

## **DELEGATION AGREEMENT**

### **Office of Personnel Management and The Department of Defense**

The Office of Personnel Management (OPM), under the authority of sections 1104 and 5371 of title 5, United States Code, authorizes the Department of Defense (DOD) to use certain personnel authorities for health care occupations, subject to the restrictions herein. For the purpose of this agreement, "health care occupations" means positions other than positions in the Senior Executive Service that provide direct patient-care services or services incident to direct patient-care services and which would be covered by chapter 51 of title 5, United States Code, were it not for the provisions of this agreement.

OPM hereby delegates to DOD the discretionary use of certain title 38 provisions that are primarily available to the Department of Veterans Affairs. If DOD uses one of the authorities in this delegation agreement, the comparable authority in title 5, United States Code, is waived. The provisions listed are those directly related to pay rates and systems, premium pay, classification, and hours of work, as provided in 5 U.S.C. 5371. The DOD and OPM responsibilities are listed in the Statement of Responsibilities (Attachment A), and the delegations are provided in the Statement of Delegations (Attachment B).

All actions taken under this delegation agreement must conform to requirements of law and any regulations or instructions issued by OPM. DOD may redelegate these authorities to the extent permitted by statutory provisions for the delegated authorities and agency internal delegations of authority.

The DOD official responsible for the overall administration of the delegated authorities is:

Name:	Ms. Marilee Fitzgerald
Title:	Acting Deputy Under Secretary of Defense Civilian Personnel Policy
Telephone Number:	(703) 614-9487
Address:	4000 Defense Pentagon Washington, DC 20301

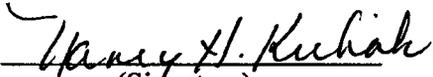
The DOD official responsible for serving as subject matter expert on the delegated authorities and providing information to OPM is:

Name: Mr. George Bell  
Title: Chief, Pay and Compensation Section  
Field Advisory Services Division  
Telephone Number: (703) 696-1268  
Address: Defense Civilian Personnel  
Management Service  
1400 Key Blvd., Suite B-200  
Arlington, VA 22209

DOD may terminate this agreement at any time with 90 days advance notice to OPM. OPM may terminate this delegation agreement at any time for reasons such as, but not limited to (a) evidence of inequitable treatment of employees, (b) identifiable violations of statutory requirements and/or abuses of merit system principles in 5 U.S.C. 2301, or (c) failure to coordinate with other participating departments and OPM. In such cases, DOD agrees to immediate OPM supervision of its delegated health-care personnel authorities to ensure no further abuses or to provide for an orderly phase-out of the authority.

Effective Date: July 1, 2002

Under the authority of 5 U.S.C. 5371, the authority delegated to the Department of Defense to use certain personnel provisions of title 38, United States Code, will remain in effect through June 30, 2012. Following satisfactory evaluation of the Department's use of the delegated title 38 authorities, the delegation agreement may be extended by OPM.

  
(Signature)

Nancy H. Kichak  
Acting Associate Director  
for Strategic Human Resources Policy  
Office of Personnel Management

  
(Signature)

Marilee Fitzgerald  
Acting Deputy Under Secretary of Defense  
Civilian Personnel Policy  
Department of Defense

8-30-05  
(Date)

9-20-05  
(Date)

<p style="text-align: center;"><b>STATEMENT OF RESPONSIBILITIES FOR PROVISIONS AVAILABLE UNDER 5 U.S.C. 5371</b></p>
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The following Department of Defense and OPM responsibilities apply to the overall program for delegated health-care personnel authorities and must be adhered to accordingly; each delegated provision references additional DOD and OPM responsibilities. In implementing any of these provisions, the intent of title 38 should be taken into consideration. Each provision's relationship to other provisions, such as retirement and the Fair Labor Standards Act, must be adhered to accordingly.

- I. Department of Defense Responsibilities for the Overall Program
- A. Develop appropriate written policies and procedures, apply them fairly and consistently, and ensure they meet the following requirements:
    - o Maintain quality staffing levels among facilities;
    - o Abide by statutory requirements, including merit system principles; and
    - o Avoid unwarranted competition with other departments or agencies using these authorities.
  - B. Issue written regulations and/or guidelines and consult with employee organizations, as appropriate.
  - C. Take such action as OPM may require to correct any action(s) contrary to law and/or regulations.
  - D. Participate and cooperate in the activities of the Interagency Committee on Health Care Occupations and attend Committee meetings. Assemble to discuss major pay authorities for which consensus must be reached prior to implementation as specified in the agreement.
  - E. Share policy information and pay survey data with other departments or agencies using these authorities. Minimize the burden on the non-Federal sector by sharing survey information with other Federal health-care employers and preventing duplicative pay surveys. Upon request, provide OPM with reports and data from surveys of non-Federal employers.
  - F. To the extent that authorities are redelegated within DOD, ensure that all provisions of this agreement are met by the designees to which the authorities are delegated.

- G. Maintain auditable program records. Provide OPM with information and access to Department records upon request.
- H. Maintain an internal review program to monitor use of these provisions. Provide OPM with program information and access to Department records upon request.
- I. Prior to renewal of the delegation agreement, participate in OPM's evaluation of the DOD program and policies, including the use of each provision, by health-care facility name and location and type of occupation. Provide OPM with program policies and documentation upon request.

II. OPM Responsibilities for Overall Program

- A. Establish the Interagency Committee on Health Care Occupations. Ensure that the Committee meets as needed and participate in the meetings. Assist Committee in establishing operating procedures as needed. The Committee will include the Departments of Defense, Health and Human Services, Justice, and Veterans Affairs, the Armed Forces Retirement Home, and any other departments or agencies receiving these delegated authorities.
- B. Ensure coordination among the participating departments or agencies and sharing of information among them.
- C. Provide technical assistance on the delegated authorities, as requested.
- D. Monitor the departments' and agencies' programs to ensure compliance with 5 U.S.C. 5371, including written policies and procedures developed for each provision and the departments' and agencies' internal audit programs.
- E. Prior to renewal of the delegation agreement, evaluate each department's and agency's program, policies, and documentation for compliance with law.
- F. Monitor legislative changes in title 38, assist departments and agencies in complying with the changes, and draft amendments to this delegation agreement as appropriate.

<p style="text-align: center;"><b>STATEMENT OF DELEGATIONS FOR PROVISIONS AVAILABLE UNDER 5 U.S.C. 5371</b></p>
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OPM delegates to the Department of Defense (DOD) the following title 38 provisions under the authority of 5 U.S.C. 5371:

- *Special Salary Rate Authority* -- § 7455(a)(1), (a)(2)(A) and (B), (b), (c)(1), and (d);
- *Baylor Plan* -- § 7456 and § 7456A;
- *Premium Pay* -- § 7453, § 7454, and § 7457(a) and (b);
- *Authority to Establish Qualifications* -- § 7402(a), (b), (d), and (e);
- *Qualification-based Grading System* -- § 7403(a), (b)(2), (c), (e) and (f)(1);
- *Head Nurse Pay and Nurse Executive Special Pay* -- § 7452(a)(2) and (g);
- *Hours of Employment* -- § 7421(a);
- *Special Pay for Physicians and Dentists* -- Until the first day of the first pay period beginning on or after January 1, 2006: Transition Provisions in section 3(e) of Public Law 108-445 (December 3, 2004);
- *Pay for Physicians and Dentists under the Physicians and Dentists Pay System* -- As of the first day of the first pay period beginning on or after January 1, 2006: §§ 7431(a), (b), (c), (d), (f), (g) and (h); 7432; and 7433(a), (c) and (d);
- *Nurse Locality Pay System* -- § 7451(a), (b), (c), (d), (e), and (g).

Each delegated provision references the title 38 citation, occupations covered, and DOD and OPM responsibilities.