



OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 315, 316, and 330

RIN 3206-AN86

Hiring Authority for Post-Secondary Students

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim rule, with an opportunity for comment, to amend its career and career-conditional employment regulations. The revision is necessary to implement section 1108 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019, which requires OPM to issue regulations, in interim final form, implementing hiring authorities that allow agencies to hire certain post-secondary students into positions at specified grades in the competitive service. The intended effect of the authority is to provide additional flexibility in hiring eligible and qualified individuals.

DATES: *Effective date:* This interim rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments due date: OPM must receive comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by the docket number or Regulation Identifier Number (RIN) for this proposed rulemaking, by the following method:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for sending comments.

All submissions must include the agency name and docket number or RIN for this rulemaking. Please arrange and identify your comments on the regulatory text by subpart and section number; if your comments relate to the supplementary information, please refer to the heading and page number. All comments received will be posted without change, including any personal information provided. Please ensure your comments are submitted within the specified open comment period. Comments received after the close of the comment period will be marked “late,” and OPM is not required to consider them in formulating a final decision. Before acting on this proposal, OPM will consider all comments we receive on or before the closing date for comments. Changes to this proposal may be made in light of the comments we receive.

FOR FURTHER INFORMATION CONTACT: Monica Butler at (202) 606-0960, by fax at (202) 606-4430, TDD at (202) 418-3134, or by e-mail at employ@opm.gov.

SUPPLEMENTARY INFORMATION: On August 13, 2018, the President signed Public Law 115-232, the National Defense Authorization Act (NDAA) for Fiscal Year 2019 (i.e., the Act). Section 1108 of the Act established a new hiring authority, codified at 5 U.S.C. 3116, for appointing certain post-secondary students to certain positions in the competitive service. This section also directs OPM to issue regulations to implement this authority. Section 1108 of the Act also established a hiring authority for appointments of college graduates. OPM is issuing regulations to implement the hiring authority for college graduates in a separate notification. (New section 3116 was amended by Public Law 116-92, the NDAA for Fiscal Year 2020, which modified 5 U.S.C. 3116(d)(1).)

OPM is issuing interim regulations, with an opportunity for comments, that will create a new subpart I of part 316, title 5, Code of Federal Regulations (CFR), and revise part 330 Recruitment, Selection, and Placement (General).

The interim rule for post-secondary students allows agencies to make time-limited appointments per the statute of eligible individuals directly into the competitive service, without regard to 5 U.S.C. 3309-3319 and 3330. Readers should note that this new hiring authority is separate and distinct from the programs authorized under the Executive Order 13562 (establishing the Pathways Programs, which provide for appointments in the excepted service for Interns, Recent Graduates, and Presidential Management Fellows as described in 5 CFR part 362).

When using this authority, agencies must provide public notification and follow merit system principles, in accordance with Section 1108, as codified at 5 U.S.C. 3116 (The merit system principles are codified at 5 U.S.C. 2301). Because section 1108 of the Act waives the requirement for OPM to post a vacancy to be filled under this authority that would otherwise apply (5 U.S.C. 3330), agencies are not required to use www.USAJOBS.gov (i.e., USAJOBS) to provide notice of these vacancies. Agencies may wish to use USAJOBS, nevertheless, in light of that system's ability to assist with the requirement to collect demographic information. Agencies must advertise positions in a manner that provides for "diverse and qualified applicants," 5 U.S.C. 3116(c)(2)(B), "ensure[s] that potential applicants have appropriate information relevant to the position being filled," *id.* at 3116(c)(2)(C), and adhere[s] to merit system principles," *id.* at 3116(c)(2)(A). As indicated in 5 U.S.C. 3116, agencies must determine whether an applicant meets the eligibility requirements for the Post-Secondary Students hiring authority before giving that applicant further consideration. Agencies must then assess whether an eligible applicant meets the government-wide (i.e., OPM-established) or OPM-approved agency-specific minimum qualification standard for the position being filled.

Agencies are not required to provide selection priority to eligible and qualified applicants entitled to selection priority in accordance with 5 CFR part 330, subparts F and G, pertaining to Agency Career Transition Assistance Plans (CTAP) and Interagency Career Transition

Assistance Plans (ICTAP). OPM has revised these subparts to include exceptions to these provisions when appointments are made using this Post-Secondary Student authority.

OPM has revised 5 CFR part 315, subpart G, to provide for non-competitive conversion of Post-Secondary students.

Section 1108 of the Act also allows agencies to make appointments without regard to any provision of 5 U.S.C. 3309 through 3319. An agency may select any eligible individual who meets each minimum qualification standard, without regard to the application of veterans' preference, but, in accordance with new section 3116(c)(2)(A), must adhere to merit system principles, 5 U.S.C. 2301, in so doing. Agencies may appoint individuals under this authority to time-limited appointments in the competitive service at the grade levels specified in 5 U.S.C. 3116.

OPM is adding a new § 316.901 *Agency authority* establishing that an agency may noncompetitively appoint an eligible and qualified post-secondary student to any position in the competitive service, on a time-limited basis, at the General Schedule (GS) 11 level or below (or equivalent). An agency may appoint individuals, on a time-limited basis, to a temporary appointment (for an initial period not to exceed 1 year), or a term appointment (for an initial period expected to last more than 1 year but less than 4 years), to coincide with the individual's academic curriculum and calendar. In either case, an agency may extend an initial appointment for a period that will allow the student to complete his or her degree requirements, provided the criteria for the student appointment continue to be met. Appointments made under this authority, however, are nevertheless subject to the time limitations in 5 CFR part 316, unless the agency obtains OPM's permission to extend in individual cases. For example, an agency hires a student who is expected to complete his or her degree within 8 months. The agency would place the student on a temporary appointment (i.e., the initial appointment is expected to last for up to 1 year). If the student takes longer than expected to complete his or her degree, the agency may

extend the initial appointment for up to an additional year, for a total of 24 months. Any extensions beyond 24 months would require OPM approval. As another example an agency hires a student who is expected to complete his or her degree within 18 months. The agency would place the student on a term appointment not to exceed 4 years (i.e., the initial appointment is expected to last for more than 1 year but not more than 4 years). If the student takes longer than expected to complete his or her degree, the agency may extend the initial appointment up to the 4-year limit in increments determined by the agency. The public notification should state that the agency has the option of extending a term appointment made under these provisions up to the 4-year limit. Any extensions beyond the 4-year limit would require OPM approval. Following publication of this rule, OPM will consider crafting a proposed rule to permit delegation of such extensions to agency heads.

Interim § 316.902 *Eligibility* defines an eligible post-secondary student as an individual who is enrolled or accepted for enrollment in an institution of higher education and pursuing a baccalaureate or graduate degree on at least a part-time basis as determined by the academic institution. An institution of higher education is an entity defined by the Higher Education Act of 1965, in a section codified at 20 U.S.C.1001(a).

Interim § 316.903 *Qualifications* explains that individuals appointed under this authority must meet the government-wide OPM-prescribed minimum qualification standard, or OPM-approved agency-specific qualification standard, for the position being filled.

Interim § 316.904 *Classification* establishes that positions filled under this authority must be classified under the General Schedule or appropriate pay plan to the -99 series of the appropriate occupational group. This section also explains that positions filled under the Federal Wage System must be classified to the -01 series of the appropriate occupational group. Agencies may refer to OPM's, "Introduction to the Position Classification Standards" at <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general->

schedule-positions/positionclassificationintro.pdf for a definition of these positions. In addition, agencies can refer to the “Handbook of Occupational Groups and Families” available at <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/occupationalhandbook.pdf>.

Students may not be promoted while serving on the temporary appointment (i.e., an appointment not expected to exceed 1 year). Students may be converted to a new temporary appointment at a higher grade/band level provided the student meets the qualification requirements for the higher grade/band position.

Interim §316.905 *Public notification* contains the public notification requirements agencies must follow when using this provision. This section explains that if an agency using this authority does not use USAJOBS to post the position, it must post a job announcement on its home page, or at a minimum, provide a link displayed on the hiring agency’s website to the job announcement. Agencies are free to additionally post announcements directly on 3rd party recruitment boards, (e.g., LinkedIn, Monster, Yello) as long as the agency’s homepage also includes a link to a specific announcement. This section also explains that the job announcement must include information about the position being filled to include: the position’s title, series, grade level, minimum qualifications, and geographic location; the position’s salary; whether the position will be filled on a temporary or term basis (and in the case of a term appointment whether they agency will extend the appointment up to the 4-year limit); whether individuals in the position will be eligible for promotion; the potential for conversion to the agency’s permanent workforce; and any pertinent flexibilities that may be offered in conjunction with the position (e.g., telework opportunities or student loan repayments); and information on how to apply. This section also requires the agency to adhere to the merit system principles and perform appropriate recruiting and advertising activities to foster a diverse and qualified applicant pool when using the authority.

Interim § 316.906 *Acquisition of competitive status* explains that competitive status is acquired only upon completion of a probationary period (in accordance with 5 CFR part 315, subpart H), *after* any non-competitive conversion to a permanent appointment pursuant to this subpart. Time spent on a time-limited appointment under this subpart may count toward fulfillment of the probationary period in accordance with 5 CFR 315.802(b).

Interim § 316.907 *Tenure upon appointment* states that an individual appointed under this provision becomes a career or career-conditional employee only upon completion of the individual's academic requirements and non-competitive conversion to a permanent appointment, unless the individual has already satisfied the requirements for career tenure or is exempt from the service requirement in § 315.201.

Interim § 316.908 *Break in program* defines break in program as a period of time when a student is working but is unable to go to school or is neither attending classes nor working at the agency. The intent of the program is for students to either attend classes, work at the agency or both. An agency may use its discretion in either approving or denying a request for a break in program.

Interim § 316.909 *Promotion* explains that post-secondary students appointed for an initial period expected to last more than 1 year but less than 4 years under this part may be promoted noncompetitively provided the individual meets the qualification requirements for the higher grade position and time in grade requirements in 5 CFR part 300, subpart F, and the job announcement used to fill the original position mentioned the possibility of promotions to higher grade levels. Students on initial appointments for less than 1 year are not eligible for promotion.

Interim § 316.910 *Conversion* establishes that an agency may convert a post-secondary student to a permanent appointment in the competitive service, within that same agency, without further competition if the student has completed the course of study leading to a baccalaureate or graduate degree and meets the qualification standards for the position to which converted. We

have added § 315.201(b)(1)(xvii) to indicate that upon conversion, the time served by a post-secondary student under this authority is creditable toward career tenure and may count towards fulfillment of the probationary period in accordance with § 315.802(b).

Interim § 316.911 *Reduction in Force (RIF)*, specifies the tenure groups that post-secondary students are placed in for purposes of 5 CFR part 351. Individuals whose initial appointment is for a period not to exceed 1 year are placed in tenure group 0. Individuals whose initial appointment is for a period expected to last more than 1 year are placed in tenure group III for purposes of 5 CFR part 351.

Interim § 316.912 *Termination* explains that any appointment made under this authority expires upon the not-to exceed date of that appointment, unless the agency extends the appointment prior to expiration, if not earlier. An agency must terminate the appointment of a student after completion of the individual's academic course of study, unless the student is noncompetitively converted to a permanent position in the competitive service as specified in interim § 316.914.

Interim § 316.913 *Numerical limit on the number of appointments* describes the restrictions on the number of appointments an agency may make using this authority in a fiscal year (FY). Section 1115 of the NDAA for FY2020 amended 5 U.S.C. 3116(d), limiting the total number of students eligible to be appointed under the expedited hiring authority for post-secondary students. This section specifies that the number of appointments in any FY may not exceed 15 percent of the number of students appointed during the previous fiscal year to positions at the GS-11 level, or below (or equivalent). An appointing agency may not count appointments made using direct hire authorities, non-competitive authorities, excepted service authorities (except Pathways Internship Program appointments under § 213.3402 (a) and 5 CFR part 362, subpart B), or selections under merit promotion authorities, when establishing the limit for a given fiscal year. An agency must count hires through programs that provide for conversion to the

competitive service after a trial period, such as the Pathways Intern Program. In calculating this limitation agencies may round up or down to the nearest whole number, if necessary, to eliminate a decimal place. Values ending in “.5” or more may be rounded up to the nearest whole number in determining an agency’s cap limitation. Values ending in less than “.5” should be rounded down to the nearest whole number in determining an agency’s limitation. For example, 15% of 217 is 32.55, which should be rounded up to 33 or 15% of 235 is 35.25, which should be rounded down to 35. This section also provides that OPM may establish a lower percentage limitation based on any factor OPM deems appropriate. OPM shall notify agencies via the OPM website and other venues (such as the Chief Human Capital Officer’s Council) of any changes to the numerical limitation, applicable governmentwide. Changes to the numerical limit for an individual agency will be communicated directly to the agency.

Interim § 316.914 *Reporting Requirements*, in paragraph (a), describes the type of data and frequency at which agencies must provide information to the Congress and OPM on their use of this authority. Agencies will be required to provide data on the total number of appointments; the grade levels and occupational series of the positions filled; the numerical limit established for the authority; the number of those appointed who have been separated; recruitment activities; and any difficulties encountered in using the authority. OPM will provide written guidance, around the time this rule is published, describing the means by which agencies should collect this information, the timing of such collections, and the groups as to which information should be collected.

Interim § 316.914(b) establishes that OPM may request from agencies any additional information it deems necessary to further evaluate the impact and effectiveness of this authority.

Interim § 316.915 describes the special provisions on the use of the authority by Department of Defense (DoD) in relation to other DoD specific hiring authorities.

Waiver of Proposed Rulemaking

Section 3116 of title 5, U.S. Code, as enacted by section 1108 of Public Law 115-232, the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019, directs this rulemaking shall be through “interim regulations, with an opportunity to comment.” Therefore, the general notice of proposed rulemaking typically required under 5 U.S.C. 553(b) and 1103(b) is statutorily waived for this rule.

Expected Impact of this Interim Rule

This statute provides Federal agencies with authority to hire interns under a new scheme designed to facilitate an effective pipeline of new prospects for potential permanent appointment to help sustain the Federal workforce. OPM is issuing this rule to implement 5 U.S.C. 3116. This statute establishes a hiring authority for interns into positions at specified grade levels in the competitive service. This regulation allows agencies to make appointments of post-secondary students directly into the competitive service positions, without regard to rating, ranking, veterans’ preference, and public notice provisions in 5 U.S.C. 3309-3319 and 3330. The purpose of the authority is to provide a useful tool as part of an overall strategy to implement strategic workforce and recruitment plans.

Costs

This interim final rule will affect the operations of over 80 Federal agencies—ranging from cabinet-level departments to small independent agencies. We estimate that this rule will require individuals employed by these agencies to develop policies and procedures to implement the rule and perform outreach and recruitment activities when using the authority. For the purpose of this cost analysis, the assumed average salary rate of Federal employees performing this work will be the rate in 2021 for GS-14, step 5, from the Washington, DC, locality pay table (\$138,866 annual locality rate and \$66.54 hourly locality rate). We assume that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of \$133.08 per hour.

In order to comply with the regulatory changes in this interim final rule, affected agencies will need to review the rule and update their policies and procedures. We estimate that, in the first year following publication of the final rule, this will require an average of 250 hours of work by employees with an average hourly cost of \$133.08. This would result in estimated costs in that first year of implementation of about \$33,270 per agency, and about \$2,661,600 in total Governmentwide. We do not believe this rule will substantially increase the ongoing administrative costs to agencies (including the administrative costs of administering the program and hiring and training new staff).

Benefits

This authority will allow agencies to use strategic recruiting to hire post- secondary students to fill professional and administrative positions at general schedule (GS) 11 level and below. When using the authority agencies will have additional flexibility in how these students are hired. Federal agencies would determine recruitment sources and processes for the solicitation of applications and would be held responsible for merit-based selections. This authority when combined with agencies strategic recruitment plans may help agencies better recruit to fill mission critical occupations.

This flexibility is critical to agencies' ability to continue to meet current and future mission needs. Intern programs allow agencies to hire students, while in school, and provide them with on-the-job training to prepare them for a career in the Federal Government. It also introduces students to the wide range of occupations and employment opportunities that the Federal Government employs and offers. In FY 2020, the Federal Government hired fewer than 5,925 students Government-wide (a small portion of the number of interns hired under other authorities). The low number of intern hires is insufficient to build the pipeline needed to sustain the Federal Workforce.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget as a significant, but not economically significant rule.

Regulatory Flexibility Act

The Director of the Office of Personnel Management certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act or CRA) (5 U.S.C. 801 et seq.) requires rules to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this rule before its effective date, as required by 5 U.S.C. 801. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this rule is not a major rule as defined by the CRA (5 U.S.C. 804). The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this rule is not a major rule as defined by the CRA (5 U.S.C. 804).

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521)

This final regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 5 CFR Parts 315, 316, and 330

Government employees.

Office of Personnel Management.

Steve Hickman,
Federal Register Liaison.

Accordingly, OPM is amending parts 315, 316, and 330 of title 5, Code of Federal Regulations, as follows:

PART 315 – CAREER AND CAREER-CONDITIONAL EMPLOYMENT

1. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 2301, 2302, 3301, and 3302; E.O. 10577, 3 CFR, 1954-1958 Comp. p. 218, unless otherwise noted; E.O. 13162, and E.O. 13839. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp. p.111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964-1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2506. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(c). Sec. 315.611 also issued under 5 U.S.C. 3304(f). Sec. 315.612 also issued under E.O. 13473. Sec. 315.708 also issued under E.O.13318, 3 CFR, 2004 Comp. p. 265. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp. p. 229. Subpart I also issued under 5 U.S. C. 3321, E.O. 12107, 3 CFR, 1978 Comp. p. 264.

Subpart B—The Career-Conditional Employment System

2. Amend § 315.201 by:

a. Removing the word “and” at the end of paragraph (b)(1)(xv);

b. Removing the period at the end of paragraph (b)(1)(xvi) and adding “; and” in its place; and

c. Adding paragraph (b)(1)(xvii).

The addition reads as follows:

§ 315.201 Service requirement for career tenure.

* * * * *

(b) * * *

(1) * * *

(xvii) The date of a time-limited post-secondary student appointment under subpart F of this part provided the appointment is converted to career or career-conditional appointment under 5 CFR part 316, subpart I.

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Subpart G—Conversion to Career or Career-Conditional Employment From Other Types of Employment

3. Add § 315.714 to read as follows:

§ 315.714 Conversion based on service in a post-secondary student appointment under part 316, subpart I, of this chapter.

- (a) *Agency authority.* An agency may convert to a career or career-conditional appointment from a time-limited appointment pursuant to 5 CFR part 316, subpart I, without further competition.
- (b) *Eligibility.* To be eligible for conversion the post-secondary student must:
- (1) Have completed the course of study leading to the baccalaureate or graduate degree (or certificate as appropriate);
 - (2) Have completed not less than 640 hours of current continuous employment in an appointment under § 316.902 of this chapter;
 - (3) Meet the OPM qualification standards for the position to which the student will be converted; and
 - (4) Meet the time-in-grade requirements in accordance with 5 CFR part 300, subpart F.
- (c) *Tenure on conversion.* An employee whose employment to career or career-conditional employment under this section becomes:
- (1) A career-conditional employee except as provided in paragraph (c)(2) of this section; or
 - (2) A career employee when he or she has completed the service requirement for career tenure or is excepted from it by § 315.201(c).
- (d) *Acquisition of competitive status.* A post-secondary student converted from time limited employment under this section acquires competitive status upon completion of probation.

PART 316 – TEMPORARY AND TERM EMPLOYMENT

4. Revise the authority citation for part 316 to read as follows:

AUTHORITY: 5 U.S.C. 3116, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218.

5. Add subpart I, consisting of §§ 316.901 through 316.915, to read as follows:

Subpart I-Hiring Authority for Post-Secondary Students

Sec.

316.901 Appointment authority.

316.902 Eligibility.

316.903 Qualifications.

316.904 Classification.

316.905 Public notification.

316.906 Acquisition of competitive status.

316.907 Tenure upon appointment.

316.908 Breaks in program.

316.909 Promotion.

316.910 Conversion.

316.911 Reduction in force.

316.912 Termination.

316.913 Numerical limit on the number of appointments.

316.914 Reporting requirement.

316.915 Special provisions for Department of Defense.

§ 316.901 Appointment authority.

In accordance with the provisions of this section, an agency may make a time-limited appointment of an eligible and qualified post-secondary student, to any position in the competitive service, at the General Schedule (GS) 11 level or below (or equivalent), without regard to the provisions of 5 U.S.C. 3309 through 3319 and 3330. An agency may appoint an

individual for an initial period not to exceed 1 year, or for an initial period expected to last more than 1 year but less than 4 years, in accordance with §§ 316.401(c)(1) and 316.301(a) and (b), respectively, to coincide with the individual's academic curriculum. In either case an agency may extend or seek extension from OPM, as appropriate in accordance with this part, of an initial appointment for a period that will allow the post-secondary student to complete his or her academic requirements leading to the awarding of a degree or certificate, as appropriate.

§ 316.902 Eligibility.

A post-secondary student means an individual who:

- (a) Is enrolled or accepted for enrollment in an institution of higher education as defined by the Higher Education Act of 1965, in a section codified at 20 U.S.C.1001(a); and
- (b) Is pursuing a baccalaureate or graduate degree on at least a part-time basis, as determined by the institution of higher education; and
- (c) Meets the minimum qualification standards prescribed or approved by OPM for the position to which the individual is being appointed.

§ 316.903 Qualifications.

Agencies must evaluate eligible post-secondary students using the government-wide OPM prescribed minimum qualification standard or an OPM-approved agency-specific qualification standard for the position being filled.

§ 316.904 Classification.

Post-secondary student positions under the General Schedule or appropriate pay plan must be classified to the –99 series of the appropriate occupational group. Federal Wage System positions filled under the authority in this subpart must be classified to the -01 series of the appropriate occupational group. Agencies may refer to OPM's, "Introduction to the Position Classification Standards" at <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/positionclassificationintro.pdf> for a definition of these positions. In addition, agencies can refer to the "Handbook of Occupational

Groups and Families” available at <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/occupationalhandbook.pdf>.

§ 316.905 Public notification.

An agency must adhere to merit system principles and thus must provide public notification in a manner that recruits qualified individuals from appropriate sources in an endeavor to draw from all segments of society, before filling a position under the authority in this subpart. An agency may, but is not required to, use USAJOBS for this purpose. If the agency does not use USAJOBS to meet the requirements in this section, it must, at a minimum, publicly display information about the position to be filled on its public facing home page. An agency may, alternatively, provide an actual job announcement on its public facing home page or provide a link to the job announcement on its public facing home page. The agency should consider whether additional recruitment and advertisement activities are necessary or appropriate to further merit system principles. A job announcement must include, at a minimum, the following information:

- (a) The position title, series, grade level;
- (b) The geographic location where the position will be filled;
- (c) The starting salary of the position;
- (d) The minimum qualifications of the position;
- (e) Whether the individual in the position will be eligible for promotion to higher grade levels;
- (f) The time-limit applicable to the position, and in the case of a term appointment the vacancy announcement must state that the agency has the option of extending the term appointment up to the 4-year limit (if applicable);
- (g) The potential for conversion to the agency’s permanent workforce;
- (h) Any other relevant information about the position such as telework opportunities, recruitment incentives, etc.; and

(i) Specific information instructing applicants on how to apply for the position.

§ 316.906 Acquisition of competitive status.

Time spent on a time-limited appointment under this part may count toward fulfillment of a probation period in accordance with § 315.802(b) of this chapter. A student appointed under § 316.901 acquires competitive status only upon completion of probationary period after any conversion, in accordance with the provisions of 5 CFR part 315, subpart H.

§ 316.907 Tenure upon appointment.

An individual appointed under § 316.901 becomes a career-conditional employee upon completion of academic requirements and noncompetitive conversion to a permanent appointment in accordance with § 316.910, unless the individual has already satisfied the requirements for career tenure or is exempt from the service requirement pursuant to § 315.201 of this chapter.

§ 316.908 Breaks in program.

A break in program is defined as a period of time when a student is working for the agency but is unable to go to school, or is neither attending classes nor working for the agency.

An agency may use its discretion in either approving or denying a request for a break in program.

§ 316.909 Promotion.

An agency may promote a student appointed for an initial period expected to last more than 1 year but less than 4 years provided the student meets the qualification requirements for the higher graded position, time in grade requirements in 5 CFR part 300, subpart F, and the public notification for the position filled by the student stated the potential for promotion and specified a career ladder.

§ 316.910 Conversion.

An agency may convert a student serving in an appointment under the authority in this subpart, prior to the expiration date of the appointment, to a permanent position in the competitive service within the agency without further competition if the student:

(a) Has completed the course of study leading to the baccalaureate or graduate degree (or certificate as appropriate);

(b) Has completed not less than 640 hours of current continuous employment in an appointment under § 316.902;

(c) Meets the OPM qualification standards for the position to which the student will be converted; and

(d) Meets the time-in-grade requirements in accordance with 5 CFR part 300, subpart F.

§ 316.911 Reduction in force.

(a) *Reduction in force.* Post-secondary students are covered by part 351 of this chapter for purposes of reduction in force (RIF).

(1) Students whose initial appointment was for a period of 1 year or less are not assigned a tenure group and do not compete with other employees in a RIF.

(2) Students whose initial appointment was for a period expected to last more than 1 year are placed in Tenure Group III for purposes of part 351 of this chapter.

(b) [Reserved]

§ 316.912 Termination.

(a) Any appointment made under the authority in this subpart expires on the not-to-exceed date of that appointment unless the agency extends the appointment prior to expiration.

(b) An agency must terminate any student without regard to any provision of 5 U.S.C. chapter 35 or 75, who:

(1) Does not maintain eligibility in accordance with §§ 316.902 and 316.910; or

(2) Is not converted in accordance with § 316.910.

§ 316.913 Numerical limit on the number of appointments.

(a) Except as provided in paragraph (b) of this section, the total number of students that an agency may appoint under this section during a fiscal year may not exceed the number equal to 15 percent of the number of students the agency head appointed during the previous fiscal year to a position at the GS–11 level or below (or equivalent). An appointing agency may not count appointments made using direct hire authorities, non-competitive authorities, excepted service authorities other than Pathways Internship Program appointments under § 213.3402(a) of this chapter and 5 CFR part 362, subpart B, or selections under merit promotion authorities, when establishing the limit for a given fiscal year.

(b) OPM may establish a lower limitation on the number of students that may be appointed by an agency under paragraph (a) of this section during a fiscal year based on any factor OPM considers appropriate. OPM shall notify agencies via the OPM website and other venues (such as the Chief Human Capital Officer’s Council) of any changes to the numerical limitation, applicable governmentwide. Changes to the numerical limit for an individual agency will be communicated directly to the agency.

§ 316.914 Reporting requirement.

(a) Not later than September 30 of each of the first three (3) fiscal years beginning after August 13, 2018, when 5 U.S.C. 3116 was enacted, an agency that makes an appointment under this subpart must submit a report to Congress and OPM on the impact of its use of the authority in this subpart during the fiscal year in which the report is submitted. OPM will provide written guidance describing the means by which agencies should collect this information, the timing of such collections, and the groups as to which information should be collected. The report must contain the following information:

- (1) The total number of individuals appointed by the agency under the authority in this subpart by position title, series, grade, and geographic location of the position, and type of appointment;
- (2) The number of individuals appointed under the authority in this subpart by the items identified in 5 U.S.C. 3116(h), and in OPM guidance;
- (3) The number of veterans appointed, as defined in 5 U.S.C. 2108;
- (4) Any numerical limitation established by the agency in accordance with § 316.913;
- (5) The recruitment sources and methods used by the agency to fill positions;
- (6) The total number of individuals appointed by the agency during the applicable fiscal year to a position in the competitive service classified in a professional or administrative occupational category at the GS–11 level or below (or equivalent);
- (7) The number of individuals appointed under the authority that have been separated;
- (8) Information on difficulties encountered when using the authority; and
- (9) The number of employees converted to permanent positions under the authority in this subpart.

(b) OPM may request additional information from agencies on their use of the authority in this subpart. An agency must include in its report to Congress and OPM any additional information required by OPM under this section.

§ 316.915 Special provisions for Department of Defense.

This subpart does not preclude the Secretary of Defense from exercising authority to appoint a post-secondary student under Public Law 114-328, Section 1106. Additionally, this subpart does not apply to the Department of Defense during the period that Public Law 114-328, Section 1106, is effective.

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

6. Revise the authority citation for part 330 to read as follows:

Authority: 5 U.S.C. 1104, 1302, 3116, 3316, 3301, 3302, 3304, and 3330; E.O. 10577, 19 FR 7521, 3 CFR, 1954-58 Comp., p. 218; Section 330.103 also issued under 5 U.S.C. 3327; Section 330.104 also issued under sec. 2(d), Pub. L. 114-137, 130 Stat. 310; Subpart B also issued under 5 U.S.C. 3315 and 8151; Section 330.401 also issued under 5 U.S.C. 3310; Subparts F and G also issued under Presidential Memorandum on Career Transition Assistance for Federal Employees, September 12, 1995; Subpart G also issued under 5 U.S.C. 8337(h) and 8456(b); Section 330.707 also issued under 5 U.S.C. 3115 and 3116.

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

7. Amend § 330.609 by:

- a. Removing the word “and” at the end of paragraph (e)(2);
- b. Adding the word “and” at the end of paragraph (e)(3);
- c. Adding paragraph (e)(4);
- d. Removing the word “or” at the end of paragraph (cc);
- e. Removing the period at the end of paragraph (dd) and adding a semicolon in its place;
- f. Removing the period at the end of paragraph (ee) and adding “; or” in its place; and
- g. Adding reserve paragraph (ff) and paragraph (gg).

The additions read as follows:

§ 330.609 Exceptions to CTAP selection priority.

* * * * *

(e) * * *

(4) A post-secondary student appointment under 5 U.S.C. 3116 and part 316, subpart I, of this chapter;

* * * * *

(gg) Make an appointment using the post-secondary student hiring authority under 5 U.S.C. 3116 and part 316, subpart I, of this chapter.

Subpart G—Interagency Career Transition Assistance Plan (ICTAP) for Displaced Employees

8. Amend § 330.707 by:

- a. Removing the word “and” at the end of paragraph (h)(2);
- b. Adding the word “and” at the end of paragraph (h)(3);
- c. Adding paragraph (h)(4);
- d. Removing the word “or” at the end of paragraph (u);
- e. Removing the period at the end of paragraph (v) and adding “; or” in its place; and
- f. Adding reserve paragraphs (w) and (x) and paragraph (y).

The additions read as follows:

§ 330.707 Exceptions to ICTAP selection priority.

* * * * *

(h) * * *

(4) A post-secondary student appointment under 5 U.S.C. 3116 and part 316, subpart I, of this chapter;

* * * * *

(y) Make an appointment using the post-secondary student hiring authority under 5 U.S.C. 3116 and part 316, subpart I, of this chapter.