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 335
RIN 3206–AN77

Promotion and Internal Placement

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations to give agencies the discretion to reinstate certain former Federal employees without competition to positions at any grade level for which the individual is qualified. Agencies will have greater flexibility in recruiting back to Government service former Federal employees who have developed enhanced or higher-level skill-sets than they had when they left government. Individuals seeking to rejoin the Federal workforce may do so more easily and at grade levels commensurate with the skills and experience they actually possess (and be compensated at such grade levels).

DATES: Comments must be received on or before February 24, 2020.

ADDRESSES: You may submit comments, identified by the docket number or Regulation Identifier Number (RIN) for this proposed rulemaking, by any of the following methods:

- Email: employ@opm.gov. Include the docket number or RIN in the subject line of the message.

Instructions: All submissions must include the agency name and docket number or RIN for this rulemaking. Please arrange and identify your comments on the regulatory text by subpart and section number; if your comments relate to the supplementary information, please refer to the heading and page number. All comments received will be posted without change, including any personal information provided. Please ensure your comments are submitted within the specified open comment period. Comments received after the close of the comment period will be marked “late,” and OPM is not required to consider them in formulating a final decision. Before acting on this proposal, OPM will consider all comments we receive on or before the closing date for comments. Changes to this proposal may be made in light of the comments we receive.


SUPPLEMENTARY INFORMATION:

Summary of the Proposed Changes

The U.S. Office of Personnel Management (OPM) is exercising its authority under 5 U.S.C. 3301 and 3302 in proposing to revise part 335, title 5, Code of Federal Regulations (CFR), to change the criteria for how an agency may reinstate certain former Federal employees to a position in the competitive service. Under current rules, an agency may reinstate an individual, without competition, only to a position at a grade level that is no higher than the grade level of a position the individual held on a permanent basis in the competitive service. Reinstatement to a higher-graded position, or to a position with greater promotion potential, requires competition under 5 CFR part 335 Promotion and Internal Placement.

Oftentimes, when an individual leaves Federal service, he or she acquires skills and/or experience that may qualify the individual for a position at a higher grade level than the one the individual held prior to leaving government. The proposed rules place these reinstatement actions under discretionary actions at 5 CFR 335.103(c)(3). The proposed rules allow an agency to reinstate a former career or career-conditional employee without competition, and regardless of the promotion potential, to a position at a grade level higher than that previously held by that individual to provide greater flexibility to agencies when they need to reinstate a former Federal employee. The proposed changes will benefit both agencies as well as individuals seeking to reenter the Federal workforce as the proposed rules seek to encourage individuals who have gained additional skills and experiences to reenter the Federal workforce at grade levels equal to the grade levels they actually qualify for, not for grade levels they previously qualified for. Any restriction on the promotion potential of the position may be a disincentive to attracting needed talent with the desired skills and/or experience. In order to qualify for this type of reinstatement the individual must meet the following criteria:

1. (1) Been voluntarily separated from his or her most recent career or career-conditional appointment for at least 1 year, and

2. (2) Received a rating of record for his or her most recent career or career-conditional position of at least Fully Successful (or equivalent).

OPM is proposing that individuals who voluntarily separate must wait 1 year to be eligible for a higher-graded position under this authority in order to provide consistency with the general qualification requirements for advancement to a higher grade. OPM’s government-wide qualification standards require that competitive service employees have 1 year of specialized experience before being promoted to the next highest grade level. The proposed 1-year requirement will prevent situations in which employees seeking a promotion quit and get reinstated to a higher-graded position (in essence a promotion) prior to meeting the specialized experience requirement. Thus, the proposed rules benefit both Federal agencies and former Federal employees seeking reemployment with the government at a level commensurate with each individual’s actual skill and/or experience level, while preserving a measure of fairness with respect to current employees.

OPM is proposing that individuals who did not receive a rating of record for his or her most recent career or career-conditional position of at least Fully Successful (or equivalent) are not eligible for reinstatement without competition under this rule because if the individual was not performing to expectations at the time s/he left Federal service, that rationale for liberalizing the rules for re-entry would not be present, and we would want agencies to put the candidate through a more rigorous
process to accurately evaluate current capabilities before hiring the individual again. An individual whose most recent evaluation was less than Fully Successful would have been headed for potential demotion or termination if s/he had remained.

For individuals who resigned and did not wait 1 year or more before applying for reinstatement, or for individuals who did not receive a rating of record for his or her most recent career or career-conditional position of at least Fully Successful (or equivalent), the proposed rule will require competition for higher graded positions, or positions with greater promotion potential. However, the individuals remain eligible for reinstatement without competition for positions with no higher grade or with no more promotion potential than a position previously held by the individual on a permanent basis in the competitive service.

The specific proposed changes are as follows:

OPM is proposing to modify current § 335.103(c)(1)(vi), by requiring competition under this part for an individual seeking reinstatement, within 1 calendar year from the date of his or her separation, to a position at a higher grade level or promotion potential than previously held, or for an individual who did not receive a rating of record of Fully Successful (or equivalent).

New paragraph § 335.103(c)(3)(viii) creates as a discretionary action that is not subject to competitive procedures reinstatement to a position at a higher grade level or promotion potential than previously held provided the individual resigned 1 year or more prior to the date he or she applies for reinstatement, and that the individual received a rating of record for his or her most recent career or career-conditional position of at least Fully Successful (or equivalent).

OPM is proposing these changes under Civil Service Rules II and VII, codified at 5 CFR parts 2 and 7, to establish and administer a system that provides for career appointments for former employees eligible for career appointment upon reinstatement.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies and employees.

**E.O. 13563 and E.O. 12866, Regulatory Review**

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” under Executive Order 12866 and has been reviewed by OMB.

**Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs**

This proposed rule is not expected to be subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because this proposed rule is expected to be related to agency organization, management, or personnel.

**E.O. 13132, Federalism**

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have substantial federalism implications to warrant preparation of a Federalism Assessment.

**E.O. 12988, Civil Justice Reform**

This regulation meets the applicable standard set forth in section 3(a) and (b)(2) of Executive Order 12988.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Congressional Review Act**

This action pertains to agency management, personnel and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a “rule” as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

**Paperwork Reduction Act**

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 335

Government employees.
Office of Personnel Management
Alexys Stanley,
Regulatory Affairs Analyst.

Accordingly, OPM proposed to amend 5 CFR part 335 as follows:

PART 335—PROMOTION AND INTERNAL PLACEMENT

1. The authority citation for part 335 continues to read as follows:


Subpart A—General Provisions

2. In § 335.103, revise paragraph (c)(3)(vi) and add paragraph (c)(3)(viii) to read as follows:

**§ 335.103** Agency promotion programs.

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(c) * * *

(1) * * *

(vi) Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service if the individual did not wait 1 year or more after separating from Federal employment before applying for reinstatement, or did not receive a rating of record for his or her most recent career or career-conditional position of at least Fully Successful (or equivalent).

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(viii) Reinstatement in accordance with 5 CFR part 315 to any position in the competitive service for which the individual is qualified at a higher grade level or with more promotion potential than a career or career-conditional position previously held by the individual; provided,—the individual has been voluntarily separated for at least 1 year before being reinstated, and the individual must have received a rating of record for his or her most recent career or career-conditional
position of at least Fully Successful (or equivalent).

**SUPPLEMENTARY INFORMATION:** On June 6, 2018, section 303 of Public Law 115–182, the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018, or the VA MISSION Act of 2018, amended title 38 of the United States Code (U.S.C.) by establishing new sections 7691 through 7697 and created a new student loan repayment program known as the Specialty Education Loan Repayment Program (SELRP). The SELRP would serve as an incentive for physicians starting or currently in residency programs in medical specialties for which VA has determined that recruitment and retention of qualified personnel is difficult. We would state that the SELRP is an incentive program to maintain consistency in application of obligated service would be performed.

We would also define the term “VA” to mean the Department of Veterans Affairs.

17.527 Eligibility

Proposed § 17.527 would establish the eligibility criteria for participants of the SELRP. Proposed paragraph (a) would state that to be eligible to participate in the SELRP, an individual will be eligible for appointment under 38 U.S.C. 7401 to work as a physician in a medical specialty for which VA determines that recruitment or retention of qualified personnel is difficult. We would add that in determining staffing needs, VA will consider the anticipated needs of VA for a period of two to six years in the future, and utilize staffing shortage occupation, vacancy data, and national health care workforce and other relevant data in such determinations. VA would publish these vacancies in a notice in the Federal Register on a yearly basis until vacancies are filled. Although sections 7691 to 7697 do not provide for how VA would publish the vacancies or the frequency of such publications, we believe that adding these requirements via regulation would provide for transparency in VA’s needs. See Public Law 115–182, Title III, § 303(f). The individual must also owe any amount of principal or interest for any educational loan where the proceeds have graduated from an accredited medical or osteopathic school and matched to an accredited residency program in a medical specialty designated by VA; or [is] a physician in training with more than 2 years remaining in such training. These requirements are stated in 38 U.S.C. 7693.

Proposed paragraph (b) would provide for instances where an individual applies for the SELRP before there is a posting of a residency match for the individual’s medical specialty. See section 303(e) of the VA MISSION Act of 2018. We would state that an applicant may apply for the SELRP before receiving a residency match...