



OFFICE OF THE UNDER SECRETARY OF DEFENSE

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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

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MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: AcqDemo Memorandum (AM) 13-01 – Suspension of Use of the AcqDemo Extended Probationary Period Provision

- References:
- (a) Federal Register Notice (FRN), 64 FR 1426, January 8, 1999, as amended, Civilian Acquisition Workforce Personnel Demonstration Project (AcqDemo); Department of Defense (DoD); Notice
 - (b) DoD Civilian Acquisition Workforce Personnel Demonstration Project Operating Procedures (OP), Section 4.1.9, May 15, 2003
 - (c) *Van Wersch v. Department of Health and Human Services*, 197 F.3d 1144 (Fed. Cir. 1999)
 - (d) *McCormick v. Department of the Air Force*, 307 F.3d 1339 (Fed. Cir. 2002)
 - (e) *Navigating the Probationary Period after Van Wersch and McCormick*, A Report to the President and the Congress of the United States by the U.S. Merit Systems Protection Board, September 2006

Purpose. AM 13-01 announces the suspension of the use of the AcqDemo Extended Probationary Period as described in References (a) and (b).

Effective Date. This AM is effective immediately as an augmentation to Reference (b), and will expire upon incorporation of additional waivers to title 5 United States Code (U.S.C.) and title 5 Code of Federal Regulations (CFR) into a FRN amending reference (a) and into a follow-on revision to Reference (b). Please ensure the widest dissemination possible to all AcqDemo organizations.

Background. The AcqDemo FRN contains a provision for the extension of the standard one-year probationary period for all non-status newly-hired employees in the Business Management and Technical Management Professional career path equal to the length of any educational/training assignment that places the employee outside normal supervisory review. Waivers to 5 CFR Part 315, Sections 315.801 Probationary period; when required, and 315.802 Length of probationary period; crediting service, were included in Reference (a) in order to have this extended probationary period with provisions to terminate those probationers with performance or conduct problems more expeditiously than provided by full procedural and appeal rights.

Since Reference (a) was published, the United States Court of Appeals for the Federal Circuit decided two cases, *Van Wersch v. Department of Health & Human Services*, 197 F.3d 1144 (Fed. Cir. 1999) Reference (c), and *McCormick v. Department of the Air Force*, 307 F.3d 1339 (Fed. Cir. 2002) Reference (d). The court's decisions in these two cases have changed the way in which Federal Agencies have traditionally determined entitlement to full procedural and

appeal rights if an individual is subject to an adverse action to include probationers, who in the past, would have had only limited procedural and appeal rights (Reference (e)).

In light of the new interpretation, additional waivers to title 5 U.S.C. and title 5 CFR must be added to Reference (a) in order to permit terminations, except for those individuals with veterans' preference, during AcqDemo extended probationary periods. These waivers would be to:

a. 5 U.S.C. Chapter 75—Adverse Actions, section 7501(1) Definitions and sections 7511(a)(1)(A)(ii) and 7511(a)(1)(C)(ii) Definitions; application.

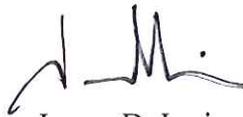
b. 5 CFR, Part 752—Adverse Actions, sections 752.101, 752.201, 752.301, and 752.401: Principal statutory requirements and Regulatory Requirements.

Guidance. It is AcqDemo Program Office guidance that until Reference (a) can be amended for:

a. Initial probationary periods for all new hires of non-status candidates to the Business Management and Technical Management Professional, code NH career path: The probationary period will be the standard one-year probationary period described in 5 CFR Part 315, Subpart H—Probation on Initial Appointment to a Competitive Position.

b. Individuals in the Business Management and Technical Management Professional, code NH career path currently serving an initial probationary period: The probationary period and any extensions assigned may be completed. However, a caution that a proposed termination of a probationary employee who has completed one year of current continuous employment in the same or similar positions other than a temporary appointment limited to one year or less may need to be processed under full adverse action procedural and appeal rights.

Point of Contact. Questions concerning this policy should be directed to Darryl Burgan, Deputy AcqDemo Program Director, at Darryl.burgan@dau.mil or by phone at 703-805-3327.



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