

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 300

RIN 3206-AM06

#### Statutory Bar to Appointment of Persons Who Fail To Register Under Selective Service Law

**AGENCY:** U.S. Office of Personnel Management.

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

**SUMMARY:** The U.S. Office of Personnel Management is issuing proposed regulations to change its procedures for determining whether an individual's failure to register with the Selective Service System was knowing and willful. These changes are intended to ensure that individuals in these circumstances have an opportunity to fully explain their failure to register and that the determination is based on a more complete record. In addition, the proposed regulations delegate authority to Federal agencies to make initial determinations as to whether an individual's failure to register with the Selective Service System was knowing and willful. This delegation will facilitate more efficient decisions and reduce paperwork.

**DATES:** Comments must be received on or before January 30, 2012.

**ADDRESSES:** You may submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. All submissions received through the portal must include the agency name and docket number of Regulation Identifier Number (RIN) for this proposed rulemaking.

You may also send, deliver, or fax comments to Angela Bailey, Deputy Associate Director for Recruitment and Hiring, U.S. Office of Personnel Management, Room 6551, 1900 E Street NW., Washington, DC 20415-9700; email at [employ@opm.gov](mailto:employ@opm.gov); or fax at (202) 606-2329.

#### FOR FURTHER INFORMATION CONTACT:

Mike Mahoney by telephone at (202) 606-0830; by fax at (202) 606-2329; by TTY at (202) 418-3134; or by email at [michael.mahoney@opm.gov](mailto:michael.mahoney@opm.gov).

**SUPPLEMENTARY INFORMATION:** Under the Military Selective Service Act of 1948, as amended (hereafter referred to as "the Act"), all males between the ages of 18 and 26 who were born after December 31, 1959, are required to register with the Selective Service System, unless the Act exempts them. (50 U.S.C. App. 453). In addition, the Act establishes that "[e]very person shall be deemed to have notice of the requirements of this title [sections 451 to 471a of this Appendix] upon publication by the President of a proclamation or other public notice fixing a time for any registration under section 3 [section 453 of this Appendix]." (50 U.S.C. App. 465(a)). In 1980, President Carter issued such a proclamation (Proclamation No. 4771, July 2, 1980), which required that registration begin on July 21, 1980. That proclamation, as amended, remains in effect. Every covered male is now deemed to have had notice of these requirements, by virtue of that Act and Proclamation 4771, as amended.

In 1985, Congress enacted section 3328 of title 5, United States Code, which provides that men who are born in 1960 or later and who are required to, but did not, register under section 3 of the Military Selective Service Act generally are ineligible for Federal service. Section 3328 provides that an individual born after 1959 and required to register and "who is not so registered or knowingly and willfully did not so register before the requirement terminated or became inapplicable to the individual, shall be ineligible for appointment to a position in an Executive agency," unless the individual can establish "by a preponderance of the evidence that the failure to register was neither knowing nor willful." Section 3328 also provides that the Office of Personnel Management (OPM), "in consultation with the Director of the Selective Service System, shall prescribe regulations to carry out" section 3328, including "provisions prescribing procedures for the adjudication of determinations of whether a failure to register was knowing and willful." In 1987, Congress amended section 3328 to allow OPM to delegate decision-making

authority to agencies (Pub. L. 100-180, 101 Stat. 1019, December 4, 1987).

As noted above, section 3328 applies only to males who are (or were) required to register. Certain individuals may be (or may have been) exempt from registration as provided by sections 3 and 6(a) of the Military Selective Service Act (50 U.S.C. App. 453 and 456(a)) or by Presidential proclamation. Examples of individuals who may be so excluded are: (1) Certain non-immigrant aliens who are residing in the United States temporarily, such as those on visitor or student visas; (2) individuals who are unable to register due to circumstances beyond their control, such as being hospitalized, institutionalized, or incarcerated; and (3) members of the Armed Forces on full-time active duty, as well as cadets and midshipmen at the United States service academies.

An individual covered by the Act who has not registered can do so at any time before reaching age 26. After age 26, he may no longer register and is no longer able to correct his failure to register. Consequently, as a general rule, these cases arise only when an applicant or employee is age 26 or older and the possibility of registration is precluded. The current regulations, promulgated in 1987, establish that agencies should "request a written statement of Selective Service registration status from each covered individual at an appropriate time during the consideration process. \* \* \*" (5 CFR 300.704(a)). Accordingly, as a practical matter, OPM is called upon to adjudicate a case involving failure to register only if registration is precluded due to the covered individual's age.

#### The Applicable Standard

The statute OPM is required to implement contains an ambiguity. Certain provisions of section 3328 (*e.g.*, subsection (a)(2)) indicate that a failure to register that is *both* knowing *and* willful is necessary to make the individual ineligible for Federal employment. The third sentence of subsection (b) of section 3328, however, states that OPM's procedures must require that a determination that a failure to register was knowing and willful "may not be made if the individual concerned shows by a preponderance of the evidence that the failure to register was neither knowing

nor willful.” This provision suggests that a failure to register that is *either* knowing or willful would suffice to make the individual ineligible for employment.

There is substantial case law, under the Military Selective Service Act of 1948 and in other contexts, concerning the meaning of the terms “knowing” and “willful.” Although OPM acknowledges that the terms have substantial overlap, it is possible, at least theoretically, that a failure to register could be knowing but not willful, or the reverse. Accordingly, OPM believes that there are divergent potential interpretations of the statute, either of which could be reasonable constructions, and that this ambiguity should be resolved.

OPM proposes to resolve the ambiguity by amending the regulations to provide that an applicant is eligible unless the failure to register was *both* knowing and willful. In other words, the applicant or employee could establish eligibility by demonstrating, by a preponderance of the evidence (*i.e.*, the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true), that a failure to register was either not knowing or not willful. This interpretation is supported by Congress’s stated concern that a person should not be ineligible for Federal service unless his failure to register is determined to be both knowing and willful. Moreover, the legislative history, which indicates that Congress was concerned with draft-eligible males who “refused” to register, is also consistent with this interpretation. (See House Rept. No. 99–81, May 10, 1985.) The reference to “refusal” in the legislative history implies that the individual has taken affirmative steps or acts to decline to do something. This interpretation, which suggests that the term “willful” has a meaning distinct from “knowing” and should not be read out of the statute, seems particularly appropriate in light of the presumption under the Act that notice has been given. In other words, if a showing of knowledge alone were sufficient to make the person ineligible for Federal employment, it would be virtually impossible for an applicant or employee ever to prevail, because the law presumes he has knowledge of the requirement to register.

The proposed regulations also establish new procedures for submitting evidence to be used by the decision-maker in undertaking the inquiry required by section 3328. The existing

procedures (5 CFR 300.705(d)) provide only for the submission of a request for an OPM determination together with any explanation or other documentation the covered individual chooses to furnish. It has been difficult for individuals to establish, through these limited procedures, that their failure to register was not knowing and willful. The more robust procedures that OPM is proposing would expressly require an individual to submit a sworn statement in support of his claim and make himself available to be interviewed by the adjudicator or provide testimony concerning his explanation for his failure to register.

OPM believes that the proposed procedures would provide individuals with a more meaningful opportunity to explain why their failure to register meets the statutory and regulatory standard of proof. They would also provide the adjudicator a more complete record on which to base his or her determination.

#### Delegation

The proposed regulation would directly assign to Executive agencies the authority to make the initial determination as to whether an individual’s failure to register with the Selective Service System was knowing and willful. This will permit faster decisions and reduce paperwork.

#### Reconsideration

OPM’s proposed regulations, however, also provide that OPM reserves reconsideration authority for itself so that an individual may seek review, by an OPM official designated by the Director, of an agency’s initial determination that a failure to register was knowing and willful. The proposed regulations also authorize OPM to audit and oversee agencies’ performance of this function, and to revoke the delegation as to any particular agency, if the agency fails to carry out the function in accordance with applicable law. If OPM revokes a delegation to a particular agency, the Director of OPM must designate an OPM official who will make the initial determinations on adjudication requests arising from that agency. The proposed regulations also provide that, once one agency has made a determination regarding whether an individual’s failure to register was knowing and willful, a subsequent agency would need to obtain permission from OPM before it could deviate from the first agency’s finding.

#### Consultation With the Selective Service System

Individuals covered by the Act who have not registered, and who are seeking to become employed or remain employed by the Federal Government, must demonstrate by a preponderance of the evidence that their failure to register was not knowing and willful. In acting on individual cases, agencies must consult with the Selective Service System. The Selective Service Web site provides easy and immediate access to verify individuals’ registration status, and agencies can request relevant documents from the Selective Service.

#### Elimination of “Applicant’s Statement of Selective Service Registration Status”

OPM’s current regulations contain a self-certification statement of Selective Service registration to be completed by applicants and employees. Agencies reproduce this statement on a separate form. In recent years, however, OPM has taken steps to streamline the application process and reduce paperwork. A question on Selective Service registration is now part of Optional Form (“OF”) 306, Declaration for Federal Employment, which is used to determine an applicant’s acceptability and suitability for Federal positions. Therefore, the Applicant’s Statement of Selective Service Registration Status is no longer needed, and we are proposing to remove it from OPM’s regulations.

To accomplish the objectives described above, these proposed regulations would make the following specific changes in subpart G of part 300 of title 5, Code of Federal Regulations:

The revised section 300.701 would replace the relevant statutory text that is repeated in the current section 300.701 with a concise statement of the purpose of subpart G, which is to implement the statutory bar on employment in an Executive agency of an individual who was required to register with the Selective Service System, but who knowingly and willfully failed to register before reaching age 26.

The new section 300.702 would replace the statement about coverage of the subpart that is currently in that section with a shorter and clearer statement that the subpart applies to all appointments in Executive agencies, as defined in 5 U.S.C. 105.

In section 300.703, which defines terms used in subpart G, we are proposing to add *authorized agency official* as a defined term to refer to an official designated by the head of an Executive agency to be responsible for determinations as to whether the failure

of an applicant or employee covered by subpart G to register with the Selective Service System was knowing and willful.

The proposed regulations revise the remaining sections of subpart G to clarify the responsibilities of agencies regarding job applicants and employees who are required to register with the Selective Service System. The proposed regulations also set forth the procedures for initial determinations by agencies, and subsequent reconsideration of those determinations by OPM, concerning whether a covered individual's failure to register was knowing and willful.

Section 300.704 of the proposed regulations requires a Federal agency, before hiring a job applicant who is required to register with the Selective Service System, to determine the Selective Service status of that individual. If the individual provides proof that he has registered, the agency may continue to consider him for appointment.

Section 300.705 of the proposed regulations concerns acceptable proof of registration status. The agency must require the individual either to (1) Complete and sign Optional Form 306 (Declaration for Federal Employment) or another similar form provided by the agency, documenting his registration status, or (2) provide a copy of his Selective Service acknowledgement card or other proof of registration or exemption that the Selective Service System furnishes. An applicant who fails to comply with this section cannot be given any further consideration for employment. If an applicant provides documentation indicating that he has not registered, or if an employee fails to provide acceptable documentation and there is nothing in his Official Personnel Folder indicating his registration status has not been resolved previously, then the agency must comply with the requirements detailed in section 300.706.

Section 300.706 of the proposed regulations sets forth an agency's responsibility concerning applicants who are required to register with the Selective Service System but have not done so. In the case of any such person who is under age 26, the agency must provide him with a written notice advising him to register and including specific information about how to do so, the proof of registration he must provide to the agency (and the agency deadline for doing so, in order for the agency to continue to consider the individual), and a statement describing the consequences of failing to comply.

The agency must also provide notice to an individual whose failure to register was not detected by the agency until after the time of appointment, and who may still register. The agency must notify such an individual that unless he registers promptly (and the agency should provide a reasonable deadline for compliance) he will no longer be eligible for retention in his position and will thus be subject to termination. (In light of the congressional intent to encourage compliance with the registration requirement, we encourage agencies also to advise individuals for whom the obligation to register has not arisen at the time of appointment that a future failure to register will preclude any subsequent appointment in the civil service).

In the case of an individual who is over age 26, and whose failure to register was not detected by the agency until after it had appointed him, the agency must inform him that it will deem him ineligible for retention in his position unless he provides evidence that his failure to register was not knowing and willful. The agency must inform the individual as to how to request a determination that his failure to register was not knowing and willful, establish a reasonable deadline for his doing so, and inform him that his failure to seek such a determination within a reasonable time will result in the termination of his employment by the agency.

Because the above-referenced obligations are owed solely to Congress, to fulfill the purpose of the underlying statute, *i.e.*, to encourage registration with the Selective Service, any failure by the agency to comply with any of these obligations must not be interpreted to give rise to any defense or claim by an individual that his failure to register was the fault of the agency.

Section 300.707 of the proposed regulations outlines the procedure for determining whether the individual's failure to register was knowing and willful. An individual who asks an agency to determine that his failure to register was not knowing and willful must submit a sworn statement to the agency explaining why he did not register, along with any other supporting documents. The burden of proof is on the individual to demonstrate, by a preponderance of the evidence, that his failure to register was not knowing and willful. The agency would first have to check with OPM to see whether OPM or another agency had previously made a determination in the individual's case. If the matter had previously been adjudicated by OPM pursuant to a reconsideration request

under § 300.708, that determination would be final. If there was no record of a prior determination by OPM, and no record of a prior determination by another agency, the agency would have to investigate and adjudicate the matter. This would include consulting with the Selective Service System and questioning the individual and any others who submitted sworn statements on his behalf. If there was no decision upon reconsideration by OPM but another agency or OPM, in an initial decision, had previously adjudicated the matter, and, after investigation, the current agency disagreed with the earlier finding, the previous agency's decision could be superseded only if OPM agreed to permit a different outcome.

The agency would be required to inform the individual in writing of its decision and inform him of his right to ask OPM to reconsider the agency's decision within 30 days after the date of the agency's decision. Section 300.707 also would require OPM to keep a repository of agency determinations under subpart G.

Proposed section 300.708 provides for reconsideration by OPM of an agency determination that an individual's failure to register with the Selective Service System was knowing and willful. OPM may do so either when it receives a request from the affected individual or on its own initiative. A reconsideration decision is made by the Director of OPM or by another official authorized by the Director to make such decisions. A reconsideration decision by OPM is final and there is no further right to administrative review. If OPM affirms the agency's determination, the individual will no longer be eligible for Federal employment. If he is currently employed by the agency, the agency must terminate his employment on the grounds that his appointment was not lawfully made.

#### **Executive Order 13563 and Executive Order 12866, Regulatory Review**

This proposed rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 13563 and Executive Order 12866.

#### **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 affect only some Federal agencies, employees, and job applicants.

## Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

### List of Subjects in 5 CFR Part 300

Administrative practice and procedure, Reporting and recordkeeping requirements, Government employees, organization and functions.

Office of Personnel Management.

**John Berry,**

*Director.*

Accordingly, the Office of Personnel Management is proposing to amend part 300 of title 5, Code of Federal Regulations, as follows:

### PART 300—EMPLOYMENT (GENERAL)

1. The authority citation for part 300 is amended to add at the end of the Authority citations that were last revised, effective March 9, 2009, after the citation for sections 300.501 through 300.507, the following:

Secs. 300.701 through 300.709 also issued under 5 U.S.C. 3328(b).

2. Subpart G is revised to read as follows:

#### Subpart G—Statutory Bar to Appointment of Persons Who Fail to Register Under the Selective Service Law

Sec.	Purpose.
300.701	Purpose.
300.702	Coverage.
300.703	Definitions.
300.704	Agency responsibility to determine registration status.
300.705	Proof of registration.
300.706	Agency responsibility regarding individuals who have not registered.
300.707	Agency determination of whether failure to register was knowing and willful.
300.708	Reconsideration by OPM.

#### § 300.701 Purpose.

This subpart implements section 3328 of title 5, United States Code, which bars from employment in an Executive agency an individual who was required to register with the Selective Service System and “who is not so registered or knowingly and willfully did not so register before the requirement terminated or became inapplicable to the individual.” The bar on employment does not apply to such an individual who can demonstrate by a preponderance of the evidence either that the failure to register was not

knowing or that the failure to register was not willful.

#### § 300.702 Coverage.

This subpart covers all appointments to positions in Executive agencies.

#### § 300.703 Definitions.

In this subpart—

*Agency* means an Executive agency as defined in section 105 of title 5, United States Code.

*Appointment* means any personnel action that brings onto the rolls of an agency as a civil service officer or employee as defined in 5 U.S.C. 2104 and 2105, respectively, a person who is not currently employed in that agency. It includes initial employment as well as transfer between agencies and subsequent employment after a break in service. A personnel action that moves an employee within an agency without a break in service of more than 3 days is not an appointment for purposes of this subpart.

*Authorized agency official* means the head of an agency or an official who is authorized to act for the head of the agency in the matter concerned.

*Covered individual* means a male—

(1) Whose application for appointment is under consideration by an agency or who is currently employed by an agency;

(2) Who was born after December 31, 1959, and is at least 18 years of age; and

(3) Who is either (i) an applicant who is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453) at any time prior to or concurrent with the consideration of his application or (ii) an appointee who is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453) at any time prior to his current appointment.

*Exempt* refers to those individuals excluded from the requirement to register with the Selective Service System by sections 3 and 6(a) of the Military Selective Service Act (50 U.S.C. App. 453 and 456(a)) or by Presidential proclamation.

*Preponderance of the evidence* means the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

*Selective Service law* means the Military Selective Service Act, rules and regulations issued thereunder, and proclamations of the President under the Act.

*Selective Service System* means the agency responsible for administering the

registration system and for determining who is required to register and who is exempt.

#### § 300.704 Agency responsibility to determine registration status.

(a) Pursuant to Congress’s direction in 5 U.S.C. 3328, the authorized agency official is obligated to determine the registration status of a covered individual before he may be appointed. An agency’s failure to make a required registration status determination prior to an individual’s appointment, however, does not relieve the agency from having to make such a determination when the agency becomes aware of the omission thereafter and does not relieve the covered individual from the obligation to cooperate with the agency in reaching a determination. The agency must take all appropriate steps to make the determination as soon as it discovers the omission, regardless of the intervening appointment.

(b) An agency may, but is not obligated to, hold open a vacancy while the individual takes steps to resolve the registration issue.

#### § 300.705 Proof of registration.

(a)(1) At an appropriate time during the consideration process prior to appointment, and unless the individual furnishes other documentation as provided by paragraph (a)(2) of this section, an agency must require a covered individual to complete, sign, and date in ink Optional Form 306, Declaration for Federal Employment, or a form provided by the agency that requests information on registration status.

(2) The agency must allow a covered individual to submit, in lieu of the forms described in paragraph (a)(1) of this section, a copy of his Selective Service acknowledgement card or other proof of registration or exemption issued by the Selective Service System.

(b) An agency may give no further consideration for appointment to a covered individual who fails, within 7 business days, or another reasonable time specified by the agency, to provide the information on registration status as required by paragraph (a) of this section.

(c) An agency considering appointment of a covered individual who is a current or former Federal appointee is not required to inquire about his registration status if the agency determined that his Office Personnel Folder contains evidence that the individual is registered, is exempt, or has had a prior determination under this subpart that his failure to register was not knowing and willful.

**§ 300.706 Agency responsibility regarding covered individuals who have not registered.**

(a) In the case of a covered individual who is under age 26 and has not registered with the Selective Service System, and in order to further Congress's purpose in enacting 5 U.S.C. 3328, the agency must provide the individual with a written notice that advises him to register promptly and includes the following:

(1) Information about how to register online on the Selective Service System's Web site;

(2) A statement requiring the individual to submit a new Optional Form 306, agency form, or other appropriate document from the Selective Service System to prove that he has registered;

(3) Any additional documentation the agency deems necessary to establish that the individual has registered;

(4) A deadline for submitting the required documentation; and

(5) A statement that, if the individual fails to provide the required documentation before the deadline, he will no longer be eligible for appointment, or, in the case of a covered individual who has already been appointed, a statement that the failure to register will result in the individual being terminated on the ground that he was ineligible for appointment at the time he was appointed,

(b) In the case of a covered individual who is age 26 or older and has not registered with the Selective Service System, the agency, when it learns of the failure to register, must notify the individual in writing that, as required by 5 U.S.C. 3328, he is ineligible for appointment or for continued employment unless his failure to register was not knowing and willful. The notice must inform the individual that he may request in writing a determination by the agency that his failure to register was not knowing and willful if he provides, along with his request, a written explanation of his failure to register, as described in § 300.707. The individual's failure to submit this request within a reasonable time, as determined by the agency, obligates the agency to eliminate the individual from further consideration for an appointment or to commence steps to terminate the individual's continued employment, as appropriate.

**§ 300.707 Agency of whether-failure to register was knowing and willful.**

(a)(1) An individual who, as provided in § 300.706(b), requests a determination that his failure to register was not knowing and willful must submit to the

authorized agency official a sworn statement that explains why he failed to register. The sworn statement must set forth all relevant facts and circumstances, including whether this issue has ever been adjudicated by another agency. This sworn statement must be signed and must include the following statement, "I declare, under penalty of perjury, that the facts stated in this statement are true and correct." He may also submit any other documents that support his claim, including sworn statements from other individuals with first-hand knowledge of the relevant facts.

(2) An individual who requests a determination referred to in paragraph (a)(1) of this section must submit to the authorized agency official his Optional Form 306 or agency form, a copy of the written notice referred to in § 300.706(b), his request for a determination that his failure to register was not knowing and willful, his sworn statement explaining his failure to register, and any other relevant documents. The individual must demonstrate by a preponderance of the evidence that his failure to register was not knowing and willful.

(b) Upon receiving a request for a determination that an individual's failure to register was not knowing and willful, the authorized agency official must contact the Office of Personnel Management (OPM) to determine whether the issue was previously adjudicated by OPM or another agency.

(1) If the issue was previously adjudicated by OPM pursuant to a reconsideration request under § 300.708, that decision is final.

(2) If the issue was not previously adjudicated, or if it was previously adjudicated only in an initial decision by OPM or another agency, the authorized agency official must examine the individual's request and reach his or her own conclusion as to whether the failure to register was knowing and willful. The official may investigate the information in the documents provided by all appropriate means, including questioning the covered individual or employee and any other person who submitted a statement in support of his claim, and consulting with the Selective Service System. Refusal of any individual who submits a sworn statement under this section to be interviewed may be grounds for a determination that the covered individual's failure to register was knowing and willful.

(c) If, after considering the entire record, the agency reaches a different conclusion from the initial decision made by another agency, the earlier

decision may be superseded only with the agreement of OPM. The agency must provide to OPM whatever documents OPM decides it needs to determine whether to permit the earlier decision to be superseded.

(d) The agency must inform the individual in writing of its decision. The decision must inform the individual that he may request reconsideration of the agency's determination under § 300.708 within 30 days after the date of receipt of the decision, at which time the agency's decision becomes final unless the individual has timely filed a request for reconsideration with OPM.

(e) An agency is not required to keep a vacant position open for a covered individual who seeks a determination under this section, unless otherwise required by law.

(f) If the agency finds that the failure to register was knowing and willful, a covered individual is ineligible for further employment consideration, or for continued employment if he has already been appointed.

(g)(1) OPM will maintain a repository for agency decisions under this section and may prescribe guidance for the submission of agency decisions under this paragraph.

(2) OPM may audit agency decisions under this subpart and may suspend or revoke an agency's authority under this subpart if it determines the agency is not carrying out its responsibilities under this subpart in accordance with applicable law and regulations. In the event of such a suspension or revocation, the Director of OPM must designate an authorized OPM official who will make the initial determinations for that agency under this section while that suspension or revocation is in effect.

**§ 300.708 Reconsideration by OPM.**

(a) When a request for reconsideration is filed with OPM in a timely manner, OPM will inform the agency or individual that it has received the request.

(b) The Director of OPM, or other OPM authorized official, at the request of the individual or on his or her own initiative, may review the initial decision of an agency under § 300.707 and make a determination based on all documentation provided, to affirm or overrule the agency's decision. Consistent with § 300.707, the authorized official may investigate the information in the documents provided by all appropriate means, including questioning the covered individual or any other person who submitted a statement in support of his claim, and

consulting with the Selective Service System. The official will examine the individual's request and make his or her own conclusion as to whether the failure to register was knowing and willful. The decision of OPM is final. There is no further right to administrative review.

(c) OPM will provide the agency and the individual who requested reconsideration with a copy of its decision.

(d) If OPM affirms the agency's determination that the failure to register was knowing and willful, the agency must cease considering the individual for appointment or, if the individual is a current employee, initiate steps to terminate his employment.

[FR Doc. 2011-30788 Filed 11-28-11; 8:45 am]

BILLING CODE 6325-39-P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Parts 1, 5, 16, 28, and 160

[Docket No. OCC-2011-0019]

RIN 1557-AD36

#### Alternatives to the Use of External Credit Ratings in the Regulations of the OCC

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) contains two directives to Federal agencies including the OCC. First, section 939A directs all Federal agencies to review, no later than one year after enactment, any regulation that requires the use of an assessment of creditworthiness of a security or money market instrument and any references to, or requirements in, such regulations regarding credit ratings. Second, the agencies are required to remove any references to, or requirements of reliance on, credit ratings and substitute such standard of credit-worthiness as each agency determines is appropriate. The statute further provides that the agencies shall seek to establish, to the extent feasible, uniform standards of creditworthiness, taking into account the entities the agencies regulate and the purposes for which those entities would rely on such standards.

Through this notice of proposed rulemaking (NPRM), the OCC seeks comment on a proposal to revise its

regulations pertaining to investment securities, securities offerings, and foreign bank capital equivalency deposits to replace references to credit ratings with alternative standards of creditworthiness.

The OCC also is proposing to amend its regulations pertaining to financial subsidiaries of national banks to better reflect the language of the underlying statute, as amended by section 939(d) of the Dodd-Frank Act.

**DATES:** Comments must be received by December 29, 2011.

**ADDRESSES:** Commenters are encouraged to use the title "Alternatives to the Use of Credit Ratings in the Regulations of the OCC" to facilitate the organization and review of comments. Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title "Alternatives to the Use of Credit Ratings in the Regulations of the OCC" to facilitate the organization and review of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal*—"*Regulations.gov*": Go to <http://www.regulations.gov>, under the "More Search Options" tab click next to the "Advanced Docket Search" option where indicated, select "Comptroller of the Currency" from the agency drop-down menu, then click "Submit." In the "Docket ID" column, select "OCC-2011-0019" to submit or view public comments and to view supporting and related materials for this proposed rule. The "How to Use This Site" link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- *Email:*

[regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).

- *Mail:* Office of the Comptroller of the Currency, 250 E Street SW., Mail Stop 2-3, Washington, DC 20219.

- *Fax:* (202) 874-5274.

- *Hand Delivery/Courier:* 250 E Street SW., Mail Stop 2-3, Washington, DC 20219.

*Instructions:* You must include "OCC" as the agency name and "Docket Number OCC-2011-0019" in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address

information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this proposed rulemaking by any of the following methods:

- *Viewing Comments Electronically:* Go to <http://www.regulations.gov>, under the "More Search Options" tab click next to the "Advanced Document Search" option where indicated, select "Comptroller of the Currency" from the agency drop-down menu, then click "Submit." In the "Docket ID" column, select "OCC-2011-0019" to view public comments for this rulemaking action.

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

#### FOR FURTHER INFORMATION CONTACT:

Kerri Corn, Director for Market Risk, Credit and Market Risk Division, (202) 874-4660; Carl Kaminski, Senior Attorney, or Kevin Korzeniewski, Attorney, Legislative and Regulatory Activities Division, (202) 874-5090; or Eugene H. Cantor, Counsel, Securities and Corporate Practices Division, (202) 874-5210, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>1</sup> (the Dodd-Frank Act) contains two directives to Federal agencies including the OCC. First, section 939A directs all Federal agencies to review, no later than one year after enactment, any regulation that requires the use of an assessment of creditworthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings. Second, the

<sup>1</sup> Public Law 111-203, Section 939A, 124 Stat. 1376, 1887 (July 21, 2010).