



OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 315 and 316

[Docket ID: OPM-2021-0006]

RIN 3206-AN86

Hiring Authority for Post-Secondary Students

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule 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 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: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

SUPPLEMENTARY INFORMATION:

On August 18, 2021, the Office of Personnel Management (OPM) published an interim rule with request for comments in the Federal Register at 86 FR 46103. The interim rule implemented the provisions of 5 U.S.C. 3116 for appointing certain post-secondary students to certain positions in the competitive service.

Summary of Comments

During the 60-day comment period between August 18, 2021, and October 18, 2021, OPM received 21 written sets of comments on the regulations. The comments were received from two non-profit organizations, two labor unions representing federal employees, five agencies, and 12 members of the public. OPM did not address the following suggestions from commenters that are outside the scope of this rulemaking:

- One comment asked about the impact this hiring authority would have on the Pathways Programs for students and recent graduates and attracting higher graded graduate students.
- One comment suggested that OPM should implement higher federal salaries.
- One comment suggested that the rule may be unnecessarily burdensome to applicants.

Many comments made arguments either for or against the authority in a more general manner, in addition to lodging specific comments on particular regulatory provisions. These are addressed below, at the outset of the discussion.

Responses to Comments

Appointment Lengths

OPM received several comments related to how the agency determined the time limit associated with appointments made using this authority and the extension of temporary and term appointments. Two agencies requested clarifying guidance about how an agency makes the determination of whether to use a temporary or term appointment. Specifically, one agency asked if the duration of the appointment was based on the student's curriculum or the agency's need. The other agency asked whether an agency could give a term appointment of two years if the student anticipates completing a degree in less than a year.

The regulation allows an agency to select the appointment duration that coincides with the student's curriculum. We have written the provision in this manner to allow agencies the flexibility to set an appointment duration that meets the needs of both the student and the agency. When selecting an appointment duration, the agency should select a reasonable length that

corresponds with the student's expected degree completion date. For example, an agency anticipating that a student will graduate in 6 to 8 months of the effective date of the appointment should make the appointment for up to 1 year to allow flexibility in case the completion of the degree is delayed by an unforeseen situation. An initial two-year appointment for this situation would not be appropriate.

Extensions of Temporary and Term Appointments

We received several comments on the ability to extend temporary or term appointments beyond the regulatory time limitations of 24 months for temporary appointments or four years for term appointments. One labor union stated that agencies should be required to request OPM approval for extensions beyond four years. Two federal agencies encouraged OPM to delegate the approval of extensions to agencies. One of these agencies presented several compelling reasons in support of delegating extensions of term appointments beyond four years. These reasons include:

- Many individuals need to attend school part-time and work in the evenings (or vice versa) due to financial hardships or family responsibilities. The four-year term limit only benefits those who have the means to complete school in the typical timeframe.
- Limiting appointments to four years may adversely affect an agency's ability to attract students who need longer than usual to complete their degree.
- Students in programs that include combined degree or accelerated degree programs where students can earn credits for both an undergraduate and master's degree at the same time would face an additional challenge to continued employment under the authority.

That same agency specifically recommended removing the four-year limit for term appointments under this authority because there is nothing in the statute that limits the appointments to four years.

OPM agrees and has modified the duration for term appointments under this authority in § 316.901 consistent with 5 CFR 316.301. This will enable agencies to make term appointments for up to four years (see § 316.301(a)), for an initial duration beyond 4 years when authorized by OPM for non-STEM positions (see § 316.301(b)), or for up to ten years for covered STEM occupations (see § 316.301(c)), as appropriate.

Veterans' Preference

OPM received three comments related to the application of veterans' preference. Two comments from individuals encouraged OPM to require agencies to apply veterans' preference, especially for disabled veterans. Another commenter asked if veterans' preference would be required when an agency uses USAJOBS to notify the public about opportunities that will be filled using the authority. The wording in 5 U.S.C. 3116(b)(1) clearly authorizes an agency to make appointments without regard to any provision of 5 U.S.C. 3309 through 3319 and 3330, which outline the requirements to apply veterans' preference. For this reason, OPM cannot include a requirement to apply veterans' preference when using this authority.

Public Notification

OPM received four comments requesting that the use of USAJOBS be a mandatory requirement when using this hiring authority. The commenters indicated that requiring the use of USAJOBS.gov would ensure transparency and that without the requirement the visibility of opportunities may be limited. Additionally, the commenter indicated that the absence of a USAJOBS posting may hinder the general public and interested applicants' ability to track opportunities. While OPM does not disagree with these claims, we are unable to modify the regulations to require the use of USAJOBS. The requirement to post competitive service opportunities on USAJOBS.gov is based in 5 U.S.C. 3330. The provisions at 5 U.S.C. 3116(b) specifically state that that an agency may make appointments without regard to 5 U.S.C. 3330. This means that agencies may provide the required public notice through USAJOBS or through other venues as discussed below.

We received a number of comments focused on the content needed for inclusion in a job announcement. One agency requested information about how the information for public notice was different from the requirements for the job announcement. Another agency asked whether agencies could conduct targeted advertisements with minority serving institutions. The public notice requirement is for agencies to share information about opportunities in a manner that provides for recruitment from all segments of society to produce qualified applicants and ensure potential applicants have appropriate information relevant to the positions available. An agency meets the public notice requirement by using job announcements on USAJOBS or by posting job announcements on the agency's website. Either of these options may be supplemented by posting on third-party websites and strategic recruitment activities to tell the public and other strategic recruiting sources about opportunities that will be filled using this authority. When conducting strategic advertising to recruiting sources, an agency cannot craft an announcement that limits the acceptance of applications from one institution and excludes other applicants.

Another commenter asked whether the hiring agency has the flexibility to determine what an announcement will look like. An agency may use any format it likes when crafting an announcement for its web page or a third-party website provided that the announcement includes the following information, and it gives a potential applicant a realistic preview about the opportunity:

- position title, series, grade and pay level, minimum qualifications, and geographic location;
- whether the position will be filled on a temporary or term basis (and in the case of a term appointment whether the agency may extend the appointment up to the 4-year limit);
- whether an individual in the position will be eligible for promotion while a student and upon conversion;
- the potential for conversion to a position in the agency's permanent workforce;

- any pertinent flexibilities that may be offered in conjunction with the position (e.g., reasonable accommodation or other workplace accommodations in accordance with the President's return to work directive, or student loan repayments);
- information on how to apply; and
- equal employment opportunity and reasonable accommodation statements. (Agencies may use the recommended statements located on OPM's USAJOBS website.)

Finally, an agency asked if it is possible to advertise for both temporary and term opportunities in the same announcement.

The regulations do not prohibit an agency from advertising for both temporary and term appointments using the same announcement. If an agency chooses to use this approach, then it must make clear what is being offered and establish appropriate procedures to ensure that all parties involved know the basis for whether a temporary or term appointment will be offered to applicants who are selected for employment.

An agency asked if it may accept applications outside of a job announcement or website posting or after an announcement has closed. OPM's response is no because the public notice provisions in 5 U.S.C. 3116 and § 316.905 require that an agency advertise opportunities that will be filled using the authority. Accepting applications outside of an announcement or after an announcement has closed would conflict with this requirement. Additionally, such a practice would not support the merit system principle of fair and open competition (5 U.S.C. 2301). Agencies should follow their existing policies for accepting applications to competitive service announcements.

An agency also asked whether an appointment can be extended if the announcement did not address the possibility of an extension. The announcement must provide a realistic preview of the position, availability of benefits, and the possibility for extension to the appointment duration in accordance with 5 CFR part 316, subparts B and C. If the announcement used to fill

the position does not include information on the potential for extension of the appointment, anyone selected from the announcement would not be eligible for an extension.

Applicant Assessments

An agency asked how applicants hired under the authority should be assessed. Agencies use the same assessment for hiring students under this authority as they do when filling the position under other hiring authorities (and at the same grade level) in accordance with Executive Order (E.O.) 14170, “Reforming the Federal Hiring Process and Restoring Merit to Government Service. See 90 FR 8621 (Jan. 30, 2025).

Consistent with E.O. 14170 and section II.A. of the OPM-Executive Office of the President (EOP) joint memorandum “Merit Hiring Plan” (<https://www.opm.gov/chcoc/transmittals/2025/Merit%20Hiring%20Plan%205-29-2025%20FINAL.pdf>), agencies should use a skills-based assessment approach when filling positions under this authority. Skills-based hiring shifts the focus from what applicants say on a resume to what applicants can do as demonstrated through proven, competency-based assessments. In accordance with E.O. 13932, “Modernizing and Reforming the Assessment and Hiring of Federal Job Candidates”, agencies must revamp position descriptions so that they delineate eligibility and qualification criteria and eliminate any requirements that are not relevant. 85 FR 39457 (July 1, 2020). Section 3 of E.O. 13932 directs agencies to utilize assessments to determine the extent to which candidates possess relevant knowledge, skills, competencies, and abilities. Skills-based hiring is particularly more important when filling positions at or near the GS –11 grade levels under this authority.

Eligibility

OPM received three comments recommending that the eligibility criteria in § 316.902 be expanded to include students pursuing associates degrees, trade school or certificate programs, and Department of Labor-approved apprenticeship programs. OPM is unable to expand the eligibility requirements for this authority because the provisions in 5 U.S.C. 3116(a)(2) define a

student as “...an individual enrolled or accepted for enrollment in an institution of higher education who is pursuing a baccalaureate or graduate degree on at least a part-time basis...”

For this reason, we have removed the references to certificate programs found in § 315.714(b)(1), § 316.901, and § 316.910. OPM recognizes this definition, based on the authorizing statute, limits the type of students that may be recruited using the authority. However, there are other programs available to agencies such as the Pathways Internship Program that may be used to recruit students pursuing other types of degrees or certificates.

One agency asked for guidance on how a students’ deferral of enrollment would affect a student’s eligibility when applications are accepted from students accepted for enrollment. Deferred enrollment generally refers to a situation in which a student who is accepted for admission for a specific academic period delays or defers enrollment to a later academic period. Such applicants may be selected and begin working under this authority if the student can provide documentation of acceptance, deferral that indicates when enrollment is expected to begin, and actually begins enrollment at the deferred time. After enrollment begins, the student must be required to submit additional documentation to verify that they are currently enrolled. If the student does not later provide documentation of actual enrollment, they would be subject to separation as required by § 316.912(b). For example, at the time of appointment in June 2025, the student provides documentation of deferred enrollment that will begin in January of the following year (2026). To continue employment, the agency must require that the student provide enrollment documentation in January 2026.

Qualifications

A labor union suggested that OPM should explicitly require a nexus between the position being filled and the student’s area of study to limit the potential for abuses such as favoritism. OPM disagrees that there needs to be a nexus between the position and the student’s area of study. Students may change majors or career goals while pursuing a degree. Upon conversion, students must meet all qualification requirements of the permanent position. A requirement for a

nexus would limit flexibility for the agency and restrict opportunities for students. For this reason, we are not incorporating a requirement for a nexus between the student's academic study and the position being filled.

Classification of Positions

Two commenters requested information on whether the position descriptions used for Pathways Internship positions may be used for positions filled under this authority. An agency may use similar position descriptions for Pathways Intern positions for Post-Secondary Student positions. However, an independent position description may need to be established as required by an agency's classification policy.

Acquisition of Competitive Status

A labor union opposed the provisions in § 316.906 that allow time spent under this authority to be creditable toward meeting the competitive service probationary period. OPM disagrees with this comment. The regulations in 5 CFR 11.4 state that time served in a federal position may be creditable toward meeting the probationary period requirement when the service is in the same agency, in the same line of work and does not include a break in service of more than 30 days.

An agency asked for additional guidance for situations where the student may attain competitive status upon conversion. Competitive status is acquired upon completion of a probationary period (which includes certification by the hiring agency in accordance with Civil Service Rule XI). Upon conversion to a permanent position the agency looks at the time served under the post-secondary student authority and determines if it meets the criteria in 5 CFR 11.4 (same agency, same line of work, no break in service of more than 30 days). For example, a student served 8 months under the appointment before conversion at the agency. The agency determined that the time served prior to conversions met the criteria in 5 CFR 11.4 and is creditable toward the one-year probationary period requirement. After conversion, the employee must serve an additional four months and be certified for continued employment by the

employing agency in accordance with 5 CFR 11.2(d), 11.4, and 11.5, before meeting the probationary period requirement and gaining competitive status. In a different example the student served one year under the authority before conversion. The agency determines that the time served prior to conversion met the criteria in 5 CFR 11.4 and is creditable toward the one-year probationary period requirement. At the time of conversion, the agency documents that the probationary period has been met and that certification of the employee's continued employment advances the public interest in accordance with 5 CFR 11.5, if applicable, and the student obtains competitive status upon conversion.

Breaks in Program

OPM received several comments asking for clarification on the provisions for breaks in program. These comments included questions about how a break in program is defined; how a break in program is different from when the employee no longer meets the definition of a student; and whether a maximum period of leave without pay (LWOP) may be defined when establishing an agency policy for 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. While breaks in program are not common, they are permissible in certain circumstances such as, but not limited to, medical leave, financial hardship, or military service. An agency may use its discretion to either approve or deny a request for a break in program, as well as determine the length of the break. For example, a student who will be unable to work for the first month of the three-month summer break between school years may be approved for a break in program. A student who has withdrawn from one educational institution to transfer to a different one may also be approved for a break in program. In both instances the student intends to return to enrollment. However, a student who is withdrawing from enrollment at an educational institution and has no plans or intention to return to enrollment within reasonable period of time

would no longer meet the definition of student and should not be approved for a break in program.

Agencies have the discretion to determine what is considered a reasonable period for a break in program depending on the student's reasons for requesting a break in program. To allow agencies the most discretion and flexibility, OPM is not prescribing a maximum length of time for a break in program or the maximum number of breaks in program that an agency may authorize for a student. Using this discretion, an agency can create policies that address the length or number of breaks in program that may be allowed. OPM has modified § 316.908 to indicate that an agency may create policies that address limitations on the duration and frequency of breaks in program.

Promotions

One agency recommended OPM clarify whether individuals appointed under a term appointment may be promoted. We have modified § 316.909 to make clear that only students on term appointments are eligible for career ladder promotions prior to conversion.

Another commenter asked OPM to modify the regulatory text by including information addressing promotion potential upon conversion to a permanent position in the competitive service. OPM agrees and has modified § 316.909(c) to address this comment. We have also added information to indicate that students appointed under this authority may be eligible for non-competitive career ladder promotions upon conversion provided that the agency has established a career ladder or promotion potential for the position and the public notification for the position filled by the student stated the potential for promotion and specified a career ladder upon conversion.

One commenter requested the final regulation include a provision allowing promotion potential beyond the GS-11 level. OPM has modified § 316.904 Classification and § 316.909 Promotion to clarify that career ladders or promotion potential beyond the GS-11 grade level may be used with this authority.

Conversion to Permanent Positions

Two commenters questioned why students cannot be converted to permanent positions in other agencies. The governing statute at 5 U.S.C. 3116(e) states that an agency head may convert a student serving in an appointment under this authority to a permanent appointment in the competitive service within the agency. For this reason, the regulations do not allow the conversion of students to a permanent appointment in a different agency.

Several commenters inquired about the time frame in which a student may be converted to a permanent position in the competitive service. An agency must convert the student to a permanent position as soon as practical after the completion of a degree and prior to the expiration of the appointment. The regulations do not prescribe a specific time frame to allow time for the agency to receive documentation of degree completion. Agencies should try to process the conversion as soon as possible after the documentation is received. For example, a student on an appointment that expires in December completes a degree on June 1 and provides documentation about completion of their degree on July 1. The agency should convert the student within one or two pay periods of receiving the documentation. The agency should not wait until December to convert the student.

Several commenters asked OPM to clarify the time frame for notifying a student that he or she will not be converted to a permanent position. A hiring agency should notify a student that he or she will not be converted as soon as possible once the agency makes its determination. Prompt notification that conversion is not available will allow the student time to make alternate career plans. For example, in January a student reminds their manager that they will be graduating in May and asks for information about whether a permanent position will be available. Due to budgetary constraints, the manager determines in February that the agency will not be able to convert the student upon completion of the degree. The manager should inform the student in February that conversion will not be available. The student would need to be separated within one pay period of when the degree is completed in May.

One commenter asked whether a student could remain on the rolls until the expiration date of the appointment when the agency is not going to convert the student to a permanent position. When an agency has determined it will not convert a student, that agency must terminate the student as soon as practicable after the student completes their degree requirements. Additionally, the agency should inform a student as soon as possible once that determination has been made to allow the student time to make alternate career plans.

One commenter suggested OPM should consider allowing a waiver of the 640-work hour requirement for those students who have grade point average (GPA) of 3.5 or higher. OPM is not adopting this recommendation. The governing statute at 5 U.S.C. 3116(e)(2) requires, as a condition of conversion, that a student must complete not less than 640 hours of current continuous employment. The statute does not give OPM the discretion to waive this requirement.

One agency asked how agencies should monitor the conversion requirements. The employing agency is responsible for keeping track of when students have met conversion requirements. This process would be similar to what agencies currently do to track conversion requirements under the Pathways programs or other hiring programs that have non-competitive conversion requirements.

Numerical Limitation on Appointments

OPM received several comments on the requirement that appointments under this authority are limited to 15 percent of the number of students appointed in the prior year. Some commenters advocated for a higher limit to meet the needs of the agencies. Other commenters supported the limit and advocated that OPM's discretion to lower the limit could be a tool to prevent misuse or abuse of the authority. OPM agrees that the ability to lower the limit could be a tool to prevent misuse or abuse of the authority. We have no reason at this time to lower the current limit allowed by statute. The 15 percent limit was established in 5 U.S.C. 3116(d)(1). OPM does not have the discretion to prescribe a higher limitation in the regulations.

Some commenters questioned the type of appointments that may be counted when determining the limit. These comments indicated that not being able to count appointments made under the authority would be unnecessarily restrictive; and that the count should be expanded to any appointments of students. One individual suggested OPM include students hired under non-title 5 U.S.C. hiring authorities, as well as the title 5 excepted service Schedule A appointing authority for individuals with disabilities (5 CFR 213.3102(u)). Another commenter supported the statutory limitation of 15 percent of prior year's student hires but exclude appointments under this authority. One non-profit organization indicated that the calculation should be based on all competitive appointments hired as indicated in 5 U.S.C. 3115. Some agencies asked whether an agency could count hires through programs that provide conversion to the competitive service after completing a trial period in the excepted service pursuant to 5 CFR 11.3, such as the Pathways Recent Graduate Program, or appointments of Pathways Interns on temporary appointments. An agency asked if each appointment counts separately if an intern is given multiple appointments in the same year or if temporary or indefinite appointments needed to be treated differently when counting the number of appointments to determine the numerical limits. Other commentors asked whether an agency could in future years count appointments made under the post-secondary student authority. A different commenter recommended that OPM follow the original language of the statute and use all competitive positions hired toward the count instead of students. In 2019, Congress amended the language in 5 U.S.C 3116(d)(1) from:

“...the head of 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 that the agency head appointed during the previous fiscal year to a position in the competitive service...”

to

“...the head of 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 that the agency head appointed during the previous fiscal year...”

This change in the statute means the 15 percent limitation is based on the number of students appointed by the agency during the previous fiscal year. OPM agrees additional clarification is necessary on which types of appointments may be counted when determining the numerical limit. We have modified the provisions at § 316.913 to clarify that an agency may count appointments made under this authority and other appointments of students made using an appointing authority that was specifically created for the appointment of students. This would include appointments under the Pathways Internship Authority, the Post-secondary Student authority, agency specific statutory appointing authorities for hiring students; and other statutory appointing authorities for hiring students such as the Boren Awards Programs (under 50 U.S.C. 1902) appointments.

An agency suggested that, when determining the numerical limit, an agency should be able to include in the count of the prior fiscal year’s appointments conditional job offers that were given but for which the agency was unable to finalize the appointment before the conclusion of the fiscal year due to the timing of the background investigation, medical clearances, or other preemployment process. OPM is not adopting this suggestion. The authorizing statute clearly defines that the numerical limit is based on the number of appointments made and not the number of job offers given.

Reporting Requirement

One federal union indicated support for the use of a reporting requirement. The authorizing statute required specific reporting requirements for the first 3 years after enactment of the statute (August 2018 through August 2020). Because the dates for required reporting have passed, we have removed the reporting requirement from the regulatory text. OPM continues to conduct oversight of all hiring activities including agency use of this hiring authority.

Other Regulatory Changes

OPM moves § 316.915 (*Special provisions for Department of Defense*) to replace the current § 316.914 (*Reporting requirement*). OPM also updates the language to reflect that Sec 1116 of PL 118-31 extended the DOD direct hire authority for post-secondary students until Sept 30, 2030, and that subpart I does not apply to DOD during that time.

Finally, OPM is updating and correcting the Authority citations for part 316.

Regulatory Analysis

A. Statement of Need

OPM is issuing this rule to implement 5 U.S.C. 3116. This statute establishes a hiring authority for students into time limited positions at specified grade levels in the competitive service. The interim rule allowed 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. Upon successful completion of degree requirements, the students may be converted into permanent positions in the competitive service. Commenters requested clarification regarding a variety of implementation issues related to the interim rule. The final rule also supports section I.C.1 (Early Career Recruitment) of the "Merit Hiring Plan." This authority, when combined with agencies' strategic recruitment and Merit Hiring Plan actions pertaining to early career talent, may help agencies better recruit and fill mission critical occupations.

B. Impact

OPM expects the impact of this final rule will be a streamlined hiring flexibility for recruiting early career talent. This rule finalizes non-competitive procedures for appointment of eligible students directly into competitive service positions and allows agencies to convert students who meet certain regulatory requirements into permanent competitive service positions. This final rule clarifies regulatory text from the interim rule based on comments received and provides additional flexibility to agencies with respect to permissible appointment lengths. The

purpose of this rule is to provide agencies with information necessary to create policies and procedures for using the authority to hire post-secondary students as a part of an agency's overall strategy to implement strategic workforce, and recruitment plans. It may also help agencies address hiring and recruiting gaps for filling early career talent positions.

C. Regulatory Alternatives

OPM's implementing regulations are required by statute and cannot be avoided. The statute prescribes eligibility requirements; types of positions that can be filled using the authority; public notice requirements; a numerical limit for the number of appointments made; and reporting requirements.

The strict wording of the eligibility requirements in the statute regulations does not allow the regulations to offer any alternatives. For this reason, the eligibility requirements in the rule match those specifically prescribed by the statute.

For the public notice requirement created in the statute, OPM has given agencies the flexibility to use a variety of ways to tell the public about opportunities. While the regulations specify the information required to be included in the public notice, they also allow the agency the discretion to determine the format of the notice when the agency is not using OPM's USAJOBS platform.

The numerical limitation on the use of the authority is prescribed in statute. The precise wording does not allow OPM to prescribe a limit higher than 15 percent or a waiver of the limit. Our approach in writing the implementing regulations for this issue is to provide instructions and clarifying information on how an agency must calculate the statutorily prescribed limit.

D. Costs

This 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 modify policies and procedures to implement the rule and perform outreach and recruitment activities when using the authority. For the purpose of this

cost analysis, OPM assumed an average salary rate of Federal employees performing this work will be the rate in 2026 for GS-14, step 5, from the Washington, DC, locality pay table (\$163,104 annual locality rate and \$78.15 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 \$156.30 per hour.

In order to comply with the regulatory changes in this final rule, affected agencies may need to review and update their policies and procedures. We estimate that, in the first year following publication of this final rule, this will require an average of 100 hours of work by employees with an average hourly cost of \$156.30. This would result in estimated costs in the first year of implementation of about \$15,630 per agency, and about \$1,250,400 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).

E. Benefits

This authority will allow agencies to use strategic recruiting to hire students in baccalaureate or graduate degree programs. When using the authority, agencies will have additional flexibility in how college students are hired. Federal agencies will determine recruitment sources and processes for the solicitation of applications and will be held responsible for merit-based selections and in accordance with the Merit Hiring Plan guidance. This authority – when combined with agencies’ strategic recruitment plans – may help agencies better recruit to fill mission critical occupations.

F. Severability

If any of the provisions of this final rule is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, we believe that the other sections should be severable and would not be impacted. Similarly, many of the operational requirements have no bearing on other provisions and are severable. For example, a holding that a hiring provision is

invalid should not impact provisions related to conversion. In enforcing the provisions of this rule, OPM will comply with all applicable legal requirements. OPM did not receive any comments on severability in the proposed rule.

Regulatory Compliance

A. Regulatory Review

OPM has examined the impact of this rule as required by E.O. 12866 and 13563, which direct 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). A regulatory impact analysis must be prepared for rules that have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule is not a “significant regulatory action” under section 3(f) of E.O. 12866. This rule is considered a deregulatory action under E.O. 14192.

B. 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.

C. 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 E.O. 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

D. Civil Justice Reform

This regulation meets the applicable standard set forth in section 3(a) and (b)(2) of E.O. 12988.

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that would impose spending costs on State, local, or tribal governments in the aggregate, or on the private sector, in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold is currently approximately \$206 million. This rulemaking will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.

F. Congressional Review Act

OMB's Office of Information and Regulatory Affairs has determined this rule does not satisfy the criteria listed in 5 U.S.C. 804(2).

G. Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves the following OMB-approved collections of information subject to the PRA: USAJOBS 3.0 (OMB Control Number 3206-0219).

OPM believes any additional burden associated with this final rule falls within the existing estimates currently associated with this control number. OPM does not anticipate that the implementation of this final rule will increase the cost burden to members of the public. Additional information regarding this collection of information – including all background

materials – can be found at <https://www.reginfo.gov/public/do/PRAMain> by using the search function to enter either the title of the collection or the OMB Control Number.

List of Subjects

5 CFR Part 315

Government employees.

5 CFR Part 316

Employment, Government employees.

The Director of OPM, Scott Kupor, reviewed and approved this document and has authorized the undersigned to electronically sign and submit this document to the Office of the Federal Register for publication.

U.S. Office of Personnel Management.

Jerson Matias,

Federal Register Liaison.

Accordingly, Office of Personnel Management amends 5 CFR parts 315 and 316 as follows:

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

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

Authority: 5 U.S.C. 1302, 3301, and 3302. E.O. 10577, 19 FR 7521, 3 CFR, 1954-1958 Comp., p. 218; E.O. 14284, 90 FR 17729.

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 22 U.S.C. 2051, 42 U.S.C. 2991.

Sec. 315.606 also issued under E.O. 11219, 30 FR 6381, 3 CFR, 1964-1965 Comp., p. 303.

Sec. 315.607 also issued under 22 U.S.C. 2560.

Sec. 315.608 also issued under E.O. 12721, 55 FR 31349, 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 under 5 U.S.C. 3330d.

Sec. 315.613 also issued under 5 U.S.C. 9602.

Sec. 315.710 also issued under E.O. 12596, 52 FR 17537, 3 CFR, 1987 Comp., p. 264.

Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 44 FR 1055, 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)(xvi);

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

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

The addition reads as follows:

§ 315.201 Service requirement for career tenure.

* * * * *

(b) * * *

(1) * * *

(xviii) 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.

* * * * *

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

3. Revise § 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;

(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 converts 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 in accordance with §§ 11.2, 11.4, and 11.5 of this chapter.

PART 316—TEMPORARY AND TERM EMPLOYMENT

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

Authority: 5 U.S.C. 3301, 3302, 3316. E.O. 10577, 19 FR 7521, 3 CFR, 1954-1958 Comp., p. 218; E.O. 14284, 90 FR 17729. 5 CFR 2.2(c).

Subpart I—Hiring Authority for Post-Secondary Students

5. Revise § 316.901 to read as follows:

§ 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 in accordance with § 316.401(c)(1), for an initial period expected to last more than 1 year but less than 4 years in accordance with § 316.301(a) and (b), or for a period of more than 1 year but not more than 10 years in accordance with § 316.301(c) to coincide with the individual's academic curriculum. 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, as appropriate.

6. Revise § 316.903 to read as follows:

§ 316.903 Qualifications.

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

7. Amend § 316.904 by adding a sentence at the end of the text to read as follows:

§ 316.904 Classification.

* * * Agencies may also attach career ladders or promotion potential beyond the General Schedule (GS) 11 grade level (or equivalent) with positions filled under this authority.

8. Revise § 316.905 to read as follows:

§ 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 advertising activities are necessary or appropriate to further merit system principles. A non-USAJOBS job announcement or information displayed on an agency's public facing homepage, 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 individual in the position will be eligible for promotion both while a student and upon conversion;
- (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 applicable limit;
- (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.;
- (i) Specific information instructing applicants on how to apply for the position; and
- (j) Equal employment opportunity and reasonable accommodation statements. (Agencies may use the recommended statements located on OPM's USAJOBS website.)

9. Revise § 316.908 to read as follows:

§ 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 to approve or deny a request for a break in program. The agency may also establish policies that address the duration, number of breaks in service, and criteria used to approve a break in program.

10. Revise § 316.909 to read as follows:

§ 316.909 Promotion.

(a) *Students on term appointments.* An agency may promote a student who was 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.

(b) *Students on temporary appointments.* An agency may not promote a student who was appointed for an initial period expected to last up to one year.

(c) *Promotions at the time of conversion.* Students (on temporary or term appointments) may be eligible for non-competitive promotions upon conversion if:

- (1) the agency has established a career ladder or promotion potential for the position;
- (2) the public notification for the position filled by the student stated the potential for promotion and specified a career ladder; and
- (3) the student has met the time-in-grade requirements in accordance with 5 CFR part 300, subpart F.

11. Amend § 316.910 by revising paragraph (a) to read as follows:

§ 316.910 Conversion.

* * * * *

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

* * * * *

12. Revise § 316.913 to read as follows:

§ 316.913 Numerical limitation 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 count Pathways Internship Program appointments under § 213.3402(a) of this chapter; appointments made under this authority; and other appointments of students made using an appointing authority that was specifically created for the appointment of students. An agency may not count appointments made using direct hire authorities, other non-competitive authorities, other excepted service authorities, or selections under merit promotion authorities when establishing the limit for a given fiscal year. In calculating this limitation, agencies must 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 cap limitation.

(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 factors OPM considers appropriate. OPM shall notify agencies via the OPM website and other venues (such as the Chief Human Capital Officers 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 [Removed]

13. Remove § 316.914.

14. Redesignate § 316.915 as § 316.914 and revise the newly redesignated § 316.914 to read as follows:

§ 316.914 Special provisions for Department of Defense.

This subpart does not apply to the Department of Defense during the period that section 1106 of Pub. L. 114-328, as amended by section 1116 of Pub. L. 118-31, (see 10 U.S.C. note prec. 1580) or that any applicable successor statute, is effective.

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