

(3) A reemployed annuitant holding any type of appointment under the SES.

(b) Coverage does not include, however, a limited emergency or a limited term appointee who is being removed for disciplinary reasons and who is covered by 5 CFR 752.601(c)(2).

§ 359.902 Conditions of removal.

(a) *Authority.* The agency may remove an appointee subject to this subpart at any time.

(b) *Notice.* The agency shall notify the appointee in writing before the effective date of the removal.

(c) *Placement rights.* An appointee covered by this subpart is not entitled to the placement rights provided for career appointees under subpart G of this part.

(d) *Appeals.* Actions taken under this subpart are not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

PART 362—PATHWAYS PROGRAMS

Subpart A—General Provisions

Sec.

- 362.101 Program administration.
- 362.102 Definitions.
- 362.103 Authority.
- 362.104 Agency requirements.
- 362.105 Filling positions.
- 362.106 Participant Agreement.
- 362.107 Conversion to the competitive service.
- 362.108 Program oversight.
- 362.109 Reporting requirements.
- 362.110 Transition.
- 362.111 Severability.

Subpart B—Internship Program

- 362.201 Agency authority.
- 362.202 Definitions.
- 362.203 Filling positions.
- 362.204 Conversion to the competitive service.
- 362.205 Reduction in force (RIF) and termination.

Subpart C—Recent Graduates Program

- 362.301 Program administration.
- 362.302 Eligibility.
- 362.303 Filling positions.
- 362.304 Movement between agencies.
- 362.305 Conversion to the competitive service.
- 362.306 Reduction in force and termination.

Subpart D—Presidential Management Fellows Program

- 362.401 Definitions.
- 362.402 Program administration.
- 362.403 Announcement, eligibility, and selection.
- 362.404 Appointment and extension.
- 362.405 Development, evaluation, promotion, and certification.
- 362.406 Movement between agencies.
- 362.407 Withdrawal and readmission.
- 362.408 Termination and reduction in force.
- 362.409 Conversion to the competitive service.

AUTHORITY: E.O. 13562, 75 FR 82585, 3 CFR, 2010 Comp., p. 291

SOURCE: 77 FR 28215, May 11, 2012, unless otherwise noted.

Subpart A—General Provisions

§ 362.101 Program administration.

(a) The Pathways Programs authorized under Executive Order 13562 consist of the following three Programs:

- (1) The Internship Program;
- (2) The Recent Graduates Program; and
- (3) The Presidential Management Fellows (PMF) Program.

(b) An agency may rename the Programs specified in paragraphs (a)(1) through (3) of this section, provided that the agency-specific name includes the Pathways Program name identified in paragraph (a) of this section, e.g., Treasury Internship Program.

(c) Agencies must provide for equal employment opportunity in the Pathways Programs without regard to race, ethnicity, color, religion, sex (including pregnancy and gender identity), national origin, age, disability, sexual orientation, genetic information, or any other non-merit-based factor.

§ 362.102 Definitions.

For the purposes of this part:

Advanced degree means a master's degree, professional degree, doctorate degree, or other formal degree pursued after completing a bachelor's degree.

Agency means an Executive agency as defined in 5 U.S.C. 105, and the Government Publishing Office.

Certificate of completion of a Registered Apprenticeship Program means the documentation given to individuals who

have successfully completed a Registered Apprenticeship Program.

Certificate program means post-secondary education in a:

(1) Qualifying educational institution, equivalent to at least one academic year of full-time study that is part of an accredited post-secondary, technical, trade, or business school curriculum; or

(2) Qualifying career or technical education program of at least one year that awards a recognized postsecondary credential.

Director means the Director of OPM or his or her designee.

Industry-recognized credential means:

(1) A credential or certificate that is developed and offered by, or endorsed by, a nationally or regionally recognized industry association or organization representing a sizeable portion of the industry sector; or

(2) A credential that is sought or accepted by companies within the industry sector for purposes of hiring or recruitment, which may include credentials from vendors of certain products.

OPM means the Office of Personnel Management.

Participant Agreement means a written agreement between the agency and each Pathways Participant.

Program Participant or Pathways Participant means any individual appointed under a Pathways Program.

Qualifying career or technical education program means:

(1) A federally administered, organized educational program that focuses on providing rigorous academic content and relevant technical knowledge and skills needed to prepare the individual for further education and/or a career in a current or emerging profession and provides technical skill proficiency and a recognized postsecondary credential (which may include an industry-recognized credential, a certificate, or an associate degree). Qualifying programs must require at least one year of substantially continuous participation;

(2) A Registered Apprenticeship Program; or

(3) A federally administered local, State, national, or international volunteer service program or organization designed to give individuals work and

or educational experiences in volunteer programs that benefit the Federal Government or local communities. Qualifying volunteer service must be documented with written information from the federally administered program that the volunteer has completed either:

(i) At least 52 weeks of volunteer service (through one or multiple periods of service); or

(ii) At least 1700 work hours when the period(s) of volunteer service (through one or multiple periods of service) is less than one year in length.

(4) For the purposes of this definition, the phrase *federally administered* means a program or organization that operates under a Federal agency's (or a component within an agency) programmatic oversight, to ensure educational outcomes and compliance with agency-established criteria to provide participants with high-demand skills. Such criteria must describe:

(i) The nature and scope of work to be performed by participants;

(ii) The type(s) and scope of training to be provided to participants;

(iii) The types of skills participants will acquire or develop during the program (e.g., teaching, environmental, business, scientific, public health/health care, languages);

(iv) The level and extent of mentoring participants will receive; and

(v) The metrics that describe successful completion of the program.

Qualifying educational institution means—

(1) A public high school whose curriculum has been approved by a State or local governing body, a private school that provides secondary education as determined under State law, or a homeschool that is allowed to operate in a State; and

(2) Any of the following educational institutions or curricula that have been accredited by an accrediting body recognized by the Secretary of the U.S. Department of Education:

(i) A technical or vocational school;

(ii) A 2-year or 4-year college or university;

(iii) A graduate or professional school (e.g., law school, medical school); or

(iv) A post-secondary homeschool curriculum.

Recognized postsecondary credential means documentation (e.g., official record) of an industry-recognized credential, a certificate of completion of a Registered Apprenticeship Program, a license recognized by the State involved or Federal Government, or an associate's or baccalaureate degree.

Registered Apprenticeship Program means a program that meets the requirements in 29 CFR part 29. Registration of a program is evidenced by a certificate of registration or other written documentation provided by the Registration Agency under 29 CFR part 29.

[77 FR 28215, May 11, 2012, as amended at 89 FR 25770, Apr. 12, 2024]

§ 362.103 Authority.

An agency may make an appointment under this part to a position defined in § 213.3402 of this chapter, provided a Memorandum of Understanding between the head of the agency or his or her designee and OPM is in effect.

§ 362.104 Agency requirements.

(a) *Agency policy.* To make any appointment under a Pathways authority, an agency must first establish a Pathways Policy. The Pathways Policy must:

(1) Include information about any agency-specific program labels that will be used, subject to the Federal naming conventions identified in § 362.101 (e.g., OPM Internship Program).

(2) State the delegations of authority for the agency's use of the Pathways Programs (e.g., department-wide vs. bureaus or components).

(3) Include any implementing policy or guidance that the agency determines would facilitate successful implementation and administration for each Pathways Program.

(4) Prescribe criteria and procedures for agency-approved extensions for Recent Graduates and PMFs, not to exceed 120 days. Extension criteria must be limited to circumstances that would render the agency's compliance with the regulations impracticable or impossible.

(5) Describe how the agency will design, implement, and document formal training and/or development, as well as the type and duration of assignments.

(6) Include a commitment from the agency to:

(i) Provide to OPM any information it requests on the agency's Pathways Programs;

(ii) Adhere to any caps on the Pathways Programs imposed by the Director;

(iii) Provide information to OPM about opportunities for individuals interested in participating in the Pathways Programs, upon request from OPM;

(iv) Provide a meaningful on-boarding process for each Pathways Program; and

(v) Provide OPM with the names of the agency's Pathways Programs Officer and PMF Coordinator.

(7) Identify the agency's Pathways Programs Officer (PPO), who:

(i) Must be in a position at the agency's headquarters level, or at the headquarters level of a departmental component, in a position at or higher than grade 12 of the General Schedule (GS) (or the equivalent under the Federal Wage System (FWS) or another pay and classification system);

(ii) Is responsible for administering the agency's Pathways Programs, including coordinating the recruitment and on-boarding process for Pathways Programs Participants, and coordinating the agency's Pathways Programs plan with agency stakeholders and other hiring plans (e.g., merit promotion plans, agency plans pursuant to Executive Order (E.O.) 14035, "Diversity, Equity, Inclusion, and Accessibility (DEIA) in the Federal Workforce");

(iii) Serves as a liaison with OPM by providing updates on the agency's implementation of its Pathways Programs, clarifying technical or programmatic issues, sharing agency best practices, and other similar duties; and

(iv) Reports to OPM on the agency's implementation of its Pathways Programs and individuals hired under these Programs, in conjunction with the agency's Pathways Policy.

(8) Identify the agency's PMF Coordinator who:

(i) Must be in a position at the agency's headquarters level, or at the headquarters level of departmental component, or sub-agency level, in a position

at or higher than grade 12 of the GS (or the equivalent under the FWS or another pay and classification system). If an agency or sub agency designates multiple PMF Coordinators, they must work collaboratively to administer the agency's PMF Program.

(ii) Is responsible for administering the agency's PMF Program including coordinating the recruitment, onboarding, and certification processes for PMF Program Participants, and coordinating the agency's PMF Program plan to ensure it is integrated with agency-wide workforce plans.

(iii) Serves as a liaison with OPM by providing updates on the agency's implementation of its PMF Program, clarifying technical or programmatic issues, sharing agency best practices, and other similar duties.

(iv) Reports to OPM on the agency's implementation of its PMF Program and individuals hired under the PMF Program.

(9) Prescribe criteria and procedures on how the agency will determine whether it has the resources available to convert a Pathways Participant to a term or permanent position in the competitive service. These procedures must specify the timeline for making the determination, which must include informing the Pathways Participant no later than 60 calendar days prior to the end of the appointment about whether the agency is able to convert them. If an agency is unable to convert a Pathways Participant, its procedures may include the actions it will take to assist a Participant in pursuing conversion at another agency (when appropriate).

(10) Identify the minimum service-hour requirement that must be completed by an Intern as required by § 362.204.

(11) An agency's Pathways Policy must be maintained and be available for review upon request of OPM, applicants, Pathways Programs participants, or agency employees.

(b) *Implementation of Pathways Policy requirement.* Agencies must establish a Pathways Policy that meets the criteria listed in paragraph (a) of this section not later than December 9, 2024. Upon June 11, 2024, agencies with existing Pathways memorandums of under-

standing (MOUs) may continue to use the Pathways Programs subject to the regulations in this part in lieu of an updated Pathways Policy while they are developing and updating their policies in accordance with the regulations in this part. Agencies without an existing MOU or an expired MOU on June 11, 2024, must establish an agency Pathways Policy before they begin making Pathways appointments. Agencies with MOUs that expire within 240 days of April 12, 2024, may request an extension of the MOU. All Pathways Programs MOUs will expire on December 9, 2024, unless OPM has specifically approved use of the MOU after December 9, 2024.

(c) *Revocation.* The Director may revoke an agency's authority to make Pathways appointments when agency use of these Programs is inconsistent with E.O. 13562, this part, or the agency's Pathways Policies.

[89 FR 25770, Apr. 12, 2024]

§ 362.105 Filling positions.

(a) *Workforce Planning.* Before filling any positions under these Programs, agencies should include measures in their workforce planning to ensure that an adequate number of permanent positions will be available to convert Pathways Participants who successfully complete their Programs.

(b) *Announcements.* When an agency accepts applications from individuals outside its own workforce, it must provide OPM information concerning Pathways Programs job opportunities as provided in each Pathways Program. For the purposes of this paragraph, "agency" means an Executive agency as defined in 5 U.S.C. 105 and the Government Printing Office. An Executive department may treat each of its bureaus or components (first major subdivision that is separately organized and clearly distinguished from other bureaus or components in work function and operation) as a separate agency or as part of one agency, but must do so consistent with its Delegated Examining Agreement.

(c) *Appointments.* (1) Agencies must fill positions under the Pathways Programs using the excepted service appointing authority provided by § 213.3402 (a), (b), or (c) of this chapter, as applicable.

(2) Agencies must follow the procedures of part 302 of this chapter when filling a position under a Pathways Program.

(3) Appointments are subject to all the requirements and conditions governing term, career, or career-conditional employment, including investigation to establish an appointee's qualifications and suitability.

(d) *Eligibility.* Except as set forth in this section, eligibility requirements for appointment under a Pathways Program are specified in each Pathways Program.

(e) *Citizenship.* (1) An agency may appoint a non-citizen provided that:

(i) The Pathways Participant is lawfully admitted to the United States as a permanent resident or is otherwise authorized to be employed; and

(ii) The agency is authorized to pay aliens under the annual Appropriations Act ban and any agency-specific enabling and appropriation statutes.

(2) A Pathways Participant must be a United States citizen to be eligible for noncompetitive conversion to the competitive service.

(f) *Employment of relatives.* In accordance with part 310 of this chapter, a Pathways Participant may work in the same agency with a relative when there is no direct reporting relationship and the relative is not in a position to influence or control the Participant's appointment, employment, promotion or advancement within the agency.

(g) *Length of Appointments.* Except as provided in subpart B, Recent Graduate and PMF appointments under this authority may not exceed 2 years plus any agency-approved extension of up to 120 days.

(h) *Terminations.* An agency may terminate a Pathways Participant for reasons including misconduct, poor performance, or suitability under the provisions of this chapter.

(i) *Performance and progress evaluation.* Each Participant must be placed on a performance plan, as prescribed by part 430 of this chapter or other applicable law or regulation, establishing performance elements and standards that are directly related to acquiring and demonstrating the various leadership, technical, and/or general com-

petencies expected of the Participant, as well as the elements and standards established for the duties assigned.

(j) *Compensation.* The rules for setting pay upon the initial appointment of a Participant are governed by the pay administration rules of the pay system or pay plan of the Participant's position under the Pathways program. In determining the Participant's compensation, agencies may also use any applicable pay flexibilities available under that pay system or pay plan (e.g., recruitment, relocation, and retention incentives under part 575 of this chapter; student loan repayments under part 537; and, for General Schedule positions, special rates under part 530, subpart C, and the superior qualifications and special needs pay setting authority and the maximum payable rate rule under part 531, subpart B).

§ 362.106 Participant Agreement.

Agencies must execute a written Participant Agreement with each Pathways Participant that clearly identifies expectations, including but not limited to:

- (a) A general description of duties;
- (b) Work schedules;
- (c) The length of the appointment and termination date;
- (d) Mentorship opportunities;
- (e) Training requirements as applicable;
- (f) Evaluation procedures that will be used for the Participant;
- (g) Requirements for continuation and successful completion of the Program; and
- (h) Minimum eligibility requirements for noncompetitive conversion to term or permanent competitive service employment according to the requirements of the applicable Pathways Program.

§ 362.107 Conversion to the competitive service.

(a) Subject to any limits on conversion imposed by the Director, and in accordance with the provisions of each Pathways Program, an agency may noncompetitively convert an eligible Pathways Participant to a term or permanent competitive service position.

(b) A Pathways Participant who is noncompetitively converted to a competitive service term appointment may be subsequently converted noncompetitively to a permanent competitive service position.

(c) *Noncompetitive conversion.* (1) An Intern may be converted to a position within the employing agency or any other agency within the Federal Government.

(2) A Recent Graduate may be converted to a position within the employing agency or any other agency within the Federal Government. Conversion to position at a different agency is subject to § 362.305(c).

(3) A PMF may be converted within the employing agency or any other agency within the Federal Government. Conversion to position at a different agency is subject to § 362.409(c).

(d) The provisions of the career transition assistance programs in subparts B, F and G of part 330 of this chapter do not apply to conversions made under this part.

(e) Time spent serving as a Pathways Participant counts towards career tenure when the individual is noncompetitively converted to a permanent position in the competitive service upon completion of the Program, with or without an intervening term appointment, and without a break in service of one day.

(f) Though Pathways Participants are eligible for noncompetitive conversion to the competitive service upon successful completion of their Program and any other applicable conversion requirements, service in a Pathways Program confers no right to further employment in either the competitive or excepted service. An agency wishing to convert a Pathways Participant must therefore execute the required actions to do so.

[77 FR 28215, May 11, 2012, as amended at 89 FR 25771, Apr. 12, 2024]

§ 362.108 Program oversight.

(a) The Director may establish caps on the number of Pathways Participants who may be appointed or converted in any Pathways Program within a specific agency or throughout the Federal Government.

(b) The Director may establish such caps based on agency or Government-wide use of the Pathways Programs, input from the Executive agencies, and consideration of the following:

(1) An agency's compliance with its Pathways Policy;

(2) Agency approach to entry-level hiring;

(3) Agency engagement in sound workforce planning to ensure that an adequate number of permanent positions will be available to which Pathways Participants who successfully complete their Programs can be converted;

(4) Agency record in using the Pathways Programs as a supplement to competitive examining, rather than as a substitute for it;

(5) Agency record of publicizing their positions in the Pathways Programs and recruiting and selecting from a broad array of sources; and

(6) Any other information the Director deems relevant.

(c) In the event the Director determines that any caps would be appropriate, OPM will publish notice of such caps in a manner chosen by the Director.

[77 FR 28215, May 11, 2012, as amended at 89 FR 25771, Apr. 12, 2024]

§ 362.109 Reporting requirements.

Agencies must provide information requested by OPM regarding workforce planning strategies that includes:

(a) Information on the entry-level occupations targeted for filling positions under this part in the coming three fiscal years;

(b) The percentage of overall hiring expected in the coming three fiscal years under the Internship, Recent Graduates, and Presidential Management Fellows Programs; and

(c) Every three fiscal years beginning with fiscal year (FY)—2024 (*i.e.*, FY24 and then again in FY27, etc.), for each of the preceding three fiscal years:

(1) The number of individuals initially appointed under each Pathways Program;

(2) The percentage of the agency's overall hires made from each Pathways Program;

§ 362.110

(3) The number of Pathways Participants, per Program, converted to the competitive service; and

(4) The number of Pathways Participants.

[89 FR 25771, Apr. 12, 2024]

§ 362.110 Transition.

OPM will provide written guidance for the orderly transition of employees currently appointed as students under the Student Educational Employment Program and current PMFs to the applicable Pathways Program and may revise that guidance as necessary.

§ 362.111 Severability.

Any provision of this part held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this part and shall not affect the remainder thereof.

[89 FR 25771, Apr. 12, 2024]

Subpart B—Internship Program

§ 362.201 Agency authority.

The Internship Program provides students in high schools, colleges, trades schools and other qualifying educational institutions, as defined in § 362.102 of this part, the opportunity to explore Federal careers as paid employees while completing their education. Students appointed under this authority are referred to as Interns.

§ 362.202 Definitions.

In this subpart:

Intern not-to-exceed (Intern NTE) means an Intern appointed for an initial period not to exceed one year.

Student means an individual who is:

(1) Accepted for enrollment or enrolled and seeking a degree (diploma, certificate, etc.) in a qualifying educational institution, on a full or half-time basis (as defined by the institution in which the student is enrolled),

5 CFR Ch. I (1–1–25 Edition)

including awardees of the Harry S. Truman Foundation Scholarship Program under Public Law 93–842. Students need not be in physical attendance, so long as all other requirements are met. An individual who needs to complete less than the equivalent of half an academic/vocational or technical course-load immediately prior to graduating is still considered a student for purposes of this Program; or

(2) Enrolled or accepted for enrollment in a qualifying career or technical education program that awards a recognized postsecondary credential.

[89 FR 25771, Apr. 12, 2024]

§ 362.203 Filling positions.

(a) *Announcement*—(1) *Public notification requirement.* An agency must adhere to merit system principles and thus must provide public notification in a manner designed to recruit qualified individuals from appropriate sources in an endeavor to draw from all segments of society. An Executive department may treat each of its bureaus or components (*i.e.*, the first major subdivision that is separately organized and clearly distinguished from other bureaus or components in work function and operation) as a separate agency or as part of one agency but must do so consistent with its Delegated Examining Agreement.

(2) *Meeting the public notification requirement.* An agency may use any of the following options for meeting the public notification requirement:

(i) Posting a searchable announcement on www.USAJOBS.gov; or

(ii) Posting job information with a link to a USAJOBS custom job announcement on the agency's public facing career or job information web page. This public facing web page must provide applicants with information about how to apply or seek additional information about the position(s) being filled.

(iii) The agency may also consider whether additional recruitment and advertisement activities to supplement paragraphs (a)(2)(i) and (ii) of this section, such as posting to third-party websites, are necessary or appropriate to further support merit system principles.

(3) *Contents of announcements.* Announcements used to meet the public notification requirement must include:

(i) *Position information.* Position title, series, and grade;

(ii) *Position location.* Geographic location where the position will be filled;

(iii) *Appointment length.* Duration of the appointment;

(iv) *Salary information.* The starting salary of the position;

(v) *Qualifications.* The minimum qualifications of the position;

(vi) *Promotion potential.* Whether the individual in the position will be eligible for promotion to higher grade levels;

(vii) *Conversion information.* The potential for conversion to the agency's permanent workforce;

(viii) *How to apply.* A public source (e.g., a link to the location on the agency's website with information on how to apply) for interested individuals to seek further information about how to apply for Intern opportunities;

(ix) *Equal employment information.* Equal employment opportunity statement (agencies may use the recommended equal employment opportunity statement located on OPM's USAJOBS website);

(x) *Reasonable accommodation information.* Reasonable accommodation statement;

(xi) *Other relevant information.* Any other relevant information about the position such as telework opportunities, recruitment incentives, etc.; and

(xii) *Other requirements.* Any other information OPM considers appropriate.

(4) *Other information.* OPM will publish information on Pathways Internship opportunities in such form as the Director may determine.

(b) *Eligibility.* Except as provided in paragraph (h) of this section, Interns must meet the definition of *student* in § 362.202 throughout the duration of their appointment.

(c) *Qualifications.* Individuals may be evaluated against either agency-developed standards or the OPM Qualification Standard for the position being filled.

(d) *Appointments.* (1) An agency may make Intern appointments, pursuant to its Pathways Policy, using the Schedule D excepted service appointing

authority provided in § 213.3402(a) of this chapter.

(2) Appointments may be made to any position for which the individual is qualified. The duties of the position to which the individual is appointed should be related to either the Intern's academic or career goals.

(3) An agency may:

(i) Appoint an Intern for an initial period expected to last more than 1 year. Intern appointments are not required to have an end date. However, agencies are required to specify an end date of the appointment in the Participant Agreement with the Intern; or

(ii) Appoint an Intern on a temporary basis, not to exceed 1 year, to complete temporary projects, to perform labor-intensive tasks not requiring subject-matter expertise, or to fill traditional summer jobs. The agency may extend these temporary appointments as provided in part 213 of this chapter.

(e) *Promotion.* An agency may promote an Intern, on an initial appointment expected to last more than one year (without a not to exceed (NTE) date) who meets the qualification requirements for the position. An Intern NTE on a temporary appointment is not eligible for promotion. This paragraph (e) does not confer entitlement to promotion.

(f) *Classification.* (1) Intern positions under the General Schedule or appropriate pay plan must be classified to the -99 series of the appropriate occupational group.

(2) Intern positions under the Federal Wage System must be classified to the -01 series of the appropriate occupational group.

(g) *Schedules.* There are no limitations on the number of hours an Intern can work per week (so long as any applicable laws and regulations governing overtime and hours of work are adhered to). Agencies and students should agree on a formally-arranged schedule of school and work so that:

(1) Work responsibilities do not interfere with academic schedule;

(2) Completion of the educational program (awarding of diploma/certificate/degree) and the Internship Program is accomplished in a reasonable and appropriate timeframe;

(3) The agency is informed of and prepared for the student's periods of employment; and

(4) Requirements for noncompetitive conversion to a term or permanent position in the competitive service are understood by all parties.

(h) *Breaks in program.* A break in program is defined as a period of time when an Intern is working but is unable to go to school, or is neither attending classes nor working at the agency. An agency may use its discretion in either approving or denying a request for a break in program.

(i) *Required developmental activities.* Agencies are required to provide appropriate training and development activities to Interns regardless of the length of the appointment. OPM recommends that agencies ensure, within 45 days of appointment, that each Intern appointed for an initial period expected to last more than 1 year, or an Intern NTE appointed for more than 90 days, documents planned training activities in a training plan, Individual Development Plan (IDP), or the Pathways Participant Agreement that is approved by their supervisor. Documentation of training activities is also recommended for an Intern NTE appointed for an initial period less than 90 days. Appropriate training opportunities may include but are not limited to on-the-job training activities, formal training classes, mentoring sessions, testing products or tools, organizing work activities or functions, and assisting colleagues with projects or tasks.

[77 FR 28215, May 11, 2012, as amended at 89 FR 25772, Apr. 12, 2024]

§ 362.204 Conversion to the competitive service.

(a) An agency may noncompetitively convert an Intern who is a U.S. citizen, to a term or permanent appointment in the competitive service.

(b) To be eligible for conversion, the Intern must have:

(1) Completed at least 480 hours of work experience acquired through the Internship Program, except as provided in paragraphs (c) and (d) of this section, while enrolled as a full-time or part-time, degree- or certificate-seeking student or participant in a career

or technical education program. (An agency may require a minimum that is higher than 480, including setting varying minimums for different types of positions);

(2) Completed a course of academic study or a career and technical education program, within the 180-day period preceding the appointment, at a qualifying educational institution conferring a diploma, certificate, or degree; or successful completion in a qualifying career or technical educational program;

(3) Received a favorable recommendation for appointment by an official of the agency or agencies in which the Intern served;

(4) Met the qualification standards for the position to which the Intern will be converted; and

(5) Met agency-specific requirements as specified in the agency's Participant Agreement with the Intern.

(c)(1) Subject to the limitations in paragraph (e) of this section, an agency may evaluate, consider, and grant credit for up to one-half of the service requirement in paragraph (b)(1) of this section for comparable non-Federal internship experience in a field or functional area related to the student's target position and acquired while the student:

(i) Worked in, but not for, a Federal agency, pursuant to a formal internship agreement, comparable to the Internship Program under this subpart, between the agency and an accredited academic institution;

(ii) Worked in, but not for, a Federal agency, pursuant to a written contract with a third-party internship provider officially established to provide internship experiences to students that are comparable to the Internship Program under this subpart;

(iii) Served as an active-duty member of the armed forces (including the National Guard and Reserves), as defined in 5 U.S.C. 2101, provided the veteran's discharge or release is under honorable conditions; or

(iv) Worked in a Registered Apprenticeship Program at a Federal Agency (prior to appointment as an Intern).

(2) Student volunteer service under part 308 of this chapter, and other Federal programs designed to give internship experience to students (e.g., fellowships and similar programs) including a Department of Labor Job Corps Program prior to an intern appointment may be evaluated, considered, and credited under this section when the agency determines the experience is comparable to experience gained in the Internship Program.

(d) An agency may waive up to one-half of the minimum service requirement in paragraph (b)(1) of this section provided the Intern has completed at least 320 hours of career-related work experience under an Internship Program appointment with exceptional job performance and demonstrates high potential in an academic or career and technical education program. For purposes of this paragraph (d):

(1) Exceptional job performance means a formal evaluation conducted by the student's internship supervisor(s), consistent with the agency performance appraisal program that results in a rating of record (or summary rating) of higher than Fully Successful or equivalent.

(2) Demonstrates high potential in an academic or career and technical education program means attaining at least one of the following:

- (i) An overall grade point average of 3.5 or better, on a 4.0 scale;
- (ii) Standing in the top 10 percent of the student's graduating class;
- (iii) Induction into a nationally recognized scholastic honor society; or
- (iv) A letter of recommendation attesting to the Intern's outstanding program performance from an instructor or program administrator.

(e) An agency may not grant a credit or waiver (or a combination of a credit and waiver) unless the Intern has performed at least 320 hours under a Pathways Internship appointment. An agency may not grant a credit or waiver (or a combination of a credit and waiver) totaling more than 320 hours.

[77 FR 28215, May 11, 2012, as amended at 89 FR 25772, Apr. 12, 2024]

§ 362.205 Reduction in force (RIF) and termination.

(a) *Reduction in force.* Interns and Interns NTE are covered by part 351 of this chapter for purposes of RIF.

(1) *Tenure Groups.* (i) An Intern serving under an appointment for an initial period expected to last more than 1 year is in excepted service Tenure Group II.

(ii) An Intern NTE who has not completed 1 year of service, is in excepted service Tenure Group 0.

(iii) An Intern NTE serving under a temporary appointment not to exceed 1 year, who has completed 1 year of current, continuous service, is in excepted service Tenure Group III.

(2) [Reserved]

(b) *Termination*—(1) *Intern.* As a condition of employment an Intern appointment expires 180 calendar days after completion of the designated academic course of study or career and technical education program, unless the Participant is selected for non-competitive conversion under § 362.204.

(2) *Intern NTE.* As a condition of employment an Intern NTE appointment expires upon expiration of the temporary internship appointment, unless the Participant is selected for non-competitive conversion under § 362.204.

[89 FR 25773, Apr. 12, 2024]

Subpart C—Recent Graduates Program

§ 362.301 Program administration.

The Recent Graduates Program provides an entry-level developmental experience designed to lead to a civil service career in the Federal Government after successfully completing 1 year under the Program, unless the training requirements of the position warrant a longer and more structured training program. Employment under the Recent Graduates Program may not exceed 2 years plus any agency approved extension of up to an additional 120 days. Individuals appointed under this authority are referred to as Recent Graduates. An agency wishing to participate in the Recent Graduates Program must:

(a) Identify in its Pathways Policy the duration of its Recent Graduates

§ 362.302

Program, including any criteria used to determine the need for a longer and more structured training program that exceeds 1 year;

(b) Ensure, within 90 days of appointment, that each Recent Graduate is assigned a mentor who is an employee outside the Recent Graduates' chain of command;

(c) Ensure, within 45 days of appointment, that each Recent Graduate has an Individual Development Plan (IDP) that is approved by his or her supervisor; and

(d) Provide at least 40 hours of formal interactive training per year that advances the goals and competencies outlined in each Recent Graduate's IDP. Mandatory annual training, such as information security and ethics training, does not count towards the 40-hour requirement.

[77 FR 28215, May 11, 2012, as amended at 89 FR 25773, Apr. 12, 2024]

§ 362.302 Eligibility.

(a) A Recent Graduate is an individual who obtained a qualifying associate's, bachelor's, master's, professional, doctorate, vocational, technical degree or a certificate from a qualifying educational institution or completed a qualifying career or technical education program within the previous 2 years or other applicable period provided in paragraph (b) of this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, an individual may apply for a position in the Recent Graduates Program only if the individual's application is received not later than 2 years after the date the individual completed all requirements of an academic course of study leading to a qualifying associate, bachelor's, master's, professional, doctorate, vocational, or technical degree or certificate from a qualifying educational institution or completed a qualifying career or technical education program.

(2) A veteran, as defined in 5 U.S.C. 2108, who, due to a military service obligation, was precluded from applying to the Recent Graduates Program during any portion of the 2-year eligibility period described in paragraph (b)(1) of this section shall have a full 2-year period of eligibility upon his or her release or discharge from active duty. In

5 CFR Ch. I (1–1–25 Edition)

no event, however, may the individual's eligibility period extend beyond 6 years from the date on which the individual completed the requirements of an academic course of study or a qualifying career or technical education program.

[89 FR 25773, Apr. 12, 2024]

§ 362.303 Filling positions.

(a) *Announcement*—(1) *Public notification requirement*. An agency must adhere to merit system principles and thus must provide public notification in a manner designed to recruit qualified individuals from appropriate sources in an endeavor to draw from all segments of society. For the purposes of this paragraph (a), *agency* means an Executive agency as defined in 5 U.S.C. 105 and the Government Publishing Office. An Executive department may treat each of its bureaus or components (*i.e.*, the first major subdivision that is separately organized and clearly distinguished from other bureaus or components in work function and operation) as a separate agency or as part of one agency but must do so consistent with its Delegated Examining Agreement.

(2) *Meeting the public notification requirement*. An agency may use any of the following options for meeting the public notification requirement:

(i) Posting a searchable announcement on www.USAJOBS.gov; or

(ii) Posting job information with a link to a USAJOBS custom job announcement on the agency's public facing career or job information web page. This custom posting must provide applicants with information about how to apply or seek additional information about the position(s) being filled, while also providing information regarding that job announcement to OPM.

(iii) The agency may also consider whether additional recruitment and advertisement activities to supplement paragraphs (a)(2)(i) and (ii) of this section, such as posting on third-party websites, are necessary or appropriate to further support merit system principles.

(3) *Contents of announcements*. Announcements used to meet the public notification requirement must include:

(i) *Position information.* Position title, series, and grade;

(ii) *Position location.* Geographic location where the position will be filled;

(iii) *Salary information.* The starting salary of the position;

(iv) *Qualifications information.* The minimum qualifications of the position;

(v) *Promotion potential.* Whether the individual in the position will be eligible for promotion to higher grade levels;

(vi) *Conversion information.* The potential for conversion to the agency's permanent workforce;

(vii) *How to apply.* A public source (e.g., a link to the location on the agency's website with information on how to apply) for interested individuals to seek further information about how to apply for Recent Graduate opportunities; and

(viii) *Equal employment information.* Equal employment opportunity statement (agencies may use the recommended equal employment opportunity statement located on OPM's USAJOBS website);

(ix) *Reasonable accommodation information.* Reasonable accommodation statement;

(x) *Other relevant information.* Any other relevant information about the position such as telework opportunities, recruitment incentives, etc.; and

(xi) *Other requirements.* Any other information OPM considers appropriate.

(4) *Other Information.* OPM will publish information on Pathways Recent Graduate opportunities in such form as the Director may determine.

(b) *Appointments.* (1) An agency may make appointments to the Recent Graduates Program pursuant to its Pathways Policy under Schedule D of the excepted service in accordance with part 302 of this chapter.

(2) An agency must appoint a Recent Graduate using the excepted service appointing authority provided by § 213.3402(b) of this chapter.

(3)(i) An agency may make an initial appointment of a Recent Graduate to any position filled under the authority in this section for which the Recent Graduate qualifies, up to the GS-11 level (or equivalent under another pay and classification system, such as the

Federal Wage System), except as provided in paragraphs (b)(3)(ii) through (iv) of this section.

(ii) 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.

(iii) 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.

(iv) 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.

(v) Positions must have progressively more responsible duties that provide career advancement opportunities (*i.e.*, positions must provide for career ladder advancement).

(c) *Extensions.* An agency may extend the Program period for up to an additional 120 days to cover rare or unusual circumstances or situations. The agency's Pathways MOU must identify criteria for approving extensions.

(d) *Qualifications.* An agency must evaluate candidates using OPM Qualification Standards for the occupation and grade level of the position being filled.

(e) *Promotions.* An agency may promote any Recent Graduate who meets the qualification requirements for the position. This provision does not confer entitlement to promotion.

(f) *Trial period.* The duration of the Recent Graduates appointment in the excepted service is a trial period.

[77 FR 28215, May 11, 2012, as amended at 89 FR 25773, Apr. 12, 2024]

§ 362.304 Movement between agencies.

(a) A Recent Graduate may apply for and accept a new Recent Graduates appointment with another agency covered by this part, as long as the agency

§ 362.305

5 CFR Ch. I (1–1–25 Edition)

meets all the requirements for participating in the Recent Graduates Program.

(b) To move to the new agency, the Recent Graduate must separate from the current employing agency.

(c) The new employing agency must appoint the Recent Graduate without a break in service.

(d) Time served under the previous agency's Recent Graduates Program is credited toward the Program requirements for noncompetitive conversion eligibility to the competitive service. Because there is no break in service, the Recent Graduate does not begin a new period in the Program upon moving to the new agency.

(e) The new employing agency's plan must identify requirements for Program completion and eligibility for noncompetitive conversion.

§ 362.305 Conversion to the competitive service.

(a) An agency may noncompetitively convert a Recent Graduate who is a U.S. citizen to a competitive service term or permanent position when the Recent Graduate has:

(1) Successfully completed at least 1-year of continuous service in addition to all the requirements of the Recent Graduates Program;

(2) Demonstrated successful job performance consistent with the applicable performance appraisal program established under the agency's approved performance appraisal system that results in a rating of record (or summary rating) of at least Fully Successful or equivalent and a recommendation for conversion by the first-level supervisor; and

(3) Met the OPM Qualification Standard for the competitive service position to which the Recent Graduate will be converted.

(b) An agency must make the noncompetitive conversion effective on the date the service requirement is met, or at the end of an agency-approved extension, if applicable.

(c) A Recent Graduate may be converted to a permanent or term position at a different agency when the following conditions are met:

(1) The employing (or losing) agency is unable to convert the Recent Grad-

uate to a term or permanent position in the competitive service in the current organizational unit of the employing agency or another component within the same Department or agency. The reasons for conversion at another agency may include unforeseen budgetary constraints; reorganizations; abolishment of positions; completion of cohort-based Pathways programs; or other appropriate reasons. Such a conversion to another agency may not be due to issues related to misconduct, poor performance, or suitability;

(2) Conversion must occur on or before the end of the agency prescribed Program period, plus any agency-approved extension; and

(3) The position at the new agency must have a full performance level that is equivalent or less than the position they would have been converted to at the prior agency.

[77 FR 28215, May 11, 2012, as amended at 89 FR 25774, Apr. 12, 2024]

§ 362.306 Reduction in force and termination.

(a) *Reduction in force.* Recent Graduates are in excepted service Tenure Group II for purposes of § 351.502 of this chapter. Expiration of the Recent Graduates appointment is not otherwise subject to part 351 of this chapter.

(b) *Terminations.* (1) Except as provided in paragraph (b)(2) of this section, as a condition of employment, a Recent Graduate appointment expires at the end of the agency prescribed Program period, plus any agency-approved extension, unless the Participant is selected for noncompetitive conversion under § 362.306.

(2) A Recent Graduate who held a career-conditional or career appointment in an agency immediately before entering the Program, and fails to complete the Program for reasons that are not related to misconduct, poor performance, or suitability, may, at the agency's discretion, be placed in a permanent competitive service position, as appropriate, in the employing agency.

Subpart D—Presidential Management Fellows Program

§ 362.401 Definitions.

For purposes of this subpart:

Agency Presidential Management Fellows (PMF) Program Coordinator is an individual, at the appropriate agency component level, who coordinates the placement, development, and other Program-related activities of PMFs appointed in his or her agency and fulfills the criteria described in § 362.104(a)(8). The agency Pathways Programs Officer may also serve as the PMF Coordinator.

Executive Resources Board (ERB) has the same meaning as specified in § 317.501(a) of this section; in those agencies that are not required to have an ERB pursuant to that section, it means the senior agency official or officials who have been given responsibility for executive resources management and oversight by the agency head.

Presidential Management Fellow (PMF) or Fellow is an individual appointed, at the GS-9, GS-11, or GS-12 level (or equivalent under a non-GS pay and classification system such as the Federal Wage System), in the excepted service under § 213.3402(c) of this chapter.

[77 FR 28215, May 11, 2012, as amended at 89 FR 25774, Apr. 12, 2024]

§ 362.402 Program administration.

(a) The Director may determine the number of Fellows who may be appointed during any given year. This determination will be based on input from the Chief Human Capital Officers Council, as well as input from agencies not represented on the Council.

(b) Thereafter, subject to the provisions and requirements of this chapter, an agency may appoint individuals selected by the Director as Fellows finalists according to its short-, medium-, and long-term senior leadership and related (senior policy, professional, technical, and equivalent) recruitment, development, and succession requirements.

(c) The Director will establish the qualification requirements for evaluating applicants for the PMF Program.

(d) An agency that hires Fellows in field locations outside the Washington, DC, Metropolitan Area may:

(1) In advance of making the appointment, discuss whether the finalist wants to do a developmental rotation to agency headquarters and, if so, make a commitment to allow and fund such a rotation, to the maximum extent practicable, in accordance with § 362.405(b) of this part; and

(2) Promote interaction among regional Fellows with the agency Federal Executive Board (FEB) and permit Fellows to attend FEB-sanctioned activities in that region.

§ 362.403 Announcement, eligibility, and selection.

(a) OPM will announce the opportunity to apply for the PMF Program and conduct a competition for the selection of finalists as set forth in this section.

(b) A Presidential Management Fellow is an individual who, within the previous 2 years, completed an advanced degree from a qualifying educational institution.

(c) An individual may apply for the PMF Program if:

(1) The individual has obtained an advanced degree within the 2-year period preceding the Program announcement described in paragraph (a) of this section, or

(2) The individual is still a student attending a qualifying educational institution, as defined in paragraph (2)(iii) of the definition of *Qualifying educational institution* in § 362.102, and he or she expects to complete a qualifying advanced degree by August 31 of the academic year in which the competition is held.

(d) An individual may apply for the PMF Program more than once as long as he or she meets the eligibility criteria. However, if an individual becomes a finalist and subsequently applies for the Program during the next open announcement, the individual will forfeit his or her status as a finalist.

(e) OPM will select Fellow finalists based on an OPM evaluation of each

§ 362.404

candidate's experience and accomplishments according to his or her application and the results of a rigorous structured assessment process.

(f) OPM will publish and provide participating agencies the Fellow finalists list for appointment consideration.

§ 362.404 Appointment and extension.

(a) *Appointments.* (1) An agency may make 2-year appointments to the PMF Program, pursuant to a Pathways Policy, under Schedule D of the excepted service in accordance with part 302 of this chapter.

(2) An agency must appoint a PMF using the excepted service appointing authority provided by § 213.3402(c) of this chapter.

(3) OPM will establish an eligibility period during which agencies may appoint Fellow finalists.

(b) *Extension.* An agency may extend a Fellow's appointment for up to 120 days to cover rare or unusual circumstances or situations. The agency's Pathways MOU must identify the criteria for approving extensions.

(c) *Grade.* An agency may appoint a Fellow at the GS-09, GS-11, or GS-12 level or equivalent depending on his or her qualifications.

(d) *Trial period.* The duration of the PMF appointment in the excepted service is a trial period.

(e) *Work schedules.* A PMF will generally have a full-time work schedule. A PMF may request a part-time work schedule for a limited period of up to 6 months during the PMF Program. An agency has the discretion to approve or deny a request for a part-time work schedule if the agency and PMF have determined that it would not negatively impact the PMF's ability to meet all Program requirements by the expiration of the PMF's appointment. The agency's approval of the request must include an approval of a specific time period that the agency determines to be appropriate. A PMF is not entitled to approval of a request for a part-time work schedule. An agency's Pathways Policy must specify the conditions under which a part-time work schedule may be authorized. The PMF's Pathways Participant agreement must be updated with the new

5 CFR Ch. I (1–1–25 Edition)

work schedule information when a part-time work schedule is approved.

[77 FR 28215, May 11, 2012, as amended at 89 FR 25774, Apr. 12, 2024]

§ 362.405 Development, evaluation, promotion, and certification.

(a) *Individual Development Plans.* An agency must approve, within 90 days, an Individual Development Plan (IDP) for each of its PMFs that sets forth the specific developmental activities that are mutually agreed upon by each PMF and their supervisor. The PMF must develop the IDP in consultation with the Agency PMF Coordinator and/or the mentor assigned to the PMF under paragraph (b)(3) of this section, as well as the PMF's supervisor.

(b) *Required developmental activities.* (1) OPM will provide leadership development activities and general Program resources for each class or cohort of PMFs and will provide information on available training opportunities known to it. Agencies must provide appropriate agency-specific onboarding and employee orientation activities.

(2) The agency must provide each Fellow a minimum of 80 hours of formal interactive training per year that addresses the competencies outlined in the IDP. Mandatory annual training, such as information security and ethics training, does not count towards the 80-hour requirement.

(3) Within the first 90 days of a Fellow's appointment, the agency must assign the Fellow a mentor, who is a managerial employee outside the Fellow's chain of command.

(4) The agency must provide each PMF with at least one rotational or developmental assignment with full-time management and/or technical responsibilities consistent with the PMF's IDP. With respect to the requirement in this paragraph (b)(4):

(i) Each PMF must receive at least one developmental assignment of 4 to 6 months in duration, with management and/or technical responsibilities consistent with the PMF's IDP.

(ii) The developmental assignment may be within the PMF's organization, in another component of the agency, or in another Federal agency as permitted

by the employing agency. These assignments should generally be in a different work unit led by a supervisor other than the usual supervisor of the PMF's current position.

(iii) Developmental assignments must provide challenging work experience of a caliber appropriate for a participant in the Federal Government's flagship leadership development program. Examples of appropriate developmental assignments may include projects implementing a new Executive order or major piece of legislation, agency reorganization, or cross-agency collaboration on a major administration initiative.

(5) The PMF may receive other short-term rotational assignments of 1 to 6 months in duration, at the agency's discretion. A short-term rotational assignment may take place within the PMF's organization, in another component of the agency, or in another Federal agency as permitted by the employing agency.

(6) Upon the request of OPM, the appointing agency must make Fellows available to assist in the assessment process for subsequent PMF classes. Any interactive training provided to a Fellow in connection with assisting OPM in the assessment process may be counted toward the minimum 80-hour training requirement in paragraph (b)(2) of this section.

(c) *Promotion.* An agency may promote any Fellow who meets the qualification requirements for the position. This provision does not confer entitlement to promotion.

(d) *Certification of completion.* (1) Upon completion of the Program, the agency's ERB must evaluate each Fellow and determine whether it can certify in writing that the Fellow met all of the requirements of the Program, including the performance and developmental expectations set forth in the individual's performance plan and IDP. The ERB may consult the Fellow's mentor in reaching its determination.

(2)(i) The ERB must notify the PMF of its decision regarding certification of successful completion.

(ii) A PMF who receives successful certification is eligible for conversion in accordance with § 362.409.

(3) ERB certifications must be forwarded to OPM.

(4)(i) If the ERB decides not to certify a Fellow, the Fellow may request reconsideration of that determination by the Director. Such reconsideration must be requested in writing, with appropriate documentation and justification, within 15 calendar days of the date of the agency's decision. The Director's decision on reconsideration is not subject to appeal.

(ii) The Fellow may continue in the Program pending the outcome of his or her request for reconsideration. The agency must continue to provide appropriate developmental activities during this period.

(iii) A PMF who is not approved for certification and whose appeal to OPM is denied is not eligible for conversion in accordance with § 362.409.

[77 FR 28215, May 11, 2012, as amended at 89 FR 25774, Apr. 12, 2024]

§ 362.406 Movement between agencies.

(a) At any time during his or her appointment in the Program, a Fellow may move to another agency covered by this part, as long as the agency meets all the requirements for participating in the PMF Program. To move from one agency to another during the Program, the Fellow must separate from the current agency. The new employing agency must appoint the Participant without a break in service.

(b) The Fellow does not begin a new Program period upon appointment by the new employing agency. Because there is no break in service, time served under the previous Program appointment will apply towards the completion of the Program with the new employing agency.

(c) An agency must notify OPM when appointing a Fellow currently appointed in another agency.

(d) If the move occurs within the first 6 months of the Fellow's appointment, the original appointing agency may request reimbursement of one-quarter of the placement fee from the new appointing agency.

§ 362.407 Withdrawal and readmission.

(a) *Withdrawal.* (1) A Fellow may withdraw from the Program at any time. Such withdrawal will be treated

as a resignation from the Federal service; however, any obligations established upon admission and appointment (for example, as a result of accepting a recruitment incentive under part 575 of this chapter) still apply.

(2) A Fellow who held a permanent appointment in the competitive service in an agency immediately before entering the Program, and who withdraws from the Program for reasons that are not related to misconduct, poor performance, or suitability, may, at the employing agency's discretion, be placed in a permanent competitive service position, as appropriate, in that agency. The employing agency's determination in this regard is not subject to appeal.

(3) An agency must notify OPM when a Fellow withdraws from the Program.

(b) *Readmission.* (1) If a Fellow withdraws from the Program for reasons that are related to misconduct, poor performance, or suitability, as determined by the agency, he or she will not be readmitted to the Program at any time.

(2) If a Fellow withdraws from the Program for reasons that are not related to misconduct, poor performance, or suitability, he or she may petition the employing original agency for readmission and reappointment to the Program. Such a petition must be in writing and include appropriate justification. The agency may approve or deny the request for readmission. An agency must submit written notification of approved readmission requests to OPM. The individual's status in the Program upon readmission and reappointment must be addressed as part of the agency's submission. The Director may overrule the agency's decision to readmit and reappoint, and the Director's decision is not subject to appeal.

§ 362.408 Termination and reduction in force.

(a) *Termination.* (1) An agency may terminate a Fellow for reasons related to misconduct, poor performance, or suitability.

(2) As a condition of employment, a Fellow's appointment expires at the end of the 2-year Program period, plus any agency-approved extension, unless

the Participant is selected for non-competitive conversion. If an agency does not convert a Fellow at the end of the Program, as provided in § 362.409 of this part, or extend the individual's initial appointment under § 362.404, the appointment expires when certification for Program completion is denied or when the Director denies the agency's request for an extension.

(3) The agency must provide written notification to OPM when a Fellow is terminated for any reason.

(b) *Reduction in force.* Fellows are in the excepted service Tenure Group II for purposes of § 351.502 of this chapter.

§ 362.409 Conversion to the competitive service.

(a) A Fellow must complete the Program within the time limits prescribed in § 362.404 of this part, including any agency-approved extension. At the conclusion of that period, the Fellow may be converted, as provided in paragraph (b) of this section.

(b) An agency may convert, without a break in service, an ERB-certified PMF to a competitive service term or permanent appointment in any position for which they are qualified.

(c) A PMF who is being converted to a permanent or term position at a different agency is subject to the following conditions:

(1) The employing (or losing) agency must be unable to convert the PMF to a term or permanent position in the competitive service in the current organizational unit of the employing agency or another component within the same Department or agency. These reasons for conversion at another agency may include unforeseen budgetary constraints; reorganizations; abolishment of positions; or other appropriate reasons. Such a conversion to another agency may not be due to issues related to failure to obtain certification from the agency's Executive Resources Board, misconduct, poor performance, or suitability;

(2) Conversion must occur on or before the end of the agency prescribed Program period, plus any agency-approved extension; and

(3) The position at the new agency must have a full performance level that is equivalent to or less than the

Office of Personnel Management

§ 370.102

position to which the PMF would have been converted at the losing agency.

[77 FR 28215, May 11, 2012, as amended at 89 FR 25775, Apr. 12, 2024]

PART 370—INFORMATION TECHNOLOGY EXCHANGE PROGRAM

Sec.

- 370.101 Purpose.
- 370.102 Definitions.
- 370.103 Eligibility.
- 370.104 Length of details.
- 370.105 Written agreements.
- 370.106 Terms and conditions.
- 370.107 Details to small business concerns.
- 370.108 Reporting requirements.
- 370.109 Agency plans.

AUTHORITY: Pub. L. 107-347, 116 Stat. 2923-2931 (5 U.S.C. 3707).

SOURCE: 70 FR 47714, Aug. 15, 2005, unless otherwise noted.

§ 370.101 Purpose.

(a) The purpose of this part is to implement sections 209(b)(6) and (c) of the E-Government Act of 2002 (Pub. L. 107-347), which authorize the Office of Personnel Management to establish an Information Technology Exchange Program. This statute authorizes the temporary detail of information technology employees between the Federal Government and private sector organizations. The statute also gives Federal agencies the authority to accept private sector information technology employees detailed under the Information Technology Exchange Program.

(b) Agency heads, or their designees, may approve details as a mechanism for improving the Federal workforce's competency in using information technology to deliver Government information and services. Details under this part allow Federal employees to serve with private sector organizations for a limited time period without loss of employee rights and benefits. Agencies may not make details under this part to circumvent personnel ceilings, or as a substitute for other more appropriate personnel decisions or actions. Approved details must meet the strategic program goals of the agency. The benefits to the Federal agency and the private sector organization are the primary considerations in initiating de-

tails; not the desires or personal needs of an individual employee.

§ 370.102 Definitions.

In this part: *Agency* means an Executive agency as defined in 5 U.S.C. 105, with the exception of the Government Accountability Office.

Core Competencies are those IT competencies identified by the Federal Chief Information Officer (CIO) Council as a baseline for use by Federal agencies in complying with the Clinger-Cohen Act, Public Law 104-106, to determine the training and development needs of the Federal IT workforce.

Detail means: (1) The assignment or loan of an employee of an agency to a private sector organization without a change of position from the agency that employs the individual (5 U.S.C. 3701(2)(A)), or

(2) The assignment or loan of a private sector organization employee to an agency without a change of position from the private sector organization that employs the individual (5 U.S.C. 3701(2)(B)).

Exceptional employee means an employee who is rated at the highest levels of the applicable performance appraisal system or, in the case of an employee under an appraisal system that does not have a summary rating level above "fully successful" or equivalent, is rated at the highest summary level used by the performance appraisal system and demonstrates sustained quality performance significantly above that expected in the type of position involved, as determined under performance-related criteria established by the agency.

Information technology (IT) management means the planning, organizing, staffing, directing, integrating, or controlling of information technology as defined by Office of Management and Budget Circular A-130 which states, the term "information technology" means any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by an executive agency. For purposes of the preceding