

Proposed Rules

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 302, 330, 335, 337, and 410

RIN 3206-AL04

Recruitment, Selection, and Placement (General)

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to revise the rules on Federal vacancy announcements, reemployment priority list requirements, positions restricted to preference eligibles, time after competitive appointment, the Career Transition Assistance Plan (CTAP), and the Interagency Career Transition Assistance Plan (ICTAP). The proposed rules clarify the regulations, incorporate longstanding OPM policies, revise placement assistance programs for consistency and effectiveness, remove references to two expired interagency placement assistance programs, and reorganize information for ease of reading.

DATES: We will consider comments received on or before November 7, 2008.

ADDRESSES: Send or deliver comments to Angela Bailey, Deputy Associate Director, Center for Talent and Capacity Policy, Strategic Human Resources Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415-9700; e-mail to employ@opm.gov; or fax to (202) 606-2329. Comments may also be sent through the Federal eRulemaking Portal at <http://www.regulations.gov>. All submissions received through the Portal must include the agency name and docket number or the Regulation Identifier Number (RIN) for this rulemaking. Please specify the subpart and section number for each comment.

FOR FURTHER INFORMATION CONTACT: For subparts A, D, and E, contact Linda Watson by telephone at (202) 606-0830; TTY at (202) 418-3134; fax at (202) 606-

0390; or e-mail at linda.watson@opm.gov. For all other subparts, contact Pam Galemore by telephone at (202) 606-0960; TTY at (202) 418-3134; fax at (202) 606-2329; or e-mail at pamela.galemore@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is proposing to revise the regulations in 5 CFR part 330 governing Federal vacancy announcements, the Reemployment Priority List (RPL), positions restricted to preference eligibles, time after competitive appointment, the Career Transition Assistance Plan (CTAP), and the Interagency Career Transition Assistance Plan (ICTAP). The proposed revisions are described below under each subpart heading.

The proposed regulations also remove subparts K and L. Subpart K provided a priority consideration program for eligible displaced employees of the District of Columbia Department of Corrections. The statutory authority for this program expired on December 31, 2002. Subpart L provided selection priority to eligible displaced employees in the Panama Canal Zone. The statutory authority for this program expired on December 31, 2000.

Throughout the proposed regulations, OPM has replaced the verb "shall" with "must" for clarity. OPM intends that any provisions in this part using the verb "must" have the same meaning and effect as previous provisions in this part using "shall."

These proposed regulations also include conforming changes in parts 302—Employment in the Excepted Service, 335—Promotion and Internal Placement, 337—Examining System, and 410—Training of OPM's regulations, specifically to revise citations because of the movement of the rules governing vacancy announcements from subpart G to subpart A.

Subpart A

We are proposing to retitle Subpart A from "Discretion in Filling Vacancies" to "Filling Vacancies in the Competitive Service" to more accurately reflect the content of the subpart. The proposed revised subpart A includes a list of specific items that must be included in all vacancy announcements published on OPM's USAJOBS Web site (which is the official job site for the Federal Government). Subpart A also adds

requirements mandated by the Veterans Employment Opportunities Act, which is codified in part at 5 U.S.C. 3304(f)(4). These proposed changes will support the requirement for specific information in the vacancy announcement and establish consistency in the information provided to applicants. OPM's authority to require items in a vacancy announcement is in 5 U.S.C. 3330.

We are proposing to add definitions in § 330.101 and move the paragraph about "agencies covered" currently in § 330.102 to § 330.101. These revisions consolidate definitions that are applicable throughout part 330, and define *vacancy* solely for the purposes of subpart A in accordance with 5 U.S.C. 3327.

Under 5 U.S.C. 3330, OPM is required to keep a current list of all competitive service vacancy announcements for which agencies will accept applications from outside their respective workforces. Currently, subpart G of part 330, which covers the Interagency Career Transition Assistance Plan (ICTAP), contains OPM's regulations prescribing information that agencies must include in Federal vacancy announcements (such as title, location, duties, etc.). We are proposing to move this information from subpart G, § 330.707, to subpart A, § 330.104, because the reporting requirement applies to all competitive service vacancy announcements. Conforming revisions to other CFR parts with the reference to § 330.707 are included with these proposed regulations.

OPM receives inquiries on a regular basis from agencies concerning how to add a vacancy announcement to OPM's USAJOBS Web site. We propose to add in § 330.105 that agencies may locate these instructions on the Web site at www.usajobs.opm.gov.

Subpart B

Subpart B governs the Reemployment Priority List (RPL), which is the program an agency must use to meet its statutory reemployment priority obligations under sections 3315 and 8151 of title 5, United States Code. Agencies establish an RPL to provide selection priority to their permanent competitive service employees who were or will be involuntarily separated through reduction in force (RIF) procedures under part 351, or who have recovered from a compensable work-related injury after more than 1 year, as required by 5

CFR 353.301(b). These employees may register for, and receive selection priority over, most other candidates from outside the agency's current permanent competitive service workforce. Agencies must apply veterans' preference when making RPL placements.

Generally, the proposed revisions to subpart B clarify who is eligible for the RPL, delete references to outdated material (e.g., appointment authorities that no longer exist), and clarify the operation of the RPL through use of plain language and improved organization of the material.

We are also proposing to define and rename certain terms (e.g., "priority consideration" to "placement priority") to clearly distinguish the RPL program from other internal agency placement programs. The proposed regulations also clarify longstanding OPM policy concerning employees' rights, agency flexibility, and termination of eligibility.

Other proposed revisions to subpart B include the following:

Section 330.202 adds a "Definitions" section for terms used throughout the subpart. This section includes a definition of *Qualified* for RPL purposes. The proposed definition ensures that placement of the RPL registrant will not detract or hinder mission accomplishment by requiring that, for RPL placement priority, the placement of the RPL registrant in the position will not cause an undue interruption to required work. The undue interruption provision is currently provided as an exception to the RPL selection order in § 330.207. Adding this provision as part of the *Qualified* definition makes the qualifications required for placement through the RPL consistent with those required for placement through RIF procedures. Also for consistency, the term "selection placement factors" is revised to "selective factors" to align with terminology used in OPM's "Operating Manual: Qualification Standards for General Schedule Positions."

Revised § 330.203 combines the conditions for RPL eligibility based on recovery from a compensable injury, currently in § 330.204, with RPL eligibility based on a notice of or actual RIF separation. Section 330.203(a)(2) clarifies that RPL eligibility ends if the employee receives a written notice of cancellation, rescission, or modification to the official notice which established RPL eligibility (for example, the agency cancels the employee's notice of RIF separation or the agency offers a position with a representative rate at least as high as that of the position from

which the employee will be separated). In § 330.203(a)(3), we are proposing to raise the minimum performance rating of record level required for RIF-based RPL eligibility from a rating above unacceptable (Level 1) to at least fully successful (Level 3) or equivalent. (The proposed definition of *Rating of record* in § 330.202 corresponds to the definition in part 351 to cover those cases where an appraisal system does not have a summary rating level of fully successful.) The proposed change makes the rating of record required for RIF-based RPL eligibility consistent with the minimum performance rating of record required for selection priority under both the Career Transition Assistance Plan (CTAP) in subpart F and the Interagency Career Transition Assistance Plan (ICTAP) in subpart G. A minimum rating of record is not required for RPL eligibility based on recovery from a compensable work-related injury.

Section 330.204(b) adds a requirement for agencies to provide information about the agency's RPL program to each RPL eligible employee when the employee accepts a position at a lower grade or pay level or separates from the agency because of a compensable work-related injury. This provision is added to ensure employees are informed of their rights under 5 U.S.C. 8151.

Section 330.206(a)(3) revises the period for an employee with RPL eligibility because of a RIF to apply for the agency's RPL. The current regulation in § 330.202(a)(1) requires the employee to apply within 30 calendar days after the RIF separation date. We propose to require that RPL eligibles must apply on or before the RIF separation date. The proposed change is intended to ease the administrative burden on agencies while allowing a RIF-based RPL eligible at least 60 days (the minimum notice period under part 351) to apply for registration. We are not proposing to change the application period for RPL eligibles based on recovery from a compensable work injury.

Section 330.207 clarifies and expands agency discretion for RPL registration areas. Specifically, § 330.207(b) allows an agency the discretion to register an employee in a local commuting area other than the local commuting area from which the employee will be, or has been, separated if the agency does not, or will not, have any competitive service positions remaining in the local commuting area from which the employee will be, or has been, separated. This provision addresses closure situations that are not currently covered in the regulations.

The proposed § 330.207(d) requires an agency to establish a fair and consistent policy for expanding the registration area for an employee whose RPL eligibility is based on recovery from a compensable work injury. The current regulation in § 330.206(b) requires an agency to determine when and how to provide for maximum opportunities for consideration; however, it does not require an agency to establish a policy for making such determinations.

The proposed § 330.207(e) deletes Alaska from the current § 330.206(a)(4), concerning RPL eligibility for overseas positions; Alaska does not meet the definition of "overseas" in part 210 of this chapter.

Section 330.208 changes the period and expiration date of RPL eligibility from the current period in § 330.203(c) of 2 years from the date of RPL registration for a tenure group I eligible and 1 year from the date of RPL registration for a tenure group II eligible. To ease the administrative burden on agencies and to maximize placement priority under this program, we propose to change the period and expiration date for RPL eligibility for both tenure groups to 2 years from the date of separation by RIF, or from the date of registration if eligibility is based on recovery from a compensable work injury. We also propose to add a provision that OPM may extend the eligibility period when an RPL eligible is not timely registered, for example, due to an administrative or procedural error. The current regulations do not specifically provide OPM with this authority. Adding this provision will avoid having to consider such an extension through a regulatory variation under Civil Service Rule 5.1 (5 CFR 5.1).

Section 330.209(a)(2) clarifies that an RPL registrant is removed from the RPL if the registrant receives a written notice of cancellation, rescission, or modification to the official notice which established RPL eligibility (for example, the agency cancels the employee's notice of RIF separation or the agency offers a position with a representative rate at least as high as that of the position from which the employee will be separated).

Sections 330.209(a)(5) and (6) clarify that RPL eligibility ends when the RPL registrant is actually placed in or appointed to a different position rather than when the registrant "receives" an appointment as currently described in § 330.203(d)(2)(ii).

Section 330.210(a) clarifies that RPL placement priority applies to permanent and time-limited positions to be filled by competitive service appointment.

Section 330.211(a) clarifies that an agency may fill vacancies with candidates from within its permanent competitive service workforce without regard to the RPL, after the agency meets its CTAP obligations under subpart F of part 330.

Paragraphs (d) and (e) of § 330.213 add an alternative rating and selection procedure (also called category rating) and an application-based procedure, respectively, to provide agencies with additional referral and selection methods. The category rating procedure is derived from 5 U.S.C. 3319, as implemented in 5 CFR part 337 and OPM's "Delegated Examining Operations Handbook." The application-based procedure is similar to the employee-empowerment model established under CTAP and ICTAP procedures in subparts F and G of this part, respectively.

The proposed regulation also deletes current paragraph (c) of § 330.208 concerning agency consideration of sex in determining qualifications for the RPL; this consideration is part of the qualification requirements.

Subpart C remains reserved.

Subpart D

We are proposing to revise §§ 330.401 through 330.403 to clarify that the statutory restriction of certain positions to preference eligibles applies to any competitive examination, regardless of whether OPM or an agency, through delegated authority under 5 U.S.C. 1104(a)(2), performs the examination. We also specify exceptions to the restriction and include a staffing procedure inadvertently omitted during OPM's process of deleting references in the Code of Federal Regulations to the Federal Personnel Manual (FPM) because of its sunset. We propose to retitle § 330.401 as "Restricted Positions." This section identifies the restricted positions covered in 5 U.S.C. 3310. Definitions of these positions are located in OPM's Delegated Examining Operations Handbook at <http://www.opm.gov/deu>.

We are proposing to retitle § 330.402 as "Exceptions to Restriction." Section 330.402 identifies the types of appointments an agency may use when filling a restricted position with a nonpreference eligible. Agencies will be required to obtain OPM's approval prior to making a selection if the type of appointment is not identified in § 330.402.

We are proposing to retitle § 330.403 as "Positions Brought into the Competitive Service." This section includes a staffing procedure formerly described in the FPM. Under this

section, agencies will be able to convert the appointment of a nonpreference eligible whose restricted position was brought into the competitive service.

Subpart E

We are proposing to revise this subpart for readability, to delete a reference to a part-time direct hire program that no longer exists, and to renumber the sections accordingly.

Subparts F and G

Since the 1940s, and in addition to the statutory RPL, the Federal Government has had placement assistance programs to help its permanent workforce transition to other positions when employees have been adversely affected by reorganizations, reshaping, or contracting-out of work. These programs support both the Government as a whole and specific agency missions by preserving the investment in high-quality, well-trained, experienced employees.

In 1994, Congress directed OPM to study competitive service placement programs to determine a better Governmentwide approach than the centralized, list-based programs in use at the time. OPM developed CTAP and ICTAP in 1995 in conjunction with agencies, labor organizations, Federal Executive Boards, employees, and other stakeholders.

The CTAP (which applies in the employee's current agency) and the ICTAP (which applies to agencies other than the employee's current or last agency) established under subparts F and G, respectively, provide selection priority to employees displaced from their jobs through no fault of their own. Under CTAP and ICTAP, instead of the centralized listings that were used in the past, eligible employees apply directly for agency vacancies and receive selection priority only if they are determined to be well-qualified for the position under the agency's job-related evaluation criteria.

Throughout subparts F and G, we are proposing to delete duplication and outdated references, to incorporate longstanding OPM policies and guidance, to clarify the material by using plain language, and to reorganize the subparts for ease of use. The proposed revisions clarify the difference between an employee eligible to apply under CTAP and ICTAP versus an employee eligible to receive selection priority under these plans. The proposed revision also clarifies that excepted service appointments are exempt from CTAP and ICTAP selection priority, which is limited to competitive service appointments. With this in

mind, we are proposing to revise the definition of *agency* in § 330.101 to include entities with positions in the competitive service by statute or Executive order, which is not clear under the current definitions in subparts F and G.

We are also proposing to replace the term "directed reassignment" with "directed geographic relocation" in both subparts. This change clarifies that declination of any management-directed involuntary movement to a different commuting area (e.g., reassignment or change in duty station) establishes eligibility for CTAP and ICTAP selection priority.

Through these proposed regulations, we are also inviting comments concerning the exceptions to CTAP and ICTAP selection priority. Currently, there are numerous exceptions to applying CTAP and ICTAP selection priority under subparts F and G, respectively. We are interested in stakeholders' views on the number and types of exceptions as well as additional necessary for efficient and effective use of agency workforces. When replying to this invitation, please indicate the rationale behind proposing to delete or add specific exceptions.

Subpart F

The following are specific proposed revisions within subpart F:

Section 330.601(c) is revised to delete the specific reference to the Department of Defense exemption from certain portions of the CTAP regulations. The revision also provides the same flexibility for agencies to develop their own internal placement assistance programs as is available under the RPL regulations in subpart B.

Section 330.602 is revised to delete definitions that have been consolidated in the proposed subpart A and to add definitions for *CTAP eligible* and *CTAP selection priority candidate* to clarify the difference between these two terms. The definition of *Displaced* is revised to add a provision that the employee must not have declined a RIF offer under part 351, subpart G, to a position with the same type of work schedule and a representative rate at least as high as that of the position from which the employee will be separated. Adding this provision makes CTAP eligibility consistent with RPL eligibility criteria. In addition, the proposed regulations move the criteria for agency definitions of "well-qualified" from the definitions section to a separate section, § 330.606. Each agency is responsible for defining "well-qualified" for the purposes of its CTAP, and the revised § 330.606

prescribes the minimum requirements for agency definitions. Because “well-qualified” is an agency-defined term, the minimum criteria for the agency definition are more appropriate in the regulatory text. We have also deleted from the well-qualified criteria the statement, “Selective and quality ranking factors cannot be so restrictive that they run counter to the goal of placing displaced employees” as unnecessary. Selective factors and quality ranking factors must be developed through job analysis and be job-related in accordance with 5 CFR part 300. OPM provides guidance on developing these factors in the “Delegated Examining Operations Handbook.”

Section 330.606(c) adds a provision that an agency may include the results of a scored structured interview process to determine whether a CTAP eligible is well-qualified when such a process is used to assess the qualified candidates being considered for the vacancy. Many agencies now use a scored interview as an assessment tool in addition to the initial evaluation of qualified candidates’ applications against job-related criteria for rating and ranking purposes. Adding this provision clarifies that the results of this tool can be used in determining whether candidates are well-qualified. This provision is also proposed for addition to § 330.704(c).

Section 330.607(b) clarifies the provision in the current regulations at § 330.606(a) concerning procuring temporary help services. The clarification states that agencies must make a determination under part 300, subpart E, that CTAP eligibles are not available before procuring temporary help services under that subpart. This provision is also proposed for addition to § 330.706(b).

Section 330.608(a) adds an option for agencies to provide the required CTAP orientation session in person or through the agency’s automated training system or Intranet.

Section 330.609 moves the list of exceptions to CTAP selection priority from current § 330.606(d) to a separate section for easier reference.

Section 330.609(y) (current paragraph (26) of § 330.606) clarifies an unintentional difference between CTAP and ICTAP under subpart G which allows program exceptions for extensions of time-limited promotions and appointments, including OPM-approved extensions. We are clarifying that OPM-approved exceptions are covered under subpart G.

Section 330.609(dd) adds an exception to CTAP selection priority to

include placements made under 5 CFR part 412, Senior Executive Service merit staffing procedures for developmental programs. This exception is also added at § 330.707(v).

Section 330.611(a) clarifies that, to establish selection priority, a CTAP eligible must submit all required materials and eligibility documentation within the timeframe established by the agency. The wording of the current regulation in § 330.605(a)(5) implies that proof of eligibility does not have to be submitted within agency-established timeframes, which was not the intent. This clarification is also proposed for addition to § 330.709(a).

Subpart G

In addition to the proposed revisions discussed under “Subparts F and G” above, the following are specific proposed revisions within subpart G.

Section 330.701 deletes outdated material and clarifies that ICTAP selection priority applies only in agencies other than the employee’s current or former agency. The CTAP and RPL programs provide selection and placement priority, respectively, in the employee’s current or former agency.

Section 330.702 is revised to delete definitions that have been consolidated in the proposed subpart A and to revise the definition of *Displaced*. Specifically, the proposed revision deletes “A former career or career-conditional competitive service employee, in tenure group 1 or 2, at grades GS–15 level or equivalent or below, who received a RIF separation notice, and who retired on the effective date of the RIF or under discontinued service retirement option.” from the current definition in § 330.703(b)(5). This provision had the unintentional result of providing ICTAP selection priority to employees who left the employing agency before the agency effected the RIF action. We are proposing to delete this provision to make ICTAP selection priority consistent with the other placement assistance programs covered under this part that provide selection priority to employees whose agency has taken an action. Also, employees may receive an offer of continued employment during a RIF notice period.

The revised definition of *Displaced* in § 330.702 also adds a provision that the employee must not have declined a RIF offer under part 351, subpart G, to a position with the same type of work schedule and a representative rate at least as high as that of the position from which the employee was, or will be, separated. Adding this provision makes ICTAP eligibility consistent with RPL eligibility criteria.

We added definitions for *ICTAP eligible* and *ICTAP selection priority candidate* to clarify the difference between these two terms.

As discussed under subpart F, we moved the criteria for agency definitions of “well-qualified” from the definitions section to a separate section, § 330.704, because each agency is responsible for defining “well-qualified” for the purposes of its ICTAP, and the revised § 330.704 prescribes the minimum requirements for agency definitions. Because “well-qualified” is an agency-defined term, the minimum criteria for the agency definition are more appropriate in the regulatory text.

Section 330.704(c) adds a provision that an agency may include the results of a scored structured interview process to determine whether an ICTAP eligible is well-qualified when such a process is used to assess the qualified candidates being considered for the vacancy. As discussed under subpart F above, many agencies now use a scored interview as an assessment tool in addition to the initial evaluation of qualified candidates’ applications against job-related criteria for rating and ranking purposes. Adding this provision clarifies that the results of this tool can be used in determining whether candidates are well-qualified. This provision is also proposed for addition to § 330.606(c).

Section 330.705(d)(2) adds provisions for an agency to make additional selections or reissue selection certificates without re-determining whether potential ICTAP eligibles are available within the local commuting area. Under the current regulations, an agency must determine if ICTAP eligibles are available whenever it makes a selection that is not an authorized exception to ICTAP. The proposed § 330.705(d)(2) allows agencies to make additional selections or reissue a selection certificate from an applicant pool previously established by a vacancy announcement under which ICTAP eligibles had an opportunity to apply.

Section 330.705(f) adds a provision that an agency may deny an ICTAP eligible future selection priority for a position previously obtained through ICTAP if the eligible was terminated or removed for cause (e.g., for performance under 5 CFR part 432 or under adverse actions procedures under 5 CFR part 752) from that position. This could occur if the ICTAP eligible was placed in a temporary position.

Section 330.707 moves the list of exceptions to ICTAP selection priority from current § 330.705(b) to a separate section for easier reference. As

discussed earlier under subpart A, we are also proposing to revise and move the information concerning agency requirements for reporting vacancies to OPM from the current regulation at § 330.707 to subpart A.

Section 330.707(v) adds an exception to ICTAP to include placements made under 5 CFR part 412, Senior Executive Service merit staffing procedures for developmental programs. This exception is also added at § 330.609(dd).

Section 330.708 clarifies when ICTAP eligibility expires, depending on the basis for the eligibility. This clarification addresses inconsistencies in the interpretation of exactly when ICTAP eligibility expires. For example, some agencies provide selection priority for the duration of the selection process, meaning until a selection is made, even though the 1-year period of ICTAP eligibility may have expired during that process. OPM's intent was always to have a definitive eligibility cut-off date, consistent with the other placement assistance programs covered by this part. Agencies retain the option to select a displaced employee whose ICTAP eligibility has expired under the reinstatement authority provided by 5 CFR 315.401.

We also propose to add a provision in § 330.708(e) that OPM may extend the eligibility period when a displaced employee does not receive timely information on ICTAP eligibility or another administrative or procedural error occurs that adversely impacts the eligibility period. The current regulations do not specifically provide OPM with this authority. Adding this provision will avoid having to consider such an extension through a regulatory variation under Civil Service Rule 5.1 (5 CFR 5.1).

Section 330.709(a) clarifies that, to establish selection priority, an ICTAP eligible must submit all required materials and eligibility documentation within the timeframe established by the agency. The wording of the current regulation in § 330.704(a)(5) implies that proof of eligibility does not have to be submitted within agency established timeframes, which was not the intent. This clarification is also proposed for addition to § 330.611(a).

Subparts H and I remain reserved.

Subpart J is unchanged.

Subparts K and L

We are proposing to remove these subparts, which provided special selection priority to certain displaced employees of the District of Columbia Department of Corrections and Panama Canal Zone, respectively. As explained

above, the statutory authority for these programs has expired.

For the convenience of the reader, the proposed part 330 is published in its entirety.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects

5 CFR Parts 302, 335, and 337

Government employees.

5 CFR Part 330

Armed forces reserves, District of Columbia, Government employees.

5 CFR Part 410

Education, Government employees.

Office of Personnel Management.

Michael W. Hager,

Acting Director.

Accordingly, OPM proposes to amend 5 CFR parts 302, 330, 335, 337, and 410 as follows:

PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

1. The authority citation for part 302 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 8151, E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 *et seq.*

§ 302.106 [Amended]

2. In § 302.106, remove the phrase “§ 330.707 of subpart G” and add in its place the phrase, “part 330, subpart A”.

3. Revise part 330 to read as follows:

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

Subpart A—Filling Vacancies in the Competitive Service

Sec.

330.101 Definitions.

330.102 Methods of filling vacancies.

330.103 Requirement to notify OPM.

330.104 Required items for a vacancy announcement.

330.105 Instructions on how to add a vacancy announcement to USAJOBS.

330.106 Funding.

Subpart B—Reemployment Priority List (RPL)

330.201 Purpose.

330.202 Definitions.

330.203 RPL eligibility.

330.204 Agency requirements and responsibilities.

330.205 Agency RPL applications.

330.206 RPL registration timeframe and positions.

330.207 Registration area.

330.208 Duration of RPL registration.

330.209 Removal from an RPL.

330.210 Applying RPL placement priority.

330.211 Exceptions to RPL placement priority.

330.212 Agency flexibilities.

330.213 Selection from an RPL.

330.214 Appeal rights.

Subpart C—[Reserved]

Subpart D—Positions Restricted to Preference Eligibles

330.401 Restricted positions.

330.402 Exceptions to restriction.

330.403 Positions brought into the competitive service.

330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.

330.405 Agency placement assistance.

330.406 OPM placement assistance.

330.407 Eligibility for the Interagency Career Transition Assistance Plan.

Subpart E—Restrictions to Protect Competitive Principles

330.501 Purpose.

330.502 General restriction on movement after competitive appointment.

330.503 Ensuring agency compliance with the principles of open competition.

330.504 Exception to the general restriction.

Subpart F—Agency Career Transition Assistance Plans (CTAP) for Local Surplus and Displaced Employees

330.601 Purpose.

330.602 Definitions.

330.603 Requirements for agency CTAPs.

330.604 Requirements for agency CTAP selection priority.

330.605 Agency responsibilities for well-qualified decisions.

330.606 Minimum criteria for agency well-qualified definition.

330.607 Applying CTAP selection priority.

330.608 Other agency CTAP responsibilities.

330.609 Exceptions to CTAP selection priority.

330.610 CTAP eligibility period.

330.611 Establishing CTAP selection priority.

330.612 Proof of eligibility.

330.613 OPM's role in CTAP.

Subpart G—Interagency Career Transition Assistance Plan (ICTAP) for Displaced Employees

330.701 Purpose.

330.702 Definitions.

330.703 Agency responsibilities for well-qualified decisions.

330.704 Minimum criteria for agency well-qualified definition.

330.705 Applying ICTAP selection priority.

330.706 Other agency ICTAP responsibilities.

- 330.707 Exceptions to ICTAP selection priority.
 330.708 ICTAP eligibility period.
 330.709 Establishing ICTAP selection priority.
 330.710 Proof of eligibility.
 330.711 OPM's role in ICTAP.

Subparts H–I—[Reserved]**Subpart J—Prohibited Practices**

- 330.1001 Withdrawal from competition.

Subparts K–L—[Reserved]

Authority: 5 U.S.C. 105, 1104, 1302, 3301, 3302, 3304, and 3330; E.O. 10577, 3 CFR, 1954–58 Comp., p. 218.

Section 330.102 also issued under 5 U.S.C. 3327. Subpart B also issued under 5 U.S.C. 3315 and 8151. Section 330.401 also issued under 5 U.S.C. 3310. Subpart G also issued under 5 U.S.C. 8337(h) and 8456(b).

Subpart A—Filling Vacancies in the Competitive Service**§ 330.101 Definitions.**

In this part:

Agency means:

- (1) The executive departments listed at 5 U.S.C. 101;
- (2) The military departments listed at 5 U.S.C. 102;
- (3) Government owned corporations in the executive branch as described at 5 U.S.C. 103;
- (4) Independent establishments in the executive branch as described at 5 U.S.C. 104, including the Nuclear Regulatory Commission; and
- (5) Government Printing Office.

Component means the first major subdivision of an agency, separately organized, and clearly distinguished in work function and operation from other agency subdivisions, e.g., the Internal Revenue Service under the Department of the Treasury or the National Park Service under the Department of the Interior.

Local commuting area is defined in part 351 of this chapter.

Permanent competitive service workforce and *permanent competitive service employees* mean agency employees in career and career conditional appointments, tenure groups I and II, respectively.

Position change is defined in part 210 of this chapter.

Rating of record is defined in part 351 of this chapter.

Representative rate is defined in part 351 of this chapter.

Tenure groups are defined in part 351 of this chapter.

In this subpart:

Vacancy means a vacant position in the competitive service, regardless of whether the position will be filled by permanent or time-limited appointment,

for which an agency is seeking applications from outside its current permanent competitive service workforce.

§ 330.102 Methods of filling vacancies.

An agency may fill a vacancy in the competitive service by any method authorized in this chapter, including competitive appointment from a list of eligibles, noncompetitive appointment under special authority, reinstatement, transfer, reassignment, change to lower grade, or promotion. The agency must exercise discretion in each personnel action solely on the basis of merit and fitness, without regard to political or religious affiliation, marital status, or race, and veterans' preference entitlements.

§ 330.103 Requirement to notify OPM.

An agency must notify OPM promptly when:

- (a) Filling a vacancy for more than 120 days from outside the agency's current permanent competitive service workforce, as required by the Interagency Career Transition Assistance Plan, subpart G of this part, unless the action to be taken is listed in subpart G as an exception to that subpart;
- (b) Filling any vacancy under the agency's merit promotion procedures when the agency will accept applications from outside its permanent competitive service workforce; and
- (c) Filling a vacancy by open competitive examination, including direct hire procedures under part 337 of this chapter, or in the Senior Executive Service, as required by 5 U.S.C. 3327.

§ 330.104 Required items for a vacancy announcement.

- (a) The vacancy announcement must contain the following information:
- (1) Name of issuing agency;
 - (2) Announcement number;
 - (3) Position title, series, pay plan, and grade (or pay rate);
 - (4) Duty location;
 - (5) Number of vacancies;
 - (6) Opening date and application deadline (closing date), plus any other information dealing with how application receipt will be controlled, such as the use of early cut-off dates, received, or postmarked date;
 - (7) Qualification requirements, including knowledge, skills, and abilities or competencies;
 - (8) Starting pay;
 - (9) Brief description of duties;
 - (10) Basis of rating;
 - (11) What to file;
 - (12) Instructions on how to apply;
 - (13) Information on how to claim veterans' preference, if applicable;

(14) Definition of "well-qualified," as required by subparts F and G of this part;

(15) Information on how candidates eligible under subparts F and G of this part may apply, including required proof of eligibility;

(16) Contact person or contact point;

(17) Equal employment opportunity statement (OPM recommends using the following statement: "The United States Government does not discriminate in employment on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, marital status, disability, age, membership in an employee organization, or other non-merit factor"); and

(18) Reasonable accommodation statement.

(b)(1) An agency may use wording of its choice in its statement that conveys the availability of reasonable accommodation required by § 330.104(a)(18). In its reasonable accommodation statement, an agency may not list types of medical conditions or impairments appropriate for accommodation.

(2) OPM recommends using the following statement:

"This agency provides reasonable accommodation to applicants with disabilities where appropriate. If you need a reasonable accommodation for any part of the application and hiring process, please notify the agency. Determinations on requests for reasonable accommodation will be made on a case-by-case basis."

§ 330.105 Instructions on how to add a vacancy announcement to USAJOBS.

An agency can find the instructions to add a vacancy announcement to USAJOBS on OPM's Web site at <http://www.usajobs.opm.gov>. An electronic file of the complete vacancy announcement must be included.

§ 330.106 Funding.

Each year, OPM will charge a fee for the agency's share of the cost of providing employment information to the public and to Federal employees as authorized by 5 U.S.C. 3330(f).

Subpart B—Reemployment Priority List (RPL)**§ 330.201 Purpose.**

(a) The Reemployment Priority List (RPL) is a required component of agency placement programs to assist its current and former competitive service employees who will be or were separated by reduction in force (RIF) under part 351 of this chapter, or who have recovered from a compensable work-related injury after more than 1

year, as required by part 353 of this chapter. In filling vacancies, an agency must give its RPL registrants placement priority for most competitive service vacancies before hiring someone from outside its own permanent competitive service workforce. An agency may choose to consider RPL placement priority candidates before other agency permanent competitive service employees under its Career Transition Assistance Plan (CTAP) established under subpart F of this part, after fulfilling agency obligations to its CTAP selection priority candidates.

(b) Agencies must use an RPL to give placement priority to their:

(1) Current competitive service employees with a specific notice of RIF separation or a Certification of Expected Separation issued under part 351 of this chapter;

(2) Former competitive service employees separated by RIF under part 351 of this chapter; and

(3) Former competitive service employees fully recovered from a compensable injury (as defined in part 353 of this chapter) after more than 1 year.

(c) All agency components within the local commuting area use a single RPL and are responsible for giving placement priority to the agency's RPL registrants.

(d) With prior OPM approval, an agency may operate an alternate placement program which satisfies the basic requirements of this subpart, including veterans' preference, as an exception to the RPL regulations under this subpart. This provision is limited to reemployment priority because of RIF separation and allows agencies to adopt different placement strategies that are effective for their programs and satisfy employee entitlements to reemployment priority.

§ 330.202 Definitions.

In this subpart:

Competitive area is defined in part 351 of this chapter.

Competitive service appointment includes new appointments, reinstatements, reemployment, and transfers as defined in part 210 of this chapter, and conversions as defined in OPM's "Guide to Processing Personnel Actions."

Injury, in relation to the RPL, is defined in part 353 of this chapter.

Overseas is defined in part 210 of this chapter.

Qualified refers to an RPL registrant who:

(1) Meets OPM-established or -approved qualification standards and requirements for the position, including minimum educational requirements,

and agency-established selective factors (as this term is used in OPM's "Operating Manual: Qualification Standards for General Schedule Positions");

(2) Will not cause an undue interruption that would prevent the completion of required work by the registrant 90 days after the registrant is placed in the position (This 90-day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands.);

(3) Is physically qualified, with or without reasonable accommodation, to perform the duties of the position;

(4) Meets any special OPM-approved qualifying conditions for the position; and

(5) Meets any other applicable requirements for competitive service appointment.

RPL eligible means a current or former employee of the agency who meets the conditions in either paragraph (a) or (b) of § 330.203. As used in this subpart, "RPL eligible" and "eligible" are synonymous.

RPL placement priority candidate means an RPL registrant who is qualified and available for a specific agency vacancy.

RPL registrant means an RPL eligible who submitted a timely RPL application and who is registered on the agency's RPL. As used in this subpart, "RPL registrant" and "registrant" are synonymous.

Vacancy means any vacant position to be filled by a competitive service permanent or time-limited appointment.

§ 330.203 RPL eligibility.

An employee must meet the conditions in either paragraph (a) or (b) of this section to be an RPL eligible.

(a) For eligibility based on part 351 of this chapter, the employee:

(1) Must be serving in an appointment in the competitive service in tenure group I or II;

(2) Must have received either a specific notice of separation or a Certification of Expected Separation under part 351 of this chapter that has not been cancelled, rescinded, or modified so that the employee is no longer under notice of separation;

(3) Must have received a rating of record of at least fully successful (Level 3) or equivalent as the most recent performance rating of record; and

(4) Must not have declined an offer under part 351, subpart G, of this chapter of a position with the same type of work schedule and with a representative rate at least as high as

that of the position from which the employee will be separated.

(b) For eligibility based on part 353 of this chapter, the employee or former employee:

(1) Must be serving in, or separated from, an appointment in the competitive service in tenure group I or II;

(2) Must either have accepted a position at a lower grade or pay level in lieu of separation or have been separated because of a compensable injury or disability (For the purposes of this subpart, any reference to the "position from which or will be separated" includes the position from which the RPL eligible accepted the lower graded or pay level position under this paragraph.);

(3) Must have fully recovered more than 1 year after compensation began; and

(4) Must have received notification from the Office of Workers Compensation Programs, Department of Labor, that injury compensation benefits have ceased or will cease.

§ 330.204 Agency requirements and responsibilities.

(a) An agency must establish policies and maintain an RPL for each local commuting area in which the agency has RPL eligibles.

(b) An agency must give each RPL eligible information about its RPL program, including Merit Systems Protection Board appeal rights under § 330.214, when:

(1) The agency issues a RIF separation notice or a Certification of Expected Separation under part 351 of this chapter; or

(2) The employee accepts a position at a lower grade or pay level or is separated from the agency because of a compensable work-related injury.

(c) An agency must register an RPL eligible on the appropriate RPL no later than 10 calendar days after receiving the eligible's written application.

(d) Agencies must include in their RPL policies established under this subpart how they will assist RPL eligibles who:

(1) Request an RPL application;

(2) Request help in completing the RPL application; and

(3) Request help in identifying and listing on the RPL application those positions within the agency for which they are qualified and interested.

(e) An agency must give RPL registrants placement priority for personnel actions as described in § 330.210.

(f) An agency must not remove an individual from the RPL under § 330.209(a)(1), (b)(1), or (b)(2) without

evidence (such as a Postal Service return receipt signed by addressee only) showing that the offer, inquiry, or scheduled interview was made in writing. The written offer, inquiry, or scheduled interview must clearly state that failure to respond will result in removal from the RPL for positions at that grade or pay level and for positions at lower grades and pay levels for which registered.

§ 330.205 Agency RPL applications.

Agencies may develop their own application format which must, at a minimum:

(a) Allow an RPL eligible to register for positions at the same representative rate and work schedule (full-time, part-time, seasonal, or intermittent) as the position from which the RPL eligible was, or will be, separated; and

(b) Allow an RPL eligible to specify the conditions under which he or she will accept a position, including grades or pay levels, appointment type (permanent or time-limited), occupations (e.g., position classification series or career groups), and minimum number of hours of work per week, as applicable.

§ 330.206 RPL registration timeframe and positions.

(a) To register, an RPL eligible must:

(1) Meet the eligibility conditions under § 330.203(a) or (b);

(2) Complete an RPL application prescribed by the current or former agency and keep the agency informed of any significant changes in the information provided; and

(3) Submit the RPL application on or before the RIF separation date or, if an RPL eligible under § 330.203(b), within 30 calendar days after the:

(i) Date injury compensation benefits cease; or

(ii) Date the Department of Labor denies an appeal for continuation of injury compensation benefits.

(b) RPL eligibles may register and receive placement priority for positions for which they are qualified and that:

(1) Have a representative rate no higher than the position from which they were, or will be, separated unless the eligible was demoted as a tenure group I or II employee in a previous RIF. If the eligible was so demoted, the eligible can register for positions with a representative rate up to the representative rate of the position held on a permanent appointment immediately before the RIF demotion was effective;

(2) Have no greater promotion potential than the position from which they were, or will be, separated; and

(3) Have the same type of work schedule as the position from which they were, or will be, separated.

§ 330.207 Registration area.

(a) Except as provided in paragraphs (b) through (e) of this section, RPL registration is limited to the local commuting area in which the eligible was, or will be, separated.

(b) If the agency has, or will have, no competitive service positions remaining in the local commuting area from which the RPL eligible will be separated under part 351 of this chapter, the agency may designate a different local commuting area where there are continuing positions for the RPL eligible to exercise placement priority. The agency has sole discretion to offer this option and over which local commuting area to designate.

(c) If the RPL eligible agreed to transfer with his or her function under part 351 of this chapter but will be separated by RIF from the gaining competitive area, registration is limited to the RPL covering the gaining competitive area's local commuting area.

(d) If eligible under § 330.203(b), registration is initially limited to the RPL covering the local commuting area of the position from which the employee was separated. Agencies must establish a fair and consistent policy which permits RPL eligibles to expand their registration to available local commuting areas mutually acceptable to the RPL eligible and the agency, up to agency-wide as required by 5 U.S.C. 8151. In lieu of expanded registration, the agency policy may provide for the RPL eligible to elect to receive placement priority for the next best available position in the former local commuting area.

(e) If the RPL eligible was, or will be, separated from an overseas position (see part 301 of this chapter), RPL registration is limited to the local commuting area in which the eligible was, or will be, separated, unless:

(1) The agency approves a written request by the RPL eligible for registration in the local commuting area from which employed for overseas service, or in another area within the United States that is mutually acceptable to the eligible and the agency; or

(2) The agency has a formal program for rotating employees between overseas areas and the United States, and the RPL eligible's preceding and prospective overseas service would exceed the maximum duration of an overseas duty tour in the rotation program. In this case, the eligible may register for a local

commuting area within the United States that is mutually acceptable to the eligible and the agency.

§ 330.208 Duration of RPL registration.

(a) RPL registration expires 2 years from the date of separation under part 351 of this chapter, or 2 years from the date the agency registers the RPL eligible under § 330.206(a)(3)(i) or (ii), unless the registrant is removed from the RPL for a reason specified in § 330.209.

(b) OPM may extend the registration period when an RPL eligible does not receive a full 2 years of placement priority, for example, because of administrative or procedural error.

§ 330.209 Removal from an RPL.

(a) An RPL registrant is removed from the RPL at all registered grades or pay levels if the registrant:

(1) Declines or fails to reply to the agency's inquiry about an RPL offer of a career, career-conditional, or excepted appointment without time limit for a position having the same type of work schedule and a representative rate at least as high as the position from which the registrant was, or will be, separated;

(2) Receives a written cancellation, rescission, or modification to:

(i) The RIF separation notice or Certification of Expected Separation so that the employee no longer meets the conditions for RPL eligibility in § 330.203(a); or

(ii) The notification of cessation of injury compensation benefits so that injury compensation benefits continue;

(3) Separates from the agency for any other reason (such as retirement, resignation, or transfer) before the RIF separation effective date. Registration continues if the RPL registrant retires on or after the RIF separation effective date. This paragraph does not apply to an RPL registrant under § 330.203(b);

(4) Requests the agency to remove his or her name from the RPL;

(5) Is placed in a position without time limit at any grade or pay level within the agency;

(6) Is placed in a position under a career, career-conditional, or excepted appointment without time limit at any grade or pay level in any agency; or

(7) Leaves the area covered by an overseas RPL (see 5 CFR part 301) or is ineligible for continued overseas employment because of previous service or residence.

(b) An RPL registrant is removed from the RPL at registered grades or pay levels with a representative rate at and below the representative rate of a position offered by the agency if the offered position is below the last grade or pay level held and the registrant:

(1) Declines or fails to reply to the agency's inquiry about an RPL offer of a career, career-conditional, or excepted appointment without time limit for a position meeting the acceptable conditions shown on the RPL registrant's application; or

(2) Declines or fails to appear for a scheduled interview.

(c) An RPL registrant removed from the RPL under paragraph (b) of this section at lower grade(s) or pay level(s) than the last grade or pay level held remains on the RPL for positions with a representative rate higher than the offered position up to the grade or pay level last held, unless registration expires or otherwise terminates.

(d) Declination of time-limited employment does not affect RPL eligibility.

§ 330.210 Applying RPL placement priority.

(a) RPL placement priority applies to:

(1) Permanent and time-limited positions to be filled by competitive service appointment; and

(2) The grade or pay level at which the agency fills the position. If a position is available at multiple grades or pay levels, placement priority applies at the grade or pay level at which the position is ultimately filled.

(b) An agency must not effect a permanent or time-limited competitive service appointment of another individual if there is an RPL placement priority candidate registered for the vacancy, unless the action is listed as an exception in § 330.211.

(c) An agency must document that there are no RPL placement priority candidates for the vacancy when requesting a competitive certificate of eligibles under part 332 of this chapter. Similarly, an agency must offer the vacancy to any RPL placement priority candidate(s) before effecting an appointment under a noncompetitive appointing authority, such as under part 315 of this chapter.

(d) Once an agency has ensured there are no RPL placement priority candidates for a particular vacancy and documents in writing an employment offer that is accepted by another individual, the agency may fulfill that employment offer to that individual.

§ 330.211 Exceptions to RPL placement priority.

An agency may effect the following personnel actions as exceptions to § 330.210:

(a) Fill a vacancy with an employee of the agency's current permanent competitive service workforce through detail or position change, subject to the requirements of subpart F of this part;

(b) Appoint a 10-point preference eligible through an appropriate appointing authority;

(c) Appoint a current or former employee exercising restoration rights under part 353 of this chapter based on return from military service or recovery from a compensable injury or disability within 1 year;

(d) Appoint a current or former employee exercising other statutory or regulatory reemployment rights;

(e) Fill a specific position when all RPL placement priority candidates decline an offer of the position or fail to respond to a written agency inquiry about their availability;

(f) Convert an employee serving under an appointment that provides noncompetitive conversion eligibility to a competitive service appointment, including from:

(1) A Veterans Recruitment Appointment under part 307 of this chapter;

(2) An appointment under 5 U.S.C. 3112 and part 316 of this chapter of a veteran with a compensable service-connected disability of 30 percent or more; and

(3) An excepted service appointment under part 213 of this chapter, such as for persons with disabilities or in the Presidential Management Fellow Program, the Student Career Experience Program, or the Federal Career Intern Program;

(g) Reappoint without a break in service to the same position currently held by an employee serving under a temporary appointment of 1 year or less (not to another temporary appointment not to exceed 1 year or less);

(h) Extend an employee's temporary or term appointment up to the maximum permitted by the appointment authority or as authorized by OPM; or

(i) Appoint an individual under an excepted service appointing authority.

§ 330.212 Agency flexibilities.

An agency may provide the following flexibilities within its written RPL policies established under this subpart:

(a) Allow RPL eligibles to register only for certain sub-areas of a local commuting area when the agency has components dispersed throughout a large commuting area. However, an agency cannot deny registration throughout the local commuting area if the RPL eligible requests it.

(b) Suspend an RPL registration for all positions, permanent and time-limited, if the agency is unable, through documented written means, to contact the RPL registrant; however, the agency must reactivate an RPL registration

when the registrant submits an updated application or otherwise requests reactivation in writing. Registration suspension and reactivation do not change the expiration date of the original registration period set in § 330.208.

(c)(1) Modify the OPM or OPM-approved qualification standard used to determine if an RPL eligible is qualified for a position, provided the:

(i) Exception is applied consistently and equitably in filling a position;

(ii) RPL registrant meets any minimum educational requirements for the position; and

(iii) RPL registrant has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position, as determined by the agency.

(2) Any modification to the qualification standard under paragraph (c)(1) of this section does not authorize a waiver of the selection order required under § 330.210.

(d) Permit RPL eligibles to register for positions with work schedules different from the work schedule of the position from which they were, or will be, separated.

(e) Permit RPL registrants to update their qualifications or conditions for accepting positions during the RPL registration period. If adopted, the agency must update the RPL registrant's registration information within 10 calendar days of receipt of the registrant's written request. The updated registration information would apply only to those vacancies becoming available after the agency updates the RPL registrant's registration.

§ 330.213 Selection from an RPL.

(a) *Methods.* An agency must adopt one of the selection methods in paragraphs (b), (c), or (d) of this section for a single RPL. The agency may adopt the same method for each RPL it establishes or may vary the method by location, but it must adopt a written policy for each RPL it establishes and maintains. While an agency may not vary the method used for an individual vacancy, it may at any time change the selection method for all positions covered by a single RPL.

(b) *Retention standing order.* For each vacancy to be filled, the agency places qualified RPL placement priority candidates in tenure group and subgroup order in accordance with part 351 of this chapter. In making a selection, an agency may not pass over a candidate in tenure group I to select from tenure group II and, within a tenure group, may not pass over a candidate in a higher subgroup to select

from a lower subgroup. Within a subgroup, an agency may select any candidate without regard to order of retention standing.

(c)(1) *Numerical scoring.* For each vacancy to be filled, the agency rates RPL placement priority candidates according to their job experience and education. The agency must use job-related evaluation criteria for the position to be filled that is capable of distinguishing differences in qualifications measured and must apply the criteria in a fair and consistent manner. The agency assigns the candidates a numerical score of at least 70 on a scale of 100, based on the evaluation criteria developed under this paragraph. The agency must grant 5 additional points to veterans' preference eligibles under 5 U.S.C. 2108(3)(A) and (B), and 10 additional points to veterans' preference eligibles under 5 U.S.C. 2108(3)(C) through (G).

(2) RPL placement priority candidates with an eligible numerical score are ranked in the following order:

(i) Veterans' preference eligibles having a compensable service-connected disability of 10 percent or more in the order of their augmented ratings, unless the position to be filled is a professional or scientific position at or above the GS-9 level, or equivalent; and

(ii) All other candidates in the order of their augmented ratings. At each score, candidates entitled to 10 point veterans' preference will be entered ahead of all other candidates, and those entitled to 5 point veterans' preference will be entered ahead of those candidates not entitled to veterans' preference.

(3) The agency must make its selection from among the highest three candidates available and may not pass over a veterans' preference eligible to select a nonpreference eligible.

(d) *Alternative rating and selection.* (1) For each vacancy to be filled, the agency may use alternative rating (also called category rating) as described in 5 U.S.C. 3319 and part 337 of this chapter. The agency assesses RPL placement priority candidates against job-related evaluation criteria and then places them into two or more pre-defined quality categories.

(2) To use this method, the agency must:

(i) Establish a system for evaluating RPL placement priority candidates that provides for two or more quality categories;

(ii) Define each quality category through job analysis conducted in accordance with the "Uniform Guidelines on Employee Selection

Procedures" at 29 CFR part 1607 and part 300 of this chapter. Each quality category must have a clear definition that distinguishes it from other quality categories; and

(iii) Place candidates into the appropriate quality categories based upon their job-related competencies, knowledge, skills, and abilities.

(3) Veterans' preference must be applied as prescribed in 5 U.S.C. 3319(b) and (c)(2). Veterans' preference points as prescribed in paragraph (c)(1) of this section are not applied under this method.

(4) The agency must make its selection from the highest quality category.

(e) *Application-based procedure.* (1) An agency may adopt an application-based procedure which allows RPL registrants to apply directly for RPL placement priority under an advertised vacancy announcement. Before using this procedure, the agency must establish policies and procedures for:

(i) Informing RPL registrants of available vacancies;

(ii) Informing RPL registrants of acceptable application formats, including how to permanently change initial registration information and how to apply changes only to the specific vacancy announcement for which the application is made;

(iii) Determining the method under which the RPL registrant will be rated and ranked (paragraph (b), (c), or (d) of this section); and

(iv) Informing each RPL registrant who applies under this method whether he or she was determined to be an RPL placement priority candidate and the outcome of the selection process, if the candidate was referred for selection.

(2) RPL registrants may not be removed from the RPL for failure to apply for a vacancy under this paragraph. Registration continues until it expires or the registrant is removed from the RPL under § 330.209.

§ 330.214 Appeal rights.

An RPL registrant who believes the agency violated his or her reemployment rights under this subpart by employing another person who otherwise could not have been appointed properly may appeal to the Merit Systems Protection Board under the Board's regulations.

Subpart C—[Reserved]

Subpart D—Positions Restricted to Preference Eligibles

§ 330.401 Restricted positions.

Under 5 U.S.C. 3310, competitive examinations for the positions of

custodian, elevator operator, guard, and messenger (referred to in this subpart as *restricted positions*) are restricted to preference eligibles as long as a preference eligible is available. For more information on these restricted positions, refer to the OPM Delegated Examining Operations Handbook.

§ 330.402 Exceptions to restriction.

(a) An agency may fill a restricted position with a nonpreference eligible under the following circumstances:

(1) By competitive examination when no preference eligible applies;

(2) By position change (promotion, demotion, or reassignment) to a position in the organizational entity (i.e., the part of an agency from which selections are normally made for promotion or reassignment to the position in question) in which the nonpreference eligible is employed;

(3) By reemployment in the agency where the nonpreference eligible was formerly employed when he or she is being appointed from the Reemployment Priority List under subpart B of this part;

(4) By reinstatement in the agency where the nonpreference eligible was formerly employed when he or she was last separated because of disability retirement; or

(5) By reappointment of certain temporary employees as provided for in part 316 of this chapter.

(b) Except as indicated in paragraph (a) of this section, OPM must authorize any other agency noncompetitive action (e.g., under an authority specified in part 315 of this chapter) to fill a restricted position with a nonpreference eligible.

§ 330.403 Positions brought into the competitive service.

An agency may convert the appointment of a nonpreference eligible whose restricted position was brought into the competitive service under part 316 of this chapter, and who meets the requirements for conversion under part 315 of this chapter, to career or career conditional appointment.

§ 330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.

An individual agency and OPM both have additional responsibilities when the agency decides, in accordance with the Office of Management and Budget (OMB) Circular A-76, to contract out the work of a preference eligible who holds a restricted position. These additional responsibilities as described in §§ 330.405 and 330.406 are applicable if a preference eligible holds a competitive service position that is:

(a) A restricted position as designated in 5 U.S.C. 3310 and § 330.401; and
 (b) In tenure group I or II, as defined in § 351.501(b)(1) and (2) of this chapter.

§ 330.405 Agency placement assistance.

An agency that separates a preference eligible from a restricted position by reduction in force under part 351 of this chapter because of a contracting out situation covered in § 330.404 must, consistent with § 330.603, advise the employee of the opportunity to participate in available career transition programs. The agency is also responsible for:

(a) Applying OMB's policy directives on the preference eligible's right of first refusal for positions that are contracted out to the private sector; and

(b) Cooperating with State units as designated or created under title I of the Workforce Investment Act of 1998 to retrain displaced preference eligibles for other continuing positions.

§ 330.406 OPM placement assistance.

OPM's responsibilities include:

(a) Assisting agencies in operating positive placement programs, such as the Career Transition Assistance Plan, which is authorized by subpart F of this part;

(b) Providing interagency selection priority through the Interagency Career Transition Assistance Plan, which is authorized by subpart G of this part; and

(c) Encouraging cooperation between local Federal activities to assist these displaced preference eligibles in applying for other Federal positions, including positions with the U.S. Postal Service.

§ 330.407 Eligibility for the Interagency Career Transition Assistance Plan.

(a) A preference eligible who is separated from a restricted position by reduction in force under part 351 of this chapter because of a contracting out situation covered in § 330.404 has interagency selection priority under the Interagency Career Transition Assistance Plan, which is authorized by subpart G of this part.

(b) A preference eligible covered by this subpart is eligible for the Interagency Career Transition Assistance Plan for 2 years following separation by reduction in force from a restricted position.

Subpart E—Restrictions to Protect Competitive Principles

§ 330.501 Purpose.

The restrictions in this subpart are designed to prevent circumvention of the open competitive examination system defined in Civil Service Rule 1.3

(5 CFR 1.3). These restrictions limit an appointee's immediate movement to another position after appointment from a competitive certificate of eligibles.

§ 330.502 General restriction on movement after competitive appointment.

(a) An agency must wait at least 90 days since an employee's latest nontemporary competitive appointment before the agency may take the following actions:

- (1) Promote an employee;
- (2) Transfer, reinstate, reassign, or detail an employee to a different position; or
- (3) Transfer, reinstate, reassign, or detail an employee to a different geographical area.

(b) Upon written request from an agency, OPM may waive the restriction against movement to a different geographical area when moving such an employee is consistent with open competition principles.

§ 330.503 Ensuring agency compliance with the principles of open competition.

OPM will review appointments made from competitive examinations and subsequent position changes to determine if agencies are complying with open competition principles. The fact that an agency waited 90 days to make the changes, as required under this subpart, is not an absolute protection. If OPM finds that an agency has not complied with these principles, either in an individual instance or on a program-wide basis, OPM will order an agency to correct the situation.

§ 330.504 Exception to the general restriction.

The restrictions in this subpart do not apply to a person who is eligible for a competitive appointment from a certificate of eligibles under part 332 of this chapter.

Subpart F—Agency Career Transition Assistance Plan (CTAP) for Local Surplus and Displaced Employees

§ 330.601 Purpose.

(a) Agency Career Transition Assistance Plans (CTAPs) provide intra-agency selection priority for its eligible surplus and displaced employees. This subpart sets forth minimum requirements for agency plans and establishes requirements for CTAP selection priority.

(b) Consistent with these regulations and at their discretion, agencies may supplement these requirements to expand career transition opportunities to their surplus and displaced workers.

(c) With prior OPM approval, an agency may operate an alternate

placement program which satisfies the basic requirements of this subpart as an exception to CTAP selection priority under this subpart. This provision allows agencies to adopt different placement strategies that are effective for their programs while satisfying employee entitlements to selection priority.

§ 330.602 Definitions.

For purposes of this subpart:
CTAP eligible means an agency surplus or displaced employee who has a current performance rating of record of at least fully successful (Level 3) or equivalent. As used in this subpart, "CTAP eligible" and "eligible" are synonymous.

CTAP selection priority candidate means a CTAP eligible who applied for and was determined to be well-qualified by the agency and whom the agency must select over any other applicant for the vacancy, unless the action to be taken is listed as an exception under § 330.609.

Displaced means an agency employee in one of the following two categories:

(1) A current career or career-conditional (tenure group I or II) competitive service employee at grade GS-15 (or equivalent) or below who:

(i) Received a reduction in force (RIF) separation notice under part 351 of this chapter and has not declined an offer under part 351, subpart G, of this chapter of a position with the same type of work schedule and a representative rate at least as high as that of the position from which the employee will be separated; or

(ii) Received a notice of proposed removal under part 752 of this chapter for declining a directed geographic relocation outside of the local commuting area (e.g., a directed reassignment or change in duty station).

(2) A current excepted service employee on an appointment without time limit at grade level GS-15 (or equivalent) or below who:

(i) Is covered by a law providing both noncompetitive appointment eligibility to, and selection priority for, competitive service positions; and

(ii) Received a RIF separation notice under part 351 of this chapter or a notice of proposed removal under part 752 of this chapter for declining a directed geographic relocation outside the local commuting area (e.g., a directed reassignment or a change in duty station).

Surplus means an agency employee in one of the following three categories:

(1) A current career or career-conditional (tenure group I or II) competitive service employee at grade

GS-15 (or equivalent) or below who received a Certification of Expected Separation under part 351 of this chapter or other official agency certification or notification indicating that the employee's position is surplus (for example, a notice of position abolishment or a notice of eligibility for discontinued service retirement).

(2) A current excepted service employee on an appointment without time limit at grade GS-15 (or equivalent) or below who:

(i) Is covered by a law providing both noncompetitive appointment eligibility to, and selection priority for, competitive service positions; and

(ii) Received a Certification of Expected Separation under part 351 of this chapter or other official agency certification or notification indicating that the employee's position is surplus (for example, a notice of position abolishment or a notice of eligibility for discontinued service retirement).

(3) A current excepted service employee on a Schedule A or B appointment without time limit at grade level GS-15 (or equivalent) or below who is in an agency offering CTAP selection priority to its excepted service employees and who:

(i) Received a Certification of Expected Separation under part 351 of this chapter or other official agency certification indicating that the employee is surplus (for example, a notice of position abolishment, or notice of eligibility for discontinued service retirement); or

(ii) Received a RIF notice of separation under part 351 of this chapter or a notice of proposed removal under part 752 of this chapter for declining a directed geographic relocation outside the local commuting area (e.g., a directed reassignment or a change in duty station).

Vacancy means a vacant competitive service position at grade GS-15 (or equivalent) or below to be filled for a total of 121 days or more, including all extensions, regardless of whether the agency issues a specific vacancy announcement.

§ 330.603 Requirements for agency CTAPs.

(a) Each agency must establish a CTAP for their surplus and displaced employees. Each agency must send its plan, and any modifications, to OPM's Division of Strategic Human Resources Policy after approval by an authorized agency official.

(b) Each agency must uniformly and consistently apply its CTAP and these regulations to all surplus and displaced employees.

(c) In addition to a description of the agency's selection priority policies required by § 330.604, a CTAP must describe the agency's policies with regard to how it will provide career transition services to all its surplus and displaced agency employees, including excepted service and Senior Executive Service employees. The plan must describe:

(1) The types of career transition services the agency will provide;

(2) Policies on employees' and former employees' use of transition services and facilities, including:

(i) Excused absences for transition-related activities;

(ii) Access to services or facilities after separation;

(iii) Orientation sessions on career transition services and information as described in § 330.608(a) and (b), respectively;

(iv) Retraining policies;

(v) Access to agency CTAP services and resources by all employees, including those with disabilities, those in field offices, and those in remote sites;

(vi) Access to other Federal, State, and local resources available to support career transition for employees with disabilities; and

(vii) Availability of employee assistance programs and services.

(d) An agency's CTAP must also describe the agency's policies and procedures for its Reemployment Priority List established under subpart B of this part and the Interagency Career Transition Placement Plan established under subpart G of this part.

§ 330.604 Requirements for agency CTAP selection priority.

In addition to the overall requirements of § 330.603, an agency's CTAP must describe:

(a) How the agency will provide CTAP selection priority to surplus and displaced employees for vacancies in the local commuting area before selecting any other candidate from either within or outside the agency;

(b) Procedures for reviewing CTAP eligibles' qualifications and resolving qualification issues or disputes;

(c) Decisions involving discretionary areas under § 330.607 (such as whether excepted service employees will receive CTAP selection priority, priority of surplus versus displaced employees, designation of agency components, and selection priority beyond the local commuting area); and

(d) When and how the agency will inform its surplus and displaced employees about CTAP eligibility criteria, as required by § 330.608(b),

how to apply for agency vacancies, and how to request CTAP selection priority.

§ 330.605 Agency responsibilities for well-qualified decisions.

(a) An agency must define what constitutes a well-qualified candidate for its specific vacancies, consistent with this subpart, and uniformly apply that definition to all CTAP eligibles being considered for the vacancy.

(b) An agency must conduct an independent second review and document the specific job-related reasons whenever a CTAP eligible is determined to be not well-qualified under the agency's definition. The agency must give the CTAP eligible the written results of this review as required by § 330.608(e).

§ 330.606 Minimum criteria for agency well-qualified definition.

(a) At a minimum, the agency must define "well-qualified" as having knowledge, skills, abilities, and/or competencies clearly exceeding the minimum qualification requirements for the vacancy. The agency definition may or may not equate to the highly or best qualified assessment criteria established for the vacancy; however, the agency definition of "well-qualified" must satisfy the criteria in paragraph (b) of this section.

(b) Under an agency's definition of "well-qualified," the agency must be able to determine whether a CTAP eligible:

(1) Meets the basic eligibility requirements (including employment suitability requirements under part 731 of this chapter and any medical qualifications requirements), qualification standards (including minimum educational and experience requirements), and any applicable selective factors;

(2) Is physically qualified, with or without reasonable accommodation, to perform the essential duties of the position;

(3) Meets any special qualifying conditions of the position;

(4) Is able to satisfactorily perform the duties of the position upon entry; and

(5) At agency discretion, either:

(i) Rates at or above specified level(s) on all quality ranking factors; or

(ii) Rates above minimally qualified in the agency's rating and ranking process.

(c) An agency may include the results of a scored structured interview process in determining whether a CTAP eligible is well-qualified.

§ 330.607 Applying CTAP selection priority.

(a) An agency must not place any other candidate from within or outside

the agency into a vacancy if there is an available CTAP selection priority candidate, unless the personnel action to be effected is an exception under § 330.609.

(b) In accordance with the conditions of part 300, subpart E, of this chapter, an agency may not procure temporary help services under that subpart until a determination is made that no CTAP eligible is available.

(c) CTAP selection priority applies to a vacancy that:

(1) Is at a grade or pay level with a representative rate no higher than the representative rate of the grade or pay level of the CTAP eligible's permanent position of record;

(2) Has no greater promotion potential than the CTAP eligible's permanent position of record;

(3) Is in the same local commuting area as the CTAP eligible's permanent position of record;

(4) Is filled during the CTAP eligible's eligibility period; and, if applicable,

(5) Is filled under the same excepted appointing authority as the CTAP eligible's permanent position of record if the CTAP eligible is an excepted service employee and the agency CTAP provides selection priority in the excepted service.

(d) An agency may take actions under § 335.102 of this chapter to place a permanent competitive service employee into a vacancy if there are no CTAP eligible employees in the local commuting area or if no CTAP eligibles apply for the vacancy.

(e) An agency component may place a component employee within the local commuting area in the vacancy after the component applies CTAP selection priority to its employees.

(f) If there are two or more CTAP selection priority candidates for a vacancy, the agency may place any of them. An agency may decide the specific order of selection among CTAP selection priority candidates. For example, an agency may:

(1) Provide a displaced candidate higher priority than a surplus candidate; or

(2) Provide an internal component candidate higher priority than another component's candidate.

(g) After an agency makes the vacancy available to its CTAP eligibles and meets its obligation to any CTAP selection priority candidates, the agency may place into the vacancy any other permanent competitive service candidate from within its workforce, under appropriate staffing procedures.

(h) An agency may provide CTAP selection priority to eligible employees from another commuting area after

fulfilling its obligation to CTAP selection priority candidates in the local commuting area.

(i) An agency may deny a CTAP eligible future selection priority if the eligible:

(1) Declines an offer of a permanent appointment at any grade or pay level in the competitive or excepted service; or

(2) Fails to respond within a reasonable period of time, as defined by the agency, to an offer of a permanent appointment at any grade or pay level in the competitive or excepted service.

(j) Before appointing an individual from outside the agency's permanent competitive service workforce, the agency must follow the requirements of subparts B and G of this part.

§ 330.608 Other agency CTAP responsibilities.

(a) An agency must make a career transition orientation session available to all agency surplus and displaced employees with information on selection priority under this subpart and subparts B and G. Such orientation sessions may be in person or web-based through an agency automated training system or intranet.

(b) An agency must give each agency CTAP eligible written information on selection priority under its plan, explaining how to locate and apply for agency vacancies and request selection priority. The agency may meet this requirement by providing a copy of its CTAP established under § 330.603.

(c) An agency must take reasonable steps to ensure that agency CTAP eligibles have access to information on all vacancies, including how CTAP eligibles can apply, what proof of eligibility is required, and the agency definition of "well-qualified" for the vacancy.

(d) If the agency can document that there are no CTAP eligibles in a local commuting area, the agency need not post the vacancy for CTAP eligibles.

(e) An agency must provide a CTAP eligible who applied for a specific vacancy written notice of the final status of his or her application, including whether the eligible was determined to be well-qualified. The agency notice must include the results of the independent, second review under § 330.605(b), if applicable; whether another CTAP selection priority candidate was hired; whether the position was filled under an exception listed in § 330.609; and whether the recruitment was cancelled.

§ 330.609 Exceptions to CTAP selection priority.

An agency may effect the following personnel actions as exceptions to § 330.607:

(a) Reemploy a former agency employee with regulatory or statutory reemployment rights, including the reemployment of an injured worker who either has been restored to earning capacity by the Office of Workers' Compensation Programs, Department of Labor, or has received a notice that his or her compensation benefits will cease because of full recovery from the disabling injury or illness;

(b) Reassign or demote an employee under part 432 or 752 of this chapter;

(c) Appoint an individual for a period limited to 120 or fewer days, including all extensions;

(d) Reassign agency employees between or among positions in the local commuting area (sometimes called job swaps) when there is no change in grade or promotion potential and no actual vacancy results;

(e) Convert an employee currently serving under an appointment providing noncompetitive conversion eligibility to a competitive service appointment, including from:

(1) A Veterans Recruitment Appointment under part 307 of this chapter;

(2) An appointment under 5 U.S.C. 3112 and part 316 of this chapter of a veteran with a compensable service-connected disability of 30 percent or more; and

(3) An excepted service appointment under part 213 of this chapter, such as for persons with disabilities or in the Presidential Management Fellow Program, the Student Career Experience Program, or the Federal Career Intern Program;

(f) A personnel action taken under, or specifically in lieu of, part 351 of this chapter;

(g) A position change of an employee into a different position as a result of a formal reorganization, as long as the former position ceases to exist and no actual vacancy results;

(h) Assign or exchange an employee under a statutory program, such as subchapter VI of chapter 33 of title 5, United States Code (also called the Intergovernmental Personnel Act), or the Information Technology Exchange Program under chapter 37 of title 5, United States Code;

(i) Appoint an individual under an excepted service appointing authority;

(j) A position change of an employee within the excepted service;

(k) Detail an employee within the agency;

(l) Promote an employee for a period limited to 120 or fewer days, including all extensions;

(m) A position change of a surplus or displaced employee in the local commuting area;

(n) A position change of an employee under 5 U.S.C. 8337 or 8451 to allow continued employment of an employee who is unable to provide useful and efficient service in his or her current position because of a medical condition;

(o) A position change of an employee to a position that constitutes a reasonable offer as defined in 5 U.S.C. 8336(d) and 8414(b);

(p) A position change of an employee resulting from a reclassification action (such as accretion of duties or an action resulting from application of new position classification standards);

(q) Promote an employee to the next higher grade or pay level of a designated career ladder position;

(r) Recall a seasonal or intermittent employee from nonpay status;

(s) A position change of an injured or disabled employee to a position in which he or she can be reasonably accommodated;

(t) A personnel action for an employee pursuant to the settlement of a formal complaint, grievance, appeal, or other litigation;

(u) Reassign or demote an employee under § 315.907 of this chapter for failure to complete a supervisory or managerial probationary period;

(v) Retain an individual whose position is brought into the competitive service under part 316 of this chapter and convert that individual, when applicable, under part 315 of this chapter;

(w) Retain an employee covered by an OPM-approved variation under Civil Service Rule 5.1 (5 CFR 5.1);

(x) Reemploy a former agency employee who retired under a formal trial retirement and reemployment program and who requests reemployment under the program's provisions and applicable time limits;

(y) Extend a time-limited promotion or appointment up to the maximum period allowed (including any OPM-approved extensions beyond the regulatory limit on the time-limited promotion or appointment), if the original action was made subject to CTAP selection priority and the original announcement or notice stated that the promotion or appointment could be extended without further announcement;

(z) Transfer an employee between agencies under appropriate authority during an interagency reorganization,

interagency transfer of function, or interagency mass transfer;

(aa) Appoint a member from the Senior Executive Service into the competitive service under 5 U.S.C. 3594;

(bb) Transfer an employee voluntarily from one agency to another under a Memorandum of Understanding or similar agreement under appropriate authority resulting from an interagency reorganization, interagency transfer of function, or interagency mass transfer, when both the agencies and the affected employee agree to the transfer;

(cc) Reassign an employee whose position description or other written mobility agreement provides for reassignment outside the commuting area as part of a planned agency rotational program; or

(dd) Transfer or a position change of an employee under part 412 of this chapter.

§ 330.610 CTAP eligibility period.

(a) CTAP eligibility begins on the date the employee meets the definition of *surplus* or *displaced* in § 330.602.

(b) CTAP eligibility ends on the date that the employee:

(1) Separates from the agency either voluntarily or involuntarily;

(2) Receives a notice rescinding, canceling, or modifying the notice which established CTAP eligibility so that the employee no longer meets the definition of *surplus* or *displaced*.

(3) Is placed in another position within the agency at any grade or pay level, either permanent or time-limited, before the agency separates the employee; or

(4) Is appointed to a career, career-conditional, or excepted appointment without time limit in any agency at any grade or pay level.

§ 330.611 Establishing CTAP selection priority.

(a) CTAP selection priority for a specific agency vacancy begins when a CTAP eligible:

(1) Submits all required application materials, including proof of eligibility, within agency-established timeframes; and,

(2) The agency determines the eligible is well-qualified for the vacancy.

(b) An agency may allow CTAP eligible employees to become CTAP selection priority candidates for positions in other local commuting areas only if there are no CTAP selection priority candidates within the local commuting area of the vacancy.

(c) An agency may deny future CTAP selection priority for agency positions if the CTAP eligible declines an offer of

permanent appointment at any grade level (whether it is a competitive or excepted appointment).

§ 330.612 Proof of eligibility.

(a) The CTAP eligible must submit a copy of one of the documents listed under the definition of *displaced* or *surplus* in § 330.602 to establish selection priority under § 330.611.

(b) The CTAP eligible may also submit a copy of a RIF notice with an offer of another position, accompanied by the signed declination of the offer. The RIF notice must state that declination of the offer will result in separation under RIF procedures.

§ 330.613 OPM's role in CTAP.

OPM has oversight of CTAP and may conduct reviews of agency compliance and require corrective action at any time.

Subpart G—Interagency Career Transition Assistance Plan (ICTAP) for Displaced Employees

§ 330.701 Purpose.

The Interagency Career Transition Assistance Program (ICTAP) provides eligible displaced Federal employees with interagency selection priority for vacancies in agencies that are filling positions from outside their respective permanent competitive service workforces. The ICTAP selection priority does not apply in the ICTAP eligible's current or former agency and it does not prohibit movement of permanent competitive service employees within an agency, as permitted by subpart F of this part. This subpart establishes requirements for ICTAP selection priority.

§ 330.702 Definitions.

In this subpart:

Displaced means an individual in one of the following categories:

(1) A current career or career-conditional (tenure group I or II) competitive service employee of any agency at grade GS-15 (or equivalent) or below whose current performance rating of record is at least fully successful (Level 3) or equivalent and who:

(i) Received a reduction in force (RIF) separation notice under part 351 of this chapter and has not declined an offer under part 351, subpart G, of this chapter of a position with the same type of work schedule and a representative rate at least as high as that of the position from which the employee will be separated; or

(ii) Received a notice of proposed removal under part 752 of this chapter for declining a directed geographic relocation outside the local commuting

area (e.g., a directed reassignment or a change in duty station).

(2) A former career or career-conditional (tenure group I or II) competitive service employee of any agency at grade GS-15 (or equivalent) or below whose last performance rating of record was at least fully successful (Level 3) or equivalent who was either:

(i) Separated by RIF under part 351 of this chapter and did not decline an offer under part 351, subpart G, of this chapter of a position with the same type of work schedule and a representative rate at least as high as that of the position from which the employee was separated; or

(ii) Removed under part 752 of this chapter for declining a directed geographic relocation outside the local commuting area (e.g., a directed reassignment or a change in duty station).

(3) A former career or career-conditional employee of any agency who was separated because of a compensable work-related injury or illness as provided under 5 U.S.C. chapter 81, subchapter I, whose compensation was terminated and who has received certification from the former employing agency that it is unable to place the employee as required by part 353 of this chapter.

(4) A former career or career-conditional (tenure group I or II) competitive service employee of any agency who retired with a disability annuity under 5 U.S.C. 8337 or 8451 and who has received notification from OPM that the disability annuity has been or will be terminated.

(5) A former Military Reserve Technician or National Guard Technician receiving a special disability retirement annuity under 5 U.S.C. 8337(h) or 8456 and who has certification of such annuity from the military department or National Guard Bureau.

(6) A current or former excepted service employee on an appointment without time limit at grade GS-15 (or equivalent) or below whose current or last performance rating of record is or was at least fully successful (Level 3) or equivalent and who:

(i) Has been provided by law with both noncompetitive appointment eligibility and selection priority for competitive service positions; and

(ii) Has received a RIF separation notice under part 351 of this chapter or notice of proposed removal under part 752 of this chapter for declining a directed geographic relocation outside the local commuting area (e.g., a directed reassignment or a change in duty station) or has been separated by

RIF procedures or removed for declining a geographic relocation outside the local commuting area.

ICTAP eligible means an individual who meets the definition of *displaced*. As used in this subpart, “ICTAP eligible” and “eligible” are synonymous.

ICTAP selection priority candidate means an ICTAP eligible who applied for a vacancy, was determined by the agency to be well-qualified for that vacancy, and who the agency must select over any other candidate from outside the agency’s current competitive service workforce for the vacancy, unless the action to be taken is listed as an exception under § 330.707.

Vacancy means a vacant competitive service position at grade GS-15 (or equivalent) or below to be filled for 121 days or more, including extensions.

§ 330.703 Agency responsibilities for well-qualified decisions.

(a) Agencies must define “well-qualified” for their specific vacancies, consistent with this subpart, and uniformly apply that definition to all ICTAP eligibles being considered for the vacancy.

(b) Agencies must conduct an independent second review and document the specific job-related reasons whenever an ICTAP eligible is determined to be not well-qualified for the vacancy under the agency’s definition. An agency must give the ICTAP eligible the written results of this review as required by § 330.706(d).

§ 330.704 Minimum criteria for agency well-qualified definition.

(a) At a minimum, agencies must define “well-qualified” as having knowledge, skills, abilities, and/or competencies clearly exceeding the minimum qualification requirements for the vacancy. The agency definition may or may not equate to the highly or best qualified assessment criteria established for the vacancy; however, the agency definition of “well-qualified” must satisfy the criteria in paragraph (b) of this section.

(b) Under an agency’s definition of “well-qualified,” the agency must be able to determine whether an ICTAP eligible:

(1) Meets the basic eligibility requirements (including employment suitability requirements under part 731 of this chapter and any medical qualification requirements), qualification standards (including minimum educational and experience requirements), and any applicable selective factors;

(2) Is physically qualified, with or without reasonable accommodation, to

perform the essential duties of the position;

(3) Meets any special qualifying conditions of the position;

(4) Is able to satisfactorily perform the duties of the position upon entry; and

(5) At agency discretion, either:

(i) Rates at or above specified level(s) on all quality ranking factors; or

(ii) Rates above minimally qualified in the agency’s rating and ranking process.

(c) An agency may include the results of a scored structured interview process in determining whether an ICTAP eligible is well-qualified.

§ 330.705 Applying ICTAP selection priority.

(a) An agency must not appoint any candidate from outside its permanent competitive service workforce if there is an ICTAP selection priority candidate available for the vacancy, unless the personnel action to be effected is an exception under § 330.707.

(b) ICTAP selection priority applies to a vacancy that:

(1) Is at a grade or pay level with a representative rate no higher than the representative rate of the grade or pay level of the ICTAP eligible’s current or last permanent position of record;

(2) Has no greater promotion potential than the ICTAP eligible’s current or last permanent position of record;

(3) Is in the same local commuting area as the ICTAP eligible’s current or last permanent position of record; and

(4) Is filled during the ICTAP eligible’s eligibility period.

(c) An agency may appoint any ICTAP selection priority candidate for a vacancy.

(d)(1) After an agency announces the vacancy and meets its obligation to any ICTAP selection priority candidates, the agency may appoint any other candidate from outside its current permanent competitive service workforce, under appropriate staffing procedures.

(2) An agency may make additional selections or reissue selection certificates in accordance with its merit promotion program without readvertising for ICTAP eligibles only if the additional selections are made from the applicant pool established by the original vacancy announcement, including readvertisements for the same vacancy.

(e) An agency may deny an ICTAP eligible future selection priority for vacancies in that agency if the ICTAP eligible:

(1) Declines an offer of a permanent appointment at any grade or pay level in the competitive or excepted service; or

(2) Fails to respond within a reasonable period of time, as defined by

the agency, to an offer or official inquiry of availability for a permanent appointment at any grade or pay level in the competitive or excepted service.

(f) An agency may deny an ICTAP eligible future selection priority for a position previously obtained through ICTAP if the eligible was terminated or removed from that position under part 432 or 752 of this chapter.

§ 330.706 Other agency ICTAP responsibilities.

(a) Before appointing any other candidate from outside the agency's permanent competitive service workforce, the agency must first fulfill its obligation to any employees entitled to selection priority under subparts B and F of this part.

(b) In accordance with the conditions of part 300, subpart E, of this chapter, an agency may not procure temporary help services under that subpart until a determination is made that no ICTAP eligible is available.

(c) An agency must announce all vacancies it intends to fill from outside its permanent competitive service workforce. Vacancy announcements must meet the requirements of subpart A of this part.

(d) An agency must provide an ICTAP eligible who applied for a specific vacancy written notice of the final status of his or her application, including whether the eligible was determined to be well-qualified. The agency notice must include the results of the independent second review under § 330.703(b), if applicable; whether another ICTAP selection priority candidate was hired; whether the position was filled under an exception listed in § 330.707; and whether the recruitment was cancelled.

§ 330.707 Exceptions to ICTAP selection priority.

An agency may effect the following personnel actions as exceptions to § 330.705:

(a) Place a current or reinstate a former agency employee with RPL selection priority under subpart B of this part;

(b) A position change of a current permanent competitive service agency employee;

(c) Appoint a 10-point veteran preference eligible through an appropriate appointing authority;

(d) Reemploy a former agency employee with regulatory or statutory reemployment rights, including the reemployment of an injured worker who either has been restored to earning capacity by the Office of Workers' Compensation Programs, Department of

Labor, or has received a notice that his or her compensation benefits will cease because of recovery from disabling injury or illness;

(e) Appoint an individual for a period limited to 120 or fewer days, including all extensions;

(f) A personnel action effected under, or specifically in lieu of, part 351 of this chapter;

(g) Appoint an individual under an excepted service appointing authority;

(h) Convert an employee serving under an appointment that provides noncompetitive conversion eligibility to a competitive service appointment, including from:

(1) A Veterans Recruitment Appointment under part 307 of this chapter;

(2) An appointment under 5 U.S.C. 3112 and part 316 of this chapter of a veteran with a compensable service-connected disability of 30 percent or more;

(3) An excepted service appointment under part 213 of this chapter, such as for persons with disabilities or in the Presidential Management Fellow Program, the Student Career Experience Program, or the Federal Career Intern Program;

(i) Transfer an employee between agencies under appropriate authority during an interagency reorganization, interagency transfer of function, or interagency mass transfer;

(j) Reemploy a former agency employee who retired under a formal trial retirement and reemployment program and who requests reemployment under the program's provisions and applicable time limits;

(k) A personnel action for an employee pursuant to the settlement of a formal complaint, grievance, appeal, or other litigation;

(l) Extend a time-limited appointment up to the maximum period allowed (including any OPM-approved extension past the regulatory limit on the time-limited appointment), if the original action was made subject to ICTAP selection priority and the original vacancy announcement stated that the appointment could be extended without further announcement;

(m) Reappoint a former agency employee into a hard-to-fill position requiring unique skills and experience to conduct a formal skills-based agency training program;

(n) Retain an individual whose position is brought into the competitive service under part 316 of this chapter and convert that individual, when applicable, under part 315 of this chapter;

(o) Retain an employee covered by an OPM-approved variation under Civil Service Rule 5.1 (5 CFR 5.1);

(p) Appoint a member from the Senior Executive Service into the competitive service under 5 U.S.C. 3594;

(q) Assign or exchange an employee under a statutory program, such as subchapter VI of chapter 33 of title 5, United States Code (also called the Intergovernmental Personnel Act), or the Information Technology Exchange Program under chapter 37 of title 5, United States Code;

(r) Detail an employee to another agency;

(s) Transfer employees under an OPM-approved interagency job swap plan designed to facilitate the exchange of employees between agencies to avoid or minimize involuntary separations;

(t) Transfer or reinstate an ICTAP eligible who meets the agency's definition of "well-qualified";

(u) Transfer an employee voluntarily from one agency to another under a Memorandum of Understanding or similar agreement under appropriate authority resulting from an interagency reorganization, interagency transfer of function, or interagency realignment, when both the agencies and the affected employee agree to the transfer; or

(v) Transfer or a position change of an employee under part 412 of this chapter.

§ 330.708 ICTAP eligibility period.

(a) ICTAP eligibility begins on the date the employee or former employee meets the definition of *displaced* in § 330.702.

(b) ICTAP eligibility ends 1 year from the date of:

(1) Separation by RIF under part 351 of this chapter;

(2) Removal by the agency under part 752 of this chapter for declining a directed geographic relocation outside the local commuting area (e.g., a directed reassignment or a change in duty station);

(3) Agency certification that it cannot place the employee under part 353 of this chapter; or

(4) OPM notification that an employee's disability annuity has been, or will be, terminated.

(c) ICTAP eligibility ends 2 years after RIF separation if eligible under subpart D of this part.

(d) ICTAP eligibility also ends on the date the eligible:

(1) Receives a notice rescinding, canceling, or modifying the notice which established ICTAP eligibility so that the employee no longer meets the definition of *displaced* in § 330.702;

(2) Separates from the agency for any reason before the RIF or removal effective date; or

(3) Is appointed to a career, career-conditional, or excepted appointment without time limit in any agency at any grade or pay level.

(e) OPM may extend the eligibility period when an ICTAP eligible does not receive a full 1 year (or 2 years under subpart D of this part) of eligibility, for example, because of administrative or procedural error.

§ 330.709 Establishing ICTAP selection priority.

ICTAP selection priority for a specific vacancy begins when an ICTAP eligible:

(a) Submits all required application materials, including proof of eligibility, within agency-established timeframes; and

(b) The agency determines the eligible is well-qualified for the vacancy.

§ 330.710 Proof of eligibility.

(a) The ICTAP eligible must submit a copy of one of the documents listed under the definition of *displaced* in § 330.702 to establish selection priority under § 330.709.

(b) The ICTAP eligible may also submit a copy of the RIF notice with an offer of another position accompanied by the signed declination of that offer. The RIF notice must state that declination of the offer will result in separation under RIF procedures.

§ 330.711 OPM's role in ICTAP.

OPM has oversight of ICTAP and may conduct reviews of agency compliance and require corrective action at any time.

Subparts H–I—[Reserved]

Subpart J—Prohibited Practices

§ 330.1001 Withdrawal from competition.

An applicant for competitive examination, an eligible on a register, and an officer or employee in the Executive branch of the Government may not persuade, induce, or coerce, or attempt to persuade, induce, or coerce, directly or indirectly, a prospective applicant to withhold filing an application, or an applicant or eligible to withdraw from competition or eligibility, for a position in the competitive service, for the purpose of improving or injuring the prospects of an applicant or eligible for appointment. OPM will cancel the application or eligibility of an applicant or eligible who violates this section, and will impose such other penalty as it considers appropriate.

Subpart K–L—[Reserved]

PART 335—PROMOTION AND INTERNAL PLACEMENT

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

Authority: 5 U.S.C. 3301, 3302, 3330; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; 5 U.S.C. 3304(f), and Pub. L. 106–117.

§ 335.105 [Amended]

5. In § 335.105, remove the phrase “§ 330.707 of subpart G” and add in its place the phrase, “part 330, subpart A”.

PART 337—EXAMINING SYSTEM

6. The authority citation for part 337 continues to read as follows:

Authority: 5 U.S.C. 1104(a), 1302, 2302, 3301, 3302, 3304, 3319, 5364; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; and 45 FR 18365, Mar. 21, 1980; 116 Stat. 2135, 2290; and 117 Stat 1392, 1665.

§ 337.203 [Amended]

7. In § 337.203, remove the phrase “subpart G” and add in its place the phrase, “subpart A”.

PART 410—TRAINING

8. The authority citation for part 410 continues to read as follows:

Authority: 5 U.S.C. 4101, *et seq.*; E.O. 11348, 3 CFR, 1967 Comp., p. 275.

§ 410.307 [Amended]

9. In § 410.307:

a. In paragraph (c)(3), remove the phrase “5 CFR 330.604(b) and (f)” and add in its place the phrase, “5 CFR 330.602”.

b. In paragraph (c)(4), remove the phrase “5 CFR 330.602” and add in its place the phrase, “5 CFR part 330, subpart F”.

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FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 104

[Notice 2008–09]

Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants

AGENCY: Federal Election Commission.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The Federal Election Commission is announcing a public hearing on the proposed rules governing the disclosure of information about

bundled contributions provided by certain lobbyists, registrants and their PACs.

DATES: The hearing will be held on Wednesday, September 17, 2008 and will begin at 9:30 a.m.

ADDRESSES: Commission hearings are held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Ms. Cheryl A.F. Hemsley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On November 6, 2007, the Commission published a Notice of Proposed Rulemaking (“NPRM”) proposing rules governing the disclosure of information about bundled contributions provided by certain lobbyists, registrants and their PACs. *Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants*, 72 FR 62,600 (Nov. 6, 2007). The deadline for comments on the NPRM was Nov. 30, 2007. In the NPRM, the Commission stated that it would announce the date of a hearing at a later date.

Accordingly, the hearing will be held on Wednesday, September 17, 2008 (see **DATES** and **ADDRESSES**, above). Witnesses will be limited to those individuals who indicated in their timely comments on the NPRM that they wished to testify at the hearing. Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

Dated: September 2, 2008.

On behalf of the Commission.

Ellen Weintraub,

Commissioner, Federal Election Commission.
[FR Doc. E8–20810 Filed 9–5–08; 8:45 am]

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