



Department of Energy  
Washington, DC 20585

**JM CHRONOLOGY**  
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DRB DISCUSSION 8/21/14

AUG 4 2014

MEMORANDUM FOR: INGRID KOLB  
DIRECTOR, OFFICE OF MANAGEMENT

THROUGH: *FOR Carville Belen 8/4/14*  
KEVIN T. HAGERTY  
DIRECTOR, OFFICE OF INFORMATION RESOURCES

FROM: *Kenneth Venuto*  
KENNETH T. VENUTO  
DIRECTOR, OFFICE OF HUMAN CAPITAL MANAGEMENT

SUBJECT: Notice of Intent to Develop a Directive Order 329.2 *Excepted Service Exceptionally Well Qualified (EWQ) Authority*

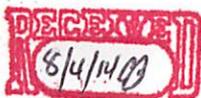
**PURPOSE:** To establish a new Order that addresses the requirements and responsibilities when using the EWQ appointing authority.

**JUSTIFICATION:** DOE received authority under the Consolidated Appropriations Act of 2014 to appoint up to 120 EWQ individuals to scientific, engineering, or other critical technical positions without regard to the provisions of chapter 33 of title 5, United States Code. This appointing authority will allow program offices to hire in an area of significant difficulty. The ability to recruit renowned senior scientists, engineers, and technical experts accompanied by the means to compensate them accordingly will greatly help DOE lead groundbreaking research and development projects that support the Department's strategic imperative to transform the nation's energy system and to secure the U.S. leadership in clean energy technologies. The Order will apply to all departmental elements.

There are no valid external, consensus or other "Standards" (e.g., ISO, VPP, etc.) available which can be used in place of this directive because this is a new hiring appointing authority unique to DOE.

**IMPACT:** The proposed directive does not duplicate existing laws, regulations or national standards and it does not create undue burden on the Department.

The directive will provide guidance for utilizing the appointing authority as stipulated by the Act, to include ensuring DOE is in compliance through specific safeguards and measures, one of which requires reporting to Congress on the use of the hiring authority by the Secretary of Energy and the Director, Office of Personnel Management (OPM). Internal controls are necessary to ensure that use of the new hiring authority is implemented consistently across DOE and in accordance with the law. The directive will also provide hiring managers with the guidelines and flexibilities to best utilize the new authority within their organization. A carefully designed corporate



Justification Memorandum (Continued)

approach to the use of the EWQ hiring authority will result in a flexible and uniform application throughout DOE.

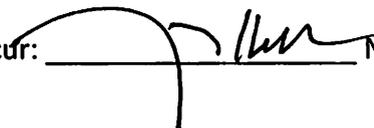
The directive will: describe the EWQ appointing authority and EQ pay plan; outline the role of the Senior Management Review Board (SMRB); ensure merit system principles are used; reinforce the Department's commitment to diversity; and provide pay setting procedures for EWQ appointments. It is anticipated that implementation of this directive will have minimal financial impacts to DOE.

The Office of the Chief Human Capital Officer will have primary responsibility for developing and implementing the guidance, ensuring compliance, and maintaining the allocations.

**WRITER:** The writer is Erin Moore and her contact number is (202) 586-9558.

**OPI/OPI CONTACT:** The office responsible for this directive is the Office of the Chief Human Capital Officer, Office of Executive Resources and the primary contact is Tonya Mackey, Director, Office of Executive Resources. She can be reached at (202) 586-2195.

Ingrid Kolb, Director, Office of Management (MA-1):

Concur:  Nonconcur: \_\_\_\_\_ Date: 8-21-14

Unless determined otherwise by the Directives Review Board (DRB), writers will have up to 60 days in which to develop their first draft and submit to the Office of Information Resources, MA-90

<u>Standard Schedule for Directives Development</u>	<u>Days</u>
Draft Development	Up to 60 days
Review and Comment (RevCom)	30
Comment Resolution	30
Final Review	30
Total	150

**(NOTE: The standard schedule of up to 150 days will be used unless otherwise specified by the Directives Review Board.)**

# Risk Identification and Assessment

## DOE Order 329.2 Excepted Service Exceptionally Well Qualified Authority

Risk	Probability	Impact	Risk Level
<b>People</b>			
1. Application of new hiring authority may be implemented inconsistently with respect to appointing nonqualified individuals or misuse of EWQ positions and hiring managers may not use all of the flexibilities afforded by the Consolidated Appropriations Act of 2014 (referred to hereafter as the "Act")	Likely	High	Extreme
2. Application of new hiring authority could result in a lack of diversity and noncompliance of the law by not notifying diverse professional associations and institutes of higher education when appropriate	Possible	High	Extreme
<b>Mission</b>			
3. Application of new hiring authority could result in Department's loss of the authority as a result of violations of the Act and inconsistent application	Possible	High	Extreme
<b>Assets</b>	N/A	N/A	None
<b>Financial</b>			
4. Without guidance on applying the new hiring authority, total pay compensation (including initial salary, awards, incentives etc.) may not be applied consistently and equitably throughout the Department	Likely	Medium	Significant
<b>Customer and Public Trust</b>			
5. Incorrect application of the new hiring authority, especially with the high threshold of salary (EX-I) could expose the Department and may cause public trust issues if the hiring authority is improperly executed and information is publicly disclosed	Possible	Medium	Significant

### Gap Analysis of Existing Risks and Controls

Laws	<ul style="list-style-type: none"> <li>• Section 313 of division D of the Consolidated Appropriations Act of 2014</li> <li>• U.S.C. Chapter 104</li> <li>• 5 U.S.C. Chapter 23</li> <li>• 5 U.S.C. Chapter 33</li> <li>• 5 U.S.C. Chapter 43</li> <li>• 5 U.S.C. Chapter 45</li> </ul>
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	<ul style="list-style-type: none"> <li>• 5 U.S.C. Chapter 75</li> </ul>
External Regulation	<ul style="list-style-type: none"> <li>• 5 CFR Part 302</li> <li>• 5 CFR Part 430</li> <li>• 5 CFR Part 451</li> <li>• 5 CFR Part 575</li> </ul>
DOE Regulation	<ul style="list-style-type: none"> <li>• Executive Resources Board (ERB) Charter</li> <li>• DOE Handbook on Recruitment and Retention Incentives</li> </ul>
DOE Orders	<ul style="list-style-type: none"> <li>• DOE N 314.1</li> <li>• DOE M 321.1-1</li> <li>• DOE O 322.1C</li> <li>• DOE O 331.1C</li> </ul>
Contract Controls	None
External Assessments	Secretary of Energy, Office of Personnel Management (OPM), and Congress

## Risk Mitigation Techniques

Risk Assessment for 329.2 Excepted Service Exceptionally Well Qualified (EWQ) Authority					
Risk/Opportunity	Risk Level	Potential Cost/Benefit	External Control(s)	Proposed Mitigation Technique	Internal Control (if needed)
1. Application of new hiring authority may be implemented inconsistently with respect to appointing nonqualified individuals or misuse of EWQ positions and hiring managers may not use all of the flexibilities afforded by the Consolidated Appropriations Act of 2014 (referred to hereafter as the "Act")	Extreme	Ensures selectees are qualified based upon documented selection criteria	Section 313 of division D of the Consolidated Appropriations Act of 2014; 5 U.S.C. Chapter 23	Market and train Human Resource Directors (HRDs) on proper usage of the new hiring authority to collaborate with hiring managers	<ul style="list-style-type: none"> <li>• Approval of the appointments and proposed positions by the Senior Management Review Board (SMRB)</li> <li>• Conduct an annual audit to ensure the Act is being consistently implemented; compile data regarding diversity, compensation packages, etc.</li> </ul>
2. Application of new hiring authority could result in a lack of diversity and noncompliance of the law by not notifying diverse professional associations and institutes of higher education when appropriate	Extreme	<ul style="list-style-type: none"> <li>• Complies with Merit System Principles</li> <li>• Ensures diversity in key positions in accordance with the Act and Presidential Management Agenda</li> </ul>	Section 313 of division D of the Consolidated Appropriations Act of 2014; 5 U.S.C. Chapter 23	Market and train HRDs on proper usage of the new hiring authority to collaborate with hiring managers	Approval of the appointments and proposed positions by the SMRB

3. Application of new hiring authority could result in Department's loss of the authority as a result of violations of the Act and inconsistent application	Extreme	New authority allows the Department to attract high quality technical and scientific employees to fill critical positions	Section 313 of division D of the Consolidated Appropriations Act of 2014	Provide regulatory guidance and applicable restrictions to HRDs and hiring managers	Approval of the appointments and proposed positions by the SMRB
4. Without guidance on applying the new hiring authority, total pay compensation (including initial salary, awards, incentives etc.) may not be applied consistently and equitably throughout the Department	Moderate		U.S.C § 104;5 U.S.C. Chapter 23;5 U.S.C. Chapter 33;5 U.S.C. Chapter 43; 5 U.S.C. Chapter 45; 5 U.S.C. Chapter 75; 5 CFR Part 430; 5 CFR Part 451; 5 CFR Part 575	Provide regulatory guidance and applicable restrictions to HRDs and hiring managers	Approval of the appointments and proposed positions by the SMRB
5. Incorrect application of the new hiring authority, especially with the high threshold of salary (EX-I) could expose the Department and may cause public trust issues if the hiring authority is improperly executed and information is publicly disclosed	Moderate		Section 313 of division D of the Consolidated Appropriations Act of 2014	Provide regulatory guidance and applicable restrictions to HRDs and hiring managers	Approval of the appointments and proposed positions by the SMRB

## References

### Risk/Opportunity Categories

- People – Risks that affect the individual well being.
- Mission – Risks that impede the ability of the department or offices to accomplish their mission.
- Assets – Risks that impact federal land, buildings, facilities, equipment, etc.
- Financial – Risks that may incur costs or obligations outside of DOE’s control.
- Customer and Public Trust – Risks that affect the trust and political environment around DOE.

### Probability Ratings

- Rare – even without controls in place, it is nearly certain that event would not occur
- Unlikely – without controls in place, it is unlikely the event would occur
- Possible – without controls in place, there is an even (50/50) probability that the event will occur
- Likely – without controls in place, the event is more likely than not to occur
- Certain – without controls in place, the event will occur

### Impact Ratings

Rating	Risk	Opportunity
Negligible	Events of this type have very little short-term or long-term impact and whatever went wrong can be easily and quickly corrected with little effect on people, mission, assets, finances, or stakeholder trust.	A benefit with little or no improvement of operations or utilization of resources.
Low	Events of this type may have a moderate impact in the short term, but can be easily and quickly corrected with no long term consequences.	A benefit with minor improvement of operations or utilization of resources.
Medium	Events of this type have a significant impact in the short term and the actions needed to recover from them may take significant time and resources.	A benefit with somewhat major improvement of operations or utilization of resources.
High	Events of this type are catastrophic and result in long-term impacts that significantly affect the ability of the Department to complete its mission.	A benefit with major improvement of operations or utilization of resources.

### Risk Level Ratings

		Impact			
		Negligible	Low	Medium	High
Probability	Certain	Minor	Moderate	Extreme	Extreme
	Likely	Minor	Moderate	Significant	Extreme
	Possible	Minor	Moderate	Significant	Extreme
	Unlikely	Minor	Minor	Moderate	Significant
	Rare	Minor	Minor	Minor	Moderate

## Risk Mitigation Options and Guidance

- Acceptance
- Monitoring
- Mitigation
- Avoidance

Unmitigated Risk / Strategy	Extreme	Significant	Moderate	Minor
Acceptance	<ul style="list-style-type: none"> <li>• Not Appropriate</li> </ul>	<ul style="list-style-type: none"> <li>• Not Appropriate</li> </ul>	<ul style="list-style-type: none"> <li>• Not Appropriate</li> </ul>	<ul style="list-style-type: none"> <li>• Risks can be handled through performance feedback and accountability</li> </ul>
Monitoring	<ul style="list-style-type: none"> <li>• Mandatory Contractor independent assessments</li> <li>• Federal oversight with a mandatory periodicity</li> <li>• Mandatory, periodic reporting</li> </ul>	<ul style="list-style-type: none"> <li>• Mandatory Contractor Self-assessments with a minimum periodicity</li> <li>• Federal oversight with a periodicity that is based on performance</li> <li>• Mandatory, periodic reporting</li> </ul>	<ul style="list-style-type: none"> <li>• Limited Federal oversight based on performance</li> <li>• Mandatory reporting of threshold events</li> </ul>	<ul style="list-style-type: none"> <li>• Federal oversight on a for-cause basis</li> <li>• Standard performance evaluation processes</li> </ul>
Mitigation	<ul style="list-style-type: none"> <li>• Federal approvals of individual transactions</li> <li>• Detailed performance or process requirements</li> <li>• Detailed design requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Federal approvals of systems and programs</li> <li>• Detailed performance or process requirements</li> <li>• Detailed design requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Detailed performance requirements</li> </ul>	<ul style="list-style-type: none"> <li>• General Performance Requirements</li> </ul>
Avoidance	<ul style="list-style-type: none"> <li>• Prohibition of activities or operations</li> </ul>	<ul style="list-style-type: none"> <li>• Prohibition of activities or operations</li> </ul>	<ul style="list-style-type: none"> <li>• Prohibition of activities or operations</li> </ul>	<ul style="list-style-type: none"> <li>• Guidance</li> </ul>