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United States
Department of
Agriculture

Office of the
Assistant Secretary
for Administration

Office of
Human Resources
Management

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TO: Mission Area Human Resources Directors
Agency Human Resources Employment Contacts and Hiring Reform
Personnel, USDA

FROM: Karen A. Messmore
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SUBJECT: Changes to 5 C.F.R. 330, Recruitment, Placement, and Selection
OHRM Advisory #2011-003

Purpose:

This advisory implements change to employment regulations issued by the Office of Personnel Management (OPM) and codified at 5 C.F.R. Part 330, Recruitment, Selection, and Placement (General). The changes impact the development of vacancy announcements for USAJOBS, and the requirements for the Reemployment Priority List Program (RPL), the Career Transition Assistance Plan Program (CTAP), and the Interagency Career Transition Assistance Plan Program (ICTAP).

This notice serves as interim guidance until such time the Office of Human Resources Management (OHRM) amends Department Regulations #4030-330-001 Special Placement Programs, dated 08/05/05 and DPM Chapter 335, Merit Promotion Plan, dated 2000 to reflect the changes to these regulations.

The changes are effective March 3, 2011. All mission area and Agency Human Resources Offices are required to comply per this advisory and incorporate the changes into their policies and procedures for merit staffing and special placement programs.

Background

The OPM made changes to the provisions of these employment regulations with the intent to clarify regulations, reorganize the information, revise special placement programs (CTAP, ICTAP, RPL) for consistency as well as remove expired interagency placement programs.

Summary of Significant Changes

Subpart A

Filling Vacancies in the Competitive Service (§330.101 – 106)

Subpart A is re-titled, “Filling Vacancies in the Competitive Service”

330.101 Definitions. In this section, OPM added definitions to terms that were previously found throughout this subpart. Definitions have not changed and are consolidated in 330.101 (a) and are applicable throughout Part 330.

330.103 Requirements to Notify OPM. This section contains the requirements for Agencies to provide OPM vacancy announcement information promptly when: (a) Filling a vacancy for more than 120 days from outside the agency’s current permanent competitive service workforce, as required by the Interagency Career Transition Assistance Plan, subpart G of this part, unless the action to be taken is listed in subpart G as an exception to that subpart; (b) Filling any vacancy under the agency’s merit promotion procedures when the agency will accept applications from outside its permanent competitive service workforce; and (c) Filling a vacancy by open competitive examination, including direct hire procedures under part 337 of this chapter, or in the Senior Executive Service, as required by 5 U.S.C. 3327. These requirements were previously found under Subpart G—ICTAP and are moved to this Subpart because reporting requirements apply to all competitive service vacancy announcements.

330.104(a) Requirements for Vacancy Announcements. OPM provides a list of specific items that must be included in all vacancy announcements published on OPM’s USAJOBS website: (1) Name of issuing agency; (2) Announcement number; (3) Position title, series, pay plan, and grade (or pay rate); (4) Duty location; (5) Number of vacancies; (6) Opening date and application deadline (closing date) and any other information concerning how receipt of applications will be documented, such as by date of receipt or postmark, and considered, such as by cut-off dates in open continuous announcements ; (7) Qualification requirements, including knowledge, skills, and abilities or competencies; (8) Starting pay; (9) Brief description of duties; (10) Basis of rating; (11) What to file; (12) Instructions on how to apply; (13) Information on how to claim veterans’ preference, if applicable; (14) Definition of “well-qualified,” as required by subparts F and G of this part; (15) Information on how candidates eligible under subparts F and G of this part may apply, including required proof of eligibility; (16) Contact person or contact point; (17) Equal employment opportunity statement (Agencies may use the recommended equal employment opportunity statement located on OPM’s USAJOBS website.); and (18) Reasonable accommodation statement. This list, previously found in 330.707(b), was moved to this section and revised.

The above list is revised in 330.104(b) in that OPM removed the recommended EEO and Reasonable Accommodation statement that was previously listed in 330.707(a)(13) and (14) and under this new section it is suggested agencies go to the OPM website for the EEO and Reasonable Accommodation statement. In placing the statements on their website, OPM can readily update them when there are changes in the Federal Employment Discrimination Law as well as interpretive changes to the American with Disabilities Act of 1990. These websites are located at: <http://www.usajobs.gov/eoo>; and <http://www.usajobs.gov/raps>.

330.105 Instructions on How to Add Vacancy Announcements to USAJOBS. OPM provides information on where agencies can find instructions on how to add a vacancy announcement to USAJOBS. The web address is: www.usajobs.opm.gov.

Subpart B
Reemployment Priority List (RPL) (§330.201 – 214)

330.202 Definitions. This section adds terms used throughout this Subpart. The term “Qualified” is revised and defined for RPL purposes as a registrant who: (1) Meets OPM-established or -approved qualification standards and requirements for the position, including minimum educational requirements, and agency-established selective factors (as this term is used in OPM’s “Operating Manual: Qualification Standards for General Schedule Positions”); (2) *Will not cause an undue interruption*, as defined in § 351.203 of this chapter, that would prevent the completion of required work by the registrant 90 days after the registrant is placed in the position; (3) Is physically qualified, with or without reasonable accommodation, to perform the duties of the position; (4) Meets any special OPM-approved qualifying conditions for the position; and (5) Meets any other applicable requirements for competitive service appointment. This definition is revised to include “will not cause undue interruption.” This requirement was previously an exception to RPL selection order in 330.227. Adding this to the definition of Qualified makes the qualifications consistent with those required for placement through RIF procedures.

330.203 RPL Eligibility. This section revises how Agencies determine RPL eligibility as follows: An employee must meet the conditions in either paragraph (a) or (b) of this section to be an RPL eligible.

(a) For eligibility based on part 351 of this chapter, the employee: (1) Must be serving in an appointment in the competitive service in tenure group I or II; (2) Must have received either a specific notice of separation or a Certification of Expected Separation under part 351 of this chapter that has not been cancelled, rescinded, or modified so that the employee is no longer under notice of separation; (3) Must have received a rating of record of at least fully successful (Level 3) or equivalent as the most recent performance rating of record; and (4) Must not have declined an offer under part 351, subpart G, of this chapter of a position with the same type of work schedule and with a representative rate at least as high as that of the position from which the employee will be separated.

(b) For eligibility based on part 353 of this chapter, the employee or former employee: (1) Must be serving in, or separated from, an appointment in the competitive service in tenure group I or II; (2) Must either have accepted a position at a lower grade or pay level in lieu of separation or have been separated because of a compensable injury or disability. (For the purposes of this subpart, any reference to the position from which an individual was or will be separated includes the position from which the RPL eligible accepted the lower graded or pay level position under this paragraph.); (3) Must have fully recovered more than 1 year after compensation began; and (4) Must have received notification from the Office of Workers’ Compensation Programs, Department of Labor, that injury compensation benefits have ceased or will cease.

Note: 330.203(a)(3), raises the minimum performance rating of record level required for RIF based RPL eligibility from a rating above unacceptable (Level 1) to at least fully successful (Level 3) or equivalent.

330.203 RPL Eligibility is revised to combine the conditions of RPL eligibility based on recovery from a compensable injury, currently in 330.204 with RPL eligibility based on a notice of or actual RIF separation. Section 203(a)(2) clarifies that RPL eligibility ends if the

employee receives written notice of cancellation of the official notice which established RPL eligibility.

330.204(a)(2) Agency Requirements and Responsibilities. This section requires Agencies to provide information about the agency's RPL program to each RPL eligible employee when the employee accepts a position at a lower grade or pay level or separates from the agency due to a compensable work related injury. This is added to ensure employees are informed of their rights under 5 U.S.C. 8151 (Civil Service Retention).

330.206(a)(3) RPL Registration and Timeframe and Positions. This section revises the timeframe an RPL eligible employee has to apply for RPL program due to a RIF. Prior to this change the employee who received a RIF notice had to apply for RPL within 30 days after RIF separation. Now an RPL eligible employee who receives a RIF notice must apply on or before the RIF separation date.

330.207(d) Registration Area. This section requires agencies to establish fair and consistent policy for expanding the registration area for an employee whose RPL eligibility is based on recovery from a compensable work injury. Prior to this agencies were required to determine how and when to provide maximum opportunities for consideration. We are now required to establish policy for making such determinations.

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

330.208 Duration of RPL registration. This section revises the expiration period for RPL registrants. Registrants for both tenure group I and II will have a two year expiration period if they remain eligible under criteria set forth in this Part. Prior to this change only tenure group I registrants, if eligible, could remain in the program for two years from the date of separation or registration in the RPL program.

330.208(b)(1) of this section adds the statement that OPM may extend the expiration period of a registrant for the RPL program when the registrant does not receive the full two year period of eligibility due to an administrative or procedural error.

330.213 Selection from an RPL. Prior to the change Agencies were required to use one of the selection methods i.e., Retention standing Order or Numerical Scoring. The new provisions add Alternative Rating and Selection and Application based procedure. The Alternative Rating and Selection method gives Agencies a less complicated method to determine selection order. The Application Based Procedure allows the registrant to apply directly for RPL placement priority and is based on the employee-empowered model used in CTAP and ICTAP. Agencies may not vary the method used for an individual vacancy; it may at any time change the selection method for all positions covered by a single RPL.

Subpart C – [Reserved]

Subpart D

Positions Restricted to Preference Eligibles (§330-401 – 407)

330.402 Exceptions to Restrictions. Agencies are required to obtain OPM approval prior to making a selection to a restricted position of a non preference eligible if the appointment is not identified as one of the exceptions in §330.402.*

Subpart E

Restrictions to Protect Competitive Principles (§330.501 – 504)

Section 330.504 Special restrictions after appointment under the Part Time Direct Hire program. This section is deleted from this Subpart as the program no longer exists.

Subpart F - Agency Career Transition Assistance Plan (CTAP) for Local Surplus and Displaced Employees (§330.601 – 613)

And;

Subpart G – Interagency Career Transition Assistance Plan (ICTAP) for Displaced Employees (§330.701 -711)

The revisions to these Subparts incorporate longstanding OPM policies for CTAP and ICTAP. These Subparts clarify the difference between an employee eligible to apply under CTAP and the ICTAP versus an employee eligible to receive Selection Priority under these plans.

Definitions. This section consolidates terms used throughout this Subpart. The term “Eligible” is defined for CTAP and ICTAP purposes as Agency surplus or displaced employees who have a current performance rating of record at least Fully Successful (level 3) or equivalent. The term “Selection Priority Candidate” is defined as CTAP or ICTAP eligible who applied for and was determined to be well qualified by the agency and whom the agency must select over any other applicants for the vacancy, unless the action to be taken is listed as an exception under §330.609.
330.602 and 330.702

For both CTAP and ICTAP the definition of “Displaced” is revised and reads: An individual in one of the following two categories:

- (1) A current career or career-conditional (tenure Group I or II) competitive service employee at grade GS–15 (or equivalent) or below who:
 - (i) Received a reduction in force (RIF) separation notice under part 351 of this chapter and has not declined an offer under part 351, subpart G, of this chapter of a position with the same type of work schedule and a representative rate at least as high as that of the position from which the employee will be separated; or
 - (ii) Received a notice of proposed removal under part 752 of this chapter for declining a directed geographic relocation outside of the local commuting area (e.g., a directed reassignment or change in duty station).
- (2) A current excepted service employee on an appointment without time limit at grade level GS–15 (or equivalent) or below who:
 - (i) Is covered by a law providing both noncompetitive appointment eligibility to, and selection priority for, competitive service positions; and
 - (ii)

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

Note: This definition is revised to include the provision that the employee must not have declined a RIF offer under Part 351, Subpart G to a position with *the same type of work schedule* and representative rate at least as high as the position from which he/she was separated. This is an addition to the current definition. §330.602(1)(i) and 330.702(1)(i).

330.606 Minimum Criteria for Agency Definition of “Well Qualified.” OPM deleted from the “well qualified” criteria the statement, “selective and quality ranking factors cannot be so restricted that they run counter to the goal of placing displaced employees”. The statement was deleted. The goal of placing or not placing displaced employees is irrelevant to the establishment of selective and quality ranking factors. The same definition is also in 330.704 under ICTAP.

330.608(a) Other Agency CTAP Responsibilities. Agencies have the authority to provide the required CTAP orientation session in person or through an automated training session or Intranet. This provides greater flexibility to the Agencies.

330.609(dd) Exceptions to CTAP Selection Priority. OPM added two exceptions to the list of personnel actions that are exempt from CTAP Selection Priority that are currently found in 330.606; 1) Placements made under 5 C.F.R. Part 412, Senior Executive Service Merit staffing procedures for developmental programs and; 2) Conversion of an employee on a time limited appointment in the competitive or excepted service to a permanent appointment in the competitive service if the employee accepted the time limited appointment while a CTAP eligible (330.609(ee)).

330.705 (d)(2) Applying ICTAP Selection Priority. OPM revised this section to allow Agencies the flexibility to make additional selections or reissue selection certificates without re-determining whether potential ICTAP eligibles are available within the local commuting area.

330.705(f) of this section adds permission for agencies to deny an ICTAP eligible future Selection Priority for a position previously obtained through ICTAP if the eligible was terminated or removed for cause, i.e. performance or conduct.

330.708(e) ICTAP Eligibility Period. OPM has the authority to extend eligibility periods when a displaced employee does not receive timely information on ICTAP eligibility due to administrative procedural errors that adversely impacts the one year eligibility period or two years under Subpart D (Positions Restricted to Preference Eligibles).

Subpart H and I – [Reserved]

**Subpart J
Prohibited Practices (§330.1001)**

No change

Subpart K and L

These subparts will be removed because they describe special selection priority to certain displaced employees of the District of Columbia Department of Corrections and Panama Canal Zone. The statutory authority for these programs has expired. Subparts will now be reserved.

Notes

OPM will incorporate references to the new provisions to 5 C.F.R. Part 330 where appropriate in Part 335 – Promotion and Internal Placement; Part 337 – Examining System and Part 410 – Training.

*In order to obtain approval to select a non preference eligible for a restricted position under Subpart D, Section 330.402, when the action taken is not identified as an exception under this Subpart, Agencies must submit their request through OHRM to OPM to request the approval.

*In the definition of “Displaced,” OPM defines “same type of work schedule” as full time, part time, seasonal, intermittent, on-call, etc. for the purpose of CTAP and ICTAP (330.202 old).

If you have any inquiries regarding this advisory, please contact Deborah Rodriguez, OHRM, Policy Division on (202)720-5806 or via e-mail at Deborah.rodriquez@dm.usda.gov.