

## §213.3101

by temporary appointment(s) in either the competitive or excepted service for an aggregate of 2 years, or 24 months, within the preceding 3-year period. This limitation does not apply to programs established to provide for systematic exchange between a Federal agency and nonfederal organizations.

(3) *Exceptions to the general limits.* The service limits and restrictions on refilling positions set out in this section do not apply when:

(i) Positions involve intermittent or seasonal work, and employment in the same or a successor position under one or more appointing authorities totals less than 6 months (1,040 hours), excluding overtime, in a service year. The service year is the calendar year that begins on the date of the employee's initial appointment in the agency. Should employment in a position filled under this exception total 6 months or more in any service year, the general limits set out in this section will apply to subsequent extension or reappointment unless OPM approves continued exception under this section. An individual may be employed for training for up to 120 days following initial appointment and up to 2 weeks a year thereafter without regard to the service year limitation.

(ii) Positions are filled under an authority established for the purpose of enabling the appointees to continue or enhance their education, or to meet academic or professional qualification requirements. These include the authorities set out in paragraphs (r) and (s) of §213.3102 and paragraph (a) of §213.3202, and authorities granted to individual agencies for use in connection with internship, fellowship, residency, or student programs.

(iii) OPM approves extension of specific temporary appointments beyond 2 years (24 months total service) when necessitated by major reorganizations or base closings or other rare and unusual circumstances. Requests based on major reorganization, base closing, restructuring, or other unusual circumstances that apply agencywide must be made by an official at the headquarters level of the Department or agency. Requests involving extension of appointments to a specific position or project based on other unusual

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circumstances may be submitted by the employing office to the appropriate OPM service center.

[59 FR 46897, Sept. 13, 1994, as amended at 59 FR 64841, Dec. 16, 1994; 62 FR 18505, Apr. 16, 1997; 62 FR 55725, Oct. 28, 1997; 62 FR 63628, Dec. 2, 1997]

### Subpart B [Reserved]

### Subpart C—Excepted Schedules

#### SCHEDULE A

#### **§213.3101 Positions other than those of a confidential or policy-determining character for which it is impracticable to examine.**

Upon specific authorization by OPM, agencies may make appointments under this section to positions which are not of a confidential or policy-determining character, and which are not in the Senior Executive Service, for which it is not practicable to examine. Examining for this purpose means application of the qualification standards and requirements established for the competitive service. Positions filled under this authority are excepted from the competitive service and constitute Schedule A. For each authorization under this section, OPM shall assign an identifying number from 213.3102 through 213.3199 to be used by the appointing agency in recording appointments made under that authorization.

[46 FR 20147, Apr. 3, 1981, as amended at 46 FR 45323, Sept. 11, 1981, 59 FR 64841, Dec. 16, 1994; 62 FR 19900, Apr. 24, 1997]

#### **§213.3102 Entire executive civil service.**

(a) Positions of Chaplain and Chaplain's Assistant.

(b) [Reserved]

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment

under this paragraph. However, an appointment which was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f)–(h) [Reserved]

(i) Temporary and less-than-full time positions for which examining is impracticable. These are:

(1) Positions in remote/isolated locations where examination is impracticable. A remote/isolated location is outside the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing examining office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the same agency under a combination of this and any other appointment to positions involving related duties and requiring the same qualifications for more than 1,040 working hour in a service year. Temporary appointments under this authority may be extended in 1-year increments, with no limit on the number of such extensions, as an exception to the service limits in §213.104.

(2) Positions for which a critical hiring need exists. This includes both short-term positions and continuing positions that an agency must fill on an interim basis pending completion of competitive examining, clearances, or other procedures required for a longer appointment. Appointments under this authority may not exceed 30 days and may be extended for up to an additional 30 days if continued employment is essential to the agency's operations. The appointments may not be used to extend the service limit of any other appointing authority. An agency may not employ the same individual under this authority for more than 60 days in any 12-month period.

(3) Other positions for which OPM determines that examining is impracticable.

(j) Positions filled by current or former Federal employees eligible for

placement under special statutory provisions. Appointments under this authority are subject to the following conditions.

(1) *Eligible employees.* (i) Persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) who are entitled to placement under §353.110 of this chapter, or who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 8456 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment.

(ii) Executive branch employees (other than employees of intelligence agencies) who are entitled to placement under §353.110 but who are not eligible for reinstatement or non-competitive appointment under the provisions of part 315 of this chapter.

(iii) Legislative and judicial branch employees and employees of the intelligence agencies defined in 5 U.S.C. 2302(a)(2)(C)(ii) who are entitled to placement under §353.110.

(2) *Employees excluded.* Employees who were last employed in Schedule C or under a statutory authority that specified the employee served at the discretion, will, or pleasure of the agency are not eligible for appointment under this authority.

(3) *Position to which appointed.* Employees who are entitled to placement under §353.110 will be appointed to a position that OPM determines is equivalent in pay and grade to the one the individual left, unless the individual elects to be placed in a position of lower grade or pay. National Guard Technicians whose eligibility is based upon a disability may be appointed at the same grade, or equivalent, as their National Guard Technician position or at any lower grade for which they are available.

(4) *Conditions of appointment.* (i) Individuals whose placement eligibility is based on an appointment without time limit will receive appointments without time limit under this authority. These appointees may be reassigned, promoted, or demoted to any position within the same agency for which they qualify.

(ii) Individuals who are eligible for placement under §353.110 based on a time-limited appointment will be given appointments for a time period equal to the unexpired portion of their previous appointment.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, or technical experts for consultation purposes.

(m) [Reserved]

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional, or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p)–(q) [Reserved]

(r) Positions established in support of fellowship and similar programs that are filled from limited applicant pools and operate under specific criteria developed by the employing agency and/or a non-Federal organization. These programs may include: internship or fellowship programs that provide developmental or professional experiences to individuals who have completed their formal education; training and associateship programs designed to increase the pool of qualified candidates in a particular occupational specialty; professional/industry exchange programs that provide for a cross-fertilization between the agency and the private sector to foster mutual understanding, an exchange of ideas, or to bring experienced practitioners to the agency; residency programs through which participants gain experience in a Federal clinical environment; and programs that require a period of Government service in exchange for educational, financial or other assistance. Appointments under this authority may not exceed 4 years.

(s) Positions with compensation fixed under 5 U.S.C. 5351–5356 when filled by student-employees assigned or attached to Government hospitals, clin-

ics or medical or dental laboratories. Employment under this authority may not exceed 4 years.

(t) [Reserved]

(u) *Appointment of persons with mental retardation, severe physical disabilities, or psychiatric disabilities*—(1) *Purpose*. An agency may appoint, on a permanent, time-limited, or temporary basis, a person with mental retardation, a severe physical disability, or a psychiatric disability according to the provisions described below.

(2) *Proof of disability*. (i) An agency must require proof of an applicant's mental retardation, severe physical disability, or psychiatric disability prior to making an appointment under this section.

(ii) An agency may accept, as proof of an individual's mental retardation, severe physical disability, or psychiatric disability, appropriate documentation (e.g., records, statements, or other appropriate information) issued from a licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine); a licensed vocational rehabilitation specialist (*i.e.*, State or private); or any Federal agency, State agency, or an agency of the District of Columbia or a U.S. territory that issues or provides disability benefits.

(3) *Certification of job readiness*. (i) An agency may accept certification that the individual is likely to succeed in the performance of the duties of the position for which he or she is applying. Certification of job readiness may be provided by any entity specified in paragraph (u)(2)(ii) of this section.

(ii) In cases where certification has not been provided, the hiring agency may give the individual a temporary appointment under this authority to determine the individual's job readiness. The agency may also accept, at the agency's discretion, service under another type of temporary appointment in the competitive or excepted services as proof of job readiness.

(4) *Permanent or time-limited employment options*. (i) An agency may make a permanent or time-limited appointment based upon:

(A) Proof of disability; and

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(B) A certification of job readiness, or demonstration of job readiness through a temporary appointment.

(5) *Temporary employment options.* An agency may make a temporary appointment based upon proof of disability specified in paragraph (u)(2) of this section when:

(i) It is necessary to observe the applicant on the job to determine whether the applicant is able or ready to perform the duties of the position. When an agency uses this option to determine an individual's job readiness, the hiring agency may convert the individual to a permanent appointment whenever the agency determines the individual is able to perform the duties of the position; or

(ii) The individual has a certification of job readiness and the work is of a temporary nature.

(6) *Noncompetitive conversion to the competitive service.* (i) An agency may noncompetitively convert to the competitive service an employee who has completed 2 years of satisfactory service in a nontemporary appointment under this authority in accordance with the provisions of Executive Order 12125 as amended by Executive Order 13124 and §315.709 of this chapter.

(ii) An agency may credit time spent on a temporary appointment specified in paragraph (u)(5) of this section towards the 2-year requirement.

(v)–(w) [Reserved]

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under the authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed 1 additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this author-

ity longer than 1-year beyond the date of that person's release from custody.

(y) [Reserved]

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS-11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of the Office except when the authority is specifically included in a delegated examining agreement with the Office.

(cc)–(ee) [Reserved]

(ff) Not to exceed 24 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Public Law 91-452 and related statutes. A person appointed under this authority may continue to be employed under it after he ceases to be in a qualifying program only as long as he remains in the same agency without a break in service.

(gg)–(hh) [Reserved]

(ii) Positions of Fellows in the Presidential Management Fellows Program. Initial appointments of Fellows are made at either the GS-9, GS-11, or GS-12 level (or their equivalents), depending on the candidate's qualifications. Appointments are made under this authority for 2 years; however, upon approval of OPM, the head of the department, agency, or component within the Executive Office of the President may extend the appointment for up to 1 additional year. Upon the Fellow's satisfactory completion of the Program, as certified by the employing agency's Executive Resources Board (ERB) or equivalent, the employing agency must

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noncompetitively appoint the Fellow to a full-time, permanent position in the competitive service as prescribed in §315.708 and part 362 of this chapter.

(jj) Positions of Senior Fellows in the Presidential Management Fellows Program. Initial appointments are made at the GS-13, GS-14, or GS-15 level (or their equivalents), depending on the candidate's qualifications. Appointments may be made under this authority for up to 2 years; however, upon approval of OPM, the head of the department, agency, or component within the Executive Office of the President may extend the Senior Fellow's appointment for up to 1 additional year. Upon the Senior Fellow's satisfactory completion of the Program, as certified by the employing agency's Executive Resources Board (ERB) or equivalent, the employing agency must noncompetitively appoint the Fellow to a full-time, permanent position in the competitive service as prescribed in §315.708 and part 362 of this chapter. If a Senior Fellow successfully completes the Program, as certified by the appointing agency's ERB or equivalent, he/she may, at the agency's discretion, be appointed to a position in the Senior Executive Service (SES) (or the equivalent) without further competition and only one time, in the same manner, and subject to the same Qualifications Review Board review, as an individual who has successfully completed an OPM-approved SES candidate development program under parts 317 and 412 of this chapter.

(kk) [Reserved]

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

(5 U.S.C. 3301, 3307, 8337(h); 5 U.S.C. 3301, 3302; EO 12364, 47 FR 22931)

[47 FR 28902, July 2, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §213.3102, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§213.3199 Temporary organizations.

Positions on the staffs of temporary organizations, as defined in 5 U.S.C. 3161(a). Appointments may not exceed 3

years, but temporary organizations may extend the appointments for 2 additional years if the conditions for extension are related to the completion of the study or project.

[68 FR 24605, May 8, 2003]

SCHEDULE B

§213.3201 Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination.

(a) Upon specific authorization by OPM, agencies may make appointments under this section to positions which are not of a confidential or policy-determining character, and which are not in the Senior Executive Service, for which it is impracticable to hold open competition or to apply usual competitive examining procedures. Appointments under this authority are subject to the basic qualification standards established by the Office of Personnel Management for the occupation and grade level. Positions filled under this authority are excepted from the competitive service and constitute Schedule B. For each authorization under this section, OPM shall assign a number from 213.3202 through 213.3299 to be used by the appointing agency in recording appointments made under that authorization.

(b) [Reserved]

[46 FR 20147, Apr. 3, 1981, as amended at 47 FR 57655, Dec. 28, 1982; 53 FR 15353, Apr. 29, 1988]

§213.3202 Entire executive civil service.

(a) Student Educational Employment Program—Student Temporary Employment Program. (1) Students may be appointed to the Student Temporary Employment Program if they are pursuing any of the following educational programs:

- (i) High school diploma or General Equivalency Diploma (GED);
- (ii) Vocational/Technical certificate;
- (iii) Associate degree;
- (iv) Baccalaureate degree;
- (v) Graduate degree; or
- (vi) Professional degree.

(2) Definition of student. A student is an individual who has been accepted