

§ 319.402 Scientific and professional positions.

(a) ST positions are filled without competitive examination under 5 U.S.C. 3325.

(b) ST positions are not subject to the citizenship requirements in 5 CFR part 338, subpart A. Agencies, however, must observe any restrictions on the employment of noncitizens in applicable appropriations acts.

(c) ST employees acquire competitive status immediately upon appointment. They are not required to serve a probationary or trial period.

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

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AUTHORITY: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–58 Comp., p. 218. Section 330.102 also issued under 5 U.S.C. 3327 and 3330.

Subpart B also issued under 5 U.S.C. 3315 and 8151.

Section 330.401 also issued under 5 U.S.C. 3310.

Subparts F-G also issued under Presidential memorandum dated September 12, 1995, entitled "Career Transition Assistance for Federal Employees."

Subpart H also issued under 5 U.S.C. 8337(h) and 8457(b).

Subpart I also issued under 106 Stat. 2720, 5 U.S.C. 3301 note.

SOURCE: 33 FR 12425, Sept. 4, 1968, unless otherwise noted.

Subpart A—Discretion in Filling Vacancies

§ 330.101 Methods of filling vacancies.

An appointing officer may fill a position in the competitive service by any of the methods authorized in this chapter. He shall exercise his discretion in each personnel action solely on the basis of merit and fitness and without the discrimination prohibited in part 713 of this chapter.

§ 330.102 Federal employment information.

(a) *Vacancies open to the public.* (1) *Notice required*—(i) Under 5 U.S.C. 3327, Federal agencies must notify OPM promptly of:

(A) Open competitive examinations;

(B) Vacancies in the competitive service to be filled under direct hire procedures or part 333 of this chapter; and

(C) Vacancies in the Senior Executive Service for which the agency seeks applications from persons outside the Federal service. Also, in accordance with §317.501(b)(2) of this chapter, agencies must notify OPM of all Senior Executive Service vacancies to be filled by initial career appointment.

(ii) OPM will provide this information to the employment offices of the United States Employment Service.

(2) *Agencies covered.* Paragraph (a)(1) of this section applies to:

(i) The executive departments listed at 5 U.S.C. 101;

(ii) The military departments listed at 5 U.S.C. 102;

(iii) Government owned corporations in the executive branch as described at 5 U.S.C. 103;

(iv) Independent establishments in the executive branch as described at 5 U.S.C. 104, including the Nuclear Regulatory Commission; and

(v) Government Printing Office.

(b) *All other vacancies*—(1) *Notice required.* Under 5 U.S.C. 3330, OPM must maintain, and make available to the public, a list of agency vacancy announcements for positions in the competitive service. Under §330.707 of this chapter, agencies must notify OPM promptly of competitive service vacancies to be filled for more than 120 days when the agency will accept applications from individuals outside the agency's own work force.

(2) [Reserved]

(c) *Funding.* Under 5 U.S.C. 3330(f), OPM is authorized to charge fees to agencies for their share of the cost of providing employment information to the public and to Federal employees. OPM will work with agencies to review the effectiveness and efficiency of the Federal Employment Information System in meeting Federal agency and public needs and identify improvements to the system, consistent with the minimum level of service and statutory requirements. Subsequently, OPM will annually compute the cost of providing employment information and notify each agency of its share, along with a full accounting of the costs, and payment procedures.

[61 FR 11501, Mar. 21, 1996, as amended at 62 FR 31320, June 9, 1997]

Subpart B—Reemployment Priority List (RPL)

SOURCE: 53 FR 45067, Nov. 8, 1988, unless otherwise noted.

§ 330.201 Establishment and maintenance of RPL.

(a) The reemployment priority list (RPL) is the mechanism agencies use to give reemployment consideration to their former competitive service employees separated by reduction in force (RIF) or fully recovered from a compensable injury after more than 1 year. The RPL is a required component of agency positive placement programs. In filling vacancies, the agency must

give RPL registrants priority consideration over certain outside job applicants and, if it chooses, also may consider RPL registrants before considering internal candidates.

(b) Each agency is required to establish and maintain a reemployment priority list for each commuting area in which it separates eligible competitive service employees by RIF or when a former employee recovers from a compensable injury after more than 1 year, except as provided in paragraph (c) of this section. For purposes of this subpart, *agency* means *Executive agency* as defined in 5 U.S.C. 105. All components of an agency within the commuting area utilize a single RPL and are responsible for giving priority consideration to the RPL registrants.

(c) An agency need not maintain a distinct RPL for employees separated by reduction in force if the agency operates a placement program for its employees and obtains OPM concurrence that the program satisfies the basic requirements of this subpart. The intent of this provision is to allow agencies to adopt different placement strategies that are effective for their particular programs yet satisfy legal entitlements to priority consideration in reemployment.

[60 FR 3058, Jan. 13, 1995]

§ 330.202 Application.

(a)(1) To be entered on the RPL, an eligible employee under § 330.203 must complete an application prescribed by the employing agency and inform the agency of any significant changes in the information provided. This application must provide for the employee to specify the conditions under which he or she will accept employment, including grade, occupation, and minimum hours or work per week, in addition to positions at the same representative rate and type of work schedule (e.g., full-time, part-time, seasonal, intermittent, on-call, etc.) as the position from which the employee was or will be separated. Registration may take place as soon as a specific notice of separation under part 351 of this chapter, or a Certification of Expected Separation as provided in § 351.807 of this chapter, has been issued. The employee must submit the application within 30 calendar days

after the RIF separation date. An employee who fails to submit a timely application is not entitled to be placed on the RPL. If an agency has components scattered throughout a large commuting area, the agency may allow eligibles to indicate their availability only for certain sub-areas within the commuting area. However, the agency cannot deny consideration throughout the entire commuting area if the eligible wants it.

(2) An eligible employee under § 330.204 must request reemployment within 30 calendar days after the date compensation ceases, except that when an appeal for continuation of compensation is filed, the 30-day period begins the day after resolution is reached. No specific format is required.

(b) An agency must enroll an individual on the RPL no later than 10 calendar days after receipt of an application or request.

(c) Agencies should be prepared to assist employees, when requested, in identifying and listing on the reemployment priority list (RPL) application those positions within the agency for which the employee qualifies and is interested.

[53 FR 45067, Nov. 8, 1988, as amended at 60 FR 3059, Jan. 13, 1995]

§ 330.203 Eligibility due to reduction in force.

(a) To apply for the RPL, an employee must meet all the following conditions:

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

(2) Have received a rating above unacceptable (level 1) as the last annual performance rating of record for part 351 purposes (except for employees in positions excluded from a performance appraisal system by law, regulation, or OPM administrative action);

(3) Have received a specific notice of separation under part 351 of this chapter, or a Certification of Expected Separation as provided in § 351.807 of this chapter; and

(4) Have not declined an offer under subpart G of part 351 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 or will be separated.

(b) At the time it gives a specific RIF notice of separation or a Certification of Expected Separation, the agency must give each eligible employee information about the RPL, including appeal rights.

(c) A tenure group I employee is eligible for the RPL for 2 years, and a tenure group II employee is eligible for 1 year, from the date the employee is entered on the RPL.

(d)(1) When an individual declines an offer of career, career-conditional, or excepted appointment without time limit or fails to reply to an inquiry, under this subpart, and the position meets the acceptable conditions shown in his or her application, he or she loses RPL consideration for all positions with a representative rate at or below that grade. However, subject to paragraph (d)(2)(iii) of this section, the individual retains eligibility for positions with a higher representative rate up to the last grade held.

(2) Also, an individual is taken off the RPL before the period of eligibility expires when the individual:

(i) Requests removal;

(ii) Receives a career, career-conditional, or excepted appointment without time limit in any agency;

(iii) Declines an offer of career, career-conditional, or excepted appointment without time limit or fails to reply to an inquiry, under this subpart, by the employee's former agency, concerning a specific position having a representative rate at least as high, and with the same type of work schedule, as that of the position from which the person was or will be separated.

(iv) Separates for some other reason (such as retirement, resignation, etc.) before the date the RIF separation would take effect. An employee who retires on or after the date of separation by RIF does not lose RPL eligibility.

(v) Declines an interview or fails to appear for a scheduled interview only if notified in advance of this requirement and the subsequent consequences.

(vi) In the case of an individual enrolled on an RPL for Alaska or overseas, leaves the area covered by that RPL or becomes disqualified for over-

seas employment because of previous service or residence.

(3) When an agency removes an individual from the RPL because of failure to reply to a specific permanent job offer or an inquiry of availability for a specific permanent vacancy, the agency must have evidence to show that a written offer or inquiry was made (e.g., a Postal Service "return receipt signed by addressee only"). The written offer or inquiry to the individual must clearly state that failure to respond will result in loss of RPL consideration for that grade or higher grades, if eligible.

(e) Declination of nonpermanent employment has no effect on RPL eligibility or continuation of RPL consideration.

(f) Consideration for all jobs (whether permanent or nonpermanent) is suspended for any individual who cannot be reached by the agency. Submission of an updated application can reinstate consideration, but the period of eligibility is not extended beyond the original time set in paragraph (c) of this section.

(g) Eligibles who had agreed to transfer with their function but were separated by RIF from the gaining competitive area are registered on the RPL of the gaining competitive area.

[53 FR 45067, Nov. 8, 1988, as amended at 57 FR 21890, May 26, 1992; 60 FR 3059, Jan. 13, 1995]

§330.204 Eligibility due to compensable injury.

(a) A competitive service employee in tenure group I or II who is separated (or who accepts a lower graded position in lieu of separation) because of a compensable injury of disability (as defined in part 353 of this chapter) who has fully recovered more than 1 year after compensation began is entitled to be placed on the RPL provided the individual applies within the timeframes addressed in §330.202. Part 353 of this chapter contains information on eligibility.

(b) A former tenure group I employee is eligible for the RPL for 2 years, and a former tenure group II employee is eligible for 1 year, from the date the individual is entered on the RPL. An individual is taken off the RPL before

the period of eligibility expires when the individual:

- (1) Requests removal;
 - (2) Receives a career, career-conditional, or excepted appointment without time limit in any agency; or
 - (3) Declines an offer or fails to respond to an inquiry of availability about a specific position that is the same as or equivalent to the position from which separated.
- (c) A former employee must request reemployment consideration with the time limits set in § 330.202.

[53 FR 45067, Nov. 8, 1988, as amended at 60 FR 3059, Jan. 13, 1995]

§ 330.205 Employment restrictions.

(a) The restrictions in paragraph (b) of this section apply to the filling of all competitive service vacancies, regardless of whether an agency plans to make a temporary, term, or permanent appointment. This means an agency must consider RPL registrants for non-permanent as well as permanent positions when they have indicated such interest on their RPL application.

(b) When a qualified individual is available on an agency's RPL, the agency may not make a final commitment to an individual not on the RPL to fill a permanent or temporary competitive service position by:

- (1) A new appointment, unless the individual appointed is a qualified 10-point preference eligible; or
- (2) Transfer or reemployment, unless the individual appointed is a preference eligible, is 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, or is exercising other statutory or regulatory reemployment rights.

(c) Paragraph (b) of this section does not apply to actions involving employees on an agency's rolls, as authorized in paragraphs (c) (1), (2), and (3) of this section, or in filling a specific position:

- (1) When all qualified individuals on the RPL decline an offer of a specific position or fail to respond to an official agency inquiry about their availability for it; or
- (2) By a current, qualified employee of the agency through:

- (i) Detail or position change (promotion, demotion, reassignment); or

- (ii) Conversion to competitive appointment of employees currently serving under appointments that carry a noncompetitive conversion eligibility (e.g., Veterans Readjustment Appointee, 30 percent disabled veterans, disabled employees under Schedule A appointment, Presidential Management Interns, cooperative education students under Schedule B appointment, and TAPERS); or

- (iii) Reappointment without a break in service to the same position currently held by an employee serving under a temporary appointment of 1 year or less (only to another temporary appointment not to exceed 1 year or less and not to a permanent appointment); or

- (iv) Extension of an employee's temporary appointment up to the maximum permitted by the appointment authority or as authorized by OPM.

(3) By a 30-day special needs appointment or 700 hour temporary appointment of a severely disabled or mentally restored individual, when the agency's staffing policies provide for these exceptions.

(d) An agency must clear the RPL at the grade level at which it fills a position (regardless of the full performance level). Similarly, if an agency advertises a position at multiple grade levels, it must clear the RPL only at the grade level at which the position is ultimately filled.

(e) Once an agency has cleared its RPL and made a final employment commitment to an individual, the later registration of another employee on the RPL does not prevent the fulfillment of the original commitment, regardless of when the individual actually enters on duty.

(f) An agency may make an exception to this section and appoint an individual not on the RPL as authorized by § 330.207(d).

(g) When submitting a request for referral of eligibles, an agency is required to indicate that no qualified RPL registrant is available for the vacancy and therefore the agency may make a new appointment. Similarly, an agency must clear its RPL before making appointments under a direct-

hire authority, which includes the Outstanding Scholar provision, or delegated examining authority.

[60 FR 3059, Jan. 13, 1995]

§ 330.206 Job consideration.

(a)(1) An eligible employee under § 330.203 is entitled to consideration for positions in the commuting area for which qualified and available that are at no higher grade (or equivalent), have no greater promotion potential than the position from which the employee was or will be separated, and have the same type of work schedule. In addition, an employee is entitled to consideration for any higher grade previously held on a nontemporary basis in the competitive service from which the employee was demoted under part 351 of this chapter.

(2) An employee is considered for positions having the same type of work schedule as the position from which separated except that the agency, at its discretion, may adopt provisions permitting employees to request consideration for other work schedules in addition to that formerly held.

(3) An eligible employee may be entered on the RPL only for the commuting area in which separated and may not apply for the RPL in any other location, except as provided in paragraph (a)(4) of this section.

(4) Each eligible employee in a position in Alaska or overseas is entitled to apply for the RPL for the commuting area in which separated, unless:

(i) The employee leaves that area and makes a written request for entry on the RPL for the commuting area from which he or she was employed for Alaskan or overseas service, or in another area within the United States outside of Alaska that is mutually acceptable to the individual and the agency; or

(ii) The agency has a general program for rotating employees between overseas areas and the United States and the employee's immediately preceding overseas service or residence, combined with prospective overseas service under available appointments, would exceed the maximum duration of an overseas duty tour in the agency rotation program. In this case, the employee may apply for one other commuting area within the United States

that is mutually acceptable to the individual and the agency.

(b)(1) An eligible employee under § 330.205 is placed on the RPL for reemployment consideration for his or her former position or an equivalent one. If the individual cannot be placed in such a position in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency at the time and in a manner as the agency determines will provide the individual with maximum opportunities for consideration.

(2) In lieu of expanded consideration in other locations, an individual who cannot be placed in his or her former or equivalent position in the former commuting area may elect to be considered for the next best available position in the former commuting area.

[53 FR 45067, Nov. 8, 1988, as amended at 60 FR 3060, Jan. 13, 1995]

§ 330.207 Selection from RPL.

(a) *Options.* An agency must adopt one of the selection methods in paragraphs (b) and (c) of this section for use in operating 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. After a method is adopted, the agency uses that method in filling all positions. While an agency may not vary the method used by individual vacancy, it may at any time switch selection methods for employees enrolled on the RPL.

(b) *Retention standing order.* For each vacancy to be filled, the agency shall place qualified individuals in group and subgroup order in accordance with part 351 of this chapter. In making a selection, an agency may not pass over an individual in group I to select from group II and, within a group, may not pass over an individual in a higher subgroup to select from a lower subgroup. Within a subgroup, an agency may select an individual without regard to order of retention standing. A person has no greater priority for the grade or position from which separated than any other person on the list who is qualified for the vacancy. An agency

may make an exception to this selection order only in accordance with paragraph (d) of this section.

(c)(1) *Rating and ranking.* For each vacancy to be filled, the agency rates qualified individuals according to their job experience and education. To do this, an agency shall develop job-related evaluation procedures capable of distinguishing differences in qualifications measured, which shall be applied in a fair and consistent manner. Based on these procedures, the agency shall assign qualified individuals a numerical score of at least 70 on a scale of 100. The agency shall grant 5 additional points to preference eligibles under section 2108(3)(A) and (B) of title 5, United States Code, and 10 additional points to preference eligibles under section 2108(3) (C) through (G) of that title.

(2) Individuals with an eligible numerical score shall be ranked in the following order:

(i) 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 position at and above the GS-9 level, or equivalent; and

(ii) All other qualified candidates in the order of their augmented ratings. At each score, qualified candidates eligible for 10-point preference will be entered ahead of all other eligibles, and those eligible for 5-point preference will be entered ahead of those not eligible for veteran preference.

(3) An agency must make its selection from not more than the highest three candidates available and may pass over a preference eligible to select a nonpreference eligible only as an exception under paragraph (d) of this section.

(d) *Exceptions.* An agency may make an exception to this subpart and appoint an individual who is not on the RPL or has lower standing than others on the RPL. The exception may be granted only when necessary to obtain an employee for duties that cannot be taken over without undue interruption (as defined in §351.203 of this chapter) to the agency by an individual who is on the RPL or has higher standing than the one appointed. The agency

shall notify, in writing, each individual on the RPL who is adversely affected by an appointment under this paragraph of the reasons for the exception and of the right of appeal to the Merit Systems Protection Board.

[53 FR 45067, Nov. 8, 1988, as amended at 60 FR 3060, Jan. 13, 1995]

§ 330.208 Qualification requirements.

(a) Subject to applicable requirements of law and this chapter, an individual is considered qualified for a position if he or she:

(1) Meets OPM-established or approved qualification standards and requirements for the position, including any minimum educational requirements, and any selection placement factors established by the agency;

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position; and

(3) Meets any special qualifying condition that OPM has approved for the position.

(4) Meets any other applicable requirement for appointment to the competitive service.

(b) An agency may make an exception to the qualification standard and adopt an alternative standard under the following conditions (this provision does not authorize waiver of the selection order required by §330.207):

(1) The exception is applied consistently and equitably in filling a position;

(2) The individual meets any minimum educational requirement for the position; and

(3) The agency determines that the individual has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

(c) The sex of an individual may not be considered in determining qualifications for a position, except positions for which OPM has determined certification of eligibles by sex is justified.

[53 FR 45067, Nov. 8, 1988, as amended at 60 FR 3061, Jan. 13, 1995]

§ 330.209 Appeals.

An individual who believes that his or her reemployment priority rights

under this subpart have been violated because of the employment of another person who otherwise could not have been appointed properly may appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

Subpart C—Placement Assistance Programs for Displaced Employees

SOURCE: 53 FR 28364, July 28, 1988, unless otherwise noted.

§ 330.301 Coverage.

(a) This subpart covers the Interagency Placement Program for employees who will be displaced or who have been separated from their Federal jobs as a result of agency workforce reductions, compensable on-the-job injury, discontinued service retirement, or disability retirement. Agencies have the primary responsibility for providing placement assistance to their surplus and displaced employees, and for administering career transition assistance programs. OPM supplements these agency efforts by administering the Interagency Placement Program which gives surplus or displaced employees priority referral to positions in other agencies.

(b) The operation of this subpart will be suspended from February 29, 1996 through September 30, 1999. In the interim, placement assistance will be provided in accordance with subparts B, F, and G of this part. OPM may extend this date if it determines that the Federal Government is still experiencing an emergency downsizing situation.

[62 FR 31320, June 9, 1997]

§ 330.302 OPM Interagency Placement Program.

OPM operates the Interagency Placement Program (IPP) which provides placement assistance to employees who have received a Certification of Expected Separation or specific notice of separation, or who have been separated.

[59 FR 32872, June 27, 1994]

§ 330.303 Eligibility.

(a) [Reserved]

(b) For the IPP, the registrant must:

(1) Be a present or former career or career-conditional employee, or excepted employee with competitive status and in tenure group I or II as defined in part 351 of this chapter (except that an employee occupying a Schedule C position as defined in part 213 of this chapter is not entitled to placement assistance);

(2) Be serving in or have been separated from a position in an agency whose personnel system is subject to competitive service requirements;

(3) Have a rating above "unacceptable" on his or her most recent performance rating of record as described in § 351.203 of this chapter (except individuals qualifying under paragraphs (b)(4)(iii) and (b)(4)(v) of this section or those who are in positions excluded from any performance appraisal system by law, regulation or OPM administrative action);

(4) Must be subject to one of the following:

(i) Has received a specific notice of separation under part 351 of this chapter, or a Certification of Expected Separation as provided in § 351.807 of this chapter.

(ii) Has declined a transfer of function to another commuting area or has declined reassignment to another commuting area (as defined in part 351 of this chapter);

(iii) Has fully or partially recovered from a compensable injury in accordance with the provisions of sub-chapter I of chapter 81 of title 5, United States Code, when the agency is unable to restore the employee;

(iv) Has applied for an annuity or has retired under the discontinued service retirement provision in section 8336(d)(1) or 8414(b)(1)(A) of title 5, United States Code; or

(v) Has retired due to disability under section 8337, 8451 or 8457 of title 5, United States Code; and

(5) Must register for the program within time limits specified by OPM.

[53 FR 28364, July 28, 1988, as amended at 59 FR 32872, June 27, 1994]

§ 330.304 Period of eligibility.

Employees registered in the IPP receive 2 years of OPM placement assistance renewable in 6 month increments by the registered employee.

[59 FR 32872, June 27, 1994]

§ 330.305 Placement assistance.

(a) IPP registrants are referred ahead of other candidates when they are qualified and available for vacancies expected to last more than 1 year and that are filled through competitive appointments. No individual may be selected for such a vacancy as long as a qualified IPP registrant is available. Referrals are based on qualifications of registrants.

(b) Placement assistance is nationwide except that registrants who decline transfer or reassignment outside the commuting area may register for placement assistance only within the commuting area of the position from which they will be or were separated. However, these registrants may transfer their eligibility to another commuting area if they later relocate.

(c) A registrant will be referred to vacancies that are at or below the grade level of and have no more promotion potential than the position from which separated. Eligible registrants separated from positions above GS-15 will receive assistance at the GS-15 level and below.

(d) When an agency selects an IPP registrant, it employs him or her under appropriate appointments such as reinstatement, transfer, position change, or excepted appointment.

[53 FR 28364, July 28, 1988, as amended at 59 FR 32872, June 27, 1994]

§ 330.306 Termination of eligibility.

Eligibility for assistance under the IPP will be terminated if one of the following occurs:

(a) A registrant's 2 year period of eligibility expires (except for preference eligibles who are eligible for up to 1 year of additional assistance as specified in § 330.407);

(b) The registrant requests, in writing, that placement assistance be terminated;

(c) The registrant is placed in a non-temporary position in either the competitive or excepted service;

(d) The registrant declines an offer of continuing employment in the competitive or excepted service under conditions (i.e., grade, salary, geographic location, or work schedule) the registrant previously indicated were acceptable, unless OPM determines that an exception is warranted; or

(e) The agency notifies OPM that the registrant no longer meets the eligibility criteria for program registration and placement assistance.

[59 FR 32872, June 27, 1994]

§ 330.307 Agency responsibilities.

(a) *Agency programs.* (1) Each agency has primary obligation to assist, to the maximum extent practical and in keeping with the requirements set forth in paragraph (a)(2) of this section, in the placement of surplus and displaced employees. OPM's placement program only supplements these efforts and is not intended to relieve an agency of its responsibility to provide the maximum placement assistance possible.

(2) Each agency is required to operate a positive placement program for its own surplus and displaced employees. The program must, at a minimum, provide for the establishment and maintenance of a reemployment priority list for the commuting area for those employees who have received a specific notice of separation through reduction in force or a Certification of Expected Separation, as provided for in subpart B of this part. Additionally, each agency is expected to supplement this basic requirement with other forms of appropriate assistance to be given to employees prior to actual separation. An agency's positive placement program should include the following elements:

(i) Criteria of eligibility for assistance;

(ii) The duration of eligibility;

(iii) The types of assistance provided, including counseling, job referral, and training;

(iv) Consideration of the appropriateness of placing restrictions on filling vacancies by any means when qualified surplus or displaced employees are available in the agency's positive placement program.

(b) *Registration of eligible employees.* In accordance with subpart H of part 351 of this chapter, agencies must inform affected employees about the Interagency Placement Program at the same time that Certifications of Expected Separation or specific reduction in force notices are distributed. Employees who receive a Certification of Expected Separation may register up to 6 months prior to separation. Agencies are responsible for assisting employees with their registration forms, for completing the information requested on the forms, for ensuring employees meet the minimum qualification requirements for the position(s) registered, and for sending them to the appropriate office as instructed by OPM.

(c) *Consideration of individuals referred.* Agencies will give full consideration to individuals referred through OPM's Interagency Placement Program. Full consideration is a careful and open review of the qualifications of the registrant as described in the individual's application forms, contact to determine interest and availability, and an interview; if possible, to further assess the registrant's ability to perform the duties of the position within a reasonable period of time. An appointing officer may not pass over an IPP eligible to select a non-IPP eligible unless an objection to the IPP eligible is sustained by OPM or an agency with delegated authority.

[53 FR 28364, July 28, 1988, as amended at 57 FR 21890, May 26, 1992; 59 FR 32872, June 27, 1994]

Subpart D—Positions Restricted to Preference Eligibles

§ 330.401 Competitive examination.

In each entrance examination for the positions of custodian, elevator operator, guard, and messenger (referred to hereinafter in this subpart as restricted positions), OPM shall restrict competition to preference eligibles as long as preference eligibles are available.

§ 330.402 Direct recruitment.

In direct recruitment by an agency under delegated authority, the agency

shall fill each restricted position by the appointment of a preference eligible as long as preference eligibles are available.

§ 330.403 Noncompetitive actions.

An agency may fill a restricted position by the appointment by noncompetitive action of a nonpreference eligible only in particular types of cases as determined by OPM. OPM shall publish in the Federal Personnel Manual a statement of the circumstances under which a restricted position may be filled by noncompetitive action.

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

OPM and agencies have certain obligations toward preference eligibles occupying restricted positions when a decision is made to contract out a Government-performed commercial activity in accordance with the Office of Management and Budget (OMB) Circular A-76. (Copies of the OMB circular are available from Executive Office of the President, Office of Management and Budget, Publications Office, 725 17th Street, NW., Room 220, New Executive Office Building, Washington, DC 20503.) Preference eligibles are entitled to additional placement assistance through the Interagency Placement Program. These preference eligibles must:

(a) Be occupying restricted positions as designated in 5 U.S.C. 3310 and § 330.401;

(b) Be in the competitive service (in tenure I or II); and

(c) Meet the eligibility requirements of the IPP which are described in subpart C of this part.

[59 FR 32873, June 27, 1994]

§ 330.405 Agency placement assistance.

An agency, compelled to conduct a reduction in force and separate a preference eligible from a restricted position because a Government-performed commercial activity is contracted out, must alert affected preference eligible employees of their placement rights and their opportunity to participate in agency and OPM placement programs. Agencies must make maximum effort

to find suitable positions for the preference eligible. This effort must include—

(a) Conducting an internal positive placement program;

(b) Emphasizing selection procedures using reemployment priority lists in accordance with subpart B of this part and subpart J of part 351 for every vacant agency position for which the preference eligible qualifies and is available;

(c) Notifying preference eligibles of the right to register in the IPP at least 60 days before the effective date of separation.

(d) Assuring that OMB’s policy directives on the preference eligibles’ right of first refusal for employment openings in contracting out situations are met;

(e) Continuing liaison with State Job Service offices for placement assistance for eligible employees who wish to be considered for jobs outside the Federal Government. This includes cooperation with Local Veteran Employment Representatives (LVER) and Disabled Veterans Outreach Program (DVOP) specialists;

(f) Referring names of interested preference eligibles to the U.S. Postal Service for consideration for employment opportunities.

[50 FR 39877, Sept. 30, 1985, as amended at 59 FR 32873, June 27, 1994]

§ 330.406 OPM placement assistance.

OPM’s responsibilities include:

(a) Assisting agencies in operating positive placement programs.

(b) Making priority referral in accordance with § 330.304 of subpart C of this part.

(c) Assuring that all agencies that have vacancies to fill through the competitive examining process give full consideration to adversely affected preference eligibles registered in the IPP.

(d) Encouraging cooperation between local U.S. Postal Service installations and local Federal installations to assist these displaced preference eligibles in applying for U.S. Postal Service positions.

(e) Monitoring this placement assistance through IPP procedures.

[50 FR 39877, Sept. 30, 1985, as amended at 59 FR 32873, June 27, 1994]

§ 330.407 Duration of eligibility for assistance.

Adversely affected preference eligibles may remain in the IPP for 1 year after their normal IPP eligibility expires with placement assistance renewable in 6 month increments by the registered employee. Eligibility may, however, be terminated earlier in accordance with other IPP procedures.

[59 FR 32873, June 27, 1994]

Subpart E—Restrictions To Protect Competitive Principles

§ 330.501 General restriction on movement after competitive appointment.

An agency may promote an employee or reassign him to a different line of work, or to a different geographical area, and it may transfer a present employee or reinstate a former employee of the same or another agency to a higher grade or different line of work, or to a different geographical area, only after 3 months have elapsed since the employee’s latest nontemporary competitive appointment. OPM may waive the restriction against movement to a different geographical area when it is satisfied that the waiver is consistent with the principles of open competition.

[37 FR 11965, June 16, 1972]

§ 330.502 [Reserved]

§ 330.503 Assessment of compliance with competitive principles.

As one factor in assessing an agency’s compliance with competitive principles, OPM will consider the relationship between appointments from competitive examinations and subsequent position changes. When OPM finds that an agency has not complied with competitive principles, either in an individual case or on a program basis, OPM will require the agency to take appropriate corrective action.

[37 FR 11965, June 16, 1972]

§ 330.504 Special restrictions after appointment under Part-time Direct Hire Program.

(a) A person hired under the Part-time Direct Hire Program may not be changed to full time through:

- (1) Position change;
- (2) Work schedule change;
- (3) Transfer; or

(4) Reinstatement based on appointment under the Part-time Direct Hire Program until he or she has completed at least 1 calendar year of service in a part-time position under the program.

(b) In the event of a break in service, the service requirement in paragraph (a) of this section is computed on the basis of the employee's total time in a pay status, 365 days equaling 1 calendar year.

(c) Agencies may waive this restriction only in the event of extreme personal hardship to the employee.

[45 FR 65493, Oct. 3, 1980]

§ 330.505 Nonapplicability to persons within reach on registers.

The restrictions in this subpart do not apply to a person who is within reach on a register for competitive appointment to the position to be filled.

[34 FR 2649, Feb. 27, 1969]

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

AUTHORITY: Presidential memorandum dated September 12, 1995, entitled "Career Transition Assistance for Federal Employees".

SOURCE: 62 FR 31320, June 9, 1997, unless otherwise noted.

§ 330.601 Purpose.

(a) This subpart implements the President's memorandum of September 12, 1995, to establish agency Career Transition Assistance Plans for Federal employees during a period of severe Federal downsizing. It is the policy of the United States Government to provide services to help surplus and displaced Federal employees take charge of their own careers and find other job offers, either within the Fed-

eral Government or in the private sector.

(b) These regulations set forth minimum criteria for agency Career Transition Assistance Plans. Consistent with the regulations, agencies may supplement these provisions to expand career transition opportunities to their surplus and displaced workers at their discretion.

(c) Sections 330.602(a)(2) and 330.604 through 330.609 do not apply to the Department of Defense Priority Placement Program.

(d) New negotiated agreements and agreements which have expired since February 29, 1996, the effective date of the interim regulations, will be subject to the provisions set forth in this part.

§ 330.602 Agency plans.

(a) Each agency will establish a Career Transition Assistance Plan (CTAP) to actively assist its surplus and displaced employees. A copy of the final plan and any additional modified plans will be sent to OPM as approved by the agency/department head or deputy or under secretary. An agency plan will include:

(1) Policies to provide career transition services to all surplus and displaced agency employees affected by downsizing or restructuring, including employees in the excepted service and the Senior Executive Service, which include the following:

(i) Types of career transition services to be provided by the agency;

(ii) Use of excused absence for employees to use the services and facilities;

(iii) Access to services or facilities after separation;

(iv) The requirement for a specific orientation session for surplus and displaced employees on the use of career transition services and the eligibility requirements for selection priority under CTAP and ICTAP. The orientation session must include information on how to apply for vacancies under the CTAP and ICTAP (if applicable);

(v) Retraining to be provided to employees;

(vi) Access by employees, including those with disabilities, to services in headquarters, field offices, and remote site locations;

(vii) Access to resource information on other forms of Federal, state, and local assistance which are available to support career transition for employees with disabilities;

(viii) Role of employee assistance programs in providing services; and

(ix) Designation of agency components, if the agency exercises its discretion under § 330.606(d)(24).

(2) Policies to provide special selection priority to well-qualified surplus and/or displaced agency employees, as defined by § 330.604 (c) and (i), who apply for agency vacancies in the local commuting area, before selecting any other candidate from either within or outside the agency, and agency procedures for reviewing qualification issues; and

(3) Operation of the agency's Reemployment Priority List under subpart B of 5 CFR part 330.

(b) Each agency is responsible for assuring that its Career Transition Assistance Plan and the provisions of these subparts are uniformly and consistently applied to all employees.

§ 330.603 Duration.

This subpart will expire on September 30, 1999, unless the Office of Personnel Management extends the program based on its determination that the Federal Government is still experiencing an emergency downsizing situation.

§ 330.604 Definitions.

For purposes of this subpart:

(a) *Agency* means an Executive Department, a Government corporation, and an independent establishment as cited in 5 U.S.C. 105. For the purposes of this program, the term "agency" includes all components of an organization, including its Office of Inspector General.

(b) *Component* means the first major subdivision of an agency, that is separately organized and clearly distinguished from other components in work function and operation.

(c) *Displaced employee* means:

(1) A current career or career conditional competitive service employee in tenure group 1 or 2, at grade levels GS-15 or equivalent and below, who has received a specific reduction in force (RIF) separation notice or notice of

proposed removal for declining a directed reassignment or transfer of function outside of the local commuting area; or,

(2) A current Executive Branch agency employee in the excepted service, serving on an appointment without time limit, at grade levels GS-15 or equivalent and below, who has been given noncompetitive appointment eligibility and selection priority by statute for positions in the competitive service, and who is in receipt of a reduction in force separation notice or notice of proposed removal for declining a transfer of function or directed reassignment outside of the local commuting area.

(d) *Eligible employee* means a surplus or displaced employee who meets the conditions set forth in § 330.605(a).

(e) *Local commuting area* means the geographic area that usually constitutes one area for employment purposes as determined by the agency. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment.

(f) *Reorganization* means the planned elimination or redistribution of work functions within an agency, normally announced in writing.

(g) *Special selection priority* means that, except as provided by § 330.606(d), surplus and/or displaced employees eligible under this subpart must be selected over any other candidate for vacancies in the local commuting area for which they apply and are found well-qualified.

(h) *Suitability* means determinations based on an individual's character or conduct that may impact the efficiency of the service by jeopardizing an agency's accomplishment of its duties or responsibilities, or by interfering with or preventing effective service in the competitive, excepted or SES position applied for or employed in, and determinations that there is a statutory or regulatory bar to employment.

(i) *Surplus employee means:*

(1) A current agency employee serving under an appointment in the competitive service, in tenure group 1 or 2, at grade levels GS-15 or equivalent and

below, who has received a certificate of expected separation or other official certification issued by the agency indicating that the position is surplus, for example, a notice of position abolishment, or a notice stating that the employee is eligible for discontinued service retirement; or,

(2) A current Executive Branch agency employee serving on an excepted service appointment without time limit, at grade levels GS-15 or equivalent and below, who has been issued a certificate of expected separation or other official agency certification indicating that his or her position is surplus, for example, a notice of position abolishment or a notice stating that the employee is eligible for discontinued service retirement, and who has been conferred noncompetitive appointment eligibility and special selection priority by statute for positions in the competitive service; and

(3) At an agency's discretion, a current Executive Branch employee serving on a Schedule A or B excepted appointment without time limit, at grade levels GS-15 or equivalent and below, and who is in receipt of a certificate of expected separation or other official agency certification indicating that his or her job is surplus, for example, a notice of position abolishment, or an official notice stating that the employee is eligible for discontinued service retirement; or an employee who has received a RIF notice of separation, or a notice of proposed removal for declining a transfer of function or directed reassignment outside of the local commuting area. Such employee may exercise selection priority for permanent excepted service positions within the agency's local commuting area, provided the position to which appointed has the same appointing authority, i.e., Schedule A or B, as the position from which being separated.

(j) *Vacancy* means a competitive service position filled for a total of 121 days or more, including all extensions, which the agency is filling, regardless of whether the agency issues a specific vacancy announcement.

(k) *Well-qualified employee* means an eligible employee who possesses the knowledge, skills, and abilities which clearly exceed the minimum qualifica-

tion requirements for the position. A well-qualified employee will not necessarily meet the agency's definition of "highly or best qualified," when evaluated against other candidates who apply for a particular vacancy, but must satisfy the following criteria, as determined and consistently applied by the agency:

(1) Meets the basic qualification standards and eligibility requirements for the position, including any medical qualifications, suitability, and minimum educational and experience requirements; and

(2) Satisfies one of the following qualifications requirements:

(i) Meets all selective factors where applicable. Meets appropriate quality rating factor levels as determined by the agency. Selective and quality ranking factors cannot be so restrictive that they run counter to the goal of placing displaced employees. In the absence of selective and quality ranking factors, selecting officials will document the job-related reason(s) the eligible employee is or is not considered to be well qualified; or

(ii) Is rated by the agency to be above minimally qualified in accordance with the agency's specific rating and ranking process. Generally, this means that the individual may or may not meet the agency's test for "highly qualified," but would in fact, exceed the minimum qualifications for the position;

(3) Is physically qualified, with reasonable accommodation where appropriate, to perform the essential duties of the position;

(4) Meets any special qualifying condition(s) that OPM has approved for the position; and

(5) Is able to satisfactorily perform the duties of the position upon entry.

§ 330.605 Eligibility.

(a) To be eligible for the special selection priority, an individual must meet all of the following conditions:

(1) Is a surplus or displaced employee (still on the agency rolls) as defined in § 330.604 (c) and (i);

(2) Has a current performance rating of record of at least fully successful or equivalent;

(3) Applies for a vacancy that is at or below the grade level from which the employee may be or is being separated, that does not have a greater promotion potential than the position from which the employee may be or is being separated;

(4) Occupies a position in the same local commuting area of the vacancy; or, at the agency's discretion, occupies a position beyond the local commuting area. An eligible agency applicant outside of the local commuting area, however, can only exercise selection priority when there are no eligible surplus and displaced agency employees within the local commuting area who apply and are found well-qualified;

(5) Files an application for a specific vacancy within the time frames established by the agency, and provides proof of eligibility as required under § 330.608(a)(2); and

(6) Is determined by the agency to be well-qualified for the specific vacancy.

(b) *Eligibility for special selection priority begins* on the date the agency issues the employee a RIF separation notice, certificate of expected separation, notice of proposed separation for declining a directed reassignment or transfer of function outside of the local commuting area, or other official agency certification identifying the employee as being in a surplus organization or occupation, whichever is earliest.

(c) *Eligibility expires on the earliest of:*

(1) The RIF separation date, the date of the employee's resignation from the agency, or the date of separation under adverse action procedures for declining a directed reassignment or transfer of function to another local commuting area; or

(2) Cancellation of the RIF separation notice, certificate of expected separation, notice of proposed removal for declining a directed reassignment or transfer of function outside of the commuting area, or other official agency certification identifying the employee as surplus; or

(3) When an eligible employee receives a career, career-conditional, or excepted appointment without time limit in any agency at any grade level; and

(4) Within an agency, and at the agency's discretion, when an eligible

employee declines a career, career conditional, or excepted appointment (without time limit), for which the employee has applied and been rated well-qualified.

§ 330.606 Order of selection for filling vacancies from within the agency.

(a) Except as provided in paragraph (d) of this section, when filling a vacancy as defined in § 330.604(j), an agency must select an employee eligible under § 330.605 of this subpart before selecting any other candidate from within or outside the agency, unless the agency can show that another employee would otherwise be separated by reduction in force. In addition, agencies may not procure temporary help services under 5 CFR part 300, subpart E, in lieu of appointing a surplus or displaced Federal employee as required by subparts F and G of this chapter.

(b) Once the agency has met its obligation to select employees eligible under its CTAP, it is free to select any other competitive service tenure group 1 or 2 candidate from within its workforce, under appropriate procedures. An agency may provide selection priority to surplus and displaced agency employees from another commuting area after it has discharged its obligation to eligible surplus and displaced agency employees from within the local commuting area.

(c) When an agency selects a candidate from outside of its workforce, the agency is subject to the order of selection prescribed in § 330.705.

(d) The following are not covered under this subpart:

(1) Actions taken under 5 CFR part 335, including reassignments, changes to lower grade, or promotions, when no employees eligible under this subpart apply;

(2) Reemployment of a former agency employee exercising regulatory or statutory reemployment rights, including the reemployment of injured workers who have either been restored to earning capacity by the Office of Workers' Compensation Programs (OWCP), or who have received a notice that their compensation benefits will cease because of recovery from the disabling injury or illness;

(3) Position changes resulting from disciplinary actions;

(4) Temporary appointments of under 121 days (including all extensions);

(5) Exchange of positions between or among agency employees, when the actions involve no increase in grade or promotion potential, i.e., job swaps;

(6) Conversion of an employee of the same agency who is serving on an excepted appointment which confers eligibility for noncompetitive conversion into the competitive service, e.g., conversion of a veterans' readjustment appointee to a career conditional appointment under §315.705;

(7) An action taken under part 351 of this chapter;

(8) Non-competitive placement of an employee into a different position as a result of a formal reorganization, when the former position ceases to exist, and no actual vacancy results;

(9) Assignments made under the Intergovernmental Personnel Act (IPA) as provided in part 334 of this chapter;

(10) The filling of a position through an excepted appointment;

(11) Details;

(12) Time-limited promotions of under 121 days, including all extensions;

(13) Noncompetitive movement of surplus or displaced employees within the agency, and within the same local commuting area;

(14) Movement of excepted service employees within an agency;

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

(16) A placement that is a "reasonable offer" as defined in 5 U.S.C. 8336(d) and 8414(b);

(17) Career ladder promotions or position changes resulting from reclassification actions, e.g., accretion of duties, or application of new position classification standards;

(18) Recall of seasonal or intermittent employees from nonpay status;

(19) The internal placement of an injured or disabled worker whose agency has identified a position for which he or she can be reasonably accommodated;

(20) An action taken by the agency head or his designee pursuant to the settlement of a formal complaint, grievance, appeal, or other litigation;

(21) An action taken to return an employee to his or her original or similar position during a supervisory probationary period;

(22) The retention of individuals whose positions are brought into the competitive service under §316.701 or §316.702 of this chapter and subsequent conversion, when applicable, under §315.701 of this chapter;

(23) The retention of an employee for whom OPM has approved a rule 5.1 variation;

(24) At the agency's discretion, the selection of an employee from within a component of an agency within the local commuting area, after all eligible surplus and displaced applicants of that component who are eligible under CTAP within the local commuting area have been accorded selection priority;

(25) The reemployment of a former agency employee who retired under a formal trial retirement and reemployment program, and who seeks reemployment with that agency under the program's provisions, and within the program's applicable time limits;

(26) Extensions of temporary or term actions, up to the full period allowed, provided that the original action, upon which the extension is based, was made on or before February 29, 1996; or for actions initially made after February 29, 1996, the original vacancy announcement must have specified that the position was open to CTAP candidates and that if they were found well-qualified, would be afforded selection priority. The original announcement must have stated that an extension was possible without further announcement;

(27) Noncompetitive movement of displaced employees between agencies as a result of reorganization, transfer of function, or mass transfer; and

(28) The placement of a member of the Senior Executive Service under 5 U.S.C. 3594.

§330.607 Notification of surplus and displaced employees.

(a) In addition to meeting the requirements of §330.602(a)(1)(iv), at the time it issues a specific RIF separation

notice, certificate of expected separation, or other official agency certification that identifies an employee as being likely to be separated by RIF, or by adverse action procedures for declining a directed reassignment or transfer of function outside the local commuting area, an agency must give each of its eligible employees information in writing about the special selection priority available to them under the agency's Career Transition Assistance Plan. Such information must contain guidance to the employee on how to apply for vacancies under the CTAP, and what documentation is generally required as proof of eligibility.

(b) Agencies must take reasonable steps to ensure eligible employees are notified of all vacancies the agency is filling and what is required for them to be determined well-qualified for the vacancies. Vacancy announcements within an agency must contain information on how eligible employees within the agency can apply, what proof of eligibility is required, and the agency's definition of "well-qualified."

(c) Each agency is required to advise, in writing, their surplus and displaced employees who apply for specific vacancies within its local commuting area of the results of their application, and whether or not they were found well-qualified. If they are not found well-qualified, such notice must include information on the results of an independent, second review conducted by the agency. If an applicant is found well-qualified, and another well-qualified surplus or displaced candidate is selected, the applicant must be so advised.

§ 330.608 Application and selection.

(a) Application.

(1) To receive this special selection priority, an eligible employee must apply for a specific agency vacancy in the same local commuting area as the position the employee occupies within the prescribed time frames, attach the appropriate proof of eligibility as described in paragraph (a)(2) of this section, and be determined well-qualified by the agency for the specific vacancy.

(2) Employees may submit the following as proof of eligibility for the special selection priority:

(i) RIF separation notice or notice of proposed removal for declining a directed reassignment or transfer of function outside the local commuting area;

(ii) Certificate of expected separation or other official notice from the agency indicating that the employee is surplus or eligible for discontinued service retirement; or

(iii) Other official agency certification identifying the employee as being in a surplus organization or occupation.

(b) *Selection.* An agency may decide the specific order of selection of its eligible employees within the provisions set forth in § 330.606(a) (e.g., the agency may decide to select displaced employees before surplus employees or may select surplus and/or displaced employees from within a particular component of the agency before selecting surplus and/or displaced employees from another component of the agency).

(c) An agency cannot select any other candidate from within or outside the agency if eligible employees are available for the vacancy or vacancies.

(d) If two or more eligible employees apply for a vacancy and are determined to be well-qualified, any of these eligible employees may be selected.

(e) If no eligible employees apply or none is deemed well-qualified, the agency may select another agency employee without regard to this subpart.

§ 330.609 Qualification reviews.

Agencies will ensure that a documented, independent second review is conducted whenever an otherwise eligible employee is determined to be not well-qualified. The applicant must be advised in writing of the results of the second review.

§ 330.610 Reporting.

(a) Each agency shall submit an annual report covering each fiscal year activity under this subpart to OPM no later than December 31 of each year.

(b) Each report will include the following:

(1) Number of employees identified by the agency as surplus and displaced during that fiscal year;

(2) The number of CTAP applicants who were found to be well-qualified;

(3) The number of CTAP applicants who were found to be not well-qualified;

(4) Number of selections of eligible employees under the agency's CTAP, or in the case of the Department of Defense, under its Priority Placement Program;

(5) The number of second reviews and the results of those reviews;

(6) The number of CTAP eligibles who declined job offers; and

(7) The name, title, and telephone number of the agency official responsible for the report.

(c) Reports should be addressed to: U.S. Office of Personnel Management, Workforce Restructuring Office, Employment Service, 1900 E Street, NW., Washington, DC 20415, FAX: 202-606-2329.

§ 330.611 Oversight.

OPM provides advice and assistance to agencies in implementing their Career Transition Assistance Programs. OPM is also responsible for oversight of agency CTAPs and may conduct reviews of the plans at any time.

Subpart G—Interagency Career Transition Assistance Plan for Displaced Employees

AUTHORITY: Presidential memorandum dated September 12, 1995, entitled "Career Transition Assistance for Federal Employees".

SOURCE: 62 FR 31323, June 9, 1997, unless otherwise noted.

§ 330.701 Purpose.

(a) This subpart implements the President's memorandum of September 12, 1995, to establish a special interagency career transition assistance program for Federal employees during a period of severe Federal downsizing.

(b) This subpart is effective July 9, 1997.

(c) The provisions of the Reemployment Priority List (RPL) set forth in subpart B of this part will remain in effect during the period of severe Federal downsizing. When an agency considers candidates from outside the agency for vacancies, registrants in an agency's RPL have priority for selection over

employees eligible under this subpart in accordance with § 330.705.

(d) This subpart applies only when agencies are making selections from outside their workforce, and does not prohibit movement within an agency, as permitted by subpart F of this part.

§ 330.702 Duration.

This subpart will expire on September 30, 1999, unless the U. S. Office of Personnel Management extends the program based on its determination that the Federal Government is still experiencing an emergency downsizing situation.

§ 330.703 Definitions.

For the purposes of this subpart:

(a) *Agency* has the meaning given in § 330.604(a).

(b) *Displaced employee* means:

(1) A current career or career-conditional competitive service employee, in tenure group 1 or 2, at grade levels GS-15 or equivalent and below, who has received a specific RIF separation notice, or a notice of proposed removal for declining a directed reassignment or transfer of function outside of the local commuting area;

(2) A former career or career-conditional competitive service employee, in tenure group 1 or 2, at grade levels GS-15 or equivalent and below, who was separated through reduction in force, or removed for declining a directed reassignment or transfer of function outside of the local commuting area;

(3) A former career or career-conditional employee who was separated because of a compensable injury or illness as provided under the provisions of subchapter I of chapter 81 of title 5, United States Code, whose compensation has been terminated and whose former agency is unable to place the individual as required by part 353 of this chapter;

(4) A former career or career-conditional competitive service employee, in tenure group 1 or 2, who retired with a disability under sections 8337 or 8451 of title 5, United States Code, whose disability annuity has been or is being terminated;

(5) 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 reduction in force or under the discontinued service retirement option;

(6) A former Military Reserve Technician or National Guard Technician who is receiving a special disability retirement annuity from OPM under section 8337(h) or 8456 of title 5 United States Code, as described in subpart H of this part;

(7) A current Executive Branch agency employee in the excepted service, serving on an appointment without time limit, at grade levels GS-15 or equivalent and below, who has been given noncompetitive appointment eligibility and selection priority by statute for positions in the competitive service, and who is in receipt of a reduction in force separation notice or notice of proposed removal for declining a transfer of function or directed reassignment outside of the local commuting area; or

(8) A former Executive Branch agency employee in the excepted service, who served on an appointment without time limit, at grade levels GS-15 or equivalent and below, who has been given noncompetitive appointment eligibility and selection priority by statute for positions in the competitive service, and who has been separated through reduction in force or removed for declining a transfer of function or directed reassignment outside of the local commuting area.

(c) *Eligible employee* means a displaced employee who meets the conditions set forth in § 330.704(a).

(d) *Local commuting area* has the meaning given in § 330.604(e).

(e) *Special selection priority* has the meaning given in § 330.604(g).

(f) *Vacancy* has the meaning given in § 330.604(j).

(g) *Well-qualified employee* has the meaning given in § 330.604(k).

§ 330.704 Eligibility.

(a) To be eligible for the special selection priority, an individual must meet all of the following conditions:

(1) Is a displaced employee as defined in § 330.703(b);

(2) Has a current (or a last) performance rating of record of at least fully

successful or equivalent (except for those eligible under § 330.703(b)(3), (b)(4), and (b)(6));

(3) Applies for a vacancy at or below the grade level from which the employee has been or is being separated, that does not have a greater promotion potential than the position from which the employee has been or is being separated;

(4) Occupies, or was displaced from a position in the same local commuting area of the vacancy;

(5) Files an application for a specific vacancy within the time frames established by the agency, and provides proof of eligibility required under § 330.708(a)(2); and

(6) Is determined by the agency to be well-qualified for the specific position.

(b) *Eligibility for special selection priority begins:*

(1) On the date the agency issues the RIF separation notice;

(2) On the date an agency certifies that it cannot place an employee eligible under § 330.703(b)(3);

(3) On the date an employee eligible under § 330.703(b)(4) is notified that his or her disability annuity has been or is being terminated;

(4) On the date the agency issues a formal notice of proposed separation to an employee for declining a transfer of function or directed reassignment outside the local commuting area; or

(5) On the date the National Guard Bureau or Military Department certifies that an employee under § 330.703(b)(6) has retired under 5 U.S.C. 8337(h) or 8456.

(c) *Eligibility expires:*

(1) 1 year after separation, except for those employees separated on or after September 12, 1995, and prior to February 29, 1996. For these employees, eligibility expired February 28, 1997;

(2) 1 year after an agency certifies that an individual under § 330.703(b)(3) cannot be placed;

(3) 1 year after an individual under § 330.703(b)(4) receives notification that his/her disability annuity has been or will be terminated;

(4) When the employee receives a career, career-conditional, or excepted appointment without time limit in any agency at any grade level;

(5) When the employee no longer meets the eligibility requirements set forth in paragraph (a) of this section (e.g., the employee is no longer being separated by RIF, or under adverse action procedures for declining a transfer of function or directed reassignment outside the local commuting area, or separates by resignation or non-discontinued service retirement prior to the RIF effective date); or

(6) At an agency's discretion, when an eligible employee declines a career, career conditional, or excepted appointment (without time limit), for which the employee has applied and been rated well-qualified; or upon the failure of the applicant to respond within a reasonable period of time to an offer or official inquiry of availability.

§ 330.705 Order of selection in filling vacancies from outside the agency's workforce.

(a) Except as provided in paragraph (c) of this section, when filling a vacancy from outside the agency's workforce an agency must select:

(1) Current or former agency employees eligible under the agency's Reemployment Priority List described in subpart B of this part, then;

(2) At the agency's option, any other former employee displaced from the agency (under appropriate selection procedures), then;

(3) Current or former Federal employees displaced from other agencies eligible under this subpart; and then;

(4) Any other candidate (under appropriate selection procedures) (optional).

(b) The following actions are subject to the above order of selection and are covered under this subpart:

(1) Competitive appointments (e.g., from registers or delegated examining);

(2) Noncompetitive appointments to the competitive service (e.g., the types listed in part 315, subpart F of this chapter, as well as Outstanding Scholar and Bilingual/Bicultural appointments made under the authority of the Luevano consent decree);

(3) Movement between agencies (e.g., transfer), except as provided for in paragraph (c)(8) of this section or part 351 of this chapter;

(4) Reinstatements (except as provided for in paragraph (a)(2) of this section); and

(5) Time-limited competitive appointments of 121 days or more, including all extensions, except as provided in (c)(11) of this section.

(c) The following actions are not covered under this subpart:

(1) Selections from an agency's internal Career Transition Assistance Plan or Reemployment Priority List as described in subparts F and B of this part respectively or any other internal agency movement of current agency employees;

(2) Appointments of 10 point veteran preference eligibles (CP, CPS, and XP), if reached through an appropriate appointing authority;

(3) Reemployment of former agency employees who have regulatory or statutory reemployment rights, including the reemployment of injured workers who have either been restored to earning capacity by the Office of Workers' Compensation Programs (OWCP), or who have received a notice that their compensation benefits will cease because of recovery from the disabling injury or illness;

(4) Temporary appointments of under 121 days (including all extensions);

(5) An action taken under part 351 of this chapter;

(6) The filling of a position by an excepted appointment;

(7) Conversion of an employee of the same agency who is serving on an excepted appointment that confers eligibility for noncompetitive appointment into the competitive service, e.g., conversion of a veterans' readjustment appointee to a career conditional appointment under § 315.705 of this chapter;

(8) Noncompetitive movement of displaced employees between agencies as a result of reorganization, transfer of function, or mass transfer;

(9) The reemployment of a former agency employee who retired under a formal trial retirement and reemployment program, and who seeks reemployment with that agency under the program's provisions, and within the program's applicable time limits;

(10) An action taken by the agency head or his or her designee pursuant to

the settlement of a formal complaint, grievance, appeal, or other litigation;

(11) Extensions of temporary or term actions, up to the full period allowed, provided that the original action, upon which the extension is based, was made on or before February 29, 1996 (the effective date of the interim regulations); or for actions initially made after February 29, 1996, the original vacancy announcement must have specified that the position was open to ICTAP candidates, and that if they were found well-qualified, would be afforded selection priority. The original announcement must have stated that an extension was possible without further announcement. This exception includes extensions granted by OPM to the 2 or 4 year limit allowed for temporary and term appointments, respectively;

(12) The reappointment of former employees with their agency into hard-to-fill positions, the duties of which require unique skills and experience necessary to conduct a formal skills-based training program for the agency;

(13) The retention of individuals whose positions are brought into the competitive service under §316.701 or §316.702 of this chapter and subsequent conversion, when applicable, under §315.701 of this chapter;

(14) The retention of an employee for whom OPM has approved a rule 5.1 variation;

(15) The placement of a member of the Senior Executive Service under 5 U.S.C. 3594; and

(16) Assignments made under the Intergovernmental Personnel Act (IPA) as provided in part 334 of this chapter.

§330.706 Notification of displaced employees.

(a) In addition to meeting the requirements of §330.602(a)(1)(iv) and §330.607(a), at the time it issues a specific RIF separation notice or notice of proposed removal for declining a directed reassignment or transfer of function outside of the local commuting area, an agency must give each of its eligible employees information in writing about the special selection priority available to them under the Interagency Career Transition Assistance Plan. Such information must con-

tain guidance to the employee on how to apply for vacancies under the ICTAP, and what documentation is generally required as proof of eligibility.

(b) Agencies must take reasonable steps to ensure eligible employees are notified of all vacancies the agency is filling and what is required for them to be determined well-qualified for the vacancies.

(c) Each agency is required to advise, in writing, ICTAP candidates who apply for specific vacancies within its local commuting area of the results of their application, and whether or not they were found well-qualified. If they are not found well-qualified, such notice must include information on the results of an independent, second review conducted by the agency. If an applicant is found well-qualified, and another well-qualified surplus or displaced candidate is selected, the applicant must be so advised.

§330.707 Reporting vacancies to OPM.

(a) Agencies are required to report all competitive service vacancies to OPM when accepting applications from outside the agency (including applications for temporary positions lasting 121 or more days), except when they elect to fill a position by the transfer or reassignment of an ICTAP eligible from another agency.

(b) *Content.* Notice to OPM of job announcements must include the position title, location, pay plan and grade (or pay rate) of the vacant position; application deadline; and other information specified by OPM. In addition, for all positions reported, agencies are required to provide OPM with an electronic file of the complete vacancy announcement or recruiting bulletin, which must contain:

(1) Title, series, pay plan, and grade (or pay rate);

(2) Duty location;

(3) Open and closing dates, plus any other information dealing with how application receipt will be controlled, such as the use of early cut-off dates;

(4) Name of issuing agency and announcement number;

(5) Qualification requirements, including knowledges, skills, and abilities;

- (6) Entrance pay;
- (7) Brief description of duties;
- (8) Basis of filing;
- (9) What to file;
- (10) Instructions on how to apply;
- (11) Information on how to claim veterans' preference, if applicable;
- (12) The agency's definition of well-qualified and information on how CTAP and/or ICTAP candidates may apply, including proof of eligibility required; and
- (13) Equal employment opportunity statement.

§ 330.708 Application and selection.

(a) *Application.*

(1) To receive this special selection priority, eligible employees must apply directly to agencies for specific vacancies in the local commuting area within the prescribed time frames, attach the appropriate proof of eligibility as described in paragraph (a)(2) of this section, and be determined well-qualified by the agency for the specific position.

(2) Employees may submit the following as proof of eligibility for the special selection priority:

- (i) RIF separation notice, or notice of proposed removal for declining a directed reassignment or transfer of function to another commuting area;
- (ii) Documentation, e.g., SF-50, Notification of Personnel Action, showing that they were separated as a result of reduction in force, or for declining a transfer of function or directed reassignment to another commuting area;
- (iii) Official certification from an agency stating that it cannot place an individual whose injury compensation has been or is being terminated;
- (iv) Official notification from OPM that an individual's disability annuity has been or is being terminated; or
- (v) Official notification from the Military Department or National Guard Bureau that the employee has retired under 5 U.S.C. 8337(h) or 8456.

(b) *Selection.* In making selections, an agency will adhere to the overall order of selection set forth in § 330.705. In addition, the following apply:

(1) An agency cannot select another candidate from outside the agency if eligible employees are available for the vacancy or vacancies.

(2) If two or more eligible employees apply for a vacancy and are determined to be well-qualified, any of these eligible employees may be selected.

(3) If no eligible employees apply or none is deemed well-qualified, the agency may select another candidate without regard to this subpart. (This flexibility does not apply to selections made from the agency's Reemployment Priority List as described in subpart B of this part.)

(c) An agency may select a candidate from its Career Transition Assistance Plan or Reemployment Priority List, as described in subparts F and B of this part respectively, or another current agency employee (if no eligible employees are available through its CTAP) at any time.

§ 330.709 Qualification reviews.

Agencies will ensure that a documented, independent second review is conducted whenever an otherwise eligible employee is found to be not well-qualified. The applicant must be advised in writing of the results of the second review.

§ 330.710 Reporting.

(a) Each agency shall submit an annual report covering each fiscal year activity under this subpart to OPM no later than December 31 of each year.

(b) Each report will include data specified in § 330.610 of subpart F of this part, and will also include information on:

- (1) The number of selections of ICTAP eligible employees from other Federal agencies;
- (2) The number of ICTAP candidates found not well-qualified;
- (3) The number of ICTAP candidates found well-qualified;
- (4) The number of selections of competitive service tenure group 1 or 2 employees from other Federal agencies who are not displaced;
- (5) The number of declinations from ICTAP eligible candidates;
- (6) The number of competitive service tenure group 1 or 2 appointments from outside the Federal Government; and
- (7) The number of placements made from the agency's Reemployment Priority List.

§ 330.711 Oversight.

OPM is responsible for oversight of the Interagency Career Transition Assistance Plan for Displaced Employees and may conduct reviews of agency activity at any time.

Subpart H [Reserved]**Subpart I—Full Consideration of Displaced Defense Employees**

SOURCE: 58 FR 18141, Apr. 8, 1993, unless otherwise noted.

§ 330.901 Purpose.

The purpose of this subpart is to implement section 4432 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484) to provide full consideration to eligible displaced Defense employees who apply for jobs in non-Defense agencies.

§ 330.902 Coverage.

(a) *Agencies covered.* This subpart applies to:

(1) The executive departments listed at 5 U.S.C. 101, except the Department of Defense;

(2) Government corporations in the executive branch as described at 5 U.S.C. 103; and

(3) Independent establishments in the executive branch as described at 5 U.S.C. 104, except the General Accounting Office, U.S. Postal Service, and Postal Rate Commission.

(b) *Positions covered.* This subpart applies to vacant positions being filled in the Senior Executive Service, competitive service, and excepted service. Excluded are positions determined to be of a confidential, policy-determining, policy-making, or policy-advocating character, positions filled prior to October 24, 1992, and positions for which an agency had made a final employment commitment prior to issuance of this subpart.

(c) *Actions covered.* This subpart applies to any action for which a displaced employee is within reach for appointment, including, but not limited to, selection from a competitive list of eligibles, under a direct-hire or non-competitive appointment authority, under a merit promotion action, in ac-

cordance with part 302 or 333 of this chapter, and from a list of referrals from OPM's displaced employee program.

(d) *Displaced employees covered.* Displaced employees entitled to full consideration under this subpart are competing employees as defined under part 351 of this chapter as follows:

(1) A former employee who was separated from employment with the Department of Defense by reduction in force in accordance with part 351 of this chapter during the period October 23, 1991, through October 22, 1992. Eligibility for full consideration ends when such an employee is employed at any grade level under an appointment in the same (or higher) tenure group as the appointment from which separated at the Department of Defense, or October 22, 1994, whichever occurs first; and

(2) An employee of the Department of Defense who receives, during the period from October 23, 1991, through September 30, 1997, a specific notice of separation by reduction in force in accordance with part 351 of this chapter. The employee is entitled to full consideration beginning on the date of the specific notice of separation or October 23, 1992, whichever is later. If the employee is actually separated, eligibility for full consideration ends when the employee is employed at any grade level under an appointment in the same (or higher) tenure group as the appointment from which separated at the Department of Defense, or 24 months after separation from the Department of Defense, whichever occurs first. If the notice of separation from the Department of Defense is canceled, the employee's right to full consideration under this subpart is terminated on the date of the cancellation.

§ 330.903 Full consideration.

(a) In filling a vacant position for which a covered displaced employee has filed a timely application with evidence of eligibility under this subpart, an agency shall give full consideration to the application of the displaced employee before selecting any candidate from outside the agency for the position. For purposes of this subpart, the following are not considered to be outside candidates:

(1) An individual entitled to reemployment or restoration rights with the agency;

(2) A Presidential appointee entitled to guaranteed reinstatement to the Senior Executive Service under § 317.703 of this chapter;

(3) An individual appointed from a reemployment priority list established by the agency in accordance with either subpart B of this part or part 302, subpart C, of this chapter;

(4) A current employee of the agency, regardless of the type of appointment under which he or she is serving; and

(5) An individual given a special needs appointment in accordance with the Federal Personnel Manual, Chapter 316.

(b) For purposes of this subpart, "full consideration" is a careful, bona fide review of the qualifications of the displaced employee as described in his or her application forms, and including an interview if the displaced employee's qualifications are comparable to other outside candidates in the highest qualified group who are being interviewed. Before selecting another candidate from outside the agency, the agency must assure that the displaced employee was accorded at least the same degree of consideration as the other candidate.

(c) To receive full consideration under this subpart, the displaced employee must file a timely job application, request full consideration with evidence of eligibility under this subpart, and must meet all eligibility requirements for the position, including qualification requirements, appointment eligibility, and recruitment source (including geographic area) from which applications are being accepted. The displaced employee must be within reach for selection, consistent with otherwise applicable provisions of law and regulation. Evidence of eligibility under this subpart is a copy of the employee's specific notice of separation by reduction in force and/or the SF 50, Notification of Personnel Action, documenting separation from employment with the Department of Defense as a result of reduction in force.

(d) For any position for which a covered displaced employee has applied

and is eligible for full consideration, the agency must identify such employee and document the consideration given. This information must be retained with other records pertaining to the filling of the vacancy.

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 shall not persuade, induce, or coerce, or attempt to persuade, induce, or coerce, directly or indirectly, a prospective applicant to withhold filing 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 shall cancel the application or eligibility of an applicant or eligible who violates this section, and shall impose such other penalty as it considers appropriate.

[33 FR 12425, Sept. 4, 1968. Redesignated at 60 FR 67282, Dec. 29, 1995; 61 FR 691, Jan. 10, 1996]

PART 332—RECRUITMENT AND SELECTION THROUGH COMPETITIVE EXAMINATION

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