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## OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 230, 301, 316, 333, 337, and 410

RIN 3206-AJ 99

### Organization of the Government for Personnel Management, Overseas Employment, Temporary and Term Employment, Recruitment and Selection for Temporary and Term Appointments Outside the Register, Examining System, and Training

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to implement certain Governmentwide human resources flexibilities contained in the Homeland Security Act of 2002. This regulation provides agencies with: increased flexibility in assessing applicants using alternative (category-based) rating and selection procedures; the ability to select qualified candidates for positions, including temporary and term positions, in the competitive service using direct-hire procedures; the authority to pay or reimburse the costs of academic degree training from appropriated or other available funds under specified conditions; and increased flexibility in the use of academic degree training to address agency-specific human capital requirements and objectives. This interim regulation will also remove part 333 of title 5, Code of Federal Regulations, Recruitment and Selection for Temporary and Term Appointments Outside the Register, and all related references to this part, including the authority to appoint using temporary appointments pending establishment of a register (TAPER).

**DATES:** These regulations are effective June 13, 2003. We will consider comments received on or before August 12, 2003.

**ADDRESSES:** Send, deliver or fax written comments to Ms. Ellen E. Tunstall, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415-9700; e-mail [employ@opm.gov](mailto:employ@opm.gov); fax: (202) 606-2329.

**FOR FURTHER INFORMATION CONTACT:** On alternative rating and selection procedures and direct-hire authority, Ms. Suzy Barker by telephone at (202) 606-0830, fax at (202) 606-2329 or by e-mail at [smbarker@opm.gov](mailto:smbarker@opm.gov). On emergency indefinite appointments, overseas employment, TAPER, and outside the register appointments, Ms. Diane Tyrrell by telephone at (202) 606-0830, fax at (202) 606-2329 or by e-mail at [dmtyrrel@opm.gov](mailto:dmtyrrel@opm.gov). On training, Ms. LaVeen M. Ponds by telephone at (202) 606-1394, fax at (202) 606-2329 or by e-mail at [lmponds@opm.gov](mailto:lmponds@opm.gov). Ms. Barker, Ms. Tyrrell and Ms. Ponds may also be contacted by TTY at (202) 418-3134.

**SUPPLEMENTARY INFORMATION:** On November 25, 2002, the President signed the Homeland Security Act of 2002 (Act), Public Law 107-296, into law. This Act provides Federal agencies with a number of human resources (HR) flexibilities. These flexibilities include direct-hire authority and alternative (that is, category) rating and selection procedures, which will aid in recruitment and hiring. The Act also provides Federal agencies with the authority to pay or reimburse employees for the costs of academic degree training.

#### Direct-Hire Authority

Title 5 U.S.C. 3304 provides agencies with the authority to appoint candidates directly to jobs for which OPM determines that there is a severe shortage of candidates or a critical hiring need. The requirements and justification for the direct hire authorities are presented separately and distinct from each other in these interim regulations.

We are soliciting comments on whether we should combine the requirements and justification for a severe shortage of candidates and critical hiring needs into a single section

or keep them in separate sections as written.

OPM may decide, on its own, that a severe shortage of candidates or a critical hiring need exists, either Governmentwide or in specified agencies, for one or more specific occupational series, grades (or equivalent), or geographic locations. Alternatively, an agency may, in a written request to OPM, identify the position(s) for which it believes a severe shortage or a critical hiring need exists. The agency must include relevant evidence, as described below, to support its request. Agencies that use this direct-hire authority must adhere to public notice requirements, as set forth in 5 U.S.C. 3327 and 3330, and 5 CFR part 330, subpart G.

To demonstrate that a severe shortage of candidates exists for a position or group of positions, an agency must provide information showing that it is unable to identify candidates possessing the competencies required to perform the necessary duties of the position despite extensive recruitment, extended announcement periods, and the use, as applicable, of hiring flexibilities such as recruitment and relocation incentives. In determining whether there is a severe shortage of candidates for a position or group of positions, OPM will consider all relevant evidence, including an agency's demonstrated recruitment efforts, human capital management strategic plans that forecast agency workforce needs, relevant analyses made in connection with an agency's workforce planning efforts, labor market data, and employment trends. OPM will also consider whether a nationwide or geographical skills shortage exists, as well as the extent to which the position(s) at issue are located in an undesirable geographic location, will require the incumbent to perform onerous or undesirable duties, or will require the incumbent to work under extraordinary or extreme conditions.

To prove that a critical hiring need exists, an agency must demonstrate that it has a critical need to fill the position or positions to meet mission requirements brought about by an exigency such as a national emergency, threat or potential threat, environmental disaster, or other unanticipated or unusual event or mission requirement. A critical hiring need may also be triggered by the need to conform to

requirements of law, Presidential directive or Administration initiative, or a congressional or other mandate to meet new or expanded mission requirements by a particular date. In a request for direct-hire authority due to a critical hiring need, an agency must provide sufficient evidence to demonstrate that filling the position(s) is critical to the agency's mission and that the use of other hiring authorities is impracticable or ineffective.

To provide agencies with the ability to use the new direct-hire authority, as appropriate, for temporary and term appointments, emergency-indefinite appointments in a national emergency, and overseas limited appointments, OPM is revising 5 CFR 230.402, Agency Authority to Make Emergency-indefinite Appointments in a National Emergency; 5 CFR part 301, subpart B, Overseas Limited Appointments; 5 CFR 316.302, Selection of Term Employees; and 5 CFR 316.402, Procedures for Making Temporary Appointments.

This interim regulation will add subpart B to 5 CFR part 337 and amends 5 CFR parts 230, 301 and 316.

#### **Elimination of Outside-the-Register Procedures**

OPM is eliminating 5 CFR part 333, Recruitment and Selection for Temporary and Term Appointments Outside the Register, based on its conclusion that this hiring authority is now obsolete.

The current outside-the-register procedure is available for use only when there is an insufficient number of eligibles on the appropriate register. OPM initially established these procedures to give agencies an alternative to traditional examining methods when there were not enough qualified eligibles on a particular register. The Act, however, provides OPM with the authority to permit agencies to utilize an alternative to traditional examining methods (*i.e.*, direct-hire authority) when there is a severe shortage of candidates possessing the competencies to perform the job requirements or a critical hiring need. Currently, agencies using outside-the-register procedures are required to provide public notice, apply veterans' preference, and provide selection priorities to certain displaced employees. These requirements are essentially the same as those for the new direct-hire authority. Based upon the foregoing, the current procedures for outside-the-register appointments under 5 CFR part 333 are duplicative and no longer needed, and we are therefore eliminating this regulation.

This interim regulation removes 5 CFR part 333.

#### **Elimination of the TAPER Authority**

Based on the elimination of the outside-the-register authority, OPM is also eliminating the Temporary Appointments Pending the Establishment of a Register (TAPER) authority. The TAPER authority was proposed for elimination in 1996, but was ultimately retained to provide agencies with a simplified examining process when filling Worker-Trainee (GS-1 and WG-1 and 2) positions with applicants who had limited education and experience. The decision to retain this authority thus was in response to the Governmentwide need, in connection with the "Welfare to Work" initiative, to provide opportunity for welfare recipients to enter the workforce.

Within the past several years, OPM has authorized the use of a number of alternative hiring flexibilities to assist agencies when recruiting individuals with limited education and experience. For example, in 1999, OPM gave agencies authority to use alternatives to the written test normally required when making appointments to clerical positions. These changes, combined with the flexibilities provided by the Act, give agencies the authority to bypass the selection procedures established in title 5 of the United States Code in appropriate circumstances, and therefore obviate the need for an authority to temporarily appoint an individual pending establishment of a register.

Eliminating this regulation will not adversely affect employees currently serving under TAPER appointments. These individuals will continue to work under these appointments until they have completed the 3 years of service that entitles them, under 5 U.S.C. 3304a, to be converted to career appointments. Based on the foregoing, there is no longer a need to retain the TAPER authority.

This interim regulation eliminates 5 CFR part 316, subpart B.

#### **Category Rating and Selection Procedures**

Title 5 U.S.C. 3319 provides agencies with the authority to develop a category-based rating method as an alternative way of assessing and rating job applicants for positions filled through the competitive examining process. Traditionally, applicants for Federal jobs are assigned numerical scores, including veterans' preference points, if appropriate, and are considered for selection based on the "rule of three" (5

U.S.C. 3318(a)). The category rating system prescribed by the Act does not add veterans' preference points or apply the "rule of three" but protects the rights of veterans by placing them ahead of non-preference eligibles within each category. For all positions other than scientific and professional positions at GS-9 (and equivalent) or higher, otherwise qualified preference eligibles who have a compensable service-connected disability of at least 10 percent must be listed in the highest quality category. This requirement is similar to the provisions of 5 U.S.C. 3313, which are used in numerical rating.

Under a category rating system, the agency assesses candidates against job-related criteria and then places candidates into two or more pre-defined categories. The categories are defined through a job analysis conducted in accordance with the "Uniform Guidelines on Employee Selection Procedures," at 29 CFR part 1607 and 5 CFR part 300. The categories must be distinct from one another and clearly differentiate between the relative quality of candidates in each. For example, an agency could adopt a two-category system in which the higher category is used for those candidates who meet minimum qualifications and are highly proficient in all the requirements of the job, while the lower category is reserved for those candidates who meet the minimum qualifications and are proficient in some, but not all, of the requirements of the job. For each position to be filled, an agency must decide in advance if they will assess candidates using the traditional numerical ranking and "rule of three" procedures or category rating, and must publish this information in the job announcement. When using the category rating procedure, the job announcement must then clearly define the categories.

Specific guidance on using the category rating process will be included in OPM's Delegated Examining Operations Handbook ([www.opm.gov/deu/](http://www.opm.gov/deu/)).

The category rating process provides for selections to be made from the highest category or, if fewer than three candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second-highest quality categories. If a preference eligible is in the category, an agency may not select a non-preference eligible unless the agency requests to pass over the preference eligible, and its request is approved. Objections to a preference eligible must be processed by the agency's delegated

examining office in accordance with 5 U.S.C. 3318(b) and 5 CFR 332.406. In addition, agencies are required to follow the provisions of 5 CFR 330.606 and 330.705, pertaining to order of selection.

The Act requires agencies to submit an annual report to Congress on the use of their category rating and selection procedures. For oversight purposes, OPM has required agencies to forward a copy of these reports to OPM.

This interim regulation adds subpart C to 5 CFR part 337.

#### **Expanded Academic Degree Training Authority**

Section 1331(a) of the Act amends the provisions of 5 U.S.C. 4107 by expanding the authority of an agency to pay or reimburse employees for the cost of academic degree training when such training contributes significantly to meeting an identified agency training need, resolving an identified agency staffing problem, or accomplishing goals in the agency's human capital management strategic plan. Such training must be part of a planned, systemic, and coordinated agency employee development program linked to accomplishing strategic human capital goals. According to 5 U.S.C. 4107(b)(2) agencies may not provide such training for the sole purpose providing an academic degree or as a means of qualifying for a position that requires an academic degree. However, an agency may provide an employee with the opportunity to obtain an academic degree or qualify for an appointment to a particular position for which the degree is required provided that the training is consistent with the agency's human capital management strategic plan and that selection for such training follows established competitive procedures. The academic training program must be provided by a college or university that is accredited by a nationally recognized body. OPM is amending its regulations to reflect these changes.

Agencies that pay or reimburse employees for academic degree training must generally require the employee benefiting from such training to enter into a continued service agreement with the agency prior to attending the training. Continued service agreement requirements apply to both tuition reimbursement programs and academic degree training programs.

This interim regulation revises subpart C of 5 CFR part 410.

#### **Executive Order 12866, Regulatory Review**

This interim rule has been reviewed by the Office of Management and

Budget in accordance with Executive Order 12866.

#### **Waiver of Delay of Effective Date**

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the delay in effective date and make these regulations effective in less than 30 days. The delay in the effective date is being waived because the program changes do not mandate but will give agencies needed flexibilities to recruit, hire and retain high quality candidates quickly and effectively to respond to changing and critical mission requirements. The General Accounting Office has designated strategic human capital management as a Governmentwide high-risk area citing serious human capital shortfalls that erode the ability of agencies to "economically, efficiently and effectively perform their missions." The President's Management Agenda calls for agencies to "flatten the Federal hierarchy, reduce the time to make decisions, and increase the number of employees that provide services to citizens. The reform also will pursue targeted civil service reforms, such as performance-based compensation and management flexibilities to recruit, retain, and reward a high-quality workforce." With 50% of Federal employees eligible for retirement in the coming years, agencies must have contemporary, flexible tools for workforce management. Recent media articles have highlighted the public perception that getting a Federal job takes too long and is far too complicated. The Government needs the very best applicants; in turn applicants deserve a streamlined, understandable application process. These changes will accommodate that need.

None of the three flexibilities proposed by these regulations are new or untried. In fact, category rating has been used successfully by some agencies for a decade or more under demonstration authority and enabling legislation. Studies of category rating as implemented by the Department of Agriculture indicate that employment of veterans increases and diversity is not reduced. Private-sector companies routinely use tuition payment as a strategy to attract and retain high quality employees.

These flexibilities were proposed after broad consultation with a variety of stakeholders including employees, managers and the human resources community. They long have been advocated by numerous public and private groups including the Merit Systems Protection Board and the Partnership for Public Service as

forward thinking, solid human capital strategies that should be available Governmentwide rather than to a few select agencies.

Direct hire, in particular, is critical if agencies are to respond effectively to the needs of the Nation. With a nationwide shortage of nurses and other healthcare workers, the Government must be able to move quickly and efficiently to hire excellent candidates—direct hire would provide that flexibility. Without it, the staffing to provide care to veterans and others in Federal medical facilities is diminished. Similarly, the critical need to hire talented, highly skilled workers to respond to a national crisis including an environmental threat such a raging wildfire can not be left to traditional hiring methods designed decades ago.

The alternatives provided by these regulations are not mandatory but may be used strategically by agencies to improve the management of human capital, to meet mission requirements and to respond to the President's call for a Government that is citizen focus and results oriented. There is a compelling need to provide these flexibilities without delay.

Finally, OPM will issue final regulations within 1 year of the publication of these interim regulations or these regulations will sunset.

#### **Regulatory Flexibility Act**

I certify that these regulations would not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they would only apply to Federal agencies and employees.

#### **List of Subjects in 5 CFR Parts 230, 301, 316, 333, 337, and 410**

Civil defense, Education, Government employees.

Office of Personnel Management.

**Kay Coles James,**  
*Director.*

■ Accordingly, OPM is amending parts 230, 301, 316, 333, 337, and 410 of title 5 of the Code of Federal Regulations, as follows:

#### **PART 230—ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT**

■ 1. The authority for part 230 continues to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 3302; E.O. 10577; 3 CFR 1954–1958 Comp., p. 218; sec. 230.401 also issued under 5 U.S.C. 1104.

### Subpart D—Agency Authority To Take Personnel Actions in a National Emergency

- 2. Revise § 230.402 paragraphs (c), (h)(1), and (h)(2) to read as follows:

**§ 230.402 Agency authority to make emergency-indefinite appointments in a national emergency.**

\* \* \* \* \*

(c) *Appointment under direct-hire authority.* An agency may make emergency-indefinite appointments under this section using the direct-hire procedures in part 337 of this chapter.

\* \* \* \* \*

(h)(1) The term *indefinite employee* includes an emergency-indefinite employee or an employee under an emergency appointment as used in the following: Parts 351, 353 of this chapter, subpart G of part 550 of this chapter, and part 752 of this chapter.

(2) The selection procedures of part 337 of this chapter apply to emergency-indefinite appointments that use the direct-hire authority under paragraph (c) of this section.

\* \* \* \* \*

### PART 301—OVERSEAS EMPLOYMENT

- 3. The authority citation continues to read as follows:

**Authority:** 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218, as amended by E.O. 10641, 3 CFR 1954–1958 Comp., p. 274, unless otherwise noted.

#### Subpart B—Overseas Limited Appointment

- 4. Revise § 301.201 to read as follows:

**§ 301.201 Appointments of United States citizens recruited overseas.**

When there is a shortage of eligible applicants resulting from a competitive announcement, an agency may give an overseas limited appointment to a United States citizen recruited for a position overseas.

- 5. Revise § 301.205 to read as follows:

**§ 301.205 Requirements and restrictions.**

The requirements and restrictions in subpart F of part 300 of this chapter apply to appointments under this subpart.

### PART 316—TEMPORARY AND TERM EMPLOYMENT

- 6. The authority citation continues to read as follows:

**Authority:** 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

### Subpart B—[Reserved]

- 7. Remove and reserve Subpart B (§§ 316.201 and 316.202).

### Subpart C—Term Employment

- 8. Revise § 316.302 paragraph (a) to read as follows:

**§ 316.302 Selection of term employees.**

(a) *Competitive term appointments.* An agency may make a term appointment under part 332 of this title, by using competitive procedures, or under part 337 of this title, by using direct-hire procedures, as appropriate.

\* \* \* \* \*

### Subpart D—Temporary Limited Employment

- 9. Revise § 316.402 paragraph (a) to read as follows:

**§ 316.402 Procedures for making temporary appointments.**

(a) *Competitive temporary appointments.* In accordance with the time limits in § 316.401 of this chapter, an agency may make a temporary appointment under part 332 of this title, by using competitive procedures, or under part 337 of this title, by using direct-hire procedures, as appropriate.

\* \* \* \* \*

### PART 333—[REMOVED AND RESERVED]

- 10. Remove and reserve Part 333.

### PART 337—EXAMINING SYSTEM

- 11. Remove the authority citations for §§ 337.101 and 337.102 and add an authority citation for part 337 to read as follows:

**Authority:** 5 U.S.C. 1104(a) (2), 1302, 3301, 3302, 3304, 3319, 5364, E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); 33 FR 12423, Sept. 4, 1968; and 45 FR 18365, Mar. 21, 1980.

- 12. Add Subpart B to part 337 to read as follows:

#### Subpart B—Direct-Hire Authority

Sec.

- 337.201 Coverage and purpose.  
337.202 Definitions.  
337.203 Public notice requirements.  
337.204 Severe shortage of candidates.  
337.205 Critical hiring needs.  
337.206 Terminations, modifications, extensions and reporting.  
337.207 Sunset.

#### Subpart B—Direct-Hire Authority

**§ 337.201 Coverage and purpose.**

OPM will permit an agency with delegated examining authority under 5

U.S.C. 1104(a) (2) to use direct-hire authority under 5 U.S.C. 3304 for a position or group of positions if OPM determines that there is either a severe shortage of candidates or a critical hiring need for such positions.

**§ 337.202 Definitions.**

In this subpart:

(a) A *direct-hire authority* permits hiring without regard to the provisions of 5 U.S.C. 3309 through 3318, and parts 211 and 337, subpart A of this chapter.

(b) A *severe shortage of candidates* for a particular position or group of positions means that an agency is unable to identify candidates possessing the competencies required to perform the job requirements despite extensive recruitment, extended announcement periods, and the use, as applicable, of hiring flexibilities such as recruitment and relocation incentives.

(c) A *critical hiring need* for a particular position or group of positions means that an agency has a need to fill the position(s) to meet mission requirements brought about by an emergency, potential threat, or unanticipated or unusual mission requirement, or to conform to the requirements of law, a Presidential directive or Administration initiative, or an unexpected event outside of an agency's control.

**§ 337.203 Public notice requirements.**

Agencies must comply with public notice requirements, as prescribed in 5 U.S.C. 3327 and 3330, and part 330, subpart G of this chapter with respect to any position that an agency seeks to fill using direct-hire authority.

**§ 337.204 Severe shortage of candidates.**

(a) OPM will determine when a severe shortage of candidates exists for particular occupations, grades (or equivalent), and/or geographic locations. OPM may decide on its own that such a shortage exists, or may make this decision in response to a written request from an agency.

(b) In a request for direct-hire authority under this section, an agency must identify the position(s) it is unable to fill and must include supporting evidence that demonstrates the existence of a severe shortage of candidates with respect to the position(s). The evidence should include, as applicable, information about:

(1) The results of workforce planning and analysis;

(2) Employment trends including the local or national labor market;

(3) The existence of nationwide or geographic skills shortages;

(4) Agency efforts including recruitment initiatives, use of other appointing authorities (e.g., schedule A, schedule B) and flexibilities, training and development programs tailored to the position(s), and an explanation of why these recruitment and training efforts have not been sufficient;

(5) The availability and quality of candidates;

(6) The desirability of the geographic location of the position(s);

(7) The desirability of the duties and/or work environment associated with the position(s); and

(8) Other pertinent information such as selective placement factors or other special requirements of the position, as well as the agency's use of hiring flexibilities such as recruitment or retention allowances.

#### § 337.205 Critical hiring needs.

(a) OPM will determine when there is a critical hiring need for particular occupations, grades (or equivalent) and/or geographic locations. OPM may decide on its own that there is such a need, or may make this decision in response to a written request from an agency.

(b) In a request for direct-hire authority under this section, an agency must:

(1) Identify the position(s) that it must fill;

(2) Describe the event or circumstance that has created the need to fill the position(s);

(3) Specify the duration for which the critical need is expected to exist; and

(4) Include supporting evidence that demonstrates why the use of other hiring authorities is impracticable or ineffective.

#### § 337.206 Terminations, modifications, extensions, and reporting.

(a) *Termination and modification.* On a periodic basis, for each direct-hire authority that it previously granted, OPM will review the appropriate agency's use of the authority to ensure that the agency is using the authority properly and to determine if the agency's continued use of the authority is supportable. OPM will terminate or modify a direct-hire authority previously granted to an agency if OPM determines that there is no longer a severe shortage of candidates or a critical hiring need. OPM may also terminate an agency's authority when the agency has used its authority improperly.

(b) *Extension.* OPM may extend an agency's direct-hire authority if OPM determines that there is or will continue to be a severe shortage of candidates or

a critical hiring need with respect to a particular position as of the date on which the agency's authority is due to expire.

(c) *Reporting requirement.* On a periodic basis, OPM may request information from agencies regarding their use of these direct-hire authorities.

#### § 337.207 Sunset.

The authority to use direct hire authority terminates June 14, 2004.

■ 13. Add Subpart C to part 337 to read as follows:

#### Subpart C—Alternative Rating and Selection Procedures

Sec.

337.301 Coverage and purpose.

337.302 Definitions.

337.303 Agency responsibilities.

337.304 Veterans' preference.

337.305 Reporting requirements.

337.306 Sunset.

#### Subpart C—Alternative Rating and Selection Procedures

##### § 337.301 Coverage and purpose.

This subpart implements the category rating and selection procedures at 5 U.S.C. 3319. This law authorizes agencies with delegated examining authority under 5 U.S.C. 1104(a)(2) to develop a category rating method as an alternative process to assess applicants for jobs filled through competitive examining.

##### § 337.302 Definitions.

In this subpart:

(a) *Category rating* is synonymous with alternative rating as described at 5 U.S.C. 3319, and is a process of evaluating qualified eligibles by quality categories rather than by assigning individual numeric scores. The agency assesses candidates against job-related criteria and then places them into two or more pre-defined categories.

(b) *Quality categories* are groupings of individuals with similar levels of job-related knowledge, skills, abilities, or competencies.

##### § 337.303 Agency responsibilities.

To use a category rating system, agencies must:

(a) Establish a system for evaluating applicants that provides for two or more quality categories;

(b) Define each quality category through job analysis conducted in accordance with the "Uniform Guidelines on Employee Selection Procedures" at 29 CFR part 1607 and part 300 of this chapter. Each category must have a clear definition that distinguishes it from other categories;

(c) Describe each quality category in the job announcement and apply the

provisions of part 330, subparts B, F and G of this chapter;

(d) Place applicants into categories based upon their job-related knowledge, skills, abilities or competencies; and

(e) Establish documentation and record-keeping procedures for reconstruction purposes.

#### § 337.304 Veterans' preference.

In this subpart:

(a) Veterans' preference must be applied as prescribed in section 1312(a)(2) of Public Law 107-296, the Homeland Security Act, and codified at 5 U.S.C. 3319; and

(b) Veterans' preference points as prescribed in § 337.101 are not applied in category rating.

#### § 337.305 Reporting requirements.

Any agency that uses category rating must forward to OPM a copy of the annual report that it must submit to Congress pursuant to 5 U.S.C. 3319.

#### § 337.306 Sunset.

The authority to use category rating terminates June 14, 2004.

### PART 410—TRAINING

■ 14. Revise the authority citation in part 410 to read as follows:

**Authority:** 5 U.S.C. 4101, et seq., 4107; E.O. 11348, and (3 CFR, 1967 Comp., p. 275).

#### Subpart C—Establishing and Implementing Training Programs

■ 15. Revise § 410.308 to read as follows:

##### § 410.308 Training to obtain an academic degree.

(a) An agency may authorize training for an employee to obtain an academic degree under conditions as prescribed at 5 U.S.C. 4107(a).

(b) Colleges and universities used in an academic degree training program must be accredited by a nationally recognized body. A "nationally recognized body" is a regional, national, or international accrediting organization recognized by the U.S. Department of Education. The listing of accrediting bodies is available at the Department.

(c) The selection of employees for an academic degree training program must follow the requirements of § 335.103(b)(3) and part 300, subpart A of this chapter. Subject to the additional requirement that the purpose of the selection and assignment is to accomplish an identified goal consistent with the agency's human capital management strategic plan, an agency may competitively select and assign an employee to an academic degree training program that qualifies the

employee for promotion to a higher graded position or to a position that requires an academic degree.

(d) Agency heads must assess and maintain records on the effectiveness of training assignments under this section.

(e) On a periodic basis, OPM may request agency information on the use and effectiveness of training assignments under this section.

(f) The authority to authorize training for an employee to obtain an academic degree terminates June 14, 2004.

[FR Doc. 03-14971 Filed 6-10-03; 4:46 pm]

BILLING CODE 6325-38-P

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 831 and 842

RIN 3206-AJ82

#### Voluntary Early Retirement Under the Homeland Security Act of 2002

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim voluntary early retirement authority (VERA) regulations. These regulations implement the VERA provisions of the Homeland Security Act of 2002, which apply to most executive branch agencies. These interim regulations explain how an agency requests authority from OPM to offer voluntary early retirement to its employees.

**DATES:** These regulations are effective June 13, 2003. OPM will consider written comments if received no later than August 12, 2003.

**ADDRESSES:** Send written comments to Ellen E. Tunstall, Deputy Associate Director for Talent and Capacity Policy, Office of Personnel Management, Room 6500, 1900 E Street NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Gray at 202-606-0960, FAX at 202-606-2329, TTY at 202-418-3134, or e-mail at [cwgray@opm.gov](mailto:cwgray@opm.gov).

**SUPPLEMENTARY INFORMATION** Section 1313(b) of the "Homeland Security Act of 2002" (Public Law 107-296, 116 Stat. 2135) provides agencies the option to offer voluntary early retirement when restructuring as well as when downsizing. Previously, voluntary early retirement was only available in downsizing situations.

Subsection 1313(b)(1) of Public Law 107-296 covers employees under the Civil Service Retirement System (CSRS),

and is codified in 5 U.S.C. 8336(d)(2). Section 831.114 is revised to implement the new voluntary early retirement provisions under CSRS.

Subsection 1313(b)(2) of Public Law 107-296 covers employees under the Federal Employees Retirement System (FERS), and is codified in 5 U.S.C. 8414(b)(1). Section 842.213 is revised to implement the new voluntary early retirement provisions under FERS.

The voluntary early retirement provisions are the same under CSRS and FERS. The revised regulations explain which employees are potentially eligible for voluntary early retirement, how an agency requests voluntary early retirement authority from OPM, and how the agency manages the voluntary early retirement authority after approval.

Under the interim regulations, an agency's human capital plan and/or voluntary separation incentive plan may be used to satisfy the requirements for requesting a voluntary early retirement authority if it contains the information required in the VERA regulations.

#### Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this rule effective in less than 30 days.

OPM has already promulgated interim regulations regarding use of the Voluntary Separation Incentive Payment (VSIP) authority pursuant to Congressional mandate. While agencies may now receive OPM approval to use VSIP to reshape their workforces, they cannot use VERA for that purpose until these regulations are available. In this case, compliance with notice and comment procedures, as well as with the 30-day waiting period, would severely undercut the usefulness of the VSIP authority and would deny employees who have not attained full retirement eligibility the opportunity to be considered for VSIPs. The alternative to reshaping the workforce through voluntary measures such as early retirement is generally reduction in force—a tool that is disruptive and costly both to employees and agencies. The inability of agencies to offer this option to employees undermines the intent of Congress and the Administration in providing agencies with the ability to use both the VERA and VSIP flexibilities for workforce reshaping and impacts employee options for "soft landings."

This regulation is needed to allow agencies to immediately use the VERA flexibilities that Congress accorded to them in the Homeland Security Act (Act). Prior to the enactment of this Act, agencies could obtain from OPM the authority to offer individuals voluntary early retirement based on a need to downsize. Also, if they had their own VSIP law, they could offer VSIP to their employees on the same basis. In the Act, however, Congress introduced the ability to request authority from OPM to offer VERA or VSIP, or both, based on a need for workforce reshaping. This is a flexibility that Congress deemed necessary to ensure that agencies could accomplish their respective missions, which, in many cases, have changed significantly since September 11, 2001. The VERA flexibility is designed so that it may be used in tandem with the VSIP flexibility. In fact, the VSIP authority may be ineffective in some instances, or not fully effective, if there is not a corresponding VERA authority to allow employees to retire early.

Moreover, delaying the effective date for OPM's VERA regulations could lessen the usefulness of VSIPs for reshaping this year. The financial advantage of VSIP rapidly diminishes the later it is used in a fiscal year, because the cost of the VSIP payment and the payout for accrued leave is more likely to exceed the amount of the employee's salary for the remainder of the year. Congress's inclusion of the new VERA flexibilities in the Homeland Security Act indicates that it intended for agencies to use these flexibilities this year. Waiver of the requirements regarding notice, comment, and the effective date is necessary to ensure that Congress' intent is honored.

Finally, OPM will issue final regulations within 1 year of the publication of these interim regulations or these regulations will sunset.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

#### Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

#### List of Subjects

5 CFR Part 831

Administrative practice and procedure, Alimony, Claims, Firefighters, Government employees,