

employee's current grade or pay level, without consideration of the employee's eligibility to retain his or her current grade or pay under part 536 of this chapter or other authority. In movements between pay schedules or pay systems, the comparison rate of the grade or pay level that is two grades below that of the current position will be compared with the comparison rate of the grade or pay level of the offered position. For this purpose, "comparison rate" has the meaning given that term in § 536.103 of this chapter, except paragraph (2) of that definition should be used for the purpose of comparing grade or levels of work in making reasonable offer determinations in all situations not covered by paragraph (1) of that definition.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

■ 46. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321–102; Sec. 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251, and section 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and section 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 842.304 and 842.305 also issued under section 321(f) of Pub. L. 107–228, 116 Stat. 1383, Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under section 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under section 4005 of Pub. L. 101–239, 103 Stat. 2106 and section 7001 of Pub. L. 101–508, 104 Stat. 1388; subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under section 636 of Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–164; Sec. 842.811 also issued under section 226(c)(2) of Public Law 108–176, 117 Stat. 2529.

Subpart B—Eligibility

■ 47. In § 842.206, revise paragraph (c)(3)(iv) to read as follows:

§ 842.206 Involuntary retirement.

* * * * *

(c) * * *

(3) * * *

(iv) Not lower than the equivalent of two grades or pay levels below the employee's current grade or pay level, without consideration of the employee's eligibility to retain his or her current grade or pay under part 536 of this chapter or other authority. In movements between pay schedules or pay systems, the comparison rate of the grade or pay level that is two grades below that of the current position will be compared with the comparison rate of the grade or pay level of the offered position. For this purpose, "comparison rate" has the meaning given that term in § 536.103 of this chapter, except paragraph (2) of that definition should be used for the purpose of comparing grades or levels of work in making reasonable offer determinations in all situations not covered by paragraph (1) of that definition.

* * * * *

[FR Doc. E8–26562 Filed 11–6–08; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

RIN 3206–AL18

Time-in-Grade Rule Eliminated

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is eliminating the time-in-grade restriction on advancement to competitive service positions in the General Schedule. The rule eliminates the 52-week time-in-grade requirement for promotions. Employees must continue to meet occupational qualification standard requirements and any additional job-related qualification requirements established for the position.

DATES: The rule is effective March 9, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Warren by telephone (202) 606–0960; by FAX (202) 606–2329; by TTY (202) 418–3134; or by e-mail janice.warren@opm.gov.

SUPPLEMENTARY INFORMATION: On February 6, 2008, OPM published in the *Federal Register* at 73 FR 6857 a proposal to eliminate the time-in-grade (TIG) restriction found in 5 CFR part 300, subpart F. The restriction applies to Federal employees in competitive service General Schedule positions at

grades 5 and above. These employees qualify for promotions to higher grades if they have: (1) At least one year of specialized experience equivalent in difficulty to the next lower grade level or (in some cases) the equivalent education; and (2) service of at least 52 weeks at their current grade (known as "time in grade").

The public comment period for the proposed regulation ended on April 7, 2008. We received comments from seven agencies, five unions, one national employee organization, and 33 individuals. We also received 61 form letters from individuals. We carefully considered the comments; as a result, we have decided to eliminate the time-in-grade restriction. The final regulation will become effective 120 days after the publication date of this notice in order to give agencies time to amend policies and communicate changes to their human resources staff and employees. Below is a discussion of the comments OPM received.

Comment Extension

The national employee organization and almost half of the form letter commenters suggested extending the comment period because the supplementary information accompanying the proposed rule provided incorrect dates for OPM's prior proposals to eliminate the time-in-grade restrictions. The February 6, 2008, proposal stated that OPM published its prior proposals on June 14, 1995, and January 10, 1996. In fact, they were published on June 15, 1994, and January 10, 1995. However, the February 6, 2008 proposal provided correct citations to the *Federal Register* notices for the prior proposals at 59 FR 30717 and 60 FR 2546, respectively.

We are not extending the comment period. OPM provided the dates and citations for its previously-published proposals as background information only. Potential commenters could adequately evaluate the February 6, 2008 proposal without reviewing the prior proposals. Moreover, the February 6, 2008 proposal supplied correct *Federal Register* citations for both of the previously-published proposals, thereby adequately facilitating their review by potential commenters.

Potential for Abuse and Favoritism

Many commenters stated that abolishing the time-in-grade requirement would lead to abuse of a manager's promotion authority, primarily because it would allow managers to promote their favorite employees. These commenters believe that eliminating the time-in-grade

requirement will subject agencies to charges of disparate treatment, and that the requirement ensures fairness and equity in promotions. One commenter also thinks too many individuals will reach their full performance levels in their positions too soon.

We disagree. The time-in-grade requirement is only one of the requirements for eligibility for promotion. Managers must still select only from those individuals who have at least one year of specialized experience equivalent in difficulty to the next lower grade level or (in some cases) the equivalent education. Moreover, individuals must meet occupational qualification standard requirements and any additional job-related qualification requirements established for the position.

Further, since the advent of the merit system, Federal managers always have possessed discretion to choose whom to promote. Managers are presumed to act in good faith in making employment decisions. In addition, there are safeguards in place to protect the merit system. Section 2302, which enumerates prohibited personnel practices, defines a personnel action as including a promotion, and enhances merit system protections that have existed in various forms since the Nineteenth Century.

When the time-in-grade restriction was first implemented, procedures for redressing prohibited personnel practices had not yet been enacted, and OPM's qualification standards did not exist. Eliminating the time-in-grade restriction does not alter management's responsibility to ensure that promotions are merit-based, and based on an individual's relative knowledge, skills, and abilities for a particular position.

In its oversight role, OPM will continue to review agency promotion actions for adherence to applicable requirements and identify necessary corrective actions.

The comment that the elimination of the time-in-grade requirement will result in individuals reaching their full performance levels too soon is merely speculative. The pace at which an employee advances to the full performance level of his or her position is a function of the employee's experience and/or knowledge, skills, and abilities relative to the qualification standard for the position. Even after the elimination of the time-in-grade restriction, qualification standards will provide the basis for managers to determine whether a particular employee is qualified for a promotion.

One individual commented that although safeguards against improper promotions exist, these systems have

proven to be ineffective in responding to alleged violations and prescribing corrective or disciplinary actions. OPM is not responding to this comment because the efficacy of those safeguards is beyond the scope of these regulations.

Impact on Minorities and Veterans

Many commenters were concerned that eliminating the time-in-grade requirement would have a negative impact on minorities and veterans. There is no logical or factual basis for this concern. The time-in-grade restriction applied to all individuals seeking promotion above grade 5 to a competitive service position, without regard to whether employees are minorities or veterans. Accordingly, eliminating the restriction negates one of the requirements for advancement applicable to all individuals, including minorities and veterans. In making selections for promotions, managers and human resources staff continue to be bound by applicable civil service laws and the laws pertaining to equal employment opportunity.

Using Qualification Standards and Delegated Examining

A number of commenters questioned the use of qualification standards as the sole determination for promotion. They expressed concerns that qualification determinations will be subjective. Some commenters also felt that using qualification standards will lead to "grade creep."

Agencies use qualification standards to ensure candidates for promotion demonstrate at least one year or the appropriate level of education as outlined in the OPM Operating Manual Qualification Standards for General Schedule Positions (available on the OPM Web site (<http://www.opm.gov>)). An individual may demonstrate the required competencies (or knowledge, skills, and abilities) by paid or unpaid experience. This includes experience gained through school, volunteer work, military service, paid employment, or hobbies. Beyond the OPM qualification standards, agencies have discretion to establish additional requirements that employees must meet for promotions. Examples include a specified level of performance achieved; possession of specific job-related competencies (or knowledge, skills, and abilities); and evidence of ability to perform higher-level duties.

Qualification standards are minimum requirements intended to identify applicants who are likely to be able to perform successfully on the job, and to screen out those who are unlikely to do so. Qualification standards are only one

element of a responsible human resources management program. They are not designed to substitute for a careful analysis of applicants' competencies (or knowledge, skills, and abilities).

Before qualification standards were implemented, agencies relied on time-in-grade to ensure that individuals were qualified for a higher-graded position. Now that qualification standards are in place, agencies are in a position to use the standards to determine which applicants will be able to perform at the higher grade levels.

With respect to the comment that the elimination of the time-in-grade restriction will lead to "grade creep," as noted previously, managers are obligated to make promotion decisions based on an individual's experience and/or knowledge, skills, and abilities relative to the qualification standard for the position.

A number of commenters suggested that agencies should use delegated examining for identifying and promoting individuals who do not meet the time-in-grade requirement. This suggestion is based on a misunderstanding of examining procedures. An agency announces a vacancy using competitive examining procedures to allow candidates from outside the Federal workforce, current Federal employees without civil service status, and employees with civil service status in other positions to compete for the position. OPM has created "delegated examining" by entering into written agreements with most agencies authorizing them to conduct competitive examining. If a current Federal employee applies for a promotion under competitive examining procedures (typically through a vacancy announcement stating it is open to the general public), the employee does not need to meet a time-in-grade requirement.

In contrast, promotions filled under the merit promotion procedures in 5 CFR part 335, are open to current or former Federal employees who hold or did hold a career or career-conditional appointment in the competitive service. If an eligible current Federal employee applies for a position at a higher grade through a merit promotion announcement, the employee must meet the time-in-grade requirement.

The decision to fill a position using delegated examining or merit promotion procedures rests with the agency filling the position. If a current or former Federal employee who holds or did hold a career or career-conditional appointment in the competitive service wants to apply under both procedures,

the agency's own policy determines whether it will accept an application under both methods. If the agency allows the individual to apply only through merit promotion procedures, and the individual does not meet the time-in-grade requirement (but is otherwise qualified for the position), the agency will not consider the individual. Once the time-in-grade requirement is eliminated, the agency may consider otherwise qualified applicants who have less than 52 weeks in grade, regardless of the agency's chosen recruitment procedures.

One union commented that elimination of TIG will lead to agencies bidding against each other on the establishment of a time-in-grade requirement for promotion. Once TIG is eliminated, agencies are not required to implement their own TIG requirement. Agencies will use qualification standards for determining whether an employee has met the specified criteria needed for promotion to the next highest grade level.

Effect on Within-Grade Increases

Some commenters expressed concerns that elimination of the time-in-grade requirement would result in a reduction in the number of within-grade pay increases. Based on the descriptions of these concerns, we believe the commenters are referring to General Schedule (GS) within-grade increases (WGI) authorized by 5 U.S.C. 5335 and 5 CFR part 531, subpart D. It appears there may be some confusion between the time-in-grade restriction for promotions and the waiting period for GS WGIs.

To clarify, the rate range for each GS grade has 10 step rates. WGIs or step increases are periodic increases in a GS employee's rate of basic pay from one step of the grade of his or her position to the next higher step of that grade. One of the requirements for earning a WGI is that the employee must have completed the required waiting period for advancement to the next higher step. For employees with a scheduled tour of duty, the required waiting period is 52 weeks, 104 weeks, or 156 weeks of creditable service, depending on the employee's current step. In contrast, time in grade is the amount of time one must stay at a particular grade (regardless of the step) in order to be eligible for promotion to the next higher grade level. Eliminating the time-in-grade requirement does not affect eligibility for WGIs.

Suggestions on OPM Actions

A number of commenters provided suggestions regarding what OPM can do

to ensure fairness and equity in promotions. Suggestions included monitoring promotion rates for Government employees, requiring reports, and conducting random audits of agencies. As mentioned earlier, OPM will continue to monitor agency promotion actions through our normal oversight function. We do not believe additional reporting requirements are necessary.

One commenter suggested, as an alternative to time-in-grade elimination, that agencies give preference to individuals who are eligible for time in grade over those who are not eligible. We are not adopting this suggestion. Agency promotions are to be based on merit, using government-wide and agency-specific qualification standards. Therefore, OPM will no longer require that time in grade be considered in selecting individuals for promotions. Eliminating the time-in-grade restriction from the selection process reinforces the principle that promotions are based on an individual's ability to perform the requirements of the position, i.e. merit, and not the passage of time per se.

One commenter suggested, rather than eliminating time in grade, that agencies give incentives such as student loan repayments, performance awards, retention allowances, superior qualification appointments, retention allowances, flexiplace, and alternative work schedules to reward employees. We are not adopting this suggestion because it is based on the mistaken assumption that the items listed serve the same purpose as the time-in-grade requirement. TIG is an eligibility factor for a promotion. The items listed by the commenter, however, are recruitment and retention tools that do not define eligibility for promotion. Thus, use of the items mentioned would not be equivalent to eliminating the time-in-grade requirement.

Time in Grade as an Observation Period

One union suggested we keep the time-in-grade-restriction as a period for agencies to consider an employee's demonstrated ability to perform at the next highest grade level, and to provide supervisors with a time period during which they can motivate, develop, and prepare employees for promotion. As previously noted, after the requirement is eliminated, agencies will use qualification standards to ensure that candidates for promotion have demonstrated the ability to perform at the next highest grade level. In addition, agencies will utilize their performance management systems when considering individuals for promotion. Even after

the elimination of the TIG requirement, supervisors will have some period of time to observe their employees' performance before recommending promotion. Supervisors are encouraged to motivate, develop, and prepare their employees for promotions, without regard to whether the employee is subject to a time in grade requirement.

Impact on Payroll Costs

One agency, a professional organization, several unions, and several individuals commented that elimination of the time-in-grade restriction would result in increased payroll costs for Federal agencies. This comment assumes that elimination of the time-in-grade requirement will correlate with an increase in the number of promotions, thereby increasing payroll costs. Whether such a correlation will occur is merely speculative. Moreover, even if such a correlation were to occur, because the number of promotions is not the only factor that determines payroll costs, an increase in promotions may not lead to a rise in overall payroll costs. Payroll costs depend on a variety of other factors, including collective bargaining agreements and the agency's rate of attrition. Further, agencies are presumed to use sound management practices in making promotions, including consideration of the financial consequences of their decisions.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed the final rule in accordance with Executive Order 12866.

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.

List of Subjects in 5 CFR Part 300

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective service system.

Office of Personnel Management.

Michael W. Hager,
Acting Director.

■ Accordingly, OPM is revising 5 CFR part 300 to read as follows:

PART 300—EMPLOYMENT (GENERAL)

■ 1. Revise the authority citation for part 300 to read as follows:

Authority: 5 U.S.C. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, 7701; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803.

Sec. 300.301 also issued under 5 U.S.C. 1104 and 3341.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Subpart F—[Removed and Reserved]

■ 2. Remove and reserve subpart F, consisting of § 300.601 through § 300.606.

[FR Doc. E8–26559 Filed 11–6–08; 8:45 am]

BILLING CODE 6325–39–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 370

RIN 3064–AD37

Temporary Liquidity Guarantee Program

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Amendment to the Interim Rule with request for comments.

SUMMARY: The FDIC is amending its Interim Rule with Request for Comment (Interim Rule) relating to implementation of its Temporary Liquidity Guarantee Program (TLG Program) by extending the opt out date for eligible entities until December 5, 2008; extending the deadline for complying with certain disclosure requirements related to the TLG Program until December 19, 2008; and establishing assessment procedures to accommodate the extended opt out period.

DATES: The Amended Interim Rule becomes effective on November 4, 2008. The effective date of § 370.5 paragraphs (h)(2) and (h)(3), added at 73 FR 64186, October 29, 2008, is delayed from December 1, 2008 until December 19, 2008. The FDIC seeks general and specific comments relating to questions raised in both the Amended Interim Rule and the Interim Rule. Comments regarding both the Amended Interim Rule and the Interim Rule must be received by November 13, 2008.

ADDRESSES: You may submit comments on the Amended Interim Rule by any of the following methods:

- *Agency Web Site:* <http://www.FDIC.gov/regulations/laws/federal/notices.html>. Follow instructions for submitting comments on the Agency Web Site.

- *E-mail:* Comments@FDIC.gov.

Include RIN # 3064–AD37 on the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All comments received will be posted generally without change to <http://www.fdic.gov/regulations/laws/federal/propose.html>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

William V. Farrell, Manager, Assessment Operations Section, Division of Finance, (703) 562–6168 or wfarrell@fdic.gov; Donna Saulnier, Manager, Assessment Policy Section, Division of Finance, (703) 562–6167 or dsaulnier@fdic.gov; Richard Bogue, Counsel, Legal Division, (202) 898–3726 or rbogue@fdic.gov; Robert Fick, Counsel, Legal Division, (202) 898–8962 or rfick@fdic.gov; A. Ann Johnson, Counsel, Legal Division, (202) 898–3573 or ajohnson@fdic.gov; Gail Patelunas, Deputy Director, Division of Resolutions and Receiverships, (202) 898–6779 or gpatelunas@fdic.gov; John Corston, Associate Director (Large Bank Supervision), Division of Supervision and Consumer Protection, (202) 898–6548 or jcorston@fdic.gov; Serena L. Owens, Associate Director, Supervision and Applications Branch, Division of Supervision and Consumer Protection, (202) 898–8996 or sowens@fdic.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The TLG Program was first announced by the FDIC on October 14, 2008, as an initiative to counter the current system-wide crisis in the nation's financial sector. It provided two limited guarantee programs: One, that guaranteed newly-issued senior unsecured debt of insured depository institutions and most U.S. holding companies of such insured depository institutions (the debt guarantee program), and another, that guaranteed certain noninterest-bearing transaction accounts at insured depository institutions (the transaction account guarantee program).

The FDIC's action in establishing the TLG Program was preceded by a determination of systemic risk by the Secretary of the Treasury (after consultation with the President), following receipt of the written recommendation of the Board on

October 13, 2008, along with a similar written recommendation of the Board of Governors of the Federal Reserve System.

The recommendations and eventual determination of systemic risk were made in accordance with section 13(c)(4)(G) to the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1823(c)(4)(G). The determination of systemic risk allowed the FDIC to take certain actions to avoid or mitigate serious adverse effects on economic conditions and financial stability. The FDIC believes that the TLG Program promotes financial stability by preserving confidence in the banking system and encouraging liquidity in order to ease lending to creditworthy businesses and consumers. As a result, on October 23, 2008, the FDIC's Board of Directors authorized publication in the **Federal Register** and requested comment regarding an Interim Rule designed to implement the TLG Program. The Interim Rule was published on October 29, 2008.¹ It became effective on October 23, 2008, with the exception of certain disclosure requirements for which a delayed effective date of December 1, 2008 was established.² The FDIC requested comments regarding the Interim Rule by November 13, 2008.

II. Opt Out Deadline in the Interim Rule

The Interim Rule provides that no later than 11:59 p.m. Eastern Standard Time (EST), on November 12, 2008, each eligible entity³ must inform the FDIC if it desires to opt out of the debt guarantee component or the transaction account guarantee component (or both components) of the TLG Program.⁴ If an eligible entity opts out of the TLG Program, coverage under the program ends on the earlier of the date of the opt out or on November 12, 2008.⁵ According to the Interim Rule, failure to opt out by November 12, 2008 constitutes a decision on behalf of an eligible entity to remain in the

¹ 73 FR 64179 (Oct. 29, 2008).

² 12 CFR 370.5(h)(2) and (h)(3).

³ 12 CFR 370.2(a) defines "eligible entity" as any of the following: (1) An insured depository institution; (2) a U.S. bank holding company, provided that it has at least one chartered and operating insured depository institution within its holding company structure; (3) a U.S. savings and loan holding company, provided that it has at least one chartered and operating insured depository institution within its holding company structure; or (4) other affiliates of insured depository institutions that the FDIC after consultation with the appropriate Federal banking agency, designate as eligible entities which affiliates, by seeking and obtaining such designation, will have opted in to the debt guarantee program.

⁴ 12 CFR 370.5(c).

⁵ 12 CFR 370.5(a).