

## § 212.101

### Subpart C—Competitive Status

212.301 Competitive status defined.

### Subpart D—Effect of Competitive Status on Position

212.401 Effect of competitive status on position.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218.

SOURCE: 33 FR 12408, Sept. 4, 1968, unless otherwise noted.

### Subpart A—Competitive Service

#### § 212.101 Definitions.

In this chapter:

(a) *Competitive service* has the meaning given that term by section 2102 of title 5, United States Code, and includes:

(1) All civilian positions in the executive branch of the Federal Government not specifically excepted from the civil service laws by or pursuant to statute, by the President, or by the Office of Personnel Management, and not in the Senior Executive Service; and

(2) All positions in the legislative and judicial branches of the Federal Government and in the government of the District of Columbia specifically made subject to the civil service laws by statute.

(b) *Competitive position* means a position in the competitive service.

(5 U.S.C. 2102)

[33 FR 12408, Sept. 4, 1968, as amended at 45 FR 62413, Sept. 19, 1980]

#### § 212.102 Authority to make determinations.

OPM determines finally whether a position is in the competitive service.

### Subpart B [Reserved]

### Subpart C—Competitive Status

#### § 212.301 Competitive status defined.

In this chapter, competitive status means an individual's basic eligibility for noncompetitive assignment to a competitive position. Competitive status is acquired by completion of a probationary period under a career-conditional or career appointment, or under

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a career executive assignment in the former executive assignment system, following open competitive examination, or by statute, Executive order, or the Civil Service rules, without open competitive examination. An individual with competitive status may be, without open competitive examination, reinstated, transferred, promoted, reassigned, or demoted, subject to conditions prescribed by the Civil Service rules and regulations.

[33 FR 12408, Sept. 4, 1968, as amended at 57 FR 10123, Mar. 24, 1992]

### Subpart D—Effect of Competitive Status on Position

#### § 212.401 Effect of competitive status on position.

(a) An employee is in the competitive service when he has competitive status and is in a competitive position under a nontemporary appointment.

(b) An employee who was in the competitive service and had competitive status as defined in § 212.301 of this chapter at the time:

(1) The employee's position was first listed under Schedule A, B, or C, or whose position was otherwise moved from the competitive service and listed under a schedule created subsequent to May 9, 2024; or

(2) The employee was moved involuntarily to a position in the excepted service; remains in the competitive service for the purposes of status and any accrued adverse action protections, while the employee occupies that position or any another position to which the employee is moved involuntarily.

[33 FR 12408, Sept. 4, 1968, as amended at 89 FR 25046, Apr. 9, 2024]

## PART 213—EXCEPTED SERVICE

### Subpart A—General Provisions

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- 213.3401 Positions other than those of a confidential or policy determining character for which the competitive service requirements make impracticable the adequate recruitment of sufficient numbers of students attending qualifying educational institutions or individuals who have recently completed qualifying educational programs.
- 213.3402 Entire executive civil service; Pathways Programs.

AUTHORITY: 5 U.S.C. 3161, 3301 and 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; Sec. 213.101 also issued under 5 U.S.C. 2103. Sec. 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h), and 8456; E.O. 13318, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 *et seq.*; Pub. L. 105-339, 112 Stat 3182-83; E.O. 13162; E.O. 12125, 3 CFR 1979 Comp., p. 16879; and E.O. 13124, 3 CFR 1999 Comp., p. 31103; and Presidential Memorandum—Improving the Federal Recruitment and Hiring Process (May 11, 2010).

Sec. 213.101 also issued under 5 U.S.C. 2103. Sec. 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h), and 8456; 38 U.S.C. 4301 *et seq.*; and Pub. L. 105-339, 112 Stat. 3182-83.

SOURCE: 46 FR 20147, Apr. 3, 1981, unless otherwise noted.

**Subpart A—General Provisions****§ 213.101 Definitions.**

In this chapter:

(a) Excepted service has the meaning given that term by section 2103 of title 5, United States Code, and includes all positions in the executive branch of the Federal Government which are specifi-

cally excepted from the competitive service by or pursuant to statute, by the President, or by the Office of Personnel Management, and which are not in the Senior Executive Service.

(b) *Excepted position* means a position in the excepted service.

(5 U.S.C. 2103)

**§ 213.102 Identification of positions in Schedule A, B, C, or D.**

(a) As provided in 5 U.S.C. 3302, the President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

(1) Necessary exceptions of positions from the competitive service; and

(2) Necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7202, and 7203 of title 5, U.S. Code.

(b) The President delegated authority to the Office of Personnel Management (OPM) in Civil Service Rule VI to except positions from the competitive service when OPM determines that:

(1) Appointments thereto through competitive examination are not practicable; or

(2) Recruitment from among students attending qualifying educational institutions or individuals who have recently completed qualifying educational programs can better be achieved by devising additional means for recruiting and assessing candidates that diverge from the processes generally applicable to the competitive service.

(3)(i) Upon determining that any position or group of positions, as defined in § 302.101(c), should be excepted indefinitely or temporarily from the competitive service, the Office of Personnel Management will authorize placement of the position or group of positions into Schedule A, B, C, or D, as applicable. Unless otherwise specified in a particular appointing authority, an agency may make Schedule A, B, C, or D appointments on either a permanent or nonpermanent basis, with any appropriate work schedule (*i.e.*, full-time, part-time, seasonal, on-call, or intermittent).

(ii) When OPM establishes eligibility requirements (e.g., residence, family

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income) for appointment under particular Schedule A, B, or D exceptions, an individual's eligibility for appointment must be determined before appointment and without regard to any conditions that will result from the appointment.

(c) For purposes of making any such determinations, *positions* includes:

(1) Those that are intended to be removed indefinitely from the competitive service because the nature of the position itself precludes it from being in the competitive service (e.g., because it is impracticable to examine for the knowledge, skills, and abilities required for the job); and

(2) Those that are intended to be removed temporarily from the competitive service to allow for targeted recruiting and hiring from among a particular class of persons, as defined by the Office of Personnel Management, with the opportunity for the persons selected for those positions to convert to the competitive service at a later date.

[77 FR 28213, May 11, 2012]

§213.103 **Publication of excepted appointing authorities in Schedules A, B, C, and D.**

(a) Schedule A, B, C, and D appointing authorities available for use by all agencies will be published as regulations in the FEDERAL REGISTER and the Code of Federal Regulations.

(b) Establishment and revocation of Schedule A, B, and C appointing authorities applicable to a single agency shall be published monthly in the Notices section of the FEDERAL REGISTER.

(c) A consolidated listing of all Schedule A, B, and C authorities current as of June 30 of each year, with assigned authority numbers, shall be published annually as a notice in the FEDERAL REGISTER.

[47 FR 28902, July 2, 1982, as amended at 62 FR 18505, Apr. 16, 1997; 77 FR 28213, May 11, 2012]

§213.104 **Special provisions for temporary, time-limited, intermittent, or seasonal appointments in Schedule A, B, C, or D.**

(a) When OPM specifies that appointments under a particular Schedule A, B, C, or D authority must be tem-

porary, intermittent, or seasonal, or when agencies elect to make temporary, intermittent, or seasonal appointments in Schedule A, B, C, or D, those terms have the following meaning:

(1) *Temporary appointments*, unless otherwise specified in a particular Schedule A, B, C, or D exception, are made for a specified period not to exceed 1 year and are subject to the time limits in paragraph (b) of this section. Time-limited appointments made for more than 1 year are not considered to be temporary appointments, and are not subject to these time limits.

(2) *Intermittent positions* are positions in which work recurs at sporadic or irregular intervals so that an employee's tour of duty cannot be scheduled in advance of the administrative workweek.

(3) *Seasonal positions* involve annually recurring periods of employment lasting less than 12 months each year.

(b) Temporary appointments, as defined in paragraph (a)(1) of this section, are subject to the following limits:

(1) *Service limits.* Agencies may make temporary appointments for a period not to exceed 1 year, unless the applicable Schedule A, B, C, or D authority specifies a shorter period. Except as provided in paragraph (b)(3) of this section, agencies may extend temporary appointments for no more than 1 additional year (24 months of total service). Appointment to a successor position (*i.e.*, a position that replaces and absorbs the original position) is considered to be an extension of the original appointment. Appointment to a position involving the same basic duties, in the same major subdivision of the agency, and in the same local commuting area is also considered to be an extension of the original appointment.

(2) *Restrictions on refilling positions under temporary appointments.* Except as provided in paragraph (b)(3) of this section, an agency may not fill any position (or its successor) by a temporary appointment in Schedule A, B, C, or D if that position had previously been filled by temporary appointment(s) in either the competitive or excepted service for an aggregate of 2 years, or 24 months, within the preceding 3-year period. This limitation does not apply to programs established to provide for

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systematic exchange between a Federal agency and non-Federal organizations.

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

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

(ii) Positions are filled under an authority established for the purpose of enabling the appointees to continue or enhance their education, or to meet academic or professional qualification requirements. These include the authorities set out in paragraphs (r) and (s) of § 213.3102 and paragraphs (a), (b), and (c) of § 213.3402, and authorities granted to individual agencies for use in connection with internship, fellowship, residency, or student programs.

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

the employing office to the appropriate OPM service center.

[59 FR 46897, Sept. 13, 1994, as amended at 59 FR 64841, Dec. 16, 1994; 62 FR 18505, Apr. 16, 1997; 62 FR 55725, Oct. 28, 1997; 62 FR 63628, Dec. 2, 1997; 77 FR 28213, May 11, 2012]

### Subpart B [Reserved]

### Subpart C—Excepted Schedules

#### SCHEDULE A

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

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

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

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

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

(b) [Reserved]

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

(d) Attorneys.

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

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less than 14 months may be extended for not to exceed 14 months in total duration.

(f)-(h) [Reserved]

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

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

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

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

(j) Positions filled by current or former Federal employees eligible for placement under special statutory provisions. Appointments under this au-

thority are subject to the following conditions.

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

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

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

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

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

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

(ii) Individuals who are eligible for placement under §353.110 based on a time-limited appointment will be given

appointments for a time period equal to the unexpired portion of their previous appointment.

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

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

(m) [Reserved]

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

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

(p)–(q) [Reserved]

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

(s) Positions with compensation fixed under 5 U.S.C. 5351–5356 when filled by student-employees assigned or attached to Government hospitals, clinics or medical or dental laboratories. Employment under this authority may not exceed 4 years.

(t) [Reserved]

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

(2) *Definition*. “Intellectual disabilities” means only those disabilities that would have been encompassed by the term “mental retardation” in previous iterations of this regulation and the associated Executive order, Executive Order 12125, dated March 15, 1979.

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

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

(4) *Permanent or time-limited employment options*. An agency may make permanent or time-limited appointments under this paragraph (u)(4) where an applicant supplies proof of disability as described in paragraph (u)(3) of this section and the agency determines that the individual is likely to succeed in the performance of the duties of the position for which he or she is applying. In determining whether the individual is likely to succeed in performing the duties of the position, the agency may rely upon the applicant’s employment, educational, or other relevant experience, including but not limited to service under another type of appointment in the competitive or excepted services.

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(5) *Temporary employment options.* An agency may make a temporary appointment when:

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

(ii) The work is of a temporary nature.

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

(ii) Time spent on a temporary appointment specified in paragraph (u)(5)(ii) of this section does not count towards the 2-year requirement.

(v)-(w) [Reserved]

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

(y) [Reserved]

(z) Not to exceed 30 positions of assistants to top-level Federal officials

when filled by persons designated by the President as White House Fellows.

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

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

(cc)-(ee) [Reserved]

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

(gg)-(kk) [Reserved]

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

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

[47 FR 28902, July 2, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §213.3102, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

**§213.3199 Temporary organizations.**

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

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

[68 FR 24605, May 8, 2003]

### SCHEDULE B

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

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

(b) [Reserved]

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

#### **§213.3202 Entire executive civil service.**

(a)–(i) [Reserved]

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.

(k)–(l) [Reserved]

(m) Positions when filed under any of the following conditions:

(1) Appointment at grades GS–15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in

the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successful executive performance, failure to be re-certified, or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

(n) Positions when filled by preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of continuous active military service and who, in accordance with the provisions of Pub.L. 105–339, applied for these positions under merit promotion procedures when applications were being accepted from individuals outside its own workforce. These veterans may be promoted, demoted, or reassigned, as appropriate, to other positions within the agency but would remain employed under this excepted authority as long as there is no break in service. No new appointments may be made under this authority after November 30, 1999.

(o) [Reserved]

[47 FR 28904, July 2, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §213.3202, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### SCHEDULE C

#### **§213.3301 Positions of a confidential or policy-determining character.**

(a) Upon specific authorization by OPM, agencies may make appointments under this section to positions that are of a confidential or policy determining character as defined in §210.102 of this chapter. Positions filled under this authority are excepted from the competitive service and constitute

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Schedule C. Each position will be assigned a number from §§213.3302 through 213.3999, or other appropriate number, to be used by the agency in recording appointments made under that authorization.

(b) When requesting Schedule C exception, agencies must submit to OPM a statement signed by the agency head certifying that the position was not created solely or primarily for the purpose of detailing the incumbent to the White House.

(c) The exception from the competitive service for each position listed in Schedule C by OPM is revoked immediately upon the position becoming vacant. An agency shall notify OPM within 3 working days after a Schedule C position has been vacated.

[60 FR 35120, July 6, 1995, as amended at 89 FR 25046, Apr. 9, 2024]

### **§213.3302 Temporary transitional Schedule C positions.**

(a) An agency may establish temporary transitional Schedule C positions necessary to assist a department or agency head during the 1-year period immediately following a change in presidential administration, when a new department or agency head has entered on duty, or when a new department or agency is created. These positions may be established only to meet legitimate needs of the agency in carrying out its mission during the period of transition associated with such changeovers. They must be of a confidential or policy-determining character and are subject to instructions issued by OPM.

(b) The number of temporary transitional Schedule C positions established by an agency cannot exceed either 50 percent of the highest number of permanent Schedule C positions filled by that agency at any time over the previous 5 years, or three positions, whichever is higher. In the event a new department or agency is created, the number of temporary transitional positions should be reasonable in light of the size and program responsibility of that department or agency. OPM may approve an increase in an agency's quota to meet a critical need or in unusual circumstances.

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(c) Individual appointments under this authority may be made for 120 days, with one extension of an additional 120 days. They may be deemed provisional appointments for purposes of the regulations set out in parts 351, 831, 842, 870, and 890 of this chapter if they meet the criteria set out in §§316.401 and 316.403 of this chapter.

(d) An agency shall notify OPM within 5 working days after a temporary transitional Schedule C position has been encumbered and within 3 working days when it has been vacated. The agency must also submit to OPM a statement signed by the agency head certifying that the position was not created solely or primarily for the purpose of detailing the incumbent to the White House.

[60 FR 35120, July 6, 1995]

### SCHEDULE D

SOURCE: 77 FR 28213, May 11, 2012, unless otherwise noted.

### **§213.3401 Positions other than those of a confidential or policy determining character for which the competitive service requirements make impracticable the adequate recruitment of sufficient numbers of students attending qualifying educational institutions or individuals who have recently completed qualifying educational programs.**

As authorized by OPM, agencies may make appointments under this section to positions other than those of a confidential or policy-determining character for which the competitive service requirements make impracticable the adequate recruitment and selection of sufficient numbers of students attending qualifying educational institutions or individuals who have recently completed qualifying educational programs. These positions, which may be filled in the excepted service to enable more effective recruitment from all segments of society by using means of recruiting and assessing candidates that diverge from the rules generally applicable to the competitive service, constitute Schedule D Pathways Programs. Appointments under this authority are subject to the basic qualification standards established by the Office of Personnel Management for

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the occupation and grade level unless otherwise stated.

### § 213.3402 Entire executive civil service; Pathways Programs.

(a) *Internship Program; Positions in the Internship Program.* Agencies may make initial appointments of Interns under this authority at any grade level, depending on the candidates' qualifications. Appointments must be made in accordance with the provisions of subpart B of part 362 of this chapter.

(b) *Recent Graduates Program; Positions in the Recent Graduates Program.*

(1) Agencies may make initial appointments of Recent Graduates at any grade level, not to exceed GS-09 (or equivalent level under another pay and classification system, including the Federal Wage System (FWS)), depending on the candidates' qualifications, and the position's requirements except that:

(i) Initial appointments to positions for science, technology, engineering, or mathematics (STEM) occupations may be made at the GS-11 level, if the candidate possesses a Ph.D. or equivalent degree directly related to the STEM position the agency is seeking to fill.

(ii) Initial appointments to scientific and professional research positions at the GS-11 level for which the classification and qualification criteria for research positions apply, if the candidate possesses a master's degree or equivalent graduate degree directly related to the position the agency is seeking to fill.

(iii) Initial appointments to scientific and professional research positions at the GS-12 level for which the classification and qualification criteria for research positions apply, if the candidate possesses a Ph.D. or equivalent degree directly related to the position the agency is seeking to fill.

(2) Appointments must be made in accordance with the provisions of subpart C of part 362 of this chapter.

(c) *Presidential Management Fellows Program.* Positions in the Presidential Management Fellows Program. Appointments under this authority may not exceed 2 years except as provided in subpart D of part 362 of this chapter. Agencies may make initial appointments of Fellows at the GS-09, GS-11,

or GS-12 level (or equivalent under another pay and classification system such as the FWS), depending on the candidates' qualifications and the positions' requirements. Appointments must be made in accordance with the provisions of subpart D of part 362 of this chapter.

## PART 214—SENIOR EXECUTIVE SERVICE

### Subpart A [Reserved]

### Subpart B—General Provisions

Sec.

- 214.201 Definitions.
- 214.202 Authority to make determinations.
- 214.203 Reporting requirements.
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### Subpart C—Exclusions

- 214.301 Exclusions.

### Subpart D—Types of Positions

- 214.401 Types of positions.
- 214.402 Career reserved positions.
- 214.403 Change of position type.

AUTHORITY: 5 U.S.C. 3132.

SOURCE: 45 FR 62414, Sept. 19, 1980, unless otherwise noted.

### Subpart A [Reserved]

### Subpart B—General Provisions

#### § 214.201 Definitions.

For the purposes of this part:

*Agency, Senior Executive Service position, career appointee, limited term appointee, limited emergency appointee, and noncareer appointee* have the meanings set forth in section 3132(a) of title 5, United States Code.

*Equivalent position* as used in section 3132(a)(2) of title 5, United States Code, means a position under any pay system where the level of the duties and responsibilities of the position and the rate of pay are comparable to that of a position above GS-15 or at Executive Level IV or V.

*Senior Executive Service* has the meaning given that term by section 2101a of