

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

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

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

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

§ 334.107 Reports required.

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

[FR Doc. E6-15436 Filed 9-15-06; 8:45 am]

BILLING CODE 6325-39-P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 630

RIN 3206-AK80

Absence and Leave; Creditable Service

AGENCY: Office of Personnel Management.

ACTION: Final rule.

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

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

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

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

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

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

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

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

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

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

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

the language in 5 CFR 531.211(a) covering pay setting for new appointees. We agree and have revised § 630.205(a) accordingly.

Another agency recommended that OPM define a *newly appointed* employee to mean an employee who is newly appointed to a permanent position in the Federal service. We have not adopted this recommendation. Any employee who has an established regular tour of duty, including an employee appointed to a temporary position, may earn annual leave, with one limited exception. Under 5 U.S.C. 6303(b), a newly appointed employee whose appointment is limited to fewer than 90 days is not entitled to accrue annual leave. However, if the appointment is extended or the employee receives one or more successive appointments without a break in service, the employee becomes eligible to accrue annual leave on the 90th day of employment, and in addition, the employee is entitled to the annual leave that would have accrued during the initial 90-day period. A decision to provide creditable service for prior work experience must be made when an employee is newly appointed to a Federal position.

Under § 630.205(a)(1), an agency may provide credit for service that otherwise would not be creditable under 5 U.S.C. 6303(a) for the purpose of determining the annual leave accrual rate of an employee if the head of the agency or his or her designee determines that the skills and experience the employee possesses are essential to the new position and were acquired through performance in a non-Federal position having duties that directly relate to the duties of the position to which the employee is being appointed. An agency recommended that OPM remove the term *non-Federal* in § 630.205(a)(1) and throughout the regulations, since the law does not require a prior position to be a *non-Federal* position. Although the law does not require a position to be a non-Federal position, we believe most work experience that will now be considered for credit will be work performed in a *non-Federal* position. For administrative convenience, we refer to this prior work experience in this Supplementary Information as *non-Federal* work experience. However, we have revised the regulations at § 630.205 to remove the term *non-Federal*.

An agency asked whether the head of the agency or designee may redelegate the authority to grant service credit for non-Federal work experience. The head of an agency may authorize a designee to redelegate this authority to a lower level. The same agency asked whether

an agency may change its initial determination to provide service credit if, for example, the agency learns after the employee enters on duty that the employee was fired from the position upon which the creditable service was based. Section 6303(e)(2) of title 5, United States Code, provides that credit for prior work experience is granted to the employee upon the effective date of his or her initial appointment or reappointment to the agency and remains creditable for annual leave accrual purposes thereafter unless the employee fails to complete 1 full year of continuous service with the appointing agency. Therefore, an agency may not reduce the amount of creditable service under the circumstances described. However, an agency may require, as part of the written documentation required by § 630.205(d), that an employee provide written self-certification that he or she was not fired from the position upon which the creditable service is based.

Another agency asked whether an employee may appeal an agency's decision not to provide creditable service to OPM. Under § 630.205(a), the authority to provide service credit for non-Federal work experience rests solely with the head of the agency or his or her designee. An agency's determination not to provide creditable service under § 630.205(a) is not appealable to OPM. However, a claim that such decision constitutes a prohibited personnel practice under 5 U.S.C. 2302 could be filed with the Office of Special Counsel.

An agency recommended that a definition of *agency* be added to the regulations. We agree and have added a definition of *agency* in § 630.201.

Several agencies requested more specific guidance on (1) Determining whether an individual possesses the skills and experience essential to the new position, (2) determining whether the duties performed in the prior position directly relate to the position to which the employee is being appointed, (3) determining whether providing service credit to an employee is necessary to achieve an important agency mission or performance goal, and (4) determining what kind and how much directly related experience should be credited. An agency recommended that the term *important agency mission* be defined to mean a mission or function that is central or core to the purpose of the agency and that the term *performance goal* be defined to mean a goal or objective assigned to a Department or agency by Presidential directive, Executive order or other official issuance or through laws passed

by Congress. Two commenters expressed concern that the lack of specific guidance in the regulations may result in widely divergent implementation and recruitment strategies among Federal agencies. A Federal labor organization stated that it anticipates this new leave benefit will be applied equally to all eligible candidates and that the conditions prescribed for eligibility appear to be fair to newly appointed and reappointed employees.

OPM has delegated to the head of each agency or his or her designee the sole discretion to make these determinations consistent with the law and OPM's regulations. Because it is likely that each agency will tailor its plan for using this authority to meet its individual workforce and mission needs, we do not believe it would be constructive to require a uniform, Governmentwide approach, since doing so may inappropriately limit the use of an agency's authority. The amount of service credit that may be granted may not exceed the actual amount of service during which an employee performed duties directly related to the position to which he or she is being appointed. (See § 630.205(c).)

By enhancing the annual leave accrual policy, Congress has provided an additional tool to assist agencies in strategically aligning their human resources management policies with their goals and missions. Agencies are cautioned to use this new leave benefit for the sole purpose for which it was established—*i.e.*, to recruit an individual with the skills and experience necessary to achieve an important agency mission or performance goal. Agencies should not provide creditable service for non-Federal work experience or experience in a uniformed service across-the-board for all new hires.

Three commenters asked whether service credit may be provided for non-paid volunteer work experience. Another commenter questioned whether service may be credited for previously noncreditable work experience in quasi-Federal organizations. Another commenter asked whether service may be credited for a combination of prior work experience and experience in a uniformed service. Under 5 U.S.C. 6303(e)(1), an agency may provide service credit for prior work experience if the agency determines that the work experience was obtained in a position having duties that directly relate to the duties of the position to which the employee is being appointed. Therefore, agencies may consider non-paid volunteer work, formerly noncreditable

work experience in a quasi-Federal organization, or a combination of prior work experience and experience in a uniformed service as creditable for this purpose.

Section 630.205(d) requires an employee to provide written documentation, acceptable to the agency, of his or her non-Federal work experience. An agency recommended that OPM require agencies to make the determination to approve an employee's qualifying work experience before the employee enters on duty. We agree and have revised § 630.205(d) to include this requirement. The same agency asked whether a resumé or employment application is sufficient. Each agency is responsible for determining what constitutes acceptable written documentation of an employee's qualifying prior work experience. However, the written documentation must be sufficient to allow an agency to make the determination that the employee's work experience was obtained in a position having duties that directly relate to the duties of the position to which the employee is being appointed. A resumé or employment application may be acceptable if it provides sufficient information for an agency to make this determination.

An agency recommended that OPM revise § 630.205(d) to require an employee to provide written documentation from the military before crediting uniformed service. This would be consistent with OPM's requirement that an employee or applicant submit documentation from the military to credit uniformed service for other purposes, such as creditable service for annual leave accrual under 5 U.S.C. 6303(a) and veteran's preference in hiring. We agree and have revised § 630.205(d) to include this requirement. An individual recommended that OPM require Standard Form (SF) 813, Verification of A Military Retiree's Service in Nonwartime Campaigns or Expeditions, to be used to verify military service. We disagree. Agencies use SF 813 to request verification of a retiree's military service performed in a nonwartime campaign or expedition for which a badge or medal was authorized in order to credit such service for determining an annual leave accrual rate under 5 U.S.C. 6303(a) and applying reduction-in-force procedures. However, SF 813 does not provide sufficient information on the duties performed by the retiree.

An agency asked whether it must document the reasons for not giving service credit to an employee. There is no statutory or regulatory requirement to document the reasons for not

crediting prior work experience under § 630.205(a). However, if such a decision is appealed as a prohibited personnel action, the agency may be well-served by contemporaneous documentation that the decision was made consistent with an established agency policy and criteria.

Section 630.205(e) of the interim regulations requires each agency to establish documentation and recordkeeping procedures sufficient to allow reconstruction of each action. An agency asked whether the Guide to Personnel Recordkeeping will be updated to include various documents provided by the employee for right-side retention to allow reconstruction of the service computation date when additional service credit has been granted. The Guide to Personnel Recordkeeping already requires documentation that supports an employee's creditable service to be retained on the permanent (right) side of the official personnel folder.

Section 630.205(f) provides that credit for prior work experience or experience in a uniformed service is granted to the employee and remains creditable for annual leave accrual purposes thereafter unless the employee fails to complete 1 full year of continuous service with the appointing agency. An agency recommended that an employee who transfers to a position in the same line of work for which he or she received creditable service should retain that service even though the position is in a different agency. We have not adopted this recommendation. Section 6303(e)(2)(B) of title 5, United States Code, allows service to remain creditable unless the employee fails to complete a full year of continuous service with the agency. In addition, House Report 108-733 (October 5, 2004) states that "[o]nce credited upon the effective date of the employee's appointment, the past experience remains creditable for this purpose unless the employee does not complete one continuous year of service with the same agency" [page 16, emphasis added].

Section 630.205(g) provides that if an employee separates from Federal service or transfers to another agency before completing 1 full year of continuous service with the appointing agency, the agency must subtract the creditable service and redetermine the employee's annual leave accrual rate under 5 U.S.C. 6303(a). All unused annual leave accrued and accumulated by an employee as a result of receiving service credit for non-Federal work experience or experience in a uniformed service remains to the credit of the employee

and must be transferred to the new agency under § 630.501 or liquidated by a lump-sum payment under § 550.1205, as appropriate. A commenter asked whether employees should be required to sign a service agreement. Employees are not required to sign a service agreement for this purpose. When an agency provides service credit, the agency will use remark code B73 or B74 on the SF-50 (Notification of Personnel Action) that effects the appointment. The text of these remark codes notifies the employee that the service will remain creditable unless the employee fails to complete 1 full year of continuous service with the appointing agency.

Another commenter expressed concern about the increased cost of paying a lump-sum payment for accrued and accumulated annual leave under 5 CFR part 550, subpart L, for employees who separate from Federal service prior to completing 1 year of continuous service. The commenter recommended that employees who do not complete 1 full year of service be required to repay the Government for the hours of annual leave they accrued during their service. Section 6303(e)(2)(B) allows an agency to reduce the amount of creditable service granted the employee if he or she does not fulfill the 1-year service requirement. The law does not allow an agency to reduce the amount of annual leave accrued by the employee as a result of the creditable service or require the employee to repay the Government for any annual leave accrued during this period.

A commenter asked whether a gaining agency may correct an employee's annual leave accrual rate if the agency discovers an error made by the losing agency in providing the employee credit for prior work experience. The gaining agency must coordinate any proposed corrections with the losing agency. However, the losing agency makes the final determination on whether a correction is appropriate.

An agency asked whether an employee's service credit for prior work experience would be reduced for periods during which the employee is in a nonpay status—e.g., leave without pay. The amount of creditable service is not affected by extended periods of leave without pay. However, since an employee must remain with the appointing agency for 1 full continuous year for the service to remain creditable, the completion date of the 1-year period must be extended by any period of leave without pay. If an employee's absence is due to active duty uniformed service or a compensable injury, the period of leave without pay must be credited as

though the employee had remained in a pay and duty status.

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

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

List of Subjects in 5 CFR 630

Government employees.
Office of Personnel Management.
Linda M. Springer,
Director

■ Accordingly, the interim rule amending 5 CFR part 630, which was published at 70 FR 22245 on April 29, 2005, is adopted as final with the following changes:

PART 630—ABSENCE AND LEAVE

■ 1. The authority citation for part 630 is revised to read as follows:

Authority: 5 U.S.C. 6311; § 630.205 also issued under Pub. L. 108-411, 118 Stat 2312; § 630.301 also issued under Pub. L. 103-356, 108 Stat. 3410 and Pub. L. 108-411, 118 Stat 2312; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102-484, 106 Stat. 2722, and Pub. L. 103-337, 108 Stat. 2663; subpart D also issued under Pub. L. 103-329, 108 Stat. 2423; 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100-566, 102 Stat. 2834, and Pub. L. 103-103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100-566, and Pub. L. 103-103; subpart K also issued under Pub. L. 105-18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103-3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102-25, 105 Stat. 92.

Subpart B—Definitions and General Provisions for Annual and Sick Leave

■ 2. In § 630.201, a definition of *agency* is added in alphabetical order to read as follows:

§ 630.201 Definitions.

* * * * *

Agency means an Executive agency, as defined in 5 U.S.C. 105, and any other entity of the Federal Government that employs officers and employees to whom subchapter I of chapter 63 of title 5, United States Code, applies.

* * * * *

■ 3. In § 630.205, the section heading and paragraphs (a), introductory text; (a)(1); (c); (d); and (f) are revised to read as follows:

§ 630.205 Credit for Prior Work Experience and Experience in a Uniformed Service for Determining Annual Leave Accrual Rate.

(a) The head of an agency or his or her designee may, at his or her sole discretion, provide credit for service that otherwise would not be creditable under 5 U.S.C. 6303(a) for the purpose of determining the annual leave accrual rate of an individual receiving his or her first appointment (regardless of tenure) as a civilian employee of the Federal Government or an employee who is reappointed following a break in service of at least 90 calendar days after his or her last period of civilian Federal employment. The head of the agency or his or her designee must determine that the skills and experience the employee possesses are—

(1) Essential to the new position and were acquired through performance in a prior position having duties that directly relate to the duties of the position to which he or she is being appointed; and

* * * * *

(c) When the head of an agency or his or her designee makes a determination to provide service credit for prior work experience or active duty in the uniformed services under paragraph (a) or (b) of this section, he or she must determine the amount of service that will be credited. The amount of service credited may not exceed the actual amount of service during which the employee performed duties directly related to the position to which the employee is being appointed.

(d) An employee must provide written documentation, acceptable to the agency, of his or her prior work experience. An employee must provide written documentation from the military, acceptable to the agency, of his or her uniformed service. The head of an agency or his or her designee must make the determination to approve an employee's qualifying prior work experience before the employee enters on duty.

* * * * *

(f)(1) Credit for prior work experience or experience in a uniformed service under paragraphs (a) and (b) of this section is granted to the employee upon the effective date of his or her initial appointment to the agency or reappointment after a 90-day break in service and remains creditable for annual leave accrual purposes thereafter unless the employee fails to complete 1

full year of continuous service with the appointing agency.

(2) If an employee is placed in a leave without pay status during the 1-year period of continuous service required by paragraph (f)(1) of this section, the 1-year period of continuous service must be extended by the amount of time in a leave without pay unless—

(i) The employee separates or is placed in a leave without pay status to perform service in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) and later returns to civilian service through the exercise of a reemployment right provided by law, Executive order, or regulation; or

(ii) The employee separates or is placed in a leave without pay status because of an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81 and later recovers sufficiently to return to work.

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[FR Doc. E6-15423 Filed 9-15-06; 8:45 am]

BILLING CODE 6325-39-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150-AH66

Charges for Reproducing Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its charges for copying publicly available documents by the copy service at the NRC's Public Document Room (PDR). The revised charges for copying publicly available documents are listed in § 9.35 Duplication fees. This document is necessary to inform the public of these changes to the NRC's regulations.

DATES: *Effective Date:* October 18, 2006.

FOR FURTHER INFORMATION CONTACT: Anna McGowan, Chief, Technical Information Center Section, Office of Information Services, Nuclear Regulatory Commission, Washington, DC 20555-0001, 301-415-7204, or 1-800-397-4209 (toll-free).

SUPPLEMENTARY INFORMATION: The NRC is revising its charges for copying publicly available documents by the copy service at the NRC's PDR. The PDR retains a copy service to reproduce for a fee publicly available documents, regardless of format. Since the NRC's Agencywide Documents Access and Management System (ADAMS) was