

held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor promises of confidentiality should the data subject request access to the accounting of disclosures of the record, or access to or amendment of the record.

(ii) All information in these records that meets the criteria stated in 5 U.S.C. 552a(K)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to an amendment of records by the subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(8) *Personnel Research and Test Validation Records (OPM/GOVT-6)*. (i) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(ii) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(4) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to or amendment of the records by the data subject. This exemption is claimed because portions of this system relate to records required by statute to be maintained and used solely for statistical purposes. Access to or amendment of this information by the data subject would compromise the confidentiality of these records and their usefulness for statistical research purposes.

(c) The Office also reserves the right to assert exemptions for records received from another agency that could be properly claimed by that agency in responding to a request. The Office may refuse access to information compiled in reasonable anticipation of a civil action or proceeding.

[53 FR 1998, Jan. 26, 1988, as amended at 57 FR 20956, May 18, 1992; 70 FR 28779, May 19, 2005]

## **PART 300—EMPLOYMENT (GENERAL)**

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AUTHORITY: 5 U.S.C. 552, 3301, and 3302; E.O. 10577, 3 CFR 1954-1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR 1966-1970 Comp., page 803.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

### Subpart A—Employment Practices

#### § 300.101 Purpose.

The purpose of this subpart is to establish principles to govern, as nearly as is administratively feasible and practical, the employment practices of the Federal Government generally, and of individual agencies, that affect the recruitment, measurement, ranking, and selection of individuals for initial appointment and competitive promotion in the competitive service or in positions in the government of the District of Columbia required to be filled in the same manner that positions in the competitive service are filled. For the purpose of this subpart, the term “employment practices” includes the development and use of examinations, qualification standards, tests, and other measurement instruments.

[36 FR 15447, Aug. 14, 1971]

#### § 300.102 Policy.

This subpart is directed to implementation of the policy that competitive employment practices:

(a) Be practical in character and as far as possible relate to matters that fairly test the relative capacity and

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fitness of candidates for the jobs to be filled;

(b) Result in selection from among the best qualified candidates;

(c) Be developed and used without discrimination because of race, color, religion, sex, age, national origin, partisan political affiliation or other nonmerit grounds; and

(d) Insure to the candidate opportunity for appeal or administrative review, as appropriate.

[40 FR 15379, Apr. 7, 1975]

#### § 300.103 Basic requirements.

(a) *Job analysis.* Each employment practice of the Federal Government generally, and of individual agencies, shall be based on a job analysis to identify:

(1) The basic duties and responsibilities;

(2) The knowledges, skills, and abilities required to perform the duties and responsibilities; and

(3) The factors that are important in evaluating candidates. The job analysis may cover a single position or group of positions, or an occupation or group of occupations, having common characteristics.

(b) *Relevance.* (1) There shall be a rational relationship between performance in the position to be filled (or in the target position in the case of an entry position) and the employment practice used. The demonstration of rational relationship shall include a showing that the employment practice was professionally developed. A minimum educational requirement may not be established except as authorized under section 3308 of title 5, United States Code.

(2) In the case of an entry position the required relevance may be based upon the target position when—

(i) The entry position is a training position or the first of a progressive series of established training and development positions leading to a target position at a higher level; and

(ii) New employees, within a reasonable period of time and in the great majority of cases, can expect to progress to a target position at a higher level.

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(c) *Equal employment opportunity.* An employment practice shall not discriminate on the basis of race, color, religion, sex, age, national origin, partisan political affiliation, or other nonmerit factor. Employee selection procedures shall meet the standards established by the “Uniform Guidelines on Employee Selection Procedures” (1978), 43 FR 38290 (August 25, 1978).

[40 FR 15380, Apr. 7, 1975, as amended at 43 FR 38310, Aug. 25, 1978]

### § 300.104 Appeals, grievances and complaints.

(a) *Employment practices.* A candidate who believes that an employment practice which was applied to him or her by the Office of Personnel Management violates a basic requirement in § 300.103 is entitled to appeal to the Merit Systems Protection Board under the provisions of its regulations.

(b) *Examination ratings.* A candidate may file an appeal with the Office from his or her examination rating or the rejection of his or her application, except that, where the Office has delegated examining authority to an agency, the candidate should appeal directly to that agency. The appeal and supporting documents shall be filed with the agency office that determined the rating.

(c) *Complaints and grievances to an agency.* (1) A candidate may file a complaint with an agency when he believes that an employment practice which was applied to him and which is administered or required by the agency discriminates against him on the basis of race, color, religion, sex, or national origin; or age, provided that at the time of the alleged discriminatory action the candidate was at least 40 years of age but less than 65 years of age. The complaint shall be filed and processed in accordance with subparts B and E of part 713 of this chapter.

(2) Except as provided in paragraph (c)(1) of this section, an employee may file a grievance with an agency when he or she believes that an employment practice which was applied to him or her and which is administered or required by the agency violates a basic requirement in § 300.103. The grievance shall be filed and processed under an agency grievance system, if applicable,

or a negotiated grievance system as applicable.

[40 FR 15380, Apr. 7, 1975, as amended at 41 FR 51579, Nov. 23, 1976; 44 FR 48951, Aug. 21, 1979; 60 FR 3057, Jan. 13, 1995; 60 FR 47040, Sept. 11, 1995]

## Subpart B—Examinations and Related Subjects

### § 300.201 Examinations.

(a) The Office makes available information that will assist members of the public in understanding the purpose of, and preparing for, civil service examinations. This includes the types of questions and the categories of knowledge or skill pertinent to a particular examination. The Office does not release the following: (1) Testing and examination materials used solely to determine individual qualifications, and (2) test material, including test plans, item analysis data, criterion instruments, and other material the disclosure of which would compromise the objectivity of the testing process.

(b) The Office maintains control over the security and release of testing and examination materials which it has developed and made available to agencies for initial competitive appointment or inservice use unless the materials were developed specifically for an agency through a reimbursable contractual agreement. These testing and examination materials include, and are subject to the same controls as, those described in paragraphs (a)(1) and (a)(2) of this section.

(c) Each employee entrusted with test material has a positive duty to protect the confidentiality of that material and to assure release only as required to conduct an examination authorized by the Office.

(d) An applicant may review his or her own answers in a written test, but only in the presence of an employee of the Office or, for the convenience of the Office and requester, in the presence of an employee of another agency designated by OPM. The applicant may not review a test booklet in connection with this review.

(e) The Office will release information concerning the results of examinations only to the individual concerned,

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or to parties explicitly designated by the individual.

(f) The Office will not reveal the names of applicants for civil service positions or eligibles on civil service registers, certificates, employment lists, or other lists of eligibles, or their ratings or relative standings.

[50 FR 3312, Jan. 24, 1985, as amended at 60 FR 3057, Jan. 13, 1995]

### Subpart C—Details of Employees

#### § 300.301 Authority.

(a) In accordance with 5 U.S.C. 3341, an agency may detail an employee in the competitive service to a position in either the competitive or excepted service.

(b) In accordance with 5 U.S.C. 3341, an agency may detail an employee in the excepted service to a position in the excepted service and may also detail an excepted service employee serving under Schedule A, Schedule B, or a Veterans Recruitment Appointment, to a position in the competitive service.

(c) Any other detail of an employee in the excepted service to a position in the competitive service may be made only with the prior approval of the Office of Personnel Management or under a delegated agreement between the agency and OPM.

[60 FR 3057, Jan. 13, 1995, as amended at 70 FR 72066, Dec. 1, 2005]

### Subpart D—Use of Commercial Recruiting Firms and Nonprofit Employment Services

SOURCE: 53 FR 51222, Dec. 21, 1988, unless otherwise noted.

#### § 300.401 Definitions.

For purposes of this subpart:

(a) A *commercial recruiting firm* is a profit-making entity which, by contract, supplies individual candidates for consideration for specific Federal vacancies, in accordance with the requirements set by the Federal agency.

(b) A *nonprofit employment service* is one legally established as nonprofit under State law. It may be operated, for example, by professional societies, organizations of college graduates, social agencies, or a State or local gov-

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ernment. Federal agencies may not, however, use a nonprofit employment service sponsored by a partisan political organization. By contract, a nonprofit employment service supplies individual candidates for consideration for specific Federal vacancies, in accordance with the requirements set by the Federal agency.

#### § 300.402 Coverage.

This part applies to filling positions in the competitive service; positions in the excepted service under Schedules A, B, and C; and positions in the Senior Executive Service.

[57 FR 10124, Mar. 24, 1992]

#### § 300.403 When commercial recruiting firms and nonprofit employment services may be used.

An agency may use a commercial recruiting firm and/or a nonprofit employment service in recruiting for vacancies when:

(a) The agency head or designee determines that such use is likely to provide well-qualified candidates who would otherwise not be available or that well-qualified candidates are in short supply;

(b) The agency has provided vacancy notices to appropriate State Employment Service and OPM offices; and

(c) The agency continues its own recruiting efforts.

#### § 300.404 Use of fee-charging firms.

(a) Federal agencies are prohibited from using commercial recruiting firms and nonprofit employment services which charge fees to individuals referred to Federal positions. Federal agencies may not consider a candidate referred by a commercial recruiting firm or nonprofit employment service if the individual has paid or is expected to pay any fee to the firm or service.

(b) The prohibition in paragraph (a) of this section does not apply to registration fees paid by individuals to nonprofit employment services operated by professional organizations when the registration fee is imposed regardless of whether the registrant is referred for employment or placed.

**§ 300.405 Requirement for contract.**

(a) A written contract awarded in accordance with procedures stipulated in the Federal Acquisition Regulations is required between the Federal agency and a commercial recruiting firm or nonprofit employment service. The contract will satisfy the “written request” required by 18 U.S.C. 211. That statute prohibits the acceptance of payment for aiding an individual to obtain Federal employment *except* when an employment agency renders services pursuant to the written request of an executive department or agency.

(b) The contract must include the qualifications requirements for the position(s) to be filled and also provide that the firm or service will:

(1) Screen candidates only against the basic qualifications requirements for the position(s) specified by the Federal agency in the contract and refer to the agency all candidates who appear to meet those requirements;

(2) Refer to the Federal agency only those applicants from whom the firm or service has not accepted fees other than those permitted under § 300.404(b) of this part;

(3) Not imply that it is the sole or primary avenue for employment with the Federal Government or a specific Federal agency; and

(4) Recruit and refer candidates in accordance with applicable merit principles and equal opportunity laws.

**§ 300.406 Agency responsibilities.**

(a) The purpose of a commercial recruiting firm or nonprofit employment service is to serve as an additional source of applicants. Once recruited, applicants must be evaluated and appointed through regular civil service employment procedures.

(1) For a competitive service position, an individual must be appointed in accordance with the terms of applicable competitive service procedures.

(2) For an excepted service position, an individual must be appointed in accordance with the terms of the applicable appointing authority and the requirements set out in part 302 of this chapter.

(3) For a Senior Executive Service position filled by career appointment, an individual must be appointed in ac-

cordance with the competitive process described in 5 U.S.C. 3393.

(b) In order to use commercial recruiting firms or nonprofit employment services, agencies are required to:

(1) Make known that applicants may apply directly to the Government and thus need not apply through the commercial recruiting firm or nonprofit employment service;

(2) Give the same consideration to candidates who have applied directly and candidates referred from the commercial recruiting firm or nonprofit employment service; and

(3) Follow all requirements for appointment, including veterans preference, where applicable.

**§ 300.407 Documentation.**

(a) Agencies are required to maintain records necessary to determine that using commercial recruiting firms or nonprofit employment services is cost effective and has not resulted in the violation of merit system principles or the commission of any prohibited personnel practice.

(b) When requested by OPM, agencies will provide reports on the use of commercial recruiting firms, based on the records required in paragraph (a) of this section.

[53 FR 51222, Dec. 21, 1988, as amended at 60 FR 3057, Jan. 13, 1995]

**§ 300.408 Corrective action.**

Upon evidence of failure to comply with these regulations, OPM may, pursuant to its authority, order the agency to take appropriate corrective action.

**Subpart E—Use of Private Sector Temporaries**

SOURCE: 54 FR 3766, Jan. 25, 1989, unless otherwise noted.

**§ 300.501 Definitions.**

For purposes of this subpart:

(a) A *temporary help service firm* is a private sector entity which quickly provides other organizations with specific services performed by its pool of employees, possessing the appropriate work skills, for brief or intermittent

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periods. The firm is the legally responsible employer and maintains that relationship during the time its employees are assigned to a client. The firm, not the client organization, recruits, tests, hires, trains, assigns, pays, provides benefits and leave to, and as necessary, addresses performance problems, disciplines, and terminates its employees. Among other employer obligations, the firm is responsible for payroll deductions and payment of income taxes, social security (FICA), unemployment insurance, and workers' compensation, and shall provide required liability insurance and bonding.

(b) *Private sector temporaries* or *outside temporaries* are those employees of a temporary help service firm who are supervised and paid by that firm and whom that firm assigns to various client organizations who have contracted for the temporary use of their skills when required.

(c) *Parental and family responsibilities* are defined in OPM issuances and include situations such as absence for pregnancy, childbirth, child care, and care for elderly or infirm parents or other dependents.

(d) A *Federal supervisor* of Federal employees is defined in 5 U.S.C. 7103(a)(10) as

an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment \* \* \*

(e) A *critical need* is a sudden or unexpected occurrence; an emergency; a pressing necessity; or an exigency. Such occasions are characterized by additional work or deadlines required by statute, Executive order, court order, regulation, or formal directive from the head of an agency or subordinate official authorized to take final action on behalf of the agency head. A recurring, cyclical peak workload, by itself, is not a critical need.

(f) A *local commuting area* is defined in part 351 of this chapter.

[54 FR 3766, Jan. 25, 1989, as amended at 66 FR 66710, Dec. 27, 2001]

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### § 300.502 Coverage.

(a) These regulations apply to the competitive service and to Schedules A and B in the excepted service.

(b) Agencies may not use temporary help services for the Senior Executive Service or for the work of managerial or supervisory positions.

[61 FR 19510, May 2, 1996]

### § 300.503 Conditions for using private sector temporaries.

An agency may enter into a contract or other procurement arrangement with a temporary help service firm for the brief or intermittent use of the skills of private sector temporaries, when required, and may call for those services, subject to these conditions:

(a) One of the following short-term situations exists—

(1) An employee is absent for a temporary period because of a personal need including emergency, accident, illness, parental or family responsibilities, or mandatory jury service, but not including vacations or other circumstances which are not shown to be compelling in the judgment of the agency, or

(2) An agency must carry out work for a temporary period which cannot be delayed in the judgment of the agency because of a critical need.

(b) The need cannot be met with current employees or through the direct appointment of temporary employees within the time available by the date, and for the duration of time, help is needed. At minimum, this should include an agency determination that there are no qualified candidates on the applicant supply file and on the re-employment priority list (both of which must provide preference for veterans), and no qualified disabled veterans with a compensable service-connected disability of 30 percent or more under 5 U.S.C. 3112, who are immediately available for temporary appointment of the duration required, and that employees cannot be reassigned or detailed without causing undue delay in their regular work. In instances where a need is foreseeable, as when approval of employee absence is requested well in advance, an agency may have sufficient time to follow the

temporary appointment recruiting requirements, including veterans' preference found in 5 CFR part 316 to determine whether qualified candidates are available by the date needed and for the length of service required.

(c) These services shall not be used:

(1) In lieu of the regular recruitment and hiring procedures under the civil service laws for permanent appointment in the competitive civil service, or

(2) To displace a Federal employee.

(3) To circumvent controls on employment levels.

(4) In lieu of appointing a surplus or displaced Federal employee as required by 5 CFR part 330, subpart F (Agency Career Transition Assistance Plan for Displaced Employees) and subpart G (Interagency Career Transition Assistance Plan for Displaced Employees.)

[54 FR 3766, Jan. 25, 1989, as amended at 61 FR 19510, May 2, 1996; 66 FR 66710, Dec. 27, 2001]

#### § 300.504 Prohibition on employer-employee relationship.

No employer-employee relationship is created by an agency's use of private sector temporaries under these regulations. Services furnished by temporary help firms shall be performed by their employees who shall not be considered or treated as Federal employees for any purpose, shall not be regarded as performing a personal service, and shall not be eligible for civil service employee benefits, including retirement. Further, to avoid creating any appearance of such a relationship, agencies shall observe the following requirements:

(a) *Time limit on use of temporary help service firm.* An agency may use a temporary help service firm(s) in a single situation, as defined in §300.503, initially for no more than 120 workdays. Provided the situation continues to exist beyond the initial 120 workdays, the agency may extend its use of temporary help services up to the maximum limit of 240 workdays.

(b) *Time limit on use of individual employee of a temporary help service firm.* (1) An individual employee of any temporary help firm may work at a major organizational element (headquarters or field) of an agency for up to 120

workdays in a 24-month period. The 24-month period begins on the first day of assignment.

(2) An agency may make an exception for an individual to work up to a maximum of 240 workdays only when the agency has determined that using the services of the same individual for the same situation will prevent significant delay.

(c) Individual employees of a temporary help firm providing temporary service to a Federal agency may be eligible for competitive civil service employment only if appropriate civil service hiring procedures are applied to them.

(d) Agencies shall train their employees in appropriate procedures for interaction with private sector temporaries to assure that the supervisory responsibilities identified in paragraph (a) of §300.501 of this subpart are carried out by the temporary help service firm. At the same time, agencies must give technical, task-related instructions to private sector temporaries including orientation, assignment of tasks, and review of work products, in order that the temporaries may properly perform their services under the contract.

[54 FR 3766, Jan. 25, 1989, as amended at 61 FR 19511, May 2, 1996]

#### § 300.505 Relationship of civil service procedures.

Agencies continue to have full authority to meet their temporary needs by various means, for example, redistributing work, authorizing overtime, using in-house pools, and making details or time-limited promotions of current employees. In addition, agencies may appoint individuals as civil service employees on various work schedules appropriate for the work to be performed.

[61 FR 19511, May 2, 1996]

#### § 300.506 Requirements of procurement.

(a) Agencies must follow the Federal procurement laws and the Federal Acquisition Regulation, as applicable, in procuring services from the private sector.

(b) Agencies should make full use of the provisions of the Federal procurement system to make clear that the firm is the legally responsible employer and to specify the obligations the firm will have to meet to provide effective performance including such matters as the types and levels of skills to be provided, deadlines for providing service, liability insurance, and, when necessary, security requirements. The Federal procurement system also requires contractors to comply with affirmative action requirements to employ and advance in employment qualified disabled and Vietnam era veterans as provided in 41 CFR part 60-250, and with public policy programs including equal employment opportunity, handicapped employment, and small businesses.

**§ 300.507 Documentation and oversight.**

Agencies are required to maintain records and provide oversight to establish that their use of temporary help service firms is consistent with these regulations. As needed, OPM may require agencies to provide information on their use of temporary help service firms.

[61 FR 19511, May 2, 1996]

**Subpart F—Time-In-Grade Restrictions**

SOURCE: 56 FR 23002, May 20, 1991, unless otherwise noted.

**§ 300.601 Purpose.**

The restrictions in this subpart are intended to prevent excessively rapid promotions in competitive service General Schedule positions and to protect competitive principles. They provide a budgetary control on promotion rates and help assure that appointments are made from appropriate registers. These restrictions are in addition to the eligibility requirements for promotion in part 335 of this chapter.

**§ 300.602 Definitions.**

In this subpart—

*Advancement* means a promotion (including a temporary promotion) or any type of appointment resulting in a

higher grade or higher rate of basic pay.

*Competitive appointment* means an appointment based on selection from a competitive examination register of eligibles or under a direct hire authority.

*Hardship to an agency* involves serious difficulty in filling a position, including when:

(a) The situation to be redressed results from circumstances beyond the organization's control and otherwise would require extensive corrective action; or

(b) A position at the next lower grade in the normal line of promotion does not exist and the resulting action is not a career ladder promotion; or

(c) There is a shortage of candidates for the position to be filled.

*Inequity to an employee* involves situations where a position is upgraded without change in the employee's duties or responsibilities, or where discrimination or administrative error prevented an employee from reaching a higher grade.

*Nontemporary appointment* means any appointment other than a temporary appointment pending establishment of a register (TAPER) or a temporary or excepted appointment not to exceed 1 year or less.

**§ 300.603 Coverage.**

(a) *Coverage.* This subpart applies to advancement to a General Schedule position in the competitive service by any individual who within the previous 52 weeks held a General Schedule position under nontemporary appointment in the competitive or excepted service in the executive branch, unless excluded by paragraph (b) of this section.

(b) *Exclusions.* The following actions may be taken without regard to this subpart but must be consistent with all other applicable requirements, such as qualification standards:

(1) Appointment based on selection from a competitive examination register of eligibles or under a direct hire authority.

(2) Noncompetitive appointment based on a special authority in law or Executive order (but not including transfer and reinstatement) made in

accordance with all requirements applicable to new appointments under that authority.

(3) Advancement in accordance with part 335 of this chapter up to any General Schedule grade the employee previously held under nontemporary appointment in the competitive or excepted service.

(4) Advancement of an employee from a non-General Schedule position to a General Schedule position unless the employee held a General Schedule position under nontemporary appointment in the executive branch within the previous 52 weeks.

(5) Advancement of an individual whose General Schedule service during the previous 52 weeks has been totally under temporary appointment.

(6) Advancement of an employee under a training agreement established in accordance with OPM's operating manuals. However, an employee may not receive more than two promotions in any 52-week period solely on the basis of one or more training agreements. Also, only OPM may approve a training agreement that provides for consecutive promotions at rates that exceed those permitted by § 300.604 of this part.

(7) Advancement to avoid hardship to an agency or inequity to an employee in an individual meritorious case but only with the prior approval of the agency head or his or her designee. However, an employee may not be promoted more than three grades during any 52-week period on the basis of this paragraph.

(8) Advancement when OPM authorizes it to avoid hardship to an agency or inequity to an employee in individual meritorious situations not defined, but consistent with the definitions, in § 300.602 of this part.

[56 FR 23002, May 20, 1991, as amended at 66 FR 66710, Dec. 27, 2001]

#### § 300.604 Restrictions.

The following time-in-grade restrictions must be met unless advancement is permitted by § 300.603(b) of this part:

(a) *Advancement to positions at GS-12 and above.* Candidates for advancement to a position at GS-12 and above must have completed a minimum of 52 weeks in positions no more than one grade

lower (or equivalent) than the position to be filled.

(b) *Advancement to positions at GS-6 through GS-11.* Candidates for advancement to a position at GS-6 through GS-11 must have completed a minimum of 52 weeks in positions:

(1) No more than two grades lower (or equivalent) when the position to be filled is in a line of work properly classified at 2-grade intervals; or

(2) No more than one grade lower (or equivalent) when the position to be filled is in a line of work properly classified at 1-grade intervals; or

(3) No more than one or two grades lower (or equivalent), as determined by the agency, when the position to be filled is in a line of work properly classified at 1-grade intervals but has a mixed interval promotion pattern.

(c) *Advancement to positions up to GS-5.* Candidates may be advanced without time restriction to positions up to GS-5 if the position to be filled is no more than two grades above the lowest grade the employee held within the preceding 52 weeks under his or her latest nontemporary competitive appointment.

#### § 300.605 Creditable service.

(a) All service at the required or higher grade (or equivalent) in positions to which appointed in the Federal civilian service is creditable towards the time periods required by § 300.604 of this part, except as provided in paragraph (c) of this section. Creditable service includes competitive and excepted service in positions under the General Schedule and other pay systems, including employment with a nonappropriated fund instrumentality. Service while on detail is credited at the grade of the employee's position of record, not the grade of the position to which detailed. Also creditable is service with the District of Columbia Government prior to January 1, 1980 (or prior to September 26, 1980, for those District employees who were converted to the District personnel system on January 1, 1980).

(b) Service in positions not subject to the General Schedule (GS) is credited at the equivalent GS grade by comparing the candidate's rate of basic pay with the representative rate (as defined in § 351.203 of this chapter) of the GS

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position in effect when the non-GS service was performed. The equivalent GS grade is the GS grade with a representative rate that equals the candidate's rate of basic pay. When the candidate's rate of basic pay falls between the representative rates of two GS grades, the non-GS service is credited at the higher grade.

(c) In applying the restrictions in § 300.604 of this part, prior service under temporary appointment at a level above that of a subsequent non-temporary competitive appointment is credited as if the service had been performed at the level of the non-temporary appointment. This provision applies until the employee has served in pay status for 52 weeks under non-temporary competitive appointment; thereafter, the service is credited at its actual grade level (or equivalent).

#### § 300.606 Agency authority.

An agency may expand on these restrictions consistent with the intent of this subpart or may adopt similar policies to control promotion rates of employees not covered by this subpart.

### Subpart G—Statutory Bar to Appointment of Persons Who Fail To Register Under Selective Service Law

SOURCE: 52 FR 7400, Mar. 11, 1987, unless otherwise noted.

#### § 300.701 Statutory requirement.

Section 3328 of title 5 of the United States Code provides that—

(a) An individual—

(1) Who was born after December 31, 1959, and is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453); and

(2) Who is not so registered or knowingly and willfully did not so register before the requirement terminated or became inapplicable to the individual, shall be ineligible for appointment to a position in an executive agency of the Federal Government.

(b) The Office of Personnel Management, in consultation with the Director of the Selective Service System, shall prescribe regulations to carry out this section. Such regulations shall include provisions prescribing procedures for the adjudication within the Office of determinations of whether a failure to register was knowing and willful. Such

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procedures shall require that such a determination may not be made if the individual concerned shows by a preponderance of the evidence that the failure to register was neither knowing nor willful.

#### § 300.702 Coverage.

Appointments in the competitive service, the excepted service, the Senior Executive Service, or any other civil service personnel management system in an executive agency are covered by these regulations.

#### § 300.703 Definitions.

In this subpart—

*Appointment* means any personnel action that brings onto the rolls of an executive agency as a civil service officer or employee as defined in 5 U.S.C. 2104 or 2105, respectively, a person who is not currently employed in that agency. It includes initial employment as well as transfer between agencies and subsequent employment after a break in service. Personnel actions that move an employee within an agency without a break in service are not covered. A break in service is a period of 4 or more calendar days during which an individual is no longer on the rolls of an executive agency.

*Covered individual* means a male (a) whose application for appointment is under consideration by an executive agency or who is an employee of an executive agency; (b) who was born after December 31, 1959, and is at least 18 years of age or becomes 18 following appointment; (c) who is either a United States citizen or an alien (including parolees and refugees and those who are lawfully admitted to the United States for permanent residence and for asylum) residing in the United States; and (d) is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453). Nonimmigrant aliens admitted under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101), such as those admitted on visitor or student visas, and lawfully remaining in the United States, are exempt from registration.

*Executive agency* means an agency of the Government of the United States as defined in 5 U.S.C. 105.

*Exemptions* means those individuals determined by the Selective Service

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System to be excluded from the requirement to register under sections 3 and 6(a) of the Military Selective Service Act (50 U.S.C. App. 453 and 456(a)) or Presidential proclamation.

Preponderance of the evidence means that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

Registrant means an individual registered under Selective Service law.

Selective Service law means the Military Selective Service Act, rules and regulations issued thereunder, and proclamations of the President under that Act.

Selective Service System means the agency responsible for administering the registration system and for determining who is required to register and who is exempt.

§300.704 Considering individuals for appointment.

(a) An executive agency must request a written statement of Selective Service registration status from each covered individual at an appropriate time during the consideration process prior to appointment, and from each covered employee who becomes 18 after appointment. The individual must complete, sign, and date in ink the statement on a form provided by the agency unless the applicant furnishes other documentation as provided by paragraph (c) of this section.

(b) Statement of Selective Service registration status. Agencies should reproduce the following statement, which has been approved by the Office of Management and Budget for use through October 31, 1989, under OMB Control No. 3206-0166:

APPLICANT'S STATEMENT OF SELECTIVE SERVICE REGISTRATION STATUS

If you are a male born after December 31, 1959, and are at least 18 years of age, civil service employment law (5 U.S.C. 3328) requires that you must be registered with the Selective Service System, unless you meet certain exemptions under Selective Service law. If you are required to register but knowingly and willfully fail to do so, you are ineligible for appointment by executive agencies of the Federal Government.

CERTIFICATION OF REGISTRATION STATUS

Check one:

- [ ] I certify I am registered with the Selective Service System.
[ ] I certify I have been determined by the Selective Service System to be exempt from the registration provisions of Selective Service law.
[ ] I certify I have not registered with the Selective Service System.
[ ] I certify I have not reached my 18th birthday and understand I am required by law to register at that time.

NON-REGISTRANTS UNDER AGE 26

If you are under age 26 and have not registered as required, you should register promptly at a United States Post Office, or consular office if you are outside the United States.

NON-REGISTRANTS AGE 26 OR OVER

If you were born in 1960 or later, are 26 years of age or older, and were required to register but did not do so, you can no longer register under Selective Service law. Accordingly, you are not eligible for appointment to an executive agency unless you can prove to the Office of Personnel Management (OPM) that your failure to register was neither knowing nor willful. You may request an OPM decision through the agency that was considering you for employment by returning this statement with your written request for an OPM determination together with any explanation and documentation you wish to furnish to prove that your failure to register was neither knowing nor willful.

PRIVACY ACT STATEMENT

Because information on your registration status is essential for determining whether you are in compliance with 5 U.S.C. 3328, failure to provide the information requested by this statement will prevent any further consideration of your application for appointment. This information is subject to verification with the Selective Service System and may be furnished to other Federal agencies for law enforcement or other authorized use in implementing this law.

FALSE STATEMENT NOTIFICATION

A false statement may be grounds for not hiring you, or for firing you if you have already begun work. Also, you may be punished by fine or imprisonment. (Section 1001 of title 18, United States Code.)

Legal signature of individual (please use ink)

Date signed (please use ink)

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(c) At his option, a covered individual may submit, in lieu of the statement described above, a copy of his Acknowledgment Letter or other proof of registration or exemption issued by the Selective Service System. The individual must sign and date the document and add a note stating it is submitted as proof of Selective Service registration or exemption.

(d) An executive agency will give no further consideration for appointment to individuals who fail to provide the information requested above on registration status.

(e) An agency considering employment of a covered individual who is a current or former Federal employee is not required to request a statement when it determines that the individual's Official Personnel Folder contains evidence indicating the individual is registered or currently exempt from registration.

#### § 300.705 Agency action following statement.

(a) Agencies must resolve conflicts of information and other questions concerning an individual's registration status prior to appointment. An agency may verify, at its discretion, an individual's registration status by requesting the individual to provide proof of registration or exemption issued by the Selective Service System and/or by contacting the Selective Service System at 888-655-1825.

(b) An agency may continue regular pre-employment consideration of individuals whose statements show they have registered or are exempt.

(c) An agency will take the following actions when a covered individual who is required to register has not done so, and is under age 26:

(1) Advise him to register promptly and, if he wishes further consideration, to submit a new statement immediately to the agency once he has registered. The agency will set a time limit for submitting the statement.

(2) Provide written notice to an individual who still does not register after being informed of the above requirements that he is ineligible for appointment according to 5 U.S.C. 3328 and will be given no further employment consideration.

(d) An agency will take the following actions when a covered individual who is age 26 or over, was required to register, and has not done so:

(1) Provide written notice to the individual that, in accordance with 5 U.S.C. 3328, he is ineligible for appointment unless his failure to register was neither knowing nor willful, and that OPM will decide whether his failure to register was knowing and willful if he submits a written request for such decision and an explanation of his failure to register.

(2) Submit the individual's application, the statement described in § 300.704(b), a copy of the written notice, his request for a decision and explanation of his failure to register, and any other papers pertinent to his registration status for determination to—Registration Review, Staffing Operations Division, Career Entry Group, room 6A12, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

(3) An agency is not required to keep a vacancy open for an individual who seeks an OPM determination.

(e) Individuals described in paragraph (c) of this section who do not submit a statement of registration or exemption are not eligible for employment consideration. Individuals described in paragraph (d) of this section are not eligible for employment consideration unless OPM finds that failure to register was neither knowing nor willful. Agencies are not required to follow the objections-to-eligibles procedures described in § 332.406 concerning such individuals who were certified or otherwise referred by an OPM examining office or other office delegated examining authority by OPM. Instead, an agency will provide, for information as part of its certification report to that office, a copy of its written notice to the individual.

[52 FR 7400, Mar. 11, 1987, as amended at 64 FR 28713, May 27, 1999]

#### § 300.706 Office of Personnel Management adjudication.

(a) OPM will determine whether failure to register was knowing and willful

when an individual has requested a decision and presented a written explanation, as described in § 300.705. The Associate Director for Career Entry or his or her designee will make the determination based on the written explanation provided by the individual. The burden of proof will be on the individual to show by a preponderance of the evidence that failure to register was neither knowing nor willful.

(b) OPM may consult with the Selective Service System in making determinations.

(c) The Associate Director for Career Entry or his or her designee will notify the individual and the agency in writing of the determination. The determination is final unless reconsidered at the discretion of the Associate Director. There is no further right to administrative review.

(d) The Director of OPM may reopen and reconsider a determination.

(e) The Director of OPM may, at his or her discretion, delegate to an executive agency the authority to make initial determinations. However, OPM may review any initial determination and make a final adjudication in any case. If a delegation is made under this paragraph, the notice in § 300.705(d)(1) will state that the individual may submit a written request that OPM review the agency's initial determination. The agency will forward to OPM copies of all documents relating to the individual's failure to register, including the individual's request for review and his explanation of his failure to register.

#### § 300.707 Termination of employment.

A covered individual who is serving under an appointment made on or after November 8, 1985, and is not exempt from registration, will be terminated by his agency under the authority of the statute and these regulations if he has not registered as required, unless he registers or unless, if no longer eligible to register, OPM determines in response to his explanation that his failure to register was neither knowing nor willful.

## PART 301—OVERSEAS EMPLOYMENT

### Subpart A [Reserved]

### Subpart B—Overseas Limited Appointment

Sec.

301.201 Appointments of United States citizens recruited overseas.

301.202 Appointment of citizens recruited outside overseas areas.

301.203 Duration of appointment.

301.204 Status and trial period.

301.205 Requirements and restrictions.

301.206 Within-grade increases.

### Subpart C—Overseas Employees Eligible for Noncompetitive Appointment Upon Return to the United States

301.301 Eligibility under the authority of Executive Order 12362.

301.302 Overseas appointing procedures.

301.303 Performance appraisal.

AUTHORITY: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218, as amended by E.O. 10641, 3 CFR, 1954-1958 Comp., p. 274, unless otherwise noted.

SOURCE: 44 FR 54691, Sept. 21, 1979, unless otherwise noted.

### Subpart A [Reserved]

### Subpart B—Overseas Limited Appointment

#### § 301.201 Appointments of United States citizens recruited overseas.

When there is a shortage of eligible applicants, as defined at § 337.202 of this chapter, resulting from a competitive announcement that is open to applicants in the local overseas area, an agency may give an overseas limited appointment to a United States citizen recruited overseas for a position overseas.

[69 FR 33275, June 23, 2004]

#### § 301.202 Appointment of citizens recruited outside overseas areas.

When an agency determines that unusual or emergency conditions make it infeasible to appoint from a register, it may give an overseas limited appointment to a United States citizen recruited in an area where an overseas limited appointment is not authorized.

#### § 301.203 Duration of appointment.

(a) An appointment under this subpart is of indefinite duration unless otherwise limited.