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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR PART 334

RIN 3206-AJ94

#### Temporary Assignments Under the Intergovernmental Personnel Act (IPA)

**AGENCY:** Office of Personnel Management.

**ACTION:** Final.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations on a plain language rewrite of its regulations regarding the Intergovernmental Personnel Act Mobility Program as part of a broader review of OPM regulations. The purpose of the revision is to make the regulations more readable.

**DATES:** October 18, 2006.

**FOR FURTHER INFORMATION CONTACT:** Darlene Phelps by telephone on 202-606-0960, by FAX on 202-606-2329, by TDD on 202-418-3134, or by e-mail at [employ@opm.gov](mailto:employ@opm.gov).

**SUPPLEMENTARY INFORMATION:** OPM published for comment on August 22, 2003, (at 68 FR 50726) proposed regulations revising part 334 of title 5, Code of Federal Regulations, to make it more readable. The principal purpose of that proposed revision was to clarify the regulations. OPM also solicited comments on whether certain non-Federal entities define themselves as: (1) An "instrumentality or authority of a State or States or local government" as cited in 5 U.S.C. 3371; or (2) a "Federal-State authority or instrumentality" as cited in 5 U.S.C. 3371.

Two agencies submitted comments on OPM's proposed part 334 regulations. Both agencies believed that the question and answer format in the proposed regulations required the reader to spend more, rather than less time, to locate information in part 334. After

consideration of the agencies' comments, OPM dropped the question and answer format in this final redraft of part 334.

One agency suggested we rename the title of this part by including a reference to the Intergovernmental Personnel Act. We agree the current title does not accurately describe the nature of assignments under this part, so we have renamed part 334 as "Temporary Assignments under the Intergovernmental Personnel Act (IPA)".

The other agency suggested OPM provide definitions of the terms listed in § 334.102 rather than offer readers the statutory citations where these terms are defined. We agree having the definitions in the regulation improves the readability of part 334, so we have added the definitions along with their statutory citations in § 334.102.

The other agency asked that OPM clarify whether the definition of "Institution of higher education" includes graduate level programs. OPM agrees clarification is necessary and we have revised the definition in § 334.102 to include longstanding OPM policy that this definition includes both undergraduate and graduate study.

The same agency also asked that OPM set a specific time period for maintaining copies of each written agreement that documents the obligations and responsibilities of each party to an IPA assignment. OPM believes that each agency should have the flexibility to best determine the appropriate time period for retaining copies of its written agreements under this part. We have modernized the final regulations, in § 334.106(b), to allow agencies the flexibility for establishing the time period for retaining copies of its written agreements under the IPA program.

The second agency asked that OPM clarify the IPA participation restriction in § 334.104(c) that a Federal agency may not send or receive an individual on an IPA assignment for more than four continuous years without at least a 12-month return to duty back to the organization where the individual was employed before the IPA assignment. OPM believes that the present language in § 334.104(c) sufficiently states OPM's intention that an individual may not participate on an assignment under this part for more than four continuous years without a minimum 12-month return to

duty back to the individual's pre-assignment employing organization.

The same agency also asked OPM to include a statement in § 334.102(c) clarifying that "successive assignments with a break of no more than 60 calendar days will be regarded as continuous service" per guidance on OPM's Web site. For the convenience of the reader we have added the statement pertaining to successive assignments of at least 60 calendar days to § 334.102(c), which is consistent with longstanding OPM policy.

#### 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.

#### Lists of Subjects in 5 CFR Part 334

Colleges and universities, Government employees, Indians, Intergovernmental relations.

U.S. Office of Personnel Management.

**Linda M. Springer,**

*Director.*

■ Accordingly, OPM is revising 5 CFR part 334 to read as follows:

#### PART 334—TEMPORARY ASSIGNMENTS UNDER THE INTERGOVERNMENTAL PERSONNEL ACT (IPA)

Sec.

- 334.101 Purpose.
- 334.102 Definitions.
- 334.103 Requirements for approval of instrumentalities or authorities of State and local governments and "other organizations."
- 334.104 Length of assignment.
- 334.105 Obligated service requirement.
- 334.106 Requirement for written agreement.
- 334.107 Termination of agreement.
- 334.108 Reports required.

**Authority:** 5 U.S.C. 3376; E.O. 11589, 3 CFR 557 (1971-1975)

#### § 334.101 Purpose.

The purpose of this part is to implement title IV of the Intergovernmental Personnel Act (IPA) of 1970 and title VI of the Civil Service Reform Act. These statutes authorize the temporary assignment of employees

between the Federal Government and State, local, and Indian tribal governments, institutions of higher education and other eligible organizations.

**§ 334.102 Definitions.**

In this part:

*Assignment* means a period of service under chapter 33, subchapter VI of title 5, United States Code;

*Employee*, for purposes of participation in this program, means an individual serving in a Federal agency under a career or career-conditional appointment, including career appointees in the Senior Executive Service, individuals under appointments of equivalent tenure in excepted service positions (including, e.g., the Presidential Management Fellows Program, the Federal Career Intern Program, the Student Career Experience Program, and Veterans Recruitment Appointments (VRA)), or an individual employed for at least 90 days in a career position with a State, local, or Indian tribal government, institution of higher education, or other eligible organization;

*Federal agency* as defined in 5 U.S.C. 3371(3) means an Executive agency, military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Rate Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the legislative and judicial branches as determined appropriate by the Office of Personnel Management;

*Indian tribal government* as defined in 5 U.S.C. 3371(2)(c) means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 668), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act;

*Institution of higher education* means a domestic, accredited public or private 4-year and/or graduate level college or university, or a technical or junior college;

*Local government* as defined in 5 U.S.C. 3371(2)(A) and (B) means:

(1) Any political subdivision, instrumentality, or authority of a State or States; and

(2) Any general or special purpose agency of such a political subdivision, instrumentality, or authority;

*Other organization* as defined in 5 U.S.C. 3371(4) means:

(1) A national, regional, Statewide, area wide, or metropolitan organization representing member State or local governments;

(2) An association of State or local public officials;

(3) A nonprofit organization which offers, as one of its principal functions, professional advisory, research, educational, or development services, or related services, to governments or universities concerned with public management; or

(4) A federally funded research and development center.

*State* as defined in 5 U.S.C. 3371(1) means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and a territory or possession of the United States; an instrumentality or authority of a State or States; and a Federal-State authority or instrumentality.

**§ 334.103 Requirements for approval of instrumentalities or authorities of State and local governments and "other organizations."**

(a) Organizations interested in participating in the IPA mobility program as an instrumentality or authority of a State or local government or as an "other organization" as set out in this part must have their eligibility certified by the Federal agency with which they are entering into an assignment.

(b) Written requests for certification must include a copy of the organization's:

(1) Articles of incorporation;

(2) Bylaws;

(3) Internal Revenue Service nonprofit statement; and

(4) Any other information which indicates that the organization has as a principal function the offering of professional advisory, research, educational, or development services, or related services to governments or universities concerned with public management.

(c) Federally funded research and development centers which appear on a master list maintained by the National Science Foundation are eligible to participate in the program.

(d) An organization denied certification by an agency may request reconsideration by the Office of Personnel Management (OPM).

**§ 334.104 Length of assignment.**

(a) The head of a Federal agency, or his or her designee, may make an assignment for up to 2 years, which may be extended for up to 2 more years if the parties agree.

(b) A Federal agency may not send an employee on an assignment if that person is a Federal employee and has participated in this program for more than a total of 6 years during his or her Federal career. OPM may waive this restriction upon the written request of the agency head, or his or her designee.

(c) A Federal agency may not send or receive an employee on an assignment if the employee has participated in this program for 4 continuous years without at least a 12-month return to duty with the organization from which the employee was originally assigned. Successive assignments with a break of no more than 60 calendar days will be regarded as continuous service under the mobility authority.

**§ 334.105 Obligated service requirement.**

(a) A Federal employee assigned under this part must agree, as a condition of accepting an assignment, to serve with the Federal Government upon completion of the assignment for a period equal to the length of the assignment.

(b) If the employee fails to carry out this agreement, he or she must reimburse the Federal agency for its share of the costs of the assignment (exclusive of salary and benefits). The head of the Federal agency, or his or her designee, may waive this reimbursement for good and sufficient reason.

**§ 334.106 Requirement for written agreement.**

(a) Before the assignment begins, the assigned employee and the Federal agency, the State, local, Indian tribal government, institution of higher education, or other eligible organization must enter into a written agreement recording the obligations and responsibilities of the parties, as specified in 5 U.S.C. 3373-3375.

(b) Federal agencies must maintain a copy of each assignment agreement form established under this part, including any modification to the agreement. The agency may determine the appropriate time period for retaining copies of its written agreements.

**§ 334.107 Termination of agreement.**

(a) An assignment may be terminated at any time at the request of the Federal agency or the State, local, Indian tribal government, institution of higher education, or other organization

participating in this program. Where possible, the party terminating the assignment prior to the agreed upon date should provide 30-days advance notice along with a statement of reasons, to the other parties to the agreement.

(b) Federal assignees continue to encumber the positions they occupied prior to assignment, and the position is subject to any personnel actions that might normally occur. At the end of the assignment, the employee must be allowed to resume the duties of the employee's position or must be reassigned to another position of like pay and grade.

(c) An assignment is terminated automatically when the employer-employee relationship ceases to exist between the assignee or original employer.

(d) OPM has the authority to direct Federal agencies to terminate assignments or take other corrective actions when OPM finds assignments have been made in violation of the requirements of the Intergovernmental Personnel Act or this part.

#### **§ 334.107 Reports required.**

A Federal agency which assigns an employee to or receives an employee from a State, local, Indian tribal government, institution of higher education, or other eligible organization in accordance with this part must submit to OPM such reports as OPM may request.

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## **OFFICE OF PERSONNEL MANAGEMENT**

### **5 CFR PART 630**

#### **RIN 3206-AK80**

#### **Absence and Leave; Creditable Service**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing final regulations to provide Federal agencies with the authority to grant a newly appointed or reappointed employee credit for prior work experience that otherwise would not be creditable for the purpose of determining the employee's annual leave accrual rate. An agency may use this authority to recruit an individual with the skills and experience necessary to achieve an important agency mission or performance goal.

**DATES:** The regulations are effective on October 18, 2006.

**FOR FURTHER INFORMATION CONTACT:** Carey Johnston by telephone at (202) 606-2858, by fax at (202) 606-0824, or by e-mail at *pay-performance-policy@opm.gov*.

**SUPPLEMENTARY INFORMATION:** On April 29, 2005, the Office of Personnel Management (OPM) published interim regulations (70 FR 22245) to implement section 202(a) of the Federal Workforce Flexibility Act of 2004 (Pub. L. 108-411, October 30, 2004), hereafter referred to as "the Act." Section 202(a) added subsection (e) to 5 U.S.C. 6303, which provides OPM with the authority to prescribe regulations to permit an agency to grant a newly appointed or reappointed employee service credit for prior work experience that otherwise would not be creditable for the purpose of determining his or her annual leave accrual rate. An employee may receive credit if (1) The experience was obtained in a position having duties that directly relate to the duties of the position to which he or she is being appointed, and (2) it is determined by the head of the agency that crediting service to provide a higher annual leave accrual rate is necessary to recruit an individual with the skills and experience necessary to achieve an important agency mission or performance goal.

The 60-day public comment period on the interim regulations ended on June 28, 2005. During the comment period, OPM received comments from 1 Federal labor organization, 5 Federal agencies, and 20 individuals.

Three commenters expressed the view that the effective date of an agency's authority to provide credit for non-Federal work experience should be the date the Act was signed (October 30, 2004). Section 6303(e)(1) of title 5, United States Code, provides that, not later than 180 days after enactment of the Act, OPM must prescribe regulations to permit an agency to provide service credit to a newly appointed or reappointed employee for prior work experience that otherwise would not be creditable for the purpose of determining his or her annual leave accrual rate. The earliest date this new authority could become effective was the effective date of OPM's regulations—*i.e.*, April 28, 2005.

Several commenters objected to the interim regulations because current Federal employees may not receive credit for non-Federal work experience for the purpose of redetermining their annual leave accrual rate. The commenters believe the new authority provides an unfair advantage to newly appointed employees, since current

employees must have 3 years or more of creditable service before accruing 6 hours of annual leave each pay period and 15 years or more of creditable service before accruing 8 hours of annual leave each pay period. One commenter thought it was unfair that this provision applies only to future employees, while section 202(b) of the Act provides an 8-hour annual leave accrual rate each pay period to current and future members of the Senior Executive Service (SES) and employees in senior-level and scientific or professional positions. Creditable service for non-Federal work experience may not be granted to current Federal employees because section 202(c) of the Act prohibits employees who were employed before the effective date of OPM's regulations (*i.e.*, April 28, 2005) from receiving such credit.

Two agencies asked whether there are any exceptions to the prohibition on crediting non-Federal work experience to reappointed employees who held civil service positions within 90 days before their reappointment. OPM may not grant any exceptions because 5 U.S.C. 6303(e)(3) prohibits a reappointed employee who held an appointment in the civil service within the previous 90-day period from receiving service credit for non-Federal work experience.

Senate Report 108-223 (January 27, 2004) on the Act stated that the law would "reform the annual leave accrual policy for new mid-career federal employees" so that agencies have an enhanced capability to recruit these individuals (pages 9). The Senate Report explained that "individuals with substantial private sector experience may be hesitant to enter government service if they have to surrender a considerable amount of vacation time" (page 9). OPM's regulations are consistent with this expression of congressional intent that this tool be available to agencies to recruit individuals with the skills and experience necessary to achieve an important agency mission or performance goal. The fact that current employees accepted Federal employment without receiving this new leave benefit clearly demonstrates that a higher annual leave accrual rate was not necessary to recruit them.

An agency recommended revising 5 CFR 630.205(a) by replacing "a newly appointed employee" with "an employee receiving his or her first appointment (regardless of tenure) as a civilian employee of the Federal Government." The agency explained that the recommended revision would align the language in § 630.205(a) with