UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

STATEMENT OF
ANGELA BAILEY
DEPUTY ASSOCIATE DIRECTOR FOR RECRUITMENT AND DIVERSITY
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON THE FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

on

"TEMPORARY EMPLOYEE PRACTICES: HOW LONG DOES TEMPORARY LAST?"

June 30, 2010

Chairman Lynch, Ranking Member Chaffetz, and Members of the Subcommittee:

Thank you for the opportunity to testify on behalf of the Office of Personnel Management (OPM) to discuss temporary employment in the Federal Government.

Distinctions between Temporary, Seasonal, and Intermittent Employees

Temporary appointments are used to fill positions when there is no permanent need for an employee's services. For example, a temporary appointment can be used to fill a position that is not expected to last more than one year, or to meet an employment need that is scheduled to be terminated within one or two years for reasons such as an agency's reorganization or abolishment, or the completion of a specific project or peak workload.

Temporary employees are eligible to earn leave and are covered by Social Security and unemployment compensation, but do not receive the other benefits provided to career civil service employees. As discussed later in my testimony, temporary employees can purchase health insurance after they have completed one year of temporary service; however, the employee must pay for the full cost of the health insurance with no Government contribution. Furthermore, these employees are generally ineligible for coverage under the Federal Employees' Group Life Insurance Program (FEGLI) or the Federal employees' retirement systems.

The terms "seasonal" and "intermittent" relate to employees' work schedules and not the appointment type used to hire them. Seasonal and intermittent employees can therefore be either permanent employees or temporary employees. Seasonal temporary employees receive the same benefits as other temporary employees. Permanent seasonal employees allow agencies to develop an experienced cadre of employees utilizing permanent appointment authorities. These seasonal employees perform their duties on a recurring basis every year. Seasonal employment is appropriate when the work is expected to last at least six months or more during a calendar year. Recurring work that lasts less than six months is best performed by temporary employees. Consistent with the career nature of their appointments, permanent seasonal employees receive the same benefits offered to the rest of the Federal civil service.

Intermittent employees are best suited for work that is sporadic and unpredictable, allowing agencies to utilize them in emergencies or when a work schedule is difficult to define. Temporary intermittent employees are generally ineligible for participation in most Federal employee benefit programs. In contrast, permanent intermittent employees are eligible for participation in Federal employees' retirement systems.

Limitations on Temporary Employment

Under OPM regulations, Federal agencies may make temporary appointments when they do not need an employee's services on a permanent basis. Agencies do not have authority to convert employees serving under temporary appointments to permanent appointments.

Temporary appointments are limited to one year or less although they may be extended for a second year. Generally, an agency may not fill a position using temporary appointments if that position was filled by temporary appointments for an aggregate of 24 months within the preceding 3-year period.

In order to utilize temporary hiring authority, OPM regulations require that the supervisor of each position filled by temporary appointment certify that the need for the position is truly temporary and that the appointment meets the regulatory time limits. The certification must include the specific reason for using a temporary appointment.

A brief explanation of the evolution of the rules governing temporary employees may be useful in understanding why these limitations were instituted. Until 1985, temporary appointments were much like they are today. Appointments were limited to one year with a maximum 1-year extension. In 1985, OPM made several policy changes to give agencies greater flexibility to meet mission and budgetary challenges. From 1985 through 1994, temporary appointments could be extended for up to four years, in 1-year increments. There was no limit on the number of times the same position could be filled using temporary appointments.

One consequence of this situation was that many temporary employees developed an expectation of continuing employment because agencies could appoint them to successive temporary appointments, sometimes for decades. An example of this was the tragic case of James Hudson, an employee of the Department of the Interior's National Park Service, who died on the job. Because he was a temporary employee, albeit with more than eight years of service, his family was not eligible for certain benefits that they would have received had he been serving under a permanent appointment at the time of his death.

In response to this tragic loss, and following a thorough review, OPM revised the rules governing these appointments. In 1994, OPM prescribed the 2-year maximum continuous employment limit, as well as the 24-months-out-of-the-last-3-years limitation for the same position, in order to ensure that temporary appointments will be used for truly short-term hiring needs and to avoid the perception by employees that temporary employment could last indefinitely.

OPM's regulations provide for limited exceptions from the 2-year maximum continuous employment time limits. Agencies can apply to OPM for an exception on a case-by-case basis, but only when required by major reorganizations, base closings, or other unusual circumstances. The agencies must submit a work-related justification for each request.

In addition, OPM regulations provide an exception to the 2-year maximum continuous employment time limits for work that is expected to last less than six months each year. This exception allows for multiple renewals of the temporary appointment authority, as long as the appointment is expected to last less than six months each year. This exception allows agencies that invest a significant amount of training in their temporary employees to re-appoint them on a seasonal basis. The exception also allows agencies to limit the number of permanent employees that they hire and provides them with the flexibility that they need to hire seasonal employees who need to work for fewer than six months.

As mentioned above, appointing temporary employees under the aforementioned exception differs from appointing seasonal employees. Seasonal employees work more than six months in a year and therefore must be employed under permanent appointments. Permanent seasonal employees are eligible for Federal benefits designed to attract and retain a stable workforce, even while in a non-pay status during the off-season.

Temporary Employees and Retirement Coverage

A concern that is often raised with respect to employees serving under temporary appointments is that they are excluded from coverage under the retirement programs for Federal employees. Retirement coverage is not in the interest of an employing agency. Due to the requirements under both the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS), an individual must work for at least five years in creditable civilian employment in order to become entitled to an annuity. Most temporary employees never fulfill this 5-year requirement. Therefore it does not make sense to require their employing agencies to make the requisite employer contributions on their behalf because such contributions would remain in the Civil Service Retirement Fund (Retirement Fund). This would increase the agency's cost of employing the individual. Moreover, with respect to employees covered under FERS and the

Thrift Savings Plan (TSP), when the vesting requirements are not met, the employer contributions to the TSP revert to the TSP and are not returned to the employing agency.

Retirement Credit for Earlier Temporary Service

Under CSRS, even if employment is not "covered employment" it still may be available for credit later, if the individual has subsequent service that is currently covered by the retirement system. With this in mind, the kinds of positions that were excluded from CSRS coverage by regulation were relatively broad in scope. On the other hand, when FERS was established, there was no provision for obtaining credit for non-covered service later.

Health, Life, and Other Insurance Programs

As is the case with retirement coverage, the laws governing the Federal Employees Health Benefits Program (FEHB) and FEGLI authorize OPM to exclude certain categories of employees from coverage. Specifically, the relevant statutes permit OPM, by regulation, to exclude employees based upon the nature and type of their employment or conditions pertaining to it, such as short-term, seasonal, or intermittent employment. Consequently, with a few exceptions, employees serving under appointments limited to a year or less are excluded from coverage under the health and life insurance programs. Also, the regulations exclude employees who are expected to work less than six months in each year, as well as those with intermittent work schedules.

Although temporary employees are generally excluded from FEHB coverage, there is a special provision in the health benefits law that allows such employees to obtain FEHB coverage once they have completed a year of continuous service. In other words, if an employee is serving under an appointment limited to one year and has his or her appointment renewed at the end of that year, the individual can elect FEHB coverage at that point. However, as previously mentioned, the employee must pay both the employee and the Government share of the premium.

Once employees are eligible to participate in FEHB, they may also participate in other programs such as the Federal Employee Dental and Vision Insurance Program and the Federal Long Term Care Insurance Program.

Conclusion

Thank you again for the opportunity to discuss with you how temporary employment is used in the Federal Government, and how and why it affects employee benefits. I would be happy to respond to any questions you may have.