from 30 days to 15 days.
  - Eliminate an employee's right to appeal to the Merit Systems Protection Board the denial of a performance increase on the basis of poor performance.

PBO's are urged to begin discussing any demonstration project proposals with OPM as soon as possible. Contact:

Barbara Swanson  
Team Leader, Demonstration Projects  
U.S. Office of Personnel Management  
1900 E Street, NW. – Room 7458  
Washington, DC 20415-0001  
Telephone: (202) 606-1025  
Fax: (202) 606-3577

The appendix to this template lists the broad array of personnel management policies and programs where OPM can provide PBO's assistance as they apply the various flexibilities discussed here.

**APPENDIX — OPM SERVICES AVAILABLE TO SUPPORT PBO's**

OPM provides a full range of technical assistance and a wide variety of personnel services, some through reimbursable agreements. OPM can support PBO's in all aspects of personnel management, including:

- Developing competitive examinations; **202-606-0820**
- Conducting competitive examinations and rating applications for merit promotion, using state-of-the-art automated examining services; **202-606-0940**
- Developing job evaluation systems, qualification requirements, and classification standards; **202-606-2950**
- Classifying positions and automating position classification procedures; **202-606-2950**
- Designing broadbanding systems and pay administration procedures; **202-606-2880**
- Designing performance management programs, including methods for planning and assessing performance and approaches to awards and recognition; **202-606-2720**
- Designing pay-for-performance programs; **202-606-2720**
- Designing training and development systems, including the creation and implementation of training, distance learning, and certification programs; **703-312-7226**
- Designing alternative dispute resolution procedures; **202-606-2920**
- Designing systems for assuring accountability for merit system principles and prohibited personnel practices; **202-606-2820**
- Providing other services such as survey processing and organizational needs assessment; and **202-606-0820**
- Evaluating the effectiveness of personnel systems. **202-606-2820**