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Part III

## Office of Personnel Management

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5 CFR Parts 213, 302, 315 *et al.*

Excepted Service, Career and Career-Conditional Employment; and  
Pathways Programs; Final Rules

## OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213, 302, 315, 330, 334,  
362, 531, 536, 537, 550, 575, and 890

RIN 3206-AM34

### Excepted Service, Career and Career- Conditional Employment; and Pathways Programs

**AGENCY:** U.S. Office of Personnel  
Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations implementing the Pathways Programs established by E.O. 13562, signed December 27, 2010. As directed by the President, the Pathways Programs provide clear paths to Federal internships and potential careers in Government for students and recent graduates. The Pathways Programs consist of the Internship Program, the Recent Graduates Program and the Presidential Management Fellows Program. Positions in the Pathways Programs are excepted from the competitive service. Participants in these Programs are appointed under the newly created Schedule D of the excepted service.

**DATES:** This final rule is effective July 10, 2012. Agencies, however, shall have a 6-month transition period following the effective date of the final rule to convert to the Internship Program any students serving under appointments made pursuant to the Student Educational Employment Program and to transition to the new Presidential Management Fellows Program any Fellows currently serving under appointments made pursuant to the existing Presidential Management Fellows Program. In addition, during the transition period, agencies are permitted to make appointments under the Internship and Presidential Management Fellows Programs even if they have not entered into a final Memorandum of Understanding (MOU) with OPM, as required by 5 CFR 362.104. This transition period does not apply to the Recent Graduates Program, and appointments under the Recent Graduate Program may not be made until an MOU is in place.

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**SUPPLEMENTARY INFORMATION:** In Executive Order 13562, dated December 27, 2010, President Obama established the Pathways Programs, consisting of

three streamlined developmental programs: the Internship Program for students; the Recent Graduates Program for people who have completed a qualifying educational program within the preceding 2 years; and the Presidential Management Fellows (PMF) Program for people who obtained a graduate or professional degree within the preceding 2 years. To implement this Executive Order, OPM issued proposed regulations for parts 213, 302, 315, 330, 334, 362, 531, 536, 537, 550, 575, and 890 of title 5, Code of Federal Regulations (5 CFR) on August 5, 2011.

As explained in the proposed regulations, the President is authorized by statute to provide for “necessary exceptions of positions from the competitive service” whenever warranted by “conditions of good administration.” (5 U.S.C. 3302). In Executive Order 13562, the President found that “conditions of good administration (specifically, the need to promote employment opportunities for students and recent graduates in the Federal workforce) make necessary an exception to the competitive hiring rules for certain positions in the Federal civil service,” *i.e.*, those to be filled through the Pathways Programs. (Exec. Order No. 13562, 75 FR 82585 (Dec. 27, 2010)).

OPM’s regulations implement the President’s order by establishing the framework for each of the three discrete excepted service internship programs for students and recent graduates:

- The Internship Program is for current students. It consolidates two existing internship programs into a single program designed to provide high school, vocational and technical, undergraduate, graduate, and professional students, opportunities to be exposed to the work of Government through Federal internships. It is largely modeled after the existing Student Career Experience Program (SCEP).
- The Recent Graduates Program is a new program that will provide developmental opportunities in Federal jobs for individuals who have recently graduated from qualifying educational institutions or programs.
- The Presidential Management Fellows (PMF) Program has been the Federal Government’s premier leadership development program for graduate and professional degree candidates for over three decades. Executive Order 13562 preserves the PMF Program while making it more flexible by, for example, expanding the eligibility window for applicants to include those who have received a qualifying graduate degree within the preceding 2 years.

The appointing authorities for each Pathways Program are contained in Schedule D of the excepted service, a new schedule created by section 7 of Executive Order 13562. The President created this new schedule pursuant to his statutory authority to make necessary exceptions to the competitive hiring rules when warranted by conditions of good administration. His findings to support the exception are set forth in section 1 of the Executive Order. Under the new Schedule D authority, agencies will be able, under OPM’s guidance, direction, and oversight, to use excepted service hiring to fill positions from among a particular class of eligible individuals—students and recent graduates. This approach is consistent with long-standing civil service practice under excepted service hiring authorities, including, for example, Schedule A hiring for people with disabilities.

Part 362 of title 5, Code of Federal Regulations (CFR) contains the regulatory requirements for each Pathways Program. Part 362 consists of four subparts. Subpart A contains only those requirements common to all Pathways Programs. Program-specific requirements are set forth in subpart B for the Internship Program, subpart C for the Recent Graduates Program, and subpart D for the PMF Program.

### Summary of Comments

OPM received 238 written submissions with comments on the proposed Pathways Programs. A member of Congress, 24 Federal agencies, 8 labor unions representing Federal employees, 74 individual Federal employees, 20 colleges and universities, 11 professional organizations and student unions, 56 current students and recent graduates and 44 other members of the public submitted comments.

OPM did not address comments that are outside the scope of the regulations. One agency wanted to know how current hiring and pay freezes would affect hiring under the Pathways Programs. Some students and recent graduates submitted resumes for employment consideration under the Pathways Programs. Some submissions detailed personal job search experiences. A few were addressed to agency specific programs not related to Pathways. We did not respond to these submissions in this final regulation.

The majority of the comments expressed support for the creation of the Pathways Programs. Multiple commenters emphasized that the Programs are necessary for recruiting and hiring students and recent

graduates and will be beneficial to the Federal Government. Multiple commenters also characterized the Programs as appropriately limited and emphasized the importance of the oversight tools available to OPM under the proposed regulations. Only two of the commenters—both Federal employee unions—questioned the necessity for the Programs, particularly the Recent Graduates Program. A third union also indicated that it had concerns with the Programs. Even these union commenters, however, supported some aspects of the programs.

Several commenters made arguments either for or against the programs 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. The comments that addressed specific regulatory provisions are addressed in the discussion of the applicable regulatory sections.

As explained in the proposed regulations, each of the Pathways Programs is intended to be limited in scope, transparent, and fair to veterans. They also require an investment from agencies in the training, mentoring, and career development of the individuals who are brought into these Programs. OPM will play a critical oversight role to ensure that agencies comply with the President's direction to use these Programs as a supplement to, rather than a substitute for, the competitive hiring process. It is with these five core principles in mind (limited scope, transparency, fairness to veterans, agency investment, and OPM oversight) that we reviewed the public comments on the proposed regulations.

## Responses to Overarching Comments

### 1. Necessity

Two unions commented that the Pathways Programs are not necessary for the Federal Government to be able to compete with the private sector for high-quality entry-level candidates. Another union called the Pathways regulations a step in the right direction, but raised some concerns about particular provisions.

We disagree with the unions' comments that these programs are unnecessary. In Executive order 13562, the President, exercising his statutory authority, determined that the Pathways Programs are necessary for the Federal government to compete for students and recent graduates. The President summarized his findings of necessity in section 1 of the order:

The Federal Government benefits from a diverse workforce that includes students and

recent graduates, who infuse the workplace with their enthusiasm, talents, and unique perspectives. The existing competitive hiring process for the Federal civil service, however, is structured in a manner that, even at the entry level, favors job applicants who have significant previous work experience. This structure, along with the complexity of the rules governing admission to the career civil service, creates a barrier to recruiting and hiring students and recent graduates. It places the Federal Government at a competitive disadvantage compared to private-sector employers when it comes to hiring qualified applicants for entry-level positions. To compete effectively for students and recent graduates, the Federal Government must improve its recruiting efforts; offer clear paths to Federal internships for students from high school through post-graduate school; offer clear paths to civil service careers for recent graduates; and provide meaningful training, mentoring, and career-development opportunities. Further, exposing students and recent graduates to Federal jobs through internships and similar programs attracts them to careers in the Federal Government and enables agency employers to evaluate them on the job to determine whether they are likely to have successful careers in Government.

In support of its position that the programs are not necessary, one union relies on the current economic environment, specifically the unemployment rate. Essentially, it argues that there is a greater supply of potential workers now than there was in the years when the data was gathered for some of the reports cited by OPM in its notice of proposed rulemaking, when unemployment rates were lower. The union then draws the conclusion that the Federal Government is necessarily more competitive with the private sector now, because there are more qualified applicants who need work.

We disagree. First of all, it is short-sighted to focus on the unemployment rate for any particular time period in determining the necessity for the Programs. These Programs are intended to be enduring and as the economy improves, competition for skilled workers with other sectors will increase.

Further, even in a tight job market, there exists stiff competition among employers for students and recent graduates who display great potential. Citing Bureau of Labor Statistics analysis, one commenter noted that the number of jobs requiring a master's degree will increase by 18 percent from 2008–2018, and the number requiring a doctoral degree will increase by 17 percent during the same period. Three academic commenters and one good government group supported the President's finding that the Pathways Programs are essential to recruiting and

hiring students and recent graduates; they warned that the Federal Government would largely miss out on this key segment of the workforce without the Pathways Programs. OPM agrees that the Federal Government must be able to compete for and hire students and recent graduates, who may lack relevant work experience but who possess significant untapped potential. The Pathways Programs are designed to serve this important purpose.

The unions' comments also fail to take into consideration other important and independent justifications for establishing the Pathways Programs. For example, in a report published on February 6, 2012, the Partnership for Public Service, citing data compiled by the National Association of Colleges and Employers, found that only 2.3 percent of some 35,401 students surveyed were interested in a career with the Federal Government. See <http://ourpublicservice.org/OPS/publications/viewcontentdetails.php?id=170>. The Pathways Programs will help promote enthusiasm for a Federal career among this demographic. By providing positive experiences to students and recent graduates, we help debunk negative stereotypes that they and their contemporaries may harbor about working for the Federal Government. We also leave them with a favorable impression of Government work, so that they would be more likely to consider a return to Government service at a later point in their careers. Several academic commenters emphasized the important role played by this aspect of the Programs, citing experience with past internship and fellowship programs to support their conclusions.

One union commented that the fact that a permanent job is not automatically available to all who are appointed to the Recent Graduates Program undermines the Federal Government's ability to attract high-potential candidates through the Program. It contends that an individual with a job offer from the private sector would surely accept that over a Recent Graduate appointment without the promise of conversion. We disagree. High-potential applicants who are interested in a career in public service will be interested in Recent Graduate appointments because the Program will provide a meaningful training and developmental experience, as well as the potential for a permanent job. Based on our experience with the civil service, training and career development are among the attributes most often cited by recent graduates as desirable in employment opportunities.

This commenter also contends that the best indicator of success on the job is experience, and that it would be “perplexing” for the Federal Government to “seek out” and “prefer” inexperienced applicants over those with experience. These Programs are not motivated by any desire to prefer one type of worker over another. As discussed, agencies should use the Pathways Programs as part of an overall workforce planning strategy to ensure that their workforce is diverse and drawn from all segments of society.

Another union suggested that the introduction of “category rating” into the competitive service selection process, combined with other improvements to the competitive hiring process, may have eliminated barriers to entry for inexperienced workers. The union contends that this change has not been in place long enough to evaluate its impact on students and recent graduates. The union is correct that category rating allows a hiring official to select from a larger list of best qualified candidates than the so-called “rule of 3.” But category rating does not address the advantage held by experienced workers in the competitive examining process. In order to be considered, an individual must make the top quality category that the agency established by performing well in the competitive examining process. Students and recent graduates have not fared well in the examining process because of their lack of work experience. Though we think the move to category rating is a good one for competitive examining overall, we disagree that it addresses the specific needs that the Pathways Programs are narrowly drawn to address.

This union also suggested that a better solution to the problem with recruiting and hiring students and recent graduates is to reform the competitive hiring process itself. This initiative is not inconsistent with improving the competitive hiring process. Rather, it is an efficient, targeted approach to address specific, identified problems with the current approach to entry-level hiring in the Federal Government.

A union commented that any program that focuses on students and recent graduates is demoralizing to temporary employees working at the Forest Service and other land management agencies. The Pathways Programs are not intended to demoralize any other segment of the Federal workforce. Rather, they are intended to provide for a limited exception to the competitive hiring rules to address a specific concern about the Federal Government’s ability to interest students and recent graduates in Federal careers and to

successfully recruit, hire, and retain them.

#### 2. *Schedule D*

Multiple comments addressed the new Schedule D, which was created by section 7 of Executive Order 13562 and is the appointing authority for each of the Pathways Programs.

One union criticized the new Schedule D hiring authority as overly broad. The President created Schedule D pursuant to his statutory authority to make necessary exceptions to the regular competitive hiring rules when warranted by conditions of good administration. It is based upon his determination that the need to promote employment opportunities for students and recent graduates in the Federal workforce makes necessary an exception to the competitive rules. OPM’s regulations simply implement the President’s mandate.

The union also disputes that students and recent graduates constitute a “class” or a “class of persons” eligible for appointment pursuant to Schedule D. Schedule D was created by the Executive order, which provides that Schedule D shall include “[p]ositions other than those of a confidential or policy determining character for which the competitive service requirements make impracticable the adequate recruitment of sufficient numbers of students attending qualifying educational institutions or individuals who have recently completed qualifying educational programs.” Section 2 of the Executive order directs OPM to issue regulations, including “a description of the positions that executive departments and agencies may fill through the Pathways Programs.” The regulations provide for agencies to submit to OPM the positions they seek to fill through the Pathways Programs, and OPM can approve or disapprove of the use of the Programs for those positions through the MOU process. Because the President established Schedule D and the class of individuals covered by it through the Executive order, any comments challenging that determination are beyond the scope of these implementing regulations.

One union commented that Pathways Participants may have available to them training and mentoring opportunities that are not available to other agency employees. The union is correct that agencies may implement the Programs in this manner, but it is in keeping with the nature of the Program to provide Pathways Participants with training and mentoring opportunities. These types of programs are designed to leverage the cognitive abilities of students and recent

graduates through training, mentorship, and development. The current version of the Presidential Management Fellows Program and the Veterans’ Recruitment Appointment authority are examples where program participants receive training and development opportunities that may differ from those offered to individuals hired through the competitive process or through any other hiring authorities.

#### 3. *Position Identification*

The proposed regulations contain provisions governing how to identify positions that may be filled through the Pathways Programs. One union commented that the regulations improperly delegate to agencies and their components the authority to exempt positions from the competitive service. We disagree. Agencies are required to report to OPM on the types of positions they seek to fill through the Pathways Programs; they are required to have an Memorandum of Understanding (MOU) in place with OPM in order to use the Pathways Programs; and OPM will decide whether or not to approve the types of positions agencies are filling through the Programs through the MOU renewal process.

#### 4. *Definitions*

The proposed regulations contained a number of definitions. Some commenters requested clarifications to some of the definitions. As discussed below, we have modified some language in the definitions to address these concerns.

Some comments suggested that the definition of “qualifying educational institution” should not include a homeschool curriculum. We think it should. States generally recognize homeschooling as an adequate educational alternative, and we believe it is appropriate to defer to the states on this issue. Moreover, the requirements and standards for homeschooling vary widely from state to state or even within a particular state. OPM, therefore, declines to adopt one commenter’s suggestion that there should be a specific Government-wide definition of homeschooling for purposes of these regulations. Rather, agencies will be responsible for determining the eligibility of a homeschooled student applicant.

One union commented that, with respect to the Recent Graduates Program, the definition of “qualifying educational institution” does not indicate whether high school degrees would qualify an individual for a Recent Graduate appointment. While the proposed regulation did not include

high school in the definition of “qualifying educational institution,” they were not specifically excluded, as is our intention. As a result, we have clarified the definition to exclude high school degrees.

An academic commenter raised a different issue with respect to this definition as it pertained to certificate programs. It suggested that the proposed definition is too broad and subject to abuse. We agree. We have adopted the academic commenter’s proposed definition, with modification, and defined “certificate programs” to mean “post-secondary education, in a qualifying educational institution, equivalent to at least one academic year of full-time study that is part of an accredited college-level, technical, trade, vocational, or business school curriculum.”

With respect to the PMF Program, a union suggested further clarification of the term “advanced degree” to make clear that the Program is open only to those with master’s or doctoral degrees or other professional degrees. An academic commenter made the further point that “advanced degree” is no longer in use in the educational community. The commenter suggested using the term “professional or graduate degree” instead. We agree with both comments. Subpart A now defines “advanced degree” as “a professional or graduate degree.”

##### *5. Memorandum of Understanding (MOU)*

The proposed regulations require agencies to execute an MOU (the “Pathways MOU”) with OPM as a prerequisite to using the Pathways Programs. This requirement generated several comments.

A Senator commented that it is vital that sufficient OPM oversight be built into the regulations to ensure that the new Pathways Programs do not become a substitute for competitive hiring. Union commenters and multiple academic commenters also generally supported rigorous oversight of the Pathways Programs. One academic organization characterized the regulations as creating a “rigorous and accountable framework.” One union commented the MOU requirement as a “positive idea” that will give OPM “a foothold on enforcing the Pathways regulations’ requirements against employing agencies.”

We agree that rigorous oversight by OPM is important. Such oversight is built into the regulations by a number of requirements, including, for example: (1) The requirement that agencies report to OPM annually on their intended use

of the Pathways Programs; (2) the requirement that agencies enter an MOU with OPM in order to use the Pathways Programs; (3) the requirement that agencies assign a Pathways Programs Officer to serve as a point of contact with OPM’s Student Programs Office; (4) the requirement that agencies provide OPM with information about opportunities in the Pathways Programs for posting on the Internet; and (5) the authority of the OPM Director to cap the number of conversions to the competitive service from the Programs (which we have modified, as discussed below, to include the power to cap the number of appointments into the Programs, as well).

One union commented that an MOU is not an appropriate vehicle for oversight of agency use of the Pathways Programs. It suggested that the concepts to be addressed in the MOU instead be addressed specifically in the regulations. We disagree. The MOU will be an effective oversight tool and provides a sufficient degree of accountability. We have had success with this type of tool in an analogous context. That is, we routinely execute delegated examining agreements that authorize agencies to perform their own competitive examining and competitive service hiring and have found that to be a useful vehicle for implementation of other recent hiring reform efforts.

The union appears to be specifically concerned that agencies are to include in their MOUs the criteria for conversion. To the extent this comment is suggesting that this criteria should be in the regulations (see comment above), we agree with respect to the minimum requirements and note that they are set forth in the regulations for each Pathways Program—Internship, Recent Graduates, and PMF, respectively. We are also asking agencies to provide information in their MOUs on how they will apply these criteria.

One union commented that the regulations do not provide for any enforcement mechanism to hold an agency accountable for adhering to the terms of its MOU with OPM. It contended that the regulations offer no way for a union or other interested party to complain about an alleged violation of an MOU. We disagree. Any such complaints could be lodged with OPM’s Student Programs Office. In addition, we note that complaints can be raised directly with agencies through their Pathways Programs Officer, a position each agency was required to create by Executive Order 13562. Moreover, OPM’s office of Merit System Accountability and Compliance (MSAC) will incorporate oversight of the

Pathways Programs into its own evaluations of agency human resources programs and also into agency-led evaluations conducted under an agency’s human capital accountability system. Also, nothing in the Pathways Programs implementation alters an employee’s ability to seek any other relief that would otherwise be available.

Another union commented that the regulations should specify that OPM has the authority to terminate the MOU and rescind an agency’s authority to use the Pathways Programs if OPM learns of agency abuse. We agree and that was always our intention. We have modified our regulations to make clear that OPM possess the power to revoke an agency’s MOU when OPM finds the agency’s practices are inconsistent with the Executive order, regulation, or the MOU.

Multiple agencies also commented on the requirements of the MOU. They posed questions about such matters as: how long they would have to prepare the MOU, whether OPM would provide a template for the MOU, and whether the MOU would apply at the agency level or the component level. One agency thought each Pathways Program should require a separate MOU. Other agency commenters expressed concern regarding the administrative burden of the MOU requirement.

The regulations do not require agencies to establish an MOU within any particular timeframe. During the transition period, agencies are permitted to make appointments under the Internship and Presidential Management Fellows Programs even if they have not entered into a final Memorandum of Understanding (MOU) with OPM, as required. This transition period does not apply to the Recent Graduates Program, and appointments under the Recent Graduate Program may not be made until an MOU is in place.

Several agencies thought the level of detail required in the MOU and the requirement to re-execute the MOU every 2 years were excessive, and they recommended requiring renewal of an MOU only every 5 years. Another agency recommended re-executing the MOU only if the agency decides to make significant changes. We did not adopt the suggestion concerning re-executing the MOU. While we recognize that re-executing the MOU may occasion some administrative burden, that burden is necessary, especially in light of the benefits that having an MOU in place will provide. The MOU will help OPM oversee agencies’ use of these Programs, which are to serve as limited exceptions to the regular competitive hiring rules. On the other hand, we understand the

concerns about the level of detail required in the MOU. As a result, we have streamlined the MOU requirements by removing provisions that are not essential to our initial oversight of the Programs. If we find we need additional information concerning an agency's implementation of the Pathways Programs in order to conduct full and complete oversight, we will request the information at that time.

One agency suggested that its policies and procedures may change as the Pathways Programs evolve and become more familiar to agencies. The agency did not think such changes should necessitate updates and re-execution of the MOU. We disagree. If OPM is to conduct rigorous oversight of these Programs, as is our intention, then it is important for regular re-assessment of each agency's use of them. Indeed, the commenter's suggestion that it be permitted to adopt significant changes to agency policies or procedures for a Pathways Program without modifying its MOU is antithetical to this intention. By requiring re-execution of the MOU on a bi-annual basis, we can better assist agencies in complying with the Executive order, these regulations, and the law.

One agency expressed concern that unions will make claims of excessive or inappropriate use under Pathways and wanted to know if OPM had additional recommendations agencies could include in their MOU to help eliminate misconceptions about Pathways. The Programs are designed to be a supplement to the competitive hiring procedures, and not a substitute for them. The Programs are limited in nature and subject to robust OPM oversight. As stated earlier, OPM is working on sample template MOUs, and agencies may work with OPM to include additional items in the MOU that are particular to their circumstances. OPM is also considering additional guidance to agencies to help them use the Programs appropriately, as part of an overall workforce planning strategy.

Another agency expressed concern that the requirement that an MOU be in place before agencies can use the Pathways Programs will impede agencies' abilities to hire students for jobs that will be available soon after the final regulations take effect. This agency requested a transition period that would allow agencies to fill positions under the Pathways Programs during the implementation period needed to complete the MOU. As noted above, we have adopted the agency's suggestion. First, we are going to provide for the final regulations to take effect 60 days after their publication, rather than 30

days. Second, we have created a six-month transition period during which agencies will be able to hire Interns and PMFs even if they have not executed an MOU with OPM. Third, we are working now to have MOU templates in place so that agencies can satisfy the MOU requirement promptly upon the regulations being finalized.

One agency commented that it does not know what the requirement in section 362.104(a)(1)(I)(B) to address in the MOU how it will "assess candidates" means, since the regulations require agencies to qualify candidates based on the OPM Qualification Standard. As required by part 302, agency MOUs must identify what process an agency will use to assess candidates for employment in accordance with part 302 under a Pathways Program, *e.g.*, whether applicants will be rated and ranked using a numerical system or whether the agency will use an unranked method using veterans' preference status.

#### 6. Job Announcements

The proposed regulations require agencies to provide information about Pathways Program opportunities to OPM, which will in turn provide such information to the public. One union commented that the regulations should further specify that agencies must post all job announcements for positions in the Pathways Programs on USAJOBS.gov. It contends that this is required by law.

We disagree with the commenter's legal conclusion. As a matter of policy, however, we agree that individuals who are interested in applying for positions in the Pathways Programs should be able to obtain information about the opportunities that are available. This will benefit all members of the public who are interested in and eligible for these Programs, including veterans who may have been out of school for up to 6 years and therefore not have the same access to school career counselors. Thus, we are retaining the provisions in the regulations that require agencies to provide information to OPM about positions, locations, and where to find information to apply for Pathways jobs. OPM will make this information available to the public. Our intention is to do so through USAJOBS.gov, as the commenter suggested.

Some agencies also submitted comments regarding the requirement to provide information about Pathways opportunities to OPM. A few confused the regulatory reporting requirements for accountability and oversight with the requirement to post Pathways opportunities to the public. The

reporting requirements, which are found at § 362.109, are separate from the requirement to provide information about Pathways Programs opportunities for OPM to post, found at § 362.105. These separate regulatory requirements serve different purposes. The reporting requirement is intended to encourage agencies to conduct thoughtful workforce planning and to provide OPM with information about the expected use of the Pathways Programs during the forthcoming year—both in particular agencies and across Government—including the specific positions to be filled. The posting requirement is provided to promote transparency and make it easier for students and recent graduates to learn about Pathways Programs opportunities.

Agencies expressed concern that the regulations will prohibit them from engaging in targeted recruitment of students through colleges and universities or specific networks such as NACELink or Experience.com. Similarly, one agency commented that it needed to retain the ability to hire local students and expressed concern over the cost to recruit under the new requirements. The regulations require agencies to provide basic information about Pathways Programs opportunities to OPM, which will then post that information through USAJOBS.gov. However, agencies retain the discretion to determine how they will recruit and accept applications as long as they comply with applicable law and the regulatory procedures of part 302. Nothing in the regulations precludes agencies from undertaking local recruiting efforts or using familiar recruiting networks, so long as they do so in compliance with law. Thus, agencies retain the flexibility to establish guidelines regarding minimum announcement periods, geographic areas of consideration, or additional recruitment sources. However, agencies must follow the appointment procedures in part 302.

An agency expressed concern that the requirement to announce information about Pathways positions would result in an increase in the volume of applicants, which would in turn increase the length of time needed to fill a position and perhaps even make it more difficult to increase diversity in the workforce. In contrast, several comments from schools, unions, and private citizens supported the posting of this information. OPM acknowledges that posting information about Pathways opportunities has the potential to increase the number of applicants and possibly lengthen the amount of time to fill positions under Pathways. Nonetheless, we agree with the

commenters who view the requirement positively and note that Executive Order 13562 requires posting of information about Pathways opportunities. This allows for more transparency in Federal internship programs. Members of the public interested in internship opportunities with the Federal Government—whether they are students, recent graduates, or recently obtained a graduate or professional degree—will now be able to learn about these opportunities through a single portal, USAJOBS.gov. This is the portal to all Federal jobs in the competitive service, so it is a source that job seekers are accustomed to consulting. We also believe that agencies ultimately benefit from having larger numbers of qualified applicants. We disagree that being more transparent about internship opportunities will harm agency diversity efforts. Broader dissemination of Pathways opportunities will facilitate agency efforts to recruit from all segments of society.

#### 7. Caps

The proposed regulations reserve to the Director the authority to set a cap on conversions from the Pathways Programs into the competitive service, as authorized by Executive Order 13562. They do not establish a specific cap. One union suggested that OPM establish a cap from the outset, and that the number of Participants in the Pathways Programs be “limited to a very small percentage of new hires” in order for the Federal Government to benefit from the Programs. A second union also urged establishment of an initial cap. Some agencies, on the other hand, suggested there should be no cap. They argued that the size of the Programs should be limited only by Federal agency hiring needs and not be a centrally determined cap. Multiple academic and good government groups also commented that the Programs should not be capped.

The Executive order grants to the OPM Director the discretion to limit the number of Program Participants’ Government-wide. It would, of course, be necessary to apply any such limits to individual agencies in order to administer a Government-wide cap. The authority to establish a cap is an important oversight tool, along with the other oversight and accountability components of the Pathways framework.

OPM has decided that it would be premature to impose a cap before we have experience with how agencies use the Programs. OPM expects agencies to use Pathways as a supplemental hiring authority that is part of an overall workforce planning strategy, and not as a substitute for competitive hiring.

Indeed, as one commenter noted, the Pathways Programs are inherently limiting—only students and recent graduates are eligible—in ways that previous excepted service programs have not been. OPM reserves the right to implement a cap if we find that the robust oversight mechanisms we have put in place are insufficient. Accordingly, OPM will be monitoring agency use of the Programs through data collection, assess on an annual basis whether to impose any caps, and provide notice of any decision to impose a cap in a manner determined by the Director.

One union commented that if OPM imposes a cap, it should be on the number of individuals hired into the Pathways Programs, as opposed to the number converted to the competitive service. The union is opposed to any cap on the number of Program Participants that are ultimately to be converted to competitive service jobs. The union is concerned that a cap on conversions will result in good employees being let go because of an arbitrary limitation on conversions.

A cap on conversions would naturally limit the number of people hired into the Programs in the first place. It is not in agencies’ interests to bring on and develop quality talent, only to let them go after 2 years. We would expect agencies to take into account any caps on conversions when determining how many Pathways Participants to hire in the first place.

Nonetheless, we are mindful of the union’s concern that matters outside an agency’s control, including, for example, new statutory mandates or restrictions, can upend even the best laid strategic workforce plans. In addition, multiple agencies agreed with the union that any caps imposed on the Program should be placed on Pathways appointments and not conversions. The agencies reasoned that limiting appointments automatically limits conversions. Some agencies also commented that they do not want to train Pathways Participants and then not have the opportunity to convert them due to a Program cap. Accordingly, we are adopting the suggestion offered by the union and agency commenters to allow for a cap on the number of hires into the Pathways Programs. The Director’s authority to cap the number of conversions of Pathways Participants and his overall authority to oversee and implement the Programs encompasses the inherent authority to limit the number of individuals hired into the Pathways Programs. Reserving this authority to the Director is in the best

interests of administering the Programs. We have modified our regulations accordingly.

A union commented that the regulations give OPM too much discretion in establishing any such caps. The union asked that additional substantive standards be added to the regulations, but did not offer any suggestions on the types of standards to include. Some agencies also questioned what criteria OPM would use in evaluating whether to establish any caps. We agree that it is important to identify the criteria we would consider. That is why section § 362.108 of the regulations contains several substantive standards for the OPM Director to consider in establishing any caps. In response to the comments, we have identified an additional substantive consideration: An agency’s use of the Programs to hire a majority of the individuals for any single entry-level position over a period of years would be evidence that the agency is not using the Programs as a supplement to competitive examining. We have modified the regulations to reflect this change.

One agency suggested requiring OPM to assist agencies with the implementation of Pathways by providing training or by assigning OPM personnel as points-of-contact for each agency. The agency also suggested an interagency workgroup to provide agencies the support needed to implement Pathways. OPM recognizes the administrative requirements agencies must follow to implement the Pathways Programs and has been establishing appropriate support mechanisms. Currently each agency is assigned an OPM Human Capital Management Representative who provides agencies with policy assistance. In addition, there are OPM program managers assigned to each Pathways Program who can assist agencies with Pathways implementation. OPM has also established a Pathways Advisory Council consisting of agency representatives to assist OPM in implementation of the Pathways Programs. Such assistance will include providing templates for MOUs and Participant Agreements, and providing information about best practices to agencies.

#### 8. Conversion to the Competitive Service

The proposed regulations set forth the rules governing conversion of successful Pathways Participants to jobs in the competitive service. We received multiple comments regarding the rules on conversion.

Two unions suggested that the opportunity for Interns and Recent Graduates to convert to competitive service positions upon completion of their Programs should be eliminated. The unions contend that Interns and Recent Graduates will obtain enough experience during their Internship and Recent Graduate Programs to be able to compete effectively for positions in the competitive service. The President has already made the determination to allow for conversion, and these regulations simply implement his order. Accordingly, any comments concerning whether to allow for conversion are outside the scope of these regulations.

In any event, OPM believes the opportunity for conversion is essential to the success of these Programs. A major premise of the Pathways Programs is that a good way to evaluate these potential job candidates—*i.e.*, students and recent graduates lacking prior work experience in their field—is through a “tryout” in the workplace. That is what the Pathways Programs are intended to provide—a tryout for inexperienced workers who have recently undertaken or completed educational programs. In addition, the Programs encourage agencies to develop their Pathways Participants for careers in Government. We are asking agencies to make an investment in these individuals through mentorship, training, and developmental activities. Agencies should be able to reap the benefits of that investment by retaining those who successfully complete their Programs. This is why we have emphasized that agencies must consider opportunities for conversion when deciding how many people to hire through the Programs; there should be a close correlation.

We also disagree that the work experience obtained through the Internship Program or even through on-the-job experience in the Recent Graduates Program would be sufficient to place those individuals on a level playing field when seeking to obtain a job through the regular competitive hiring process. The research we cited in our notice of proposed rulemaking establishes that the workers with much more experience are being hired to fill entry-level jobs in Government. In any event, as the Executive order established, the Pathways Programs are intended to compete effectively for students and recent graduates and must also offer a clear path to civil service careers. For these reasons, we are not accepting the union’s suggestion.

The union also suggested that on-board employees would lose out on career advancement opportunities to

Pathways Participants who are “fast-tracked” into desirable positions. The union’s concern is misplaced. As an initial matter, the Pathways Participants are not being “fast-tracked” into any Federal positions. Rather, they are being exposed to the Federal workplace through on-the-job experience that they otherwise would not be able to obtain. Indeed, rather than being “fast-tracked,” they are actually being required to complete a developmental program and demonstrate through the course of that Program that they are capable of working in an entry-level Federal job.

In addition, though the Pathways Programs include excepted service appointment authorities, OPM qualification requirements will apply to the Recent Graduates and PMF Programs. For the Internship Program, agencies will have the discretion, as they do under the current student programs, to establish agency-specific qualification requirements or to use OPM qualification requirements. Many agencies use OPM qualification requirements for Interns. In short, either OPM or agency-specific qualifications requirements apply to the Pathways Programs, and an Intern, Recent Graduate, or PMF must meet the applicable qualifications requirements in order to be converted into that job, just as he or she would have to do if seeking the job through the competitive hiring process.

With respect to the Recent Graduates Program, one union objected to the requirement that Recent Graduates complete 2 years of service before gaining eligibility to convert to the competitive service. The union argued that the 2-year period would result in inequitable treatment between people hired through the Recent Graduates Program and those hired through the competitive process into the same job. The difference primarily concerns at what point the individual would be deemed an “employee” for purposes of appeal rights under 5 U.S.C. chapter 75. We agree with the union and are modifying our regulations to provide for conversion of Recent Graduates after completion of 1 year in the Program, subject to an exception where there are position-specific training requirements that the individual must complete in order to gain entry into the position or maintain the position.

Because the Executive order provides for conversion to the competitive service, we are not bound by the practice that non-preference eligibles hired into the excepted service only become “employees” for chapter 75 purposes after completing 2 years of service. Instead, the Executive order

gives OPM the authority to implement the Pathways Programs, including the conversion rule, and we are choosing to provide for conversion after 1 year, at which point the individual would become an “employee” for purposes of chapter 75.

We are persuaded that a full 2-year period of evaluation is not necessary. Because the Recent Graduates Program contains training, mentoring, and career development requirements, we would expect and encourage agencies to be closely monitoring Participant performance to ensure the match with the agency is a good one throughout the entire duration of the Program. It is better for all parties involved if the agency makes a conversion decision within the first year. Subject to the exception discussed below, a year is sufficient time for an agency to evaluate a Participant’s potential, and the agency should assign work to the Participant within that year that allows him or her to demonstrate the ability to perform the job. By allowing for conversion to occur after 1 year in the Program, we provide for more equal treatment among people hired into the same job, regardless of whether they obtained the job through the Recent Graduates Program or the competitive hiring process.

As mentioned, however, we recognize that agencies may have position-specific training programs that new hires must complete before they can actually begin to perform the duties of the job. In those instances, we would permit agencies to develop a recent graduate program that lasts longer than 1 year, up to a maximum of 2 years. Agencies wishing to use this flexibility must include a provision in their Pathways MOU that describes the training program, including its length. Standard training given to every Federal Government employee, or to every employee of the agency, will not trigger this exception to the 1-year conversion period. Rather, the training must be position-specific and serve as a prerequisite to entry to the job, or continued performance in the job. We think this approach aligns the agency’s interest in having a sufficient period of time to evaluate a candidate for conversion with the candidate’s interest in obtaining training and career development opportunities.

A union commented that the regulations do not include appropriate standards for assuring that excessive numbers of employees are not hired into the Pathways Programs without being converted to the competitive service at the end of their appointment. It suggested that the regulations should require each agency to identify its plan for converting Pathways Programs



Participants to competitive service positions, and the number of each appointment to be used (term and permanent). We agree with the union's suggestion that agencies should conduct sound workforce planning to maximize the benefit of the Pathways Programs, but we think the specific suggestion offered by the union would be overly prescriptive. Agencies have differing staffing needs and will use the Pathways Programs in different ways. For example, some agencies may have very robust internship programs, where the aim is to provide interns with a good career development opportunity even though opportunities to convert to permanent positions may be limited. The proposed regulations strike an appropriate balance between agency flexibility and the need to provide adequate conversion opportunities for employees.

Another union commented that Program Participants should receive "due process" before an agency decision not to convert them based on unsatisfactory performance. The decision to convert or not convert could be based on a host of reasons, including performance, budget, agency priorities, etc. If by due process the union is suggesting that Program Participants receive adverse action rights under chapter 75, the law does not provide for such rights during the initial 2 years of the excepted service appointment (except for preference eligibles who have completed one year of service).

The union also objected to a provision in § 362.106(c), which allows Pathways Participants to convert non-competitively to a position in the competitive service at another agency. The union argues that this provision is inconsistent with the concept of the Pathways MOU because there is no relationship between the receiving agency and OPM or the appointee. This provision was intended to allow for Pathways Participants who successfully complete their Programs, but for whom the employing agency lacks budgetary resources or who is interested in a different career path, to convert to a position at another agency so that the Federal Government continues to benefit from the employing agency's investment in the individual. While we continue to believe that this is a valid policy consideration, the union's comment has led us to re-consider the issue in the context of each specific Program.

With respect to the Internship Program, we are persuaded that the rule that currently applies under SCEP allowing students to convert to positions at other agencies should be

retained. Because of uncertainty about the length of time it will take a student to complete his or her degree, certificate, etc., it is more difficult for agencies to conduct workforce planning that accounts for Intern conversion. These individuals are more at risk of losing conversion opportunities due to factors beyond their control, or the control of the agency. Accordingly, we do not think a change in the current rule is justified at this time. We will continue to evaluate this rule, however, and are open to considering changes to it at a later date. In any event, we believe the practice of an Intern working for one agency and then converting to another upon graduation is very rare under the current SCEP.

We have decided, however, to adopt the union's suggestion with respect to the Recent Graduates Program. One of the purposes of the Recent Graduates Program is for the Recent Graduate to have an initial "try-out" period with an agency, where he or she can receive on-the-job training, mentoring, and career development and the agency can evaluate the potential of the Recent Grad for a career in Government. We think it best that the Recent Graduate convert to a job at the agency that oversaw this developmental process. It is also noteworthy that the regulations (§ 362.304) allow Recent Graduates to seek a Recent Graduates appointment at another agency during their period of eligibility. This flexibility helps to address our original concern, as Recent Graduates working at agencies with shrinking budgets and personnel could seek an appointment at another agency at which they could complete the Program.

Similarly, the PMF Program currently does not contemplate that a Participant who completes the PMF Program would convert to another agency. Rather, the current regulations require the employing agency to convert the PMF if he or she is certified by the Executive Resources Board (ERB). Though the requirement to convert each PMF has been eliminated in these regulations, the rationale continues to hold. Agencies will be inclined to convert PMFs who are ERB certified because they have invested in their development for 2 years.

#### 9. Waiver

The proposed regulations included a provision granting the OPM Director authority to waive Pathways Program requirements under limited circumstances. A union commented that the waiver is too broad. The union proposes alternative language, namely that waiver should be limited to

extraordinary circumstances that would render an agency's compliance with the regulations impracticable or impossible. OPM agrees with the union's position that the waiver provision is too broad. Rather than modify the language, as the union suggested, we have removed the waiver provision entirely from the final regulation. OPM believes elimination of the waiver provision will contribute to better overall Program oversight and administration on the part of participating agencies and that sufficient flexibility is offered by other, narrower already existing waiver authorities available to the OPM Director.

#### 10. Veterans' Preference

OPM regularly consulted with veterans' service organizations during the development of the Pathways Programs, prior to publication of the proposed regulations. The proposed regulations make clear that veterans' preference rules apply to the Pathways Programs.

One union cited favorably the steps OPM has taken to safeguard veterans' preference in the regulations. It nonetheless commented that application of veterans' preference in the excepted service is not transparent and the ability to monitor and enforce application of veterans' preference would be compromised under the new Schedule D. As our regulations make clear, veterans' preference applies to the excepted service, Schedule D is no exception, and ensuring that agencies are properly applying veterans' preference will be a key aspect of our oversight of the Pathways Programs.

A Senator suggested that additional guidance and oversight mechanisms are needed to ensure agency compliance with veterans' preference. The regulations make clear that veterans' preference applies to the Pathways Programs. OPM is also considering further guidance to agencies on how to manage the application and selection process for the Pathways Programs in a manner that is consistent with veterans' preference. As mentioned above, we believe the regulations provide sufficient oversight mechanisms to guard against agency abuse.

A union commented that the Pathways Programs erode veterans' preference by excluding veterans who fail to meet the eligibility criteria for the Programs from applying for positions in the Program. We disagree. The President is authorized by law to make necessary exceptions to the competitive procedures, and he has appropriately done so here. Moreover, OPM has taken appropriate steps to ensure that the

Pathways Programs are fair to veterans. These include requiring that information about Pathways opportunities be posted; specifying that veterans' preference rules apply to the Pathways Programs; and allowing certain veterans up to 6 years from the time of graduation (rather than the standard 2 years) to participate in the Recent Graduates Program. As discussed here, OPM has also included several significant oversight mechanisms in the regulations to ensure that agencies are properly using them as a supplement to competitive hiring, rather than a substitute for it.

One agency commented that it supported veterans' preference but did not believe that application of the preference should disadvantage current students or recent graduates. One agency wanted to know how veterans' preference would apply. Agencies are required to follow part 302 procedures (which includes the application of veterans' preference) when making any Pathways appointment, even if to do so disadvantages current students or recent graduates.

One agency wanted to know how the application of veterans' preference would affect the consideration of priority reemployment candidates under the Pathways Programs. The Pathways Programs do not change the requirements. Agencies must follow the order of consideration in part 302 when filling jobs under the Pathways Programs.

One agency suggested that OPM revisit the application of veterans' preference under the Pathways Programs because the agency believes OPM combined competitive and excepted service procedures for veterans' preference. The same agency also expressed concern that providing veterans' preference under Pathways gives the perception that veterans have an overall advantage and wanted to know how agencies would apply veterans' preference. The Veterans' Preference Act of 1944, as amended, applies to positions in the excepted service. OPM does not have the discretion to except Pathways from this statutory requirement, nor would it agree with an exception as a matter of policy. Further, many veterans may be availing themselves of the GI Bill to complete an education. They deserve to have their preference applied should they seek a Federal job via Pathways. Part 302 contains the regulatory requirements and procedures for the application of veterans' preference in the excepted service.

One agency wanted to eliminate from consideration preference eligibles that

do not submit proper documentation. OPM will not adopt this suggestion. Agencies are required to exercise due diligence in affording veterans' preference to eligible applicants and to establish policy and procedures that follow existing regulations. This same agency suggested that OPM add a requirement to the final rule stating agencies are not required to accept late applications from veterans' preference eligibles. We did not adopt this suggestion because it is not necessary. The requirement to accept late applications from 10-point preference eligible veterans as provided in § 332.311 does not apply to filling positions in the excepted service.

#### *11. Age Discrimination*

One union questioned whether the Pathways Programs are discriminatory, claiming that the Programs favor younger applicants. The union's concerns are misplaced. First, we emphasize that the intention of these regulations is to provide agencies with options to employ as part of an overall recruiting and hiring strategy that will result in a workforce drawn from all segments of society, including employees of all ages. Second, the Pathways Programs themselves are open to all students and recent graduates, regardless of age. Eligible students and recent graduates will include older individuals who left the workforce and returned to school to prepare themselves for new careers, as well as those who obtained degrees while they took time off from their careers to raise a family. Older veterans who use the new GI Bill to further their education after completing their military service are also eligible to participate in the Pathways Programs.

In short, the Pathways Programs were not intended to discriminate based on age, nor should they have that effect. To the extent that an individual believes that an agency is misusing the Programs in order to discriminate against older applicants, he or she may pursue available legal remedies to address such misuse.

#### *12. Miscellaneous*

The provisions for temporary assignment under the Intergovernmental Personnel Act (IPA) in § 332.102 contain a definition of "employee." PMFs, SCEPs, FCIPs and VRAs are included in the definition of employee as examples of excepted service employees eligible under the IPA. OPM removed these excepted service examples contained in 332.102 in the proposed regulations because most of them will become obsolete with the publication of the

final Pathways rule. One agency suggested that OPM should replace the examples with the new Pathways Programs rather than deleting the explanatory language altogether. We are not adopting this suggestion because we believe the definition is adequate without examples.

One agency suggested OPM create a special Program identifier code to track Pathways Participants. OPM does not believe such a code is necessary at this time. Each Pathways Program has its own unique appointing authority that can be used to track Participants and Program usage. We will evaluate over time whether this approach is adequate.

One agency asked whether the Pathways Programs will be centrally funded from a source separate from the agency's approved appropriation. The Pathways Programs are not centrally funded. Agencies must fund their own Pathways Programs.

One agency recommended that OPM establish a Pathways alumni group to help with recruitment and mentoring. We will consider this idea. In the meantime, we note that agencies are free to establish these groups themselves.

Several agencies asked OPM to clarify whether the Administrative Careers with America (ACWA) testing is required when filling positions under the Recent Graduates Program and whether OPM will be developing assessment criteria for positions filled through the Recent Graduates Program. ACWA testing is not specifically required. Rather, agencies must use a valid and job-related assessment for all positions (including those formerly covered by ACWA). Agencies can choose to use the OPM assessment or other valid assessments.

### **Responses to Comments on the Regulations**

#### *1. Excepted Service (Part 213)*

One agency suggested that OPM amend the final rule by placing the regulatory requirements for the administration of the Pathways Programs in part 213 rather than part 362 because it believes it is confusing to have the requirements for the administration of the Pathways Programs in part 362. We did not adopt this suggestion because we believe it is clearer to maintain the specific Program requirements of the Pathways Programs separate from the broad regulatory requirements for the use of excepted schedules that are contained in part 213. Additionally, the current regulatory requirements for use of the PMF Program are contained in part 362, and we decided that it would be best to have

requirements for each of the three Pathways Programs in the same section of the regulation.

One agency requested clarification regarding an agency's ability to continue to simultaneously fill the same position in both the competitive and excepted service (via Pathways). As discussed above, using Pathways is similar to how agencies currently use the SEEP under Schedule A or the Schedule A for hiring people with disabilities. The Executive order allows the positions to be filled in the excepted service, and then converted to the competitive service at a later date. In general agencies have broad authority to fill a position with any applicable authority, regardless of whether doing so places the position in the excepted service.

One agency suggested we clarify the intent of § 213.102(c)(2) pertaining to targeted recruitment. Section 213.102(c)(2) refers to OPM's authority to remove positions from the competitive service so they can be filled in the excepted service under authorities that target specific groups such as students, recent graduates or people with disabilities. Targeted recruitment can be conducted so long as it is done so consistent with any applicable law and regulations.

Several agencies commented and expressed concern regarding temporary appointments for the Internship Program. One agency noted that "temporary appointment" is defined as not-to-exceed 2 years. The same agency asked if temporary appointments would be administered under part 316. Several agencies also expressed concern regarding the impact that provisions regarding service limits and restrictions on refilling positions in § 213.104(b)(1) and (2) would have on their ability to use temporary Interns under Pathways. Temporary appointments in the excepted service, the time limits on them, and exceptions to the time limits remain unchanged. The Pathways Programs are covered by excepted service provisions in both § 213 and § 302, not under § 316. By definition in both the competitive and excepted service, temporary appointments are those initially made not to exceed 1 year. Agencies can extend a temporary appointment up to 1 additional year without OPM approval. Because of the nature of temporary intern appointments and the need to accommodate a student's academic curriculum, they are not subject to the time limitations in § 213.104 as provided in paragraph (b)(3)(ii) of that section. The only change made to § 213.104 is the inclusion of the newly established Schedule D.

### 2. *Employment in the Excepted Service (Part 302)*

Our proposed regulations include some changes to part 302, governing employment in the excepted service. Agencies submitted several suggestions on part 302. One agency wanted to know how following part 302 would affect priority reemployment candidates. When filling jobs under the Pathways Programs, agencies must follow the order of consideration in § 302.304, that requires consideration of all qualified candidates on its priority reemployment list before considering other candidates.

One agency suggested OPM amend part 302 to allow, but not require, the use of category rating selection procedures so agencies can consider candidates based on criteria other than veterans' preference or reemployment priority eligibility. OPM is not adopting this suggestion. Under § 302.105, agencies may adopt category rating-like selection procedures, as long as those procedures provide veterans with at least as much preference as they would otherwise receive under the other criteria in part 302. Another agency suggested that OPM modify the final rule to include Schedule D in the list of exemptions from the appointment procedures of part 302 in order to allow agencies to apply veterans' preference as far as administratively feasible. OPM did not adopt this recommendation for several reasons. Excepted service positions are approved for exemption from the appointment procedures of part 302 because the circumstances and conditions required to fill the positions cannot be accommodated under the regulations. Pathways positions do not meet this requirement because agencies are required to provide information on Pathways job opportunities and to identify its excepted service procedures for Pathways Programs applicants in accordance with part 302. A central objective of the Pathways Programs is to establish Federal-wide Programs with consistent policies and procedures. Additionally, the exemption from the appointment procedures of part 302 does not relieve agencies from applying veterans' preference as required by law; rather it allows each agency filling these certain types of positions to determine what procedures it will use to afford eligible veterans their preference in a positive manner. For these reasons, it would not be appropriate to exempt Pathways Programs appointments from the appointment procedures of part 302.

### 3. *Conversion to Career or Career-Conditional Employment (Part 315)*

Part 315 of the proposed regulations addresses conversion to the competitive service. Several agencies requested clarification of § 315.713, *Conversions based on service in a Pathways Program*, for Pathways Participants, particularly Interns, converted to the competitive service. We believe the requirements in § 315.713(b), are clear, *i.e.*, people lacking the 3-year service requirement for career tenure will be converted to a career-conditional appointment. However, those requirements must be applied according to the provisions of § 315.201, *Service requirement for career tenure*. Certain types of service are creditable toward career tenure as identified in § 315.201(b), *Creditable service*. Service in any Pathways Program is creditable for career tenure. Because the service requirement for tenure is 3 years, most Pathways Participants will convert to career-conditional unless they have previously attained tenure (completed 3 years of creditable service) in which case those individuals should be converted to a career appointment.

Several agencies requested clarification of § 315.713, *Acquisition of competitive status*. We have clarified the regulation to specify that competitive status is acquired upon completion of the probationary period. Time spent on any Pathways appointment is creditable toward completion of the probationary period requirement for the competitive service. Recent Graduates and PMFs attain competitive status immediately upon conversion, *i.e.*, they have completed their probationary period. Because some Interns can be converted after completing their educational requirements and a minimum of 640 hours of work experience, they will be required to complete the requirements for probationary period after conversion.

One agency commented that some agencies have statutory authority to establish probationary periods of more than a year. They requested a Pathways provision that would allow those agencies to apply the longer probationary periods to Pathways conversions. We did not adopt this suggestion. Agencies with statutory authority to require probationary periods in excess of 1 year generally have an agency-specific appointing authority under the same statute. The Pathways Programs fall under the provisions of title 5. The Pathways Programs authorities cannot be used under other statutory authorities.

## Pathways Programs (Part 362)

### A. General Provisions (Part 362, Subpart A)

Part 362 of the proposed regulation set forth the requirements for each of the Pathways Programs. The majority of comments we received were generally supportive of the creation of the Pathways Programs and with the overall implementation of the Programs through our regulations. We received many comments, however, about specific regulatory provisions.

Several agencies commented that the structure of the proposed regulations was not consistent in addressing requirements such as trial periods, performance management, and progress evaluation information for each Pathways Program. We agree that some modification for clarity is in order. For example, we placed the performance and progress evaluation requirements in subpart A of the final rule, as they apply to each of the three Programs.

One agency suggested rewording § 362.101(c), which is the requirement that agencies provide for equal employment opportunity in the Pathways Programs, consistent with merit system principles and applicable law. The language we proposed is a more accurate reflection of law regarding equal employment opportunity, and we are retaining the language as it was written.

#### 1. Definitions (§ 362.102)

Several schools suggested we specify schools of public policy and schools of international affairs in the definition of a “qualifying educational institution” in § 362.102, *Definitions*, as examples of graduate or professional schools. We did not make this change, because we did not wish to highlight one type of qualifying educational institution to the exclusion of other types.

One agency suggested we redefine “agency” to include the Government Printing Office (GPO) in accordance with 5 U.S.C. 2302(a)(2)(C). OPM agrees that the GPO should be included in the definition of “agency” and modified the final rule accordingly.

Several agencies suggested OPM provide a definition of “certificate program” for the purpose of eligibility under Pathways. We agree and have defined, in § 362.102, “certificate program” to mean “postsecondary education, in a qualifying educational institution, equivalent to at least 1 academic year of full-time study that is part of an accredited college-level, technical, trade, vocational, or business school curriculum.”

One agency asked OPM to modify the final rule by adding apprenticeship programs registered with the Department of Labor to the definition of “qualifying educational institution.” OPM is not adopting this suggestion because apprenticeship programs focus on requirements for on-the-job experience rather than education and they are not qualifying educational institutions for the purposes of the Pathways Programs. The Pathways Programs focus on formal education. Nonetheless, the Internship Program is open to students in qualifying technical or trade schools, as is the Recent Graduates Program upon completion of a qualifying technical or trade program.

#### 2. Memorandum of Understanding (§ 362.104)

OPM made edits to this section in consideration of the considerable comments previously discussed. For example, we included new definitions for “advanced degree”, “certificate program,” and “Participant Agreement” in § 362.102. We clarified agency requirements in § 362.104 by reordering and renumbering the MOU requirements. Other changes are addressed in the applicable sections of the regulations.

#### On-Boarding Process (§ 362.104(c)(8))

One agency commented that the on-boarding process should be removed as a MOU requirement because on-boarding processes are different among organizations, processes change from time to time due to requirement changes, etc. The agency recommended that OPM amend the final rule by placing the on-boarding process under agency commitment. We agree with this suggestion and modified the final regulations in § 362.104(c)(8)(iv) to provide an adequate on-boarding process for each Pathways Program.

#### Pathways Programs Officer (§ 362.104(c)(9))

Several agencies suggested OPM eliminate the grade requirement for the Pathways Programs Officer (PPO) in § 362.104(a)(1)(iv)(A) on the basis that agencies should have the authority to determine the grade level and be held accountable. OPM is not adopting this suggestion. Given the duties and responsibilities of the agency PPO, OPM believes GS-12 is the appropriate minimum grade level.

#### Participant Agreement (§ 362.106)

We received several agency comments on the Participant Agreement (PA) to be executed with all Pathways Participants.

Several agencies suggested that OPM remove the PA from the MOU and place it in each Pathways Program subpart of the regulations. We agree that it should be removed from the MOU, but disagree that it should be removed from subpart A of the regulations. The PA is a requirement for all Pathways Participants and is appropriately placed in subpart A of the regulations. It is clearer, though, to set it out in a separate section, rather than including it in the MOU section. Accordingly, we have renamed it the Participant Agreement (instead of Pathways Agreement) and placed it in a separate section (§ 362.106, *Participant Agreement*). The remaining subpart A sections were renumbered accordingly.

One agency suggested we require agencies to file the PA in the Participant’s Official Personnel File (OPF). OPM is not adopting this suggestion. The PA must be maintained while the Pathways Participant is in the applicable Program. However, once the Participant completes the Program and is separated or converted to a position in the competitive service, the PA is no longer applicable. Therefore, we do not believe it is appropriate to add a requirement that it be filed in the OPF.

The same agency commented that the regulations should provide a similar level of detail as is provided for the Pathways Programs Officer with respect to who could execute and approve the PA, and that the requirements for the PA be stipulated in the MOU. OPM does not believe any changes to the final rule are necessary. Agencies have discretion to determine who signs a PA. Participant Agreement requirements are now contained in § 362.106.

Several agencies suggested more detailed requirements for the PA. For example, one agency suggested adding certain requirements to the Participant Agreement an Intern must meet to continue in the Program, such as Grade Point Average (GPA) or a statement of good academic standing and performance ratings of Fully Successful or above. Some agencies supported removal of the requirement for a 3-way agreement with the Participant, the agency, and the Participant’s educational institution, while others do not think the 3-way requirement should be removed. Another stated that it was confusing to have a choice and the requirement should be either kept or removed. Several agencies asked if they would have the flexibility to design Participant Agreements based on agency need and several comments expressed concern over the workload the PA will create.

The Participant Agreement is another administrative requirement that OPM believes is necessary for the successful administration of the Pathways Programs. The regulations provide the minimum requirements of the PA. However, agencies have discretion to tailor PAs for each Pathways Program or even for individual organizations as necessary. An agency may continue to use a 3-way agreement, and it may or may not add GPA requirements for continuation in the Internship Program. We understand the challenges involved with identifying specific agency requirements and creating the necessary Participant Agreements. However, once developed, the PAs provide a powerful communication mechanism that ensures Program Participants understand their appointment provisions, manages expectations of all parties concerned, and identifies expectations for successful completion of a Pathways Program for both the Program Participant and manager.

One agency asked if agencies are obligated to enter into an agreement with the educational institution if the school or college required such an agreement. If an agency wishes to enter into a relationship with an educational institution that requires an agreement, the agency has the discretion to do so.

One agency does not believe the Participant Agreement should be required for Interns hired under the temporary provisions of subpart B. We disagree. Interns hired on a temporary basis should have the same benefit of well-defined expectations as any other Pathways Participant.

Several agencies suggested we provide them with a template Participant Agreement. OPM will provide a PA template for agencies to use at their discretion.

### 3. Filling Positions (§ 362.105)

#### Appointments (§ 362.105(c))

One agency suggested including temporary appointments in section § 362.105(c) of the regulations. We did not adopt this suggestion. The use of temporary appointments is applicable to the Internship Program only and is addressed in subpart B. Temporary appointments cannot be made under the Recent Graduates or PMF Programs.

#### Citizenship (§ 362.105(e))

One agency commented that the citizenship requirements were confusing. This paragraph is to ensure that agencies meet Government-wide requirements for non-citizen hiring and do not inadvertently convert a non-citizen to the competitive service. As

with excepted service hiring in general, the law permits agencies to hire non-citizens under the Pathways Programs provided they meet applicable immigration requirements.

#### Length of Appointments (§ 362.105(g))

Several agency comments requested clarification in this area. One agency asked whether the length of appointment for Recent Graduates and PMFs is to be calculated using consecutive or calendar days. Because calendar days are consecutive, we assume the commenter meant business days or calendar days. Appointments for Recent Graduates and PMFs are calculated by counting consecutive calendar days. Agencies may extend the appointment of a Recent Graduate or PMF for no more than an additional 120 calendar days.

Several agencies asked questions about how the 2-year appointment period would be applied for individuals hired under the Internship Program. The 2-year appointment limit does not apply to individuals hired under the Internship Program. Length of appointments for Interns is addressed in subpart B.

#### Terminations (§ 362.105(h))

Several agency comments suggested the regulations should state reasons for terminating Pathways Participants, such as not maintaining good standing with their school, or failure to meet the conditions of the Participant Agreement. We are not including these suggestions in the final regulations. This paragraph is simply to inform agencies that Pathways Participants can be terminated in accordance with any applicable laws and regulations pertaining to the excepted service. In response to one agency comment, we added the word “including” before “for misconduct, poor performance, or suitability” to be clear that we are not attempting to restate the entire universe of reasons that an individual could legitimately be terminated. Agencies are expected to take appropriate personnel actions for any Pathways Participant who is not converted to the competitive service at the end of his or her appointment.

### 4. Conversion to the Competitive Service (§ 362.107)

One agency suggested we modify § 362.107 specifying that conversions must be made in accordance with the applicable Programs. We have made this modification to the final rule.

Another agency suggested OPM enumerate the exemptions of the Priority Reemployment List in § 362.107. The Priority Reemployment

List (PRL) is a mandatory priority placement program for certain current and former excepted service employees to excepted service positions covered in part 302 and is not applicable here. Conversions from a Pathways Program are made to competitive service positions. Because the PRL does not apply to competitive service positions, an exemption is not necessary.

One agency requested that OPM provide the statutory citation that allows a term employee in the competitive service to be noncompetitively converted to a permanent position in the competitive service. The authority to convert from a Pathways Program term to permanent competitive service appointment is provided in Executive Order 13562, section 6, paragraph (c), which was issued under the President’s broad statutory authority over the civil service.

### 5. Program Accountability and Oversight (§ 362.107)

In the proposed regulations, Program accountability and oversight information was contained in a single regulatory section, § 362.107. In response to a number of comments seeking further clarity on these provisions, we have now addressed each topic in its own regulatory section. Section § 362.108 now addresses program oversight and § 362.109 addresses agency reporting requirements.

One agency asked if they should estimate their Pathways hires on a fiscal or calendar year basis. The same agency asked about a process for revising their estimates should it need additional Pathways hires. One agency suggested agencies be allowed to give an approximate number of hires under the Pathways Programs, but not be committed to staying within the initial proposed count.

The reporting requirements for Pathways are two-fold: (1) report an estimated projected use of the Pathways Programs for workforce planning; and (2) report actual Program usage for the previous year. Agencies will be required to report to OPM all positions that they intend to fill through Pathways appointments. The reports serve as an important planning and oversight tool. We anticipate requiring this data on a calendar year basis. We will provide additional guidance on the specific form of the reports we wish to receive. This guidance will allow for agencies to review and revise their projections for a particular year if the need arises.

## 6. Transition (§ 362.108)

Several agencies suggested OPM provide regulatory guidance on how current student employees and PMFs would transition into Pathways. One agency suggested maintaining the current SCEP conversion authority through April 30, 2013, to allow current SCEPs who graduate before the end of 2012 to complete SCEP work experience and other agency-specific conversion requirements. The agency stated that April 30, 2013, would provide a 120-day conversion period and allow sufficient time to obtain necessary documentation of graduation with the required overall GPA for students graduating in December 2012. The same agency suggested the regulations permit current SCEPs to be converted to the new Internship Program with full credit for their prior SCEP work experience.

OPM appreciates the many questions concerning conversion to the new Programs. We will issue comprehensive guidance for the transition of current STEP, SCEP, and PMF employees to the new Pathways Programs following publication of the final rule. We will consider the agency's comments as we craft that guidance. In addition, as mentioned above, we have provided for a 6-month transition period for the Internship and PMF Program. We cannot, however, adopt the agency's suggestion to retain SCEP through April 2013. By virtue of the executive order, the authority to appoint under SCEP is eliminated on the effective date of these regulations.

*B. Internship Program (Part 362, Subpart B)*

The rules governing the Internship Program appear in subpart B. A union expressed concern that the Internship Program would undermine the competitive hiring process by enabling an agency to hire an Intern who had completed degree requirements but not yet graduated and then subject the Intern to a lengthy trial period with the potential for termination at the end of the period. The union misreads the scope of the Program. An individual may serve as an Intern only while a student. In order to be eligible for conversion, the individual must accumulate 640 work hours (up to 320 of which may be waived under certain circumstances) while a student. The union's hypothetical could not occur because the Intern would not be able to obtain the requisite number of work hours between completion of degree requirements and graduation.

For these reasons, we decline to adopt the union's additional suggestion that

individuals who have less than a half semester of coursework before graduation should be eligible only for the Recent Graduates Program. The individual at that point is still a student; he or she may or may not graduate on schedule, and even if he or she does, the Intern may enroll in another academic program and maintain eligibility for employment as an Intern. It is not uncommon, for example, for students who graduate from college to immediately begin a master's or professional degree program.

The union also argues that internship positions should be limited to entry-level positions up to grade 9 or to grade 11 for science, technology, engineering, or mathematics positions. The union notes that this grade limitation applies in the Recent Graduates Program. Another union also argues for grade limits on Internship Program appointments. Several academic commenters support eliminating the grade limits on Recent Graduates and, presumably, approve of the absence of limits on Interns. Grade limitations on Interns would be a change from the current Student Career Experience Program (SCEP), under which interns are paid according to their qualifications. OPM is not persuaded that it should depart from the existing SCEP rule. Agencies need to be able to compete with the private sector for sought-after students, including those in graduate and professional degree programs.

The union also alleges that a particular agency is currently abusing the SCEP, and that the Internship Program regulations would not prevent the type of abuse being alleged. Without commenting on the particulars of the allegations, we note that each agency would be operating its Internship Program under the oversight of OPM, pursuant to an MOU entered into with OPM, and subject to a cap on their use of the Programs. Any further comment would be outside the scope of the regulation.

Another union commented that the duties of a position to which an Intern is appointed should relate to either the Intern's academic or career goals. We agree with this commenter and have modified the regulation to reflect this requirement. In addition, in response to agency comments, we have modified the regulation to provide agencies the discretion, especially when filling positions that require the completion of specific education, to require degree relatedness.

The union also objected to § 362.204(c) insofar as it allows agencies to waive up to 320 of the 640 work

hours requirement for an Intern to convert. The union contends that the criteria for waiver are vague and subject to abuse. A good government group, however, commented in favor of the waiver provision. We agree with the good government commenter. This waiver provision mirrors the existing provision under SCEP, which has not been problematic. Furthermore, we think that the waiver option promotes an incentive for Interns to excel academically and in the workplace, to the benefit of the Government.

The majority of agency comments support the concept that, upon completion of the Internship Program, an Intern should be converted to a position directly related to the Intern's academic training and intern work experience. Two agencies, however, suggested that removal of the requirement was inconsistent with the Program. We disagree with these two commenters. A large majority of General Schedule positions do not have a positive education requirement. Therefore, Interns could qualify for conversion to a position at the appropriate grade level based on their general educational background alone. The agencies will have invested in the development of Interns, and it is in their interests, as well as the taxpayers', to take advantage of that investment by having the Intern continue to work for the agency. Accordingly, though we would encourage agencies to conduct workforce planning and hire interns into a field for which they ultimately have a need to fill permanent positions, it is consistent with the Internship Program to allow agencies lacking a permanent position related to the Intern's field of study and Intern work experience to convert high performing Interns to another career field for which the Intern qualifies. Additionally, time spent on the Internship appointment qualifies as work experience for purposes of evaluating an Intern's qualifications for a particular position.

One agency noted a disparity in having a grade limitation on Recent Graduates (*i.e.*, people with degrees) while no similar limitation exists for Interns (*i.e.*, people working toward a degree). The different rules recognize the different purposes of the Programs. The Internship Program is aimed at recruiting students—including those at the highest levels of study—to work in the Federal Government. In recognition of this purpose, grade levels are not currently limited under SCEP. This allows the Government to compete, for example, for highly educated researchers who are finishing their doctoral programs. The Recent

Graduates Program, on the other hand, is focused on individuals without prior work experience in their chosen field, in recognition of the difficulty they have in securing a Federal job through the competitive hiring process. A grade-level limitation is therefore appropriate for Recent Graduates because the premise is that they lack prior related work experience. Their grade levels are thus tied to the levels for which they could qualify based solely on their education.

One agency suggested OPM add a mentor requirement to the Internship Program rules. OPM is not adopting an across-the-board requirement because some Interns serve for very short periods of time. However, we included a requirement to identify mentorship opportunities in the Participant Agreement with Interns. Moreover, we encourage agencies to provide mentors to the Interns it expects to employ for lengthier periods of time (for example, longer than 12 weeks).

One agency requested that OPM add an authority to allow agencies to convert an Intern serving on a temporary appointment to an Intern appointment. The regulations allow any qualified student to be appointed under the Internship Program on either a temporary (not to exceed 1 year) or time limited (more than 1 year) basis. An agency wishing to change a temporary Intern to an Intern appointment would simply reappoint the individual under § 213.3402(a).

Several agencies and a union suggested OPM define the phrase “meaningful developmental work.” OPM is not adopting this suggestion because we do not believe it is appropriate to provide a specific definition in the regulation. The phrase broadly refers to career-related work experience that will enable the individual to successfully work upon conversion to the competitive service. By not adopting a specific definition, we allow agencies and Pathways participants to determine the nature of the developmental work appropriate to the position. In exercising this discretion, agencies should not assign, as an Intern’s primary duties, simple administrative or clerical tasks such as scanning a document or filing documents which do not support the Intern’s career goals. We would expect agencies and Interns to discuss the nature of their work in connection with executing the Participant Agreement.

Several agencies suggested that Intern appointments be made with a specific not-to-exceed (NTE) date. We are not adopting this suggestion because the appointment authority permits

noncompetitive conversion to a permanent job in the competitive service, and some Interns will not be treated as time-limited.

An agency commented that the use of the word “Intern” causes confusion since Interns are typically hired to work for no salary or a small stipend to gain work experience. OPM does not agree or share this concern. The Student Employment Educational Program (SEEP) co-existed with part 308, Volunteer Service, for many years and we see no reason why the Internship Program cannot continue to do so. Additionally, volunteer service under part 308 can be considered *creditable service*, under § 362.204, toward an Intern’s work requirement for conversion to the competitive service.

Several other agencies expressed concern over losing the ability to use unpaid interns. OPM is not revoking the authority to use student volunteers in part 308.

Several agencies asked whether Interns could be converted to the Recent Graduates Program. The Executive order does not provide authority to convert an Intern to the Recent Graduates Program. Agencies should provide Interns with appropriate, related work experience and training. Upon completion of their education and successful performance of the duties of the Intern position, agencies should convert Interns to competitive service positions. Interns could also apply to the Recent Graduates Program upon completing their educational program requirements.

One agency asked that we clarify the distinction between an Internship for a high school student versus one for a post secondary school student, to address work schedules, appointment limitations and work assignments. There is no difference in the appointment or the Program; however, work schedules, assignments, etc., may vary. The Internship Program is flexible enough to allow agencies to tailor the Program to meet its needs. Agencies may appoint any qualified student to the Internship Program on either a temporary or time limited basis. Appointment limitations, work schedules and work assignments and expectations are required to be addressed in the Participant Agreement.

Several agencies expressed concern that OPM is limiting agencies use of temporary Interns. One agency suggested language to modify the final rule for clarity. OPM has modified the final rule to clarify the appropriate use of temporary Interns. The Supplementary Information accompanying the proposed regulations simply reminded agencies to limit their

appointment of temporary Interns because the intent of the Program is for agencies to develop a pipeline of talent for important workforce needs. Agencies may hire temporary Interns as they deem necessary, though, in accordance with agency Pathways hiring procedures, and any limitations that may be established by the Director.

One agency suggested OPM rename the Internship Program the “Current Student Fellowship Program.” OPM is not adopting this suggestion because we believe “Internship Program” is a better, commonly understood label for the Program.

#### 1. Definitions (§ 362.202)

Several agencies suggested a more specific definition of “student.” Some agencies proposed OPM limit the Internship Program only to students attending classes for certain time periods, e.g., those who have completed at least one academic semester. We are not adopting these suggestions. The proposed definition of student is familiar, as it is adapted from the current SEEP, which has served the existing student programs well for many years.

#### 2. Filling Positions (§ 362.203)

One agency suggested OPM modify the regulations to include language, similar to language currently in the SEEP regulations, regarding the use of training funds for Pathways Participants. OPM is not adopting this suggestion. We are not attempting to alter the availability of any of these benefits. We have simply eliminated some provisions currently contained in the SEEP regulations that restate requirements or provisions contained in other CFR parts, such as those pertaining to the use of training funds, tuition assistance, travel and transportation, etc. This avoids lengthy changes to sections of the CFR when a particular regulatory requirement changes.

A school asked whether prior Federal service can be used by agencies to determine qualifications and grade-level limitations for individuals appointed to the Internship Program. Yes. Agencies are required, though, to establish procedures on how they will assess applicants for any Pathways Program.

#### Eligibility (§ 362.203(b))

An agency suggested OPM add a requirement that a student be in good academic standing to be eligible for an Internship appointment. We have not historically expressly stated a good academic standing requirement and are concerned that by introducing it now,

there will be confusion about what it means. It is our expectation, though, that agencies would only appoint students who are adequately progressing toward completion of their academic program.

#### Qualifications (§ 362.203(c))

One agency suggested OPM modify the final rule to require students to qualify for the Internship Program based only on education. Though we expect that will be true for the vast majority of Interns, we are preserving the rule under SEEP that a student's prior experience may also be taken into account in determining his or her qualifications in connection with an Intern appointment. That approach has been used successfully for decades. Additionally, the Internship Program will be subject to OPM oversight, including potential caps on the number of Program Participants and OPM's authority to revoke an agency's MOU and thus prohibit it from using the Programs.

Another agency asked OPM to modify the regulations to include a provision allowing agencies to develop their own qualification requirements for the competitive service position to which an Intern converts. We are not adopting this suggestion because the OPM Qualification Standards apply when filling any competitive service position and agencies are responsible for the training and development of Interns. Pathways Participants who meet the OPM Qualification Standard for a particular position are eligible for conversion.

#### Appointments (§ 362.203(d))

Several agencies submitted comments asking OPM to clarify the appointment time limit for Interns. In addition, several agencies confused appointment time limit with the requirement that the Participant Agreement clearly state an expected NTE date. Interns can be appointed two ways: as a temporary employee (NTE 1 year); or for a period of more than 1 year. Appointments made for more than 1 year do not require a NTE date. However, the Participant Agreement requires an expected end date by which the student will complete all educational requirements of the degree.

#### Promotion (§ 362.203(e))

Several agencies suggested OPM add instructional language to the regulations stating that the promotion of a temporary Intern is documented as a conversion to a new temporary appointment with a requirement the NTE date remain. OPM is not adopting

this suggestion. The service limits and restrictions in § 213.104 on refilling excepted service positions do not apply to the appointment of temporary Interns. Therefore the original NTE date is not applicable.

#### Classification (§ 362.203(f))

One agency commented that the requirement to classify positions to the 99 series is problematic because there is no distinction between one and two-grade interval positions. We disagree.

Using the -99 series for one and two-grade interval positions affords agencies the greatest amount of flexibility when hiring individuals into developmental type programs. Because these individuals are "trainees" they are not restricted to the types of work that is normally associated with a specific series. In addition, an entire job family (e.g., 300) of positions will be available at the time of conversion based on the individual's qualifications and the agency's needs. Agencies can differentiate between one grade and two-grade interval positions based on the education level of the employee (e.g., below Baccalaureate level, one grade interval), based on the journeyman level of the target position (e.g., GS 12 full performance level, two grade interval), documented advancement opportunities (career ladders) in the participant's agreement.

Another agency suggested we add the requirement to classify wage grade intern positions to the 01 series. We are adopting this suggestion and have modified the regulations. We did not intend to limit Internship appointments to General Schedule positions; therefore we are clarifying that agencies can make Internship appointments to either General Schedule or Wage Grade positions.

#### Schedules (§ 362.203(g))

Two agencies commented on work schedules. One suggested OPM amend the final rule by specifying the number of hours a student may work. We did not amend the final rule because the regulations specify an Intern may work a full or part-time schedule. Interns agreeing to work a full-time schedule must work 40 hours per week. Part-time schedules are generally considered to fall between 16 and 32 hours per week. Interns are covered by the same rules for hours of duty contained in part 610 of the CFR.

Another agency suggested we modify the final rule to include an intermittent work schedule. We did not modify the final rule because we do not believe an intermittent work schedule is appropriate for an Intern. Employees on

an intermittent work schedule do not have a regularly-scheduled tour of duty; they have no set hours of duty or days of work every week. This is not conducive for students with a set academic schedule or for Intern appointments intended to train an employee for permanent employment.

#### Breaks in Program (§ 362.203(h))

Most commenting agencies felt the rule about breaks in program, under the SEEP, should be maintained. One agency asked OPM to modify the final rule to allow only one break in Program per appointment. Rules about breaks in Program are solely at an agency's discretion. Therefore, OPM will maintain the current SEEP provisions regarding breaks in program.

#### 3. Conversion to the Competitive Service (§ 362.204)

One school suggested OPM remove the 120-day requirement for conversion so Interns working during summer months would be eligible for conversion upon completion of his or her academic requirements. OPM is not adopting this suggestion, as it appears to be based on a misunderstanding of how the 120-day period works. The 120-day administrative period begins when the Intern completes his or her academic course of study. In other words, the agency has 120 days after the Intern completes all academic requirements of his or her course of study to convert the Intern to the competitive service.

Several agency commenters asked whether the requirement to complete an academic course of study could include a variety of certificate programs, e.g., several 2-week programs completed over a period of 2 years. Short-term training programs that award certificates for completion are not considered an academic course of study. Because of the many comments received regarding certificate programs, OPM modified the regulations to include a definition of "certificate program" in subpart A.

One agency asked whether third-party interns (i.e., non-Federal interns) can convert directly into the competitive service. The Pathways Programs do not allow a non-Federal intern to be directly appointed to the competitive service. Up to 320 hours of service as a third-party intern, however, counts toward conversion, if the student subsequently is appointed to the Internship Program.

Several agencies asked OPM to clarify the Internship rules regarding creditable work experience and waiver of work experience for conversion. We agree with the agencies that further clarification of the requirements in the proposed rule is in order. Therefore, we



modified the final rule by restructuring this section as follows: (a) Contains the conversion authority; (b) lists the conversion requirements an Intern must meet for eligibility, such as 640 hours of work experience; and (c) addresses creditable work experience. Paragraph (d) contains the waiver provision. Agencies may waive up to one-half, which is 320 hours, of the work experience requirement for outstanding performers who also have a 3.5 or better grade point average. Paragraph (e) makes it clear that agencies may not credit or waive, or any combination thereof, more than 320 hours of the 640-hour work experience requirement.

Another agency suggested that agencies should be required to document the credit of work experience or waivers. We are not adopting this suggestion because agencies have the flexibility to establish such a requirement should they choose to do so. Additionally, the Internship Program mirrors the existing SEEP, which does not have such a requirement.

Another agency suggested that any experience creditable toward the 640-hour work experience should be directly related to an Intern's career path and academic study. We agree in part. We modified the final rule to require that creditable work experience must be comparable to the work experience of the Internship appointment. For consistency, we did not adopt the suggestion to require the creditable service to directly relate to an Intern's academic study because it is not a requirement of the Internship Program itself.

Several agencies asked OPM to modify the final rule to require that Interns be rated Fully Successful or above to be eligible for conversion. We have not historically expressly stated a minimum rating for student conversion and are concerned that by introducing it now, there will be confusion about what it means. It is our expectation, though, that agencies would only convert students who are performing acceptably, as reflected in any formal ratings of record they may have achieved.

One agency suggested OPM lower the Grade Point Average (GPA) requirement under the waiver provision for Interns, stating a 3.5 GPA requirement to be very restrictive. The agency also suggested that many schools no longer use a ranking system. OPM did not adopt this suggestion because we believe there must be sufficient support to waive one-half of the work requirement. The waiver provision allows agencies to waive up to 320 hours of the 640-hour work requirement based exclusively on a high potential that must be supported

by exceptional academic and job performance. Also, this standard mirrors the current SCEP standard.

Another agency asked OPM to change the waiver requirement for exceptional job performance by modifying the final rule to state that exceptional job performance can be demonstrated by a performance rating of Fully Successful or higher. OPM is not accepting this suggestion because we do not believe a Fully Successful rating demonstrates exceptional job performance. The waiver provision allows agencies to waive up to 320 hours of the 640-hour work requirement based exclusively on a high potential that must be supported by exceptional academic and job performance.

OPM received several comments simply supporting or opposing the credit or waiver of 320 hours of work experience. These comments offered nothing further than the simple statement of support or opposition, and no response is necessary.

One agency asked if performance plans are required for Interns. Yes, Pathways Participants are Federal employees subject to performance management provisions as specified in part 430. OPM modified the final rule in § 362.105(h) for clarity.

#### 4. Reduction in Force and Terminations (§ 362.205)

One agency commented that tenure group 0 does not appear in § 351.502. The agency suggested OPM revise the regulatory text in either this section or § 351.502. We are not adopting this suggestion. Tenure group 0 is not included in § 351.502 because it is not covered by RIF regulations; thus, employees who have a tenure group status of 0 have no RIF rights.

Several agencies asked OPM to clarify tenure codes for Interns. We agree with this suggestion and modified the final rule to clearly state that Interns hired for more than 1 year are placed in tenure group II; temporary Interns (hired not to exceed 1 year) are placed in tenure group 0; temporary Interns extended for an additional year are placed in tenure group III.

Several agencies asked OPM to modify the final rule to clarify appeal rights for Interns. We did not adopt this suggestion because Pathways Interns are Federal employees subject to the same appeal rights under chapter 75 of title 5, United States Code as any other employee. Since the provisions for appeal rights are covered under another rule, we will not restate them under this part.

One agency suggested that OPM clarify information pertaining to

termination based on conduct and performance. We are not making this change because Pathways Participants are Federal employees and are subject to regulations on terminations for conduct and performance in parts 432 and 752.

#### C. Recent Graduates Program (Part 362, Subpart C)

The rules governing the Recent Graduates Program are in subpart C.

A union commented that agencies should be required to create training solely for Recent Graduates Program Participants that is different from the standard training offered to all employees at the agency. We agree, as this is the intent of the regulation. Section 362.301 of the proposed regulation addresses this issue.

The union also commented that the Recent Graduates Program should not permit an agency to hire whole groups of entry-level employees and then convert them to term appointments. It would be highly unusual for agencies to take the course of action described by the union. The intent behind allowing agencies to convert Pathways Participants to term appointments is to cover those instances where budgets and other workforce requirements preclude an agency from converting an individual to a permanent position. Because a term appointment can be made for up to 4 years, the agency may be able to recover and subsequently offer that term employee a permanent position. Again, agency practices in implementing the Pathways Programs will have to comply with the MOU and will be subject to OPM oversight, and we will address any concerns along the lines of what the union posits in its comment through the MOU process.

Another union commented that eligibility for the Recent Graduates Program should be limited to those completing the requirements for their degree or certificate within 1 year, rather than 2. The union contends that the narrower window keeps the Program's focus on those who have graduated most recently. Another commenter specifically applauded the 2-year window. The 2-year eligibility window is required by the Executive order, and we have no discretion to adopt the commenter's suggestion. Moreover, we disagree with the union commenter's premise that those having completed their degree or certificate requirements within the preceding 2 years are not recent graduates. It takes time for many graduates to obtain their first job following graduation (months and even years in some cases), so many will not have an opportunity to gain much experience during their first year

that would allow them to compete in the normal competitive process in year two.

One agency requested that any individual who graduated between the date the Federal Career Intern Program was abolished (February 28, 2011) and the date these regulations take effect should have an extended window of eligibility. We reject this suggestion because the Recent Graduates Program was developed independent of the FCIP based on OPM's analysis of the Federal Government's ability to recruit, hire, and retain students and recent graduates. It would therefore not be appropriate to tie eligibility for the Recent Graduates Program in any way to the FCIP.

We are, however, sympathetic to those who graduated during the period starting when President Obama issued Executive Order 13562 (December 27, 2010) through the date these regulations take effect. The Executive order directed that this Program be created, and these graduates should not be disadvantaged as a result of the length of time it takes to issue implementing regulations. Accordingly, we think it is fair and equitable to allow anyone who would have become eligible for the Recent Graduates Program after the date Executive Order 13562 was issued and before the final regulations take effect to have 2 full years of eligibility from the date the final regulations take effect. We expect this change will have the largest impact on the May 2011 graduates, who otherwise would have only had 1 year of eligibility under the Program. OPM will provide additional instructions in the transition guidance.

One union also emphasized its view that it is important that Recent Graduate opportunities apply only to entry-level positions. We agree with the commenter and have amended § 362.301 to specifically reference entry-level positions.

#### 1. Program Administration (§ 362.301) Mentor (§ 362.301(a))

One agency asked OPM to define what we meant by the requirement to assign a mentor from an "appropriate level" outside the Recent Graduate's chain of command. We have reconsidered this issue and now conclude that the level of the mentor assigned should be left solely to the agency's discretion. We intend to allow agencies the discretion to determine mentor grade levels, as agency decisions can be made based on any one of a number of factors such as, on a case-by-case basis, according to job series, or

according to the grade level of the Recent Graduate.

#### Training (§ 362.301(c))

One agency asked OPM to explain the meaning of "formal" training in § 362.301(c). For the purposes of the Recent Graduates Program, "formal" training is any structured, career-related training.

#### 2. Eligibility (§ 362.302)

Several agencies requested that OPM clarify the eligibility requirements for participation in the Recent Graduates Program. Recent Graduates have 2 years from the date they complete their educational requirements to apply to the Recent Graduates Program. Applicants who apply to Recent Graduates job announcements within the 2-year time limit may be considered and appointed even if the appointment occurs after the 2-year time limit. As mentioned, we are providing 2 full years from the final date of these regulations for anyone graduating since the Executive order was issued on December 27, 2010, who otherwise meets all of the eligibility requirements of the Recent Graduates Program.

Several agencies asked OPM to provide situational examples on the extension of eligibility for veterans in § 362.302(b)(2). OPM will issue transition guidance that will contain situational examples to clarify how to extend the 2-year eligibility period for veterans precluded from applying to the Recent Graduates Program due to military service.

One agency suggested OPM modify the final rule to include Peace Corps and VISTA volunteers in the extension of eligibility because of a military service obligation provided in § 362.302(b)(2). The extension of eligibility was narrowly tailored to address the unique circumstances of service members. We are not persuaded that the exception should be extended beyond that population, nor is there authority to do so under the Executive order.

One commenter suggested OPM modify the military extension criteria to provide a 2-year eligibility period for any veteran completing degree requirements while on active duty. We are not adopting this suggestion because the requirements of the Executive order are to provide an eligibility extension to individuals who enter active military duty after completion of their educational requirements.

One agency asked OPM to allow agencies to extend the eligibility period for veterans beyond 6 years. The 6-year window was established in the

Executive order, and we are without authority to extend it further.

One agency suggested OPM change the eligibility criterion in § 362.302 from "completion of all requirements of an academic course of study" to "must have obtained a qualifying degree." The agency believes that, as written, the requirements will be administratively burdensome to agencies, applicants and educational institutions. It also states that the requirement will result in improper appointments or inadequate consideration of candidates. Additionally, it states that the suggested change aligns more closely with the requirements of the Executive order. OPM is not adopting this suggestion because the requirement to "complete all requirements of an academic course of study" has been effective under the current SEEP. Additionally, requiring the graduate to be in receipt of the diploma or certificate can, in many cases, disadvantage the recent graduate. We understand it is not uncommon for individuals to complete their academic course of study and then not receive their certificate or degree for months, depending on the procedures of the particular school.

One agency suggested that OPM modify the final rule in § 362.302 to be consistent with language used in other sections of the proposed rule regarding the completion of educational requirements. We agree that eligibility criteria should be consistently stated. We have modified the final rule in § 362.302 to state the eligibility as "2 years from the date all requirements of an academic course of study leading to a qualifying associate's, bachelor's, master's, professional, doctorate, vocational or technical degree or certificate from a qualifying educational institution are met." This generally means the individual is considered a Recent Graduate upon completion of all required coursework and final exams, not the date the graduate receives the degree or certificate.

#### 3. Filling Positions (§ 362.303) Announcements (§ 362.303(a))

One agency suggested that OPM modify the final rule to require agencies to fill Recent Graduate positions within a certain time period of the announcement, for example 90 or 120 days. We are not adopting the agency's suggestion because we do not believe it is appropriate to impose a hard deadline on agency hiring actions. For example, we would not want to prevent agencies from participating in on campus fall recruiting events for positions to be

filled the following spring, after the candidates graduate.

#### Appointments (§ 362.303(b))

One agency asked OPM to define “initial appointment” as referenced in § 362.303(b). For the purposes of Pathways, “initial appointment” means an individual’s first Pathways appointment in any particular agency.

The same agency asked if Recent Graduates appointments can be made at the full performance-level of a position. Appointments under the Recent Graduates Program may not be made to a full-performance level position. Recent Graduate appointments must have career advancement opportunities, *i.e.* they must be career ladder positions.

Section 362.303(b)(3)(i) through (iv) allows Recent Graduates filling certain science, technology, engineering, and mathematics (STEM) positions to be appointed up to the GS–11 grade level. An agency asked OPM to clarify whether additional occupations, other than STEM, would be included to allow initial appointment above the GS–9 grade level. They would not.

The same agency asked OPM to include a list of science, technology, engineering, or mathematics (STEM) occupations, as referenced in § 362.303(b)(3)(ii), in the final rule. OPM refers the agency to the listing of STEM occupational families appearing in the Handbook of Occupational Groups and Families, available on the OPM Web site.

Several schools suggested OPM remove the grade-level limitations of the Recent Graduates Program to allow work-related experience and additional skills to be used to qualify for appointment up to a GS–12. OPM is not adopting this suggestion because the point of this Program is to allow individuals to qualify for jobs based solely on their education.

#### Extensions (§ 362.303(c))

Several agencies suggested OPM include a provision in the final rules allowing OPM to approve appointment extensions, not to exceed 1 year, for Recent Graduate appointments. OPM is not adopting this suggestion because the Executive order does not provide OPM the authority to do so. Recent Graduate appointments may only be extended up to a period of 120 days under the employing agencies’ procedures. Agencies may, of course, continue to provide training, mentoring, and career development opportunities at their discretion.

#### Qualifications (§ 362.303(d))

Section 362.303(d) requires agencies to fill Recent Graduates positions using the OPM Qualification Standard for the position being filled. Several agencies asked OPM to modify the final rule to allow the use of agency-developed qualification standards. We are not adopting this suggestion because we do not have the authority to do so under the Executive order, which requires use of OPM Qualification Standards.

#### Promotions (§ 362.303(e))

One agency suggested OPM add a provision to allow agencies to make accelerated promotions for Recent Graduates. We are not adopting this suggestion. The purpose of the Program is to provide a developmental experience designed to lead to a Federal career. Accelerated promotions are not consistent with the purpose of the Recent Graduates Program.

#### Trial Period (§ 362.303(f))

One agency asked OPM to clarify trial period for Recent Graduates. Specifically, the agency requested clarification of the reference to § 315.802 which applies to probationary periods in the competitive service. Because recent graduates must work for at least one year prior to conversion, they will have completed their probationary period upon conversion. No further trial period following conversion is available.

#### 4. Movement Between Agencies (§ 362.304)

Several agencies asked OPM to clarify the provisions in § 362.304. Specifically, they asked if the new agency can require the Recent Graduates to begin a new employment period for conversion eligibility. An agency that hires a current Recent Graduate into its Program cannot require the Recent Graduate to start a new Recent Graduate appointment. The agency must convert the Recent Graduate without a break in service, and the employee will be eligible for conversion upon completion of the gaining agency’s Program plus any agency-approved extension not to exceed 120 days. This applies regardless of the position series the Recent Graduate is appointed to in either agency.

#### 5. Reduction in Force and Terminations (§ 362.305)

One agency suggested OPM clarify information pertaining to termination of employment based on conduct and performance. Another suggested we add language pertaining to appeal rights for Recent Graduates. OPM is not adopting

these suggestions because regulatory guidance on terminations for conduct and performance and appeal rights can be found in parts 432 and 752, respectively.

#### 6. Conversion to the Competitive Service (§ 362.306)

Several agencies asked OPM to modify the final rule to allow the use of agency-developed qualification standards for conversion to positions in the competitive service. We are not adopting this suggestion because we do not have the authority to do so under the Executive order, which requires use of OPM Qualification Standards. Recent Graduates must meet the OPM Qualification Standards for the position to which he or she will be converted. On the rare occasions where we have provided for agency-specific qualification standard, for a competitive service position, we are considering that to be an OPM Qualification Standard that agencies may use.

One agency asked OPM to specify time-in-grade (TIG) requirements for promotion at the time of conversion. We are not adopting this suggestion. Generally, excepted service employees are not subject to the TIG requirements of the competitive service. However, Recent Graduates are subject to the OPM Qualification Standards. This means that in order to promote a Recent Graduate, he or she would have to meet the specialized experience requirement of the applicable qualification standard, which is generally 1 year. The same requirements apply when converting the Recent Graduate to a competitive service position. For example, a GS–9 Recent Graduate would need 1 year of specialized experience at the GS–9 level at the time of conversion to be converted to a GS–11 position in the competitive service.

Several schools recommended OPM include a provision in the final rule to require conversion to the competitive service upon completion of the Recent Graduates Program. OPM is not adopting this suggestion because we believe conversion decisions should be based on the individual and the needs of the agency. We encourage agencies, however, to conduct sound workforce planning so that adequate conversion opportunities are available for Recent Graduates.

Recent Graduates must be rated under an agency’s approved performance appraisal system as at least Fully Successful (or equivalent) to be eligible for conversion to the competitive service. One agency suggested OPM add requirements to clarify how performance will be evaluated when a

Recent Graduate moves to another agency. OPM is not adopting this suggestion, because no special rule applies to Recent Graduates. Rather, Recent Graduates are Federal employees subject to the performance management requirements specified in part 430 of 5 CFR.

*D. Presidential Management Fellows Program (Part 362, Subpart D)*

The proposed regulations set forth the rules governing the PMF Program in subpart D. OPM received several comments simply supporting or opposing the elimination of the school nomination process. A union urged OPM to retain the school nomination process. The union argues the nomination process is the key to maintaining the PMF as a rigorous, prestigious program. It suggested that OPM regulate standards for schools to apply when making nominations. It also cited anecdotal evidence that OPM's assessment process is more burdensome than the school nomination process. A good government group and an academic group commented in favor of the elimination of the nomination process. We agree with these commenters, rather than the union commenter. We do not believe that the school nomination process is critical any longer. It may be subject to inconsistent application and, for those schools not as familiar with how the PMF Program operates, has served as a barrier to application for qualified students, according to reports we have received from students at those institutions. Moreover, we have revamped our PMF assessment process to include, among other things, an interview process that has been professionally developed and validated by our industrial psychologists. Our new assessment process ensures that the PMF Program will remain a rigorous and prestigious program that uses a valid, professionally-developed selection process. Finally, as the academic commenter notes, the new eligibility rules for PMF allow an individual to participate up to 2 years after having obtained a degree. There would be substantial practical obstacles for schools to manage a nomination process that includes alumni, and for the alumni—who may now be very far away from campus—to participate in any such process.

1. Program Administration (§ 362.402)

One agency objected to subparagraph (d), which requires agencies to allow Fellows assigned to field locations to do a developmental rotation to agency headquarters and to allow Fellows to

attend Federal Executive Board-sanctioned activities in their region. The agency asked OPM to modify the final rule by changing the word “must” to “should” or “OPM highly recommends.” The agency believes the current language places expectations on agencies that may be difficult to meet or inappropriate. We agree with the agency and modified the final rule to comport with this suggestion.

2. Announcement, Eligibility and Selection (§ 362.403)

Several agencies asked OPM to clarify the new eligibility criteria for PMFs. To clarify, individuals are eligible to apply to the PMF Program up to 2 years from the date of completion of the educational requirements for a professional or graduate degree. A PMF finalist may be appointed without regard to the time limit for application. For example, an individual could apply for the PMF Program a year and a half after completing his or her advanced degree. If the individual is selected as a finalist but does not receive an employment offer until two and a half years after completion of the degree, the individual may be appointed as a PMF. OPM is not establishing a limit on the number of times a graduate may apply to the PMF Program. However, a PMF finalist who chooses to reapply to a future announcement will be removed from the current finalist list and must successfully compete for placement on the new finalist list.

3. Appointment and Extension (§ 362.404)

Several agencies suggested OPM include a provision in the final rules allowing OPM to approve extensions of PMF appointments, not to exceed 1 year. OPM is not adopting this suggestion because the Executive order does not provide OPM the authority to do so. PMF appointments may only be extended up to a period of 120 days under the employing agencies' procedures. Agencies should only extend appointments under rare and unusual circumstances. The extension period should not be used as a standard practice to accommodate the processing of personnel actions.

4. Development, Evaluation, Promotion, and Certification (§ 362.405)

Most commenting agencies objected to the requirement that PMF mentors be in the Senior Executive Service (SES). OPM is persuaded by these comments. Talented mentors exist at the non-SES levels, and SES mentors may not be available in certain agency field locations. We adjusted the regulation to

require a mentor to be a “managerial employee outside the PMF's chain of command.”

A majority of agencies asked OPM to modify the provisions of paragraph (b)(6) that require agencies to provide PMFs to assist in the assessment process of new PMF applicants at the agency's expense. OPM agrees and has removed the provision requiring agencies to cover the expenses associated with providing PMF assessors.

5. Withdrawal and Readmission (§ 362.407)

One agency asked OPM if the last sentence of paragraph (a)(1) regarding reimbursement of the placement fee, was misplaced and should in fact be part of § 362.406, *Movement between agencies*. The agency is correct. We have modified the final rule by placing the sentence in § 362.406(d). The agency also asked OPM to clarify who would reimburse the original appointing agency, OPM or the gaining agency. The original appointing agency may request reimbursement from the gaining agency, not OPM.

**Executive Order 13563 and Executive Order 12866**

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and E.O. 12866.

**Paperwork Reduction Act**

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

**Regulatory Flexibility Act**

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

**List of Subjects in 5 CFR Parts 213, 302, 315, 330, 334, 362, 531, 536, 537, 550, 575, and 890**

Administrative practices and procedures, Colleges and universities, Employment, Government employees, Military personnel, Students, Veterans.

U.S. Office of Personnel Management.

**John Berry,**  
*Director.*

Accordingly, the Office of Personnel Management is amending 5 CFR chapter I as follows:

**PART 213—EXCEPTED SERVICE**

■ 1. The authority citation for part 213 is revised to read as follows:

**Authority:** 5 U.S.C. 3161, 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; E.O. 13562. Sec. 213.101 also issued under 5 U.S.C. 2103. Sec. 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h), and 8456; 38 U.S.C. 4301 *et seq.*; and Pub. L. 105–339, 112 Stat. 3182–83.

### Subpart A—General Provisions

#### ■ 2. Revise § 213.102 to read as follows:

##### **§ 213.102 Identification of positions in Schedule A, B, C, or D**

(a) As provided in 5 U.S.C. 3302, the President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

(1) Necessary exceptions of positions from the competitive service; and

(2) Necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7202, and 7203 of title 5, U.S. Code.

(b) The President delegated authority to the Office of Personnel Management (OPM) in Civil Service Rule VI to except positions from the competitive service when OPM determines that:

(1) Appointments thereto through competitive examination are not practicable; or

(2) Recruitment from among students attending qualifying educational institutions or individuals who have recently completed qualifying educational programs can better be achieved by devising additional means for recruiting and assessing candidates that diverge from the processes generally applicable to the competitive service.

(3)(i) Upon determining that any position or group of positions, as defined in § 302.101(c), should be excepted indefinitely or temporarily from the competitive service, the Office of Personnel Management will authorize placement of the position or group of positions into Schedule A, B, C, or D, as applicable. Unless otherwise specified in a particular appointing authority, an agency may make Schedule A, B, C, or D appointments on either a permanent or nonpermanent basis, with any appropriate work schedule (*i.e.*, full-time, part-time, seasonal, on-call, or intermittent).

(ii) When OPM establishes eligibility requirements (*e.g.*, residence, family income) for appointment under particular Schedule A, B, or D exceptions, an individual's eligibility for appointment must be determined before appointment and without regard to any conditions that will result from the appointment.

(c) For purposes of making any such determinations, *positions* includes:

(1) Those that are intended to be removed indefinitely from the competitive service because the nature of the position itself precludes it from being in the competitive service (*e.g.*, because it is impracticable to examine for the knowledge, skills, and abilities required for the job); and

(2) Those that are intended to be removed temporarily from the competitive service to allow for targeted recruiting and hiring from among a particular class of persons, as defined by the Office of Personnel Management, with the opportunity for the persons selected for those positions to convert to the competitive service at a later date.

■ 3. In § 213.103, revise the section heading and paragraph (a) to read as follows:

##### **§ 213.103 Publication of excepted appointing authorities in Schedules A, B, C, and D.**

(a) Schedule A, B, C, and D appointing authorities available for use by all agencies will be published as regulations in the **Federal Register** and the Code of Federal Regulations.

\* \* \* \* \*

■ 4. In § 213.104, revise the section heading, paragraph (a) introductory text, and paragraphs (a)(1), (b)(1), (b)(2), and (b)(3)(ii) to read as follows:

##### **§ 213.104 Special provisions for temporary, time-limited, intermittent, or seasonal appointments in Schedule A, B, C, or D.**

(a) When OPM specifies that appointments under a particular Schedule A, B, C, or D authority must be temporary, intermittent, or seasonal, or when agencies elect to make temporary, intermittent, or seasonal appointments in Schedule A, B, C, or D, those terms have the following meaning:

(1) *Temporary appointments*, unless otherwise specified in a particular Schedule A, B, C, or D exception, are made for a specified period not to exceed 1 year and are subject to the time limits in paragraph (b) of this section. Time-limited appointments made for more than 1 year are not considered to be temporary appointments, and are not subject to these time limits.

\* \* \* \* \*

(b) \* \* \*  
(1) *Service limits.* Agencies may make temporary appointments for a period not to exceed 1 year, unless the applicable Schedule A, B, C, or D authority specifies a shorter period. Except as provided in paragraph (b)(3) of this section, agencies may extend temporary appointments for no more than 1 additional year (24 months of total service). Appointment to a

successor position (*i.e.*, a position that replaces and absorbs the original position) is considered to be an extension of the original appointment. Appointment to a position involving the same basic duties, in the same major subdivision of the agency, and in the same local commuting area is also considered to be an extension of the original appointment.

(2) *Restrictions on refilling positions under temporary appointments.* Except as provided in paragraph (b)(3) of this section, an agency may not fill any position (or its successor) by a temporary appointment in Schedule A, B, C, or D if that position had previously been filled by temporary appointment(s) in either the competitive or excepted service for an aggregate of 2 years, or 24 months, within the preceding 3-year period. This limitation does not apply to programs established to provide for systematic exchange between a Federal agency and non-Federal organizations.

(3) \* \* \*

(ii) Positions are filled under an authority established for the purpose of enabling the appointees to continue or enhance their education, or to meet academic or professional qualification requirements. These include the authorities set out in paragraphs (r) and (s) of § 213.3102 and paragraphs (a), (b), and (c) of § 213.3402, and authorities granted to individual agencies for use in connection with internship, fellowship, residency, or student programs.

\* \* \* \* \*

### Subpart C—Excepted Schedules

■ 5. In § 213.3102, remove and reserve paragraphs (ii) and (jj).

##### **§ 213.3102 Entire executive civil service.**

\* \* \* \* \*

(ii) [Reserved]

(jj) [Reserved]

\* \* \* \* \*

■ 6. In § 213.3202, remove and reserve paragraphs (a), (b), and (o).

##### **§ 213.3202 Entire executive civil service.**

(a) [Reserved]

(b) [Reserved]

\* \* \* \* \*

(o) [Reserved]

\* \* \* \* \*

■ 7. After § 213.3302, add a new undesignated center heading and § 213.3401 and § 213.3402 to read as follows:

## Schedule D

### § 213.3401 Positions other than those of a confidential or policy determining character for which the competitive service requirements make impracticable the adequate recruitment of sufficient numbers of students attending qualifying educational institutions or individuals who have recently completed qualifying educational programs.

As authorized by OPM, agencies may make appointments under this section to positions other than those of a confidential or policy-determining character for which the competitive service requirements make impracticable the adequate recruitment and selection of sufficient numbers of students attending qualifying educational institutions or individuals who have recently completed qualifying educational programs. These positions, which may be filled in the excepted service to enable more effective recruitment from all segments of society by using means of recruiting and assessing candidates that diverge from the rules generally applicable to the competitive service, constitute Schedule D Pathways Programs. Appointments under this authority are subject to the basic qualification standards established by the Office of Personnel Management for the occupation and grade level unless otherwise stated.

### § 213.3402 Entire executive civil service; Pathways Programs.

(a) *Internship Program; Positions in the Internship Program.* Agencies may make initial appointments of Interns under this authority at any grade level, depending on the candidates' qualifications. Appointments must be made in accordance with the provisions of subpart B of part 362 of this chapter.

(b) *Recent Graduates Program; Positions in the Recent Graduates Program.* (1) Agencies may make initial appointments of Recent Graduates at any grade level, not to exceed GS-09 (or equivalent level under another pay and classification system, including the Federal Wage System (FWS)), depending on the candidates' qualifications, and the position's requirements except that:

(i) Initial appointments to positions for science, technology, engineering, or mathematics (STEM) occupations may be made at the GS-11 level, if the candidate possesses a Ph.D. or equivalent degree directly related to the STEM position the agency is seeking to fill.

(ii) Initial appointments to scientific and professional research positions at the GS-11 level for which the classification and qualification criteria

for research positions apply, if the candidate possesses a master's degree or equivalent graduate degree directly related to the position the agency is seeking to fill.

(iii) Initial appointments to scientific and professional research positions at the GS-12 level for which the classification and qualification criteria for research positions apply, if the candidate possesses a Ph.D. or equivalent degree directly related to the position the agency is seeking to fill.

(2) Appointments must be made in accordance with the provisions of subpart C of part 362 of this chapter.

(c) *Presidential Management Fellows Program.* Positions in the Presidential Management Fellows Program. Appointments under this authority may not exceed 2 years except as provided in subpart D of part 362 of this chapter. Agencies may make initial appointments of Fellows at the GS-09, GS-11, or GS-12 level (or equivalent under another pay and classification system such as the FWS), depending on the candidates' qualifications and the positions' requirements. Appointments must be made in accordance with the provisions of subpart D of part 362 of this chapter.

## PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

■ 8. The authority citation for part 302 continues to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 3302, 8151, E.O. 10577 (3 CFR 1954-1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95-454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 *et seq.*

■ 9. In § 302.101, remove paragraph (c)(8) and redesignate paragraphs (c)(9) through (11) as paragraphs (c)(8) through (10), respectively.

## PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

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

**Authority:** 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954-1958 Comp. p. 218, unless otherwise noted; and E.O. 13562. 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. 315.710 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

■ 11. In § 315.201, revise paragraphs (b)(1)(ix), (b)(1)(xiii), and (b)(1)(xix) and add paragraphs (b)(1)(xx), (b)(1)(xxi), and (b)(1)(xxii) to read as follows:

### § 315.201 Service requirement for career tenure.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ix) The date of nontemporary excepted appointment under § 213.3202(b) of this chapter (the former Student Career Experience Program) as in effect immediately before the effective date of the regulations removing that paragraph, provided the student's appointment is converted to career or career-conditional appointment under Executive Order 12015, with or without an intervening term appointment, and without a break in service of one day.

\* \* \* \* \*

(xii) The date of appointment as a Participant in the Presidential Management Fellows Program under the provisions of Executive Order 13318, provided the employee's appointment is converted without a break in service to career or career-conditional appointment under § 315.708 as in effect immediately before the effective date of the regulations that removed and reserved that section;

\* \* \* \* \*

(xix) Appointment as a career intern under Schedule B, § 213.3202(o) of this chapter, provided the employee's appointment is converted to career or career-conditional appointment under § 315.712 as in effect immediately before the effective date of the regulations that removed and reserved that section;

(xx) The date of appointment as a Pathways Participant in the Internship Program under Schedule D, § 213.3402(a) of this chapter, provided the employee's appointment is converted to career or career-conditional appointment under § 315.713(a), with or without an intervening term appointment, and without a break in service of one day;

(xxi) The date of appointment as a Pathways Participant in the Recent Graduates Program under Schedule D, § 213.3402(b) of this chapter, provided the employee's appointment is converted to career or career-conditional appointment under § 315.713(b), with or

without an intervening term appointment, and without a break in service of one day; and

(xxii) The date of appointment as a Pathways Participant in the Presidential Management Fellows Program under Schedule D, § 213.3402(c) of this chapter, provided the employee's appointment is converted to career or career-conditional appointment under § 315.713(c), with or without an intervening term appointment, and without a break in service of one day.

\* \* \* \* \*

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

#### § 315.708 [Removed and Reserved]

■ 12a. Remove and reserve § 315.708.

#### § 315.712 [Removed and Reserved]

■ 12b. Remove and reserve § 315.712.

■ 12c. Add a new § 315.713 to subpart G to read as follows:

#### § 315.713 Conversion based on service in a Pathways Program under part 362 of this chapter.

(a) *Agency authority.* An agency may convert to a career or career-conditional employment in the competitive service, without further competition, the following Pathways Participants:

(1) An Intern who has satisfactorily completed the Internship Program and meets all eligibility requirements for conversion under subpart B of part 362 of this chapter;

(2) A Recent Graduate who has satisfactorily completed the Recent Graduates Program and meets all eligibility requirements for conversion under subpart C of part 362 of this chapter; and

(3) A Presidential Management Fellow who has satisfactorily completed the Fellows Program and meets all eligibility requirements for conversion under subpart D of part 362 of this chapter.

(b) *Tenure on conversion.* An employee whose appointment is converted to career or career-conditional employment under this section becomes:

(1) A career-conditional employee except as provided in paragraph (b)(2) of this section;

(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).

(c) *Acquisition of competitive status.* A Pathways Participant converted to career or career-conditional employment in the competitive service

under this section acquires competitive status upon completion of probation.

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

■ 13. The authority citation for part 330 continues to read as follows:

**Authority:** 5 U.S.C. 1104, 1302, 3301, 3302, 3304, and 3330; E.O. 10577, 3 CFR, 1954–58 Comp., p. 218; Section 330.103 also issued under 5 U.S.C. 3327; 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).

■ 14. In § 330.211, revise paragraph (f)(3) to read as follows:

#### § 330.211 Exceptions to RPL placement priority.

\* \* \* \* \*

(f) \* \* \*

(3) An excepted service appointment under part 213 of this chapter;

\* \* \* \* \*

■ 15. In § 330.609, revise paragraph (e)(3) to read as follows:

#### § 330.609 Exceptions to CTAP selection priority.

\* \* \* \* \*

(e) \* \* \*

(3) Make an excepted service appointment under part 213 of this chapter;

\* \* \* \* \*

■ 16. In § 330.707, revise paragraph (h)(3) to read as follows:

#### § 330.707 Exceptions to ICTAP selection priority.

\* \* \* \* \*

(h) \* \* \*

(3) An excepted service appointment under part 213 of this chapter;

\* \* \* \* \*

### PART 334—TEMPORARY ASSIGNMENTS UNDER THE INTERGOVERNMENTAL PERSONNEL ACT (IPA)

■ 17. The authority citation for part 334 continues to read as follows:

**Authority:** 5 U.S.C. 3376; E.O. 11589, 3 CFR 557 (1971–1975).

■ 18. In § 334.102 revise the definition of *employee* to read as follows:

#### § 334.102 Definitions.

\* \* \* \* \*

*Employee*, for purposes of participation in this Program, means an individual serving in a Federal agency

under a career or career-conditional appointment, including a career appointee in the Senior Executive Service, an individual under an appointment of equivalent tenure in an excepted service position, or an individual employed for at least 90 days in a career position with a State, local, or Indian tribal government, institution of higher education, or other eligible organization;

\* \* \* \* \*

■ 19. Revise part 362 to read as follows:

### PART 362—PATHWAYS PROGRAMS

#### Subpart A—General Provisions

Sec.

362.101 Program administration.

362.102 Definitions.

362.103 Authority.

362.104 Agency requirements.

362.105 Filling positions.

362.106 Participant Agreement.

362.107 Conversion to the competitive service.

362.108 Program oversight.

362.109 Reporting requirements.

362.110 Transition.

#### Subpart B—Internship Program

362.201 Agency authority.

362.202 Definitions.

362.203 Filling positions.

362.204 Conversion to the competitive service.

362.205 Reduction in force and termination.

#### Subpart C—Recent Graduates Program

362.301 Program administration.

362.302 Eligibility.

362.303 Filling positions.

362.304 Movement between agencies.

362.305 Conversion to the competitive service.

362.306 Reduction in force and termination.

#### Subpart D—Presidential Management Fellows Program

362.401 Definitions.

362.402 Program administration.

362.403 Announcement, eligibility, and selection.

362.404 Appointment and extension.

362.405 Development, evaluation, promotion, and certification.

362.406 Movement between agencies.

362.407 Withdrawal and readmission.

362.408 Termination and reduction in force.

362.409 Conversion to the competitive service.

**Authority:** E.O. 13562, 75 FR 82585, 3 CFR, 2010 Comp., p. 291

#### Subpart A—General Provisions

##### § 362.101 Program administration.

(a) The Pathways Programs authorized under Executive Order 13562 consist of the following three Programs:

(1) The Internship Program;

(2) The Recent Graduates Program; and

(3) The Presidential Management Fellows (PMF) Program.

(b) An agency may rename the Programs specified in paragraphs (a)(1) through (3) of this section, provided that the agency-specific name includes the Pathways Program name identified in paragraph (a) of this section, *e.g.*, Treasury Internship Program.

(c) Agencies must provide for equal employment opportunity in the Pathways Programs without regard to race, ethnicity, color, religion, sex (including pregnancy and gender identity), national origin, age, disability, sexual orientation, genetic information, or any other non-merit-based factor.

#### § 362.102 Definitions.

For the purposes of this part:

*Advanced degree* means a professional or graduate degree, *e.g.* master's, Ph.D., J.D.

*Agency* means an agency as defined in 5 U.S.C. 105, and the Government Printing Office.

*Certificate program* means post-secondary education, in a qualifying educational institution, equivalent to at least one academic year of full-time study that is part of an accredited college-level, technical, trade, vocational, or business school curriculum.

*Director* means the Director of OPM or his or her designee.

*OPM* means the Office of Personnel Management.

*Participant Agreement* means a written agreement between the agency and each Pathways Participant.

*Program Participant or Pathways Participant* means any individual appointed under a Pathways Program.

*Qualifying educational institution* means—

(1) A public high school whose curriculum has been approved by a State or local governing body, a private school that provides secondary education as determined under State law, or a homeschool that is allowed to operate in a State; and

(2) Any of the following educational institutions or curricula that have been accredited by an accrediting body recognized by the Secretary of the U.S. Department of Education:

(i) A technical or vocational school;

(ii) A 2-year or 4-year college or university;

(iii) A graduate or professional school (*e.g.*, law school, medical school); or

(iv) A post-secondary homeschool curriculum.

#### § 362.103 Authority.

An agency may make an appointment under this part to a position defined in § 213.3402 of this chapter, provided a Memorandum of Understanding between the head of the agency or his or her designee and OPM is in effect.

#### § 362.104 Agency requirements.

(a) *Memorandum of Understanding.* In order to make any appointment under a Pathways authority, a Memorandum of Understanding (Pathways MOU) must be in effect between the head of an agency, or his or her designee, and OPM for the administration and use of Pathways Programs, to be re-executed no less frequently than every 2 years.

(b) The Director may revoke an agency's Pathways MOU when agency use of these Programs is inconsistent with Executive Order 13562, this part, or the Pathways MOU.

(c) The Pathways MOU must:

(1) Include information about any agency-specific program labels that will be used, subject to the Federal naming conventions identified in § 362.101 (*e.g.*, OPM Internship Program);

(2) State the delegations of authority for the agency's use of the Pathways Programs (*e.g.*, department-wide vs. bureaus or components);

(3) Include any implementing policy or guidance that the agency determines would facilitate successful implementation and administration for each Pathways Program;

(4) Prescribe criteria and procedures for agency-approved extensions for Recent Graduates and PMFs, not to exceed 120 days. Extension criteria should be limited to circumstances that would render the agency's compliance with the regulations impracticable or impossible;

(5) Describe how the agency will design, implement, and document formal training and/or development, as well as the type and duration of assignments, and necessary exceptions for short term temporary work, such as summer jobs;

(6) Include a commitment from the agency to:

(i) Provide to OPM any information it requests on the agency's Pathways Programs;

(ii) Adhere to any caps on the Pathways Programs imposed by the Director;

(iii) Provide information to OPM about opportunities for individuals interested in participating in the Pathways Programs, as required by this part;

(iv) Ensure adherence to the requirements for accepting applications, assessing applicants, rating and ranking

qualified candidates, and affording veterans' preference in accordance with the provisions of part 302; and

(v) Provide a meaningful on-boarding process for each Pathways Program;

(7) Identify the agency's Pathways Programs Officer (PPO), who:

(i) Must be in a position at the agency's headquarters level, or at the headquarters level of a departmental component, in a position at or higher than grade 12 of the General Schedule (GS) (or the equivalent under the Federal Wage System (FWS) or another pay and classification system);

(ii) Is responsible for administering the agency's Pathways Programs, including coordinating the recruitment and on-boarding process for Pathways Programs Participants, and coordinating the agency's Pathways Programs plan with agency stakeholders and other hiring plans (*e.g.*, merit promotion plans, plans for hiring people with disabilities);

(iii) Serves as a liaison with OPM by providing updates on the agency's implementation of its Pathways Programs, clarifying technical or programmatic issues, sharing agency best practices, and other similar duties; and

(iv) Reports to OPM on the agency's implementation of its Pathways Programs and individuals hired under these Programs, in conjunction with the agency's Pathways MOU; and

(8) Identify the agency's PMF coordinator responsible for administering the agency PMF Program and serving as a liaison with OPM.

#### § 362.105 Filling positions.

(a) *Workforce Planning.* Before filling any positions under these Programs, agencies should include measures in their workforce planning to ensure that an adequate number of permanent positions will be available to convert Pathways Participants who successfully complete their Programs.

(b) *Announcements.* When an agency accepts applications from individuals outside its own workforce, it must provide OPM information concerning Pathways Programs job opportunities as provided in each Pathways Program. For the purposes of this paragraph, "agency" means an Executive agency as defined in 5 U.S.C. 105 and the Government Printing Office. An Executive department may treat each of its bureaus or components (first major subdivision that is separately organized and clearly distinguished from other bureaus or components in work function and operation) as a separate agency or as part of one agency, but



must do so consistent with its Delegated Examining Agreement.

(c) *Appointments.* (1) Agencies must fill positions under the Pathways Programs using the excepted service appointing authority provided by § 213.3402 (a), (b), or (c) of this chapter, as applicable.

(2) Agencies must follow the procedures of part 302 of this chapter when filling a position under a Pathways Program.

(3) Appointments are subject to all the requirements and conditions governing term, career, or career-conditional employment, including investigation to establish an appointee's qualifications and suitability.

(d) *Eligibility.* Except as set forth in this section, eligibility requirements for appointment under a Pathways Program are specified in each Pathways Program.

(e) *Citizenship.* (1) An agency may appoint a non-citizen provided that:

(i) The Pathways Participant is lawfully admitted to the United States as a permanent resident or is otherwise authorized to be employed; and

(ii) The agency is authorized to pay aliens under the annual Appropriations Act ban and any agency-specific enabling and appropriation statutes.

(2) A Pathways Participant must be a United States citizen to be eligible for noncompetitive conversion to the competitive service.

(f) *Employment of relatives.* In accordance with part 310 of this chapter, a Pathways Participant may work in the same agency with a relative when there is no direct reporting relationship and the relative is not in a position to influence or control the Participant's appointment, employment, promotion or advancement within the agency.

(g) *Length of Appointments.* Except as provided in subpart B, Recent Graduate and PMF appointments under this authority may not exceed 2 years plus any agency-approved extension of up to 120 days.

(h) *Terminations.* An agency may terminate a Pathways Participant for reasons including misconduct, poor performance, or suitability under the provisions of this chapter.

(i) *Performance and progress evaluation.* Each Participant must be placed on a performance plan, as prescribed by part 430 of this chapter or other applicable law or regulation, establishing performance elements and standards that are directly related to acquiring and demonstrating the various leadership, technical, and/or general competencies expected of the Participant, as well as the elements and

standards established for the duties assigned.

(j) *Compensation.* The rules for setting pay upon the initial appointment of a Participant are governed by the pay administration rules of the pay system or pay plan of the Participant's position under the Pathways program. In determining the Participant's compensation, agencies may also use any applicable pay flexibilities available under that pay system or pay plan (e.g., recruitment, relocation, and retention incentives under part 575 of this chapter; student loan repayments under part 537; and, for General Schedule positions, special rates under part 530, subpart C, and the superior qualifications and special needs pay setting authority and the maximum payable rate rule under part 531, subpart B).

#### § 362.106 Participant Agreement.

Agencies must execute a written Participant Agreement with each Pathways Participant that clearly identifies expectations, including but not limited to:

- (a) A general description of duties;
- (b) Work schedules;
- (c) The length of the appointment and termination date;
- (d) Mentorship opportunities;
- (e) Training requirements as applicable;
- (f) Evaluation procedures that will be used for the Participant;
- (g) Requirements for continuation and successful completion of the Program; and
- (h) Minimum eligibility requirements for noncompetitive conversion to term or permanent competitive service employment according to the requirements of the applicable Pathways Program.

#### § 362.107 Conversion to the competitive service.

(a) Subject to any limits on conversion imposed by the Director, and in accordance with the provisions of each Pathways Program, an agency may noncompetitively convert an eligible Pathways Participant to a term or permanent competitive service position.

(b) A Pathways Participant who is noncompetitively converted to a competitive service term appointment may be subsequently converted noncompetitively to a permanent competitive service position.

(c) *Noncompetitive conversion.* (1) An Intern may be converted to a position within the employing agency or any other agency within the Federal Government.

(2) A Recent Graduate or Presidential Management Fellow may be converted

within the employing agency. Agencies may not convert Recent Graduates or Presidential Management Fellows from other agencies.

(d) The provisions of the career transition assistance programs in subparts B, F and G of part 330 of this chapter do not apply to conversions made under this part.

(e) Time spent serving as a Pathways Participant counts towards career tenure when the individual is noncompetitively converted to a permanent position in the competitive service upon completion of the Program, with or without an intervening term appointment, and without a break in service of one day.

(f) Though Pathways Participants are eligible for noncompetitive conversion to the competitive service upon successful completion of their Program and any other applicable conversion requirements, service in a Pathways Program confers no right to further employment in either the competitive or excepted service. An agency wishing to convert a Pathways Participant must therefore execute the required actions to do so.

#### § 362.108 Program oversight.

(a) The Director may establish caps on the number of Pathways Participants who may be appointed or converted in any Pathways Program within a specific agency or throughout the Federal Government.

(b) The Director may establish such caps based on agency or Governmentwide use of the Pathways Programs, input from the Executive agencies, and consideration of the following:

- (1) Agency MOU compliance;
- (2) Agency approach to entry-level hiring;
- (3) Agency engagement in sound workforce planning to ensure that an adequate number of permanent positions will be available to which Pathways Participants who successfully complete their Programs can be converted;
- (4) Agency record in using the Pathways Programs as a supplement to competitive examining, rather than as a substitute for it;
- (5) Agency record of publicizing their positions in the Pathways Programs and recruiting and selecting from a broad array of sources; and
- (6) Any other information the Director deems relevant.

(c) In the event the Director determines that any caps would be appropriate, OPM will publish notice of such caps in a manner chosen by the Director.

**§ 362.109 Reporting requirements.**

Agencies must provide information requested by OPM regarding workforce planning strategies that includes:

(a) Information on the entry-level occupations targeted for filling positions under this part in the coming year;

(b) The percentage of overall hiring expected in the coming year under the Internship, Recent Graduates, and Presidential Management Fellows Programs; and

(c) For the previous year:

(1) The number of individuals initially appointed under each Pathways Program;

(2) The percentage of the agency's overall hires made from each Pathways Program;

(3) The number of Pathways Participants, per Program, converted to the competitive service; and

(4) The number of Pathways Participants, per Program, who were separated.

**§ 362.110 Transition.**

OPM will provide written guidance for the orderly transition of employees currently appointed as students under the Student Educational Employment Program and current PMFs to the applicable Pathways Program and may revise that guidance as necessary.

**Subpart B—Internship Program****§ 362.201 Agency authority.**

The Internship Program provides students in high schools, colleges, trades schools and other qualifying educational institutions, as defined in § 362.102 of this part, the opportunity to explore Federal careers as paid employees while completing their education. Students appointed under this authority are referred to as Interns.

**§ 362.202 Definitions.**

In this subpart:

*Student* means an individual accepted for enrollment or enrolled and seeking a degree (diploma, certificate, etc.) in a qualifying educational institution, on a full or half-time basis (as defined by the institution in which the student is enrolled), including awardees of the Harry S. Truman Foundation Scholarship Program under Public Law 93–842. Students need not be in actual physical attendance, so long as all other requirements are met. An individual who needs to complete less than the equivalent of half an academic/vocational or technical course-load immediately prior to graduating is still considered a student for purposes of this Program.

**§ 362.203 Filling positions.**

(a) *Announcement.* (1) When an agency accepts applications from individuals outside its own workforce, it must provide OPM information concerning opportunities to participate in the agency's Internship Program. For the purposes of this paragraph (a), "agency" means an Executive agency as defined in 5 U.S.C. 105 and the Government Printing Office. An Executive department may treat each of its bureaus or components (first major subdivision that is separately organized and clearly distinguished from other bureaus or components in work function and operation) as a separate agency or as part of one agency, but must do so consistent with its Delegated Examining Agreement. The information must include:

(i) Position title, series and grade;

(ii) Geographic location of the position, and

(iii) How to apply. A public source (e.g., a link to the agency's Web site with information on how to apply) for interested individuals to seek further information about how to apply for Internship opportunities; and

(iv) Any other information OPM considers appropriate.

(2) OPM will publish information on Internship opportunities in such form as the Director may determine.

(b) *Eligibility.* Except as provided in paragraph (h) of this section, Interns must meet the definition of *student* in § 362.202 throughout the duration of their appointment.

(c) *Qualifications.* Individuals may be evaluated against either agency-developed standards or the OPM Qualification Standard for the position being filled.

(d) *Appointments.* (1) An agency may make Intern appointments, pursuant to its Pathways MOU, using the Schedule D excepted service appointing authority provided in § 213.3402(a) of this chapter.

(2) Appointments may be made to any position for which the individual is qualified. The duties of the position to which the individual is appointed should be related to either the Intern's academic or career goals.

(3) An agency may:

(i) Appoint an Intern for an initial period expected to last more than 1 year. Intern appointments are not required to have an end date. However, agencies are required to specify an end date of the appointment in the Participant Agreement with the Intern; or

(ii) Appoint an Intern on a temporary basis, not to exceed 1 year, to complete temporary projects, to perform labor-

intensive tasks not requiring subject-matter expertise, or to fill traditional summer jobs. The agency may extend these temporary appointments as provided in part 213 of this chapter.

(e) *Promotion.* An agency may promote any Intern who meets the qualification requirements for the position. This provision does not confer entitlement to promotion.

(f) *Classification.* (1) Intern positions under the General Schedule or appropriate pay plan must be classified to the –99 series of the appropriate occupational group.

(2) Intern positions under the Federal Wage System must be classified to the –01 series of the appropriate occupational group.

(g) *Schedules.* There are no limitations on the number of hours an Intern can work per week (so long as any applicable laws and regulations governing overtime and hours of work are adhered to). Agencies and students should agree on a formally-arranged schedule of school and work so that:

(1) Work responsibilities do not interfere with academic schedule;

(2) Completion of the educational program (awarding of diploma/certificate/degree) and the Internship Program is accomplished in a reasonable and appropriate timeframe;

(3) The agency is informed of and prepared for the student's periods of employment; and

(4) Requirements for noncompetitive conversion to a term or permanent position in the competitive service are understood by all parties.

(h) *Breaks in program.* A break in program is defined as a period of time when an Intern is working but is unable to go to school, or is neither attending classes nor working at the agency. An agency may use its discretion in either approving or denying a request for a break in program.

**§ 362.204 Conversion to the competitive service.**

(a) An agency may noncompetitively convert an Intern who is a U.S. citizen, to a term or permanent appointment in the competitive service.

(b) To be eligible for conversion, the Intern must have:

(1) Completed at least 640 hours of work experience acquired through the Internship Program, except as provided in paragraphs (c) and (d) of this section, while enrolled as a full-time or part-time, degree- or certificate-seeking student;

(2) Completed a course of academic study, within the 120-day period preceding the appointment, at a qualifying educational institution

conferring a diploma, certificate, or degree;

(3) Received a favorable recommendation for appointment by an official of the agency or agencies in which the Intern served;

(4) Met the qualification standards for the position to which the Intern will be converted; and

(5) Met agency-specific requirements as specified in the agency's Participant Agreement with the Intern.

(c)(1) An agency may evaluate, consider, and grant credit for up to one-half (320 hours) of the 640-hour service requirement in paragraph (b)(1) of this section for comparable non-Federal internship experience in a field or functional area related to the student's target position and acquired while the student:

(i) Worked in, but not for, a Federal agency, pursuant to a formal internship agreement, comparable to the Internship Program under this subpart, between the agency and an accredited academic institution;

(ii) Worked in, but not for, a Federal agency, pursuant to a written contract with a third-party internship provider officially established to provide internship experiences to students that are comparable to the Internship Program under this subpart; or

(iii) Served as an active duty member of the armed forces (including the National Guard and Reserves), as defined in 5 U.S.C. 2101, provided the veteran's discharge or release is under honorable conditions.

(2) Student volunteer service under part 308 of this chapter and other Federal programs designed to give internship experience to students (*e.g.*, fellowships and similar programs), may be evaluated, considered, and credited under this section when the agency determines the experience is comparable to experience gained in the Internship Program.

(d) An agency may waive up to one-half (*i.e.*, 320 hours) of the 640-hour minimum service requirement in paragraph (b)(1) of this section when an Intern completes 320 hours of career-related work experience under an Internship Program appointment and demonstrates high potential by outstanding academic achievement and exceptional job performance. For purposes of this paragraph:

(1) *Outstanding academic achievement* means an overall grade point average of 3.5 or better, on a 4.0 scale; standing in the top 10 percent of the student's graduating class; and/or induction into a nationally-recognized scholastic honor society.

(2) *Exceptional job performance* means a formal evaluation conducted by the student's Internship supervisor(s), consistent with the applicable performance appraisal program that results in a rating of record (or summary rating) of higher than Fully Successful or equivalent.

(e) An agency may not grant a credit or waiver (or a combination of a credit and waiver) totaling more than 320 hours of the 640-hour service requirement in paragraph (b)(1) of this section.

#### **§ 362.205 Reduction in force (RIF) and termination.**

(a) *Reduction in force.* Interns are covered by part 351 of this chapter for purposes of RIF.

(1) *Tenure Groups.* (i) An Intern serving under an appointment for an initial period expected to last more than 1 year is in excepted service Tenure Group II.

(ii) A temporary Intern, serving under an appointment not to exceed 1 year, who has not completed 1 year of service, is in excepted service Tenure Group 0.

(iii) A temporary Intern serving under an appointment not to exceed 1 year, who has completed 1 year of current, continuous service, is in excepted service Tenure Group III.

(2) [Reserved]

(b) *Termination.* As a condition of employment, an Intern appointment expires:

(1) 120 days after completion of the designated academic course of study, unless the Participant is selected for noncompetitive conversion under § 362.204, or

(2) Upon expiration of the temporary Internship appointment.

#### **Subpart C—Recent Graduates Program**

##### **§ 362.301 Program administration.**

The Recent Graduates Program provides an entry-level developmental experience designed to lead to a civil service career in the Federal Government after successfully completing 1 year under the Program, unless the training requirements of the position warrant a longer and more structured training program. Employment under the Recent Graduates Program may not exceed 2 years plus any agency approved extension of up to an additional 120 days. Individuals appointed under this authority are referred to as Recent Graduates. An agency wishing to participate in the Recent Graduates Program must:

(a) Identify in the MOU the duration of its Recent Graduates Program, including any criteria used to determine the need for a longer and more structured training program that exceeds 1 year;

(b) Ensure, within 90 days of appointment, that each Recent Graduate is assigned a mentor who is an employee outside the Recent Graduates' chain of command;

(c) Ensure, within 45 days of appointment, that each Recent Graduate has an Individual Development Plan (IDP) that is approved by his or her supervisor; and

(d) Provide at least 40 hours of formal interactive training per year that advances the goals and competencies outlined in each Recent Graduate's IDP. Mandatory annual training, such as information security and ethics training, does not count towards the 40-hour requirement.

##### **§ 362.302 Eligibility.**

(a) A Recent Graduate is an individual who obtained a qualifying associates, bachelors, master's, professional, doctorate, vocational or technical degree or certificate from a qualifying educational institution, within the previous 2 years or other applicable period provided below.

(b)(1) Except as provided in paragraph (b)(2) of this section, an individual may apply for a position in the Recent Graduates Program only if the individual's application is received not later than 2 years after the date the individual completed all requirements of an academic course of study leading to a qualifying associates, bachelor's, master's, professional, doctorate, vocational or technical degree or certificate from a qualifying educational institution.

(2) A veteran, as defined in 5 U.S.C. 2108, who, due to a military service obligation, was precluded from applying to the Recent Graduates Program during any portion of the 2-year eligibility period described in paragraph (b)(1) of this section shall have a full 2-year period of eligibility upon his or her release or discharge from active duty. In no event, however, may the individual's eligibility period extend beyond 6 years from the date on which the individual completed the requirements of an academic course of study.

##### **§ 362.303 Filling positions.**

(a) *Announcement.* (1) When an agency accepts applications from individuals outside its own workforce, it must provide OPM information concerning opportunities to participate in the agency's Recent Graduates

Program. For the purposes of this paragraph, “agency” means an Executive agency as defined in 5 U.S.C. 105 and the Government Printing Office. An Executive department may treat each of its bureaus or components (first major subdivision that is separately organized and clearly distinguished from other bureaus or components in work function and operation) as a separate agency or as part of one agency, but must do so consistent with its Delegated Examining Agreement. The information must include:

- (i) Position title, series and grade;
- (ii) Geographic location of the position;
- (iii) How to apply. A public source (e.g., a link to the agency’s Web site with information on how to apply for interested individuals to seek further information about how to apply); and
- (iv) Any other information OPM considers appropriate.

(2) OPM will publish information on Recent Graduate opportunities in such form as the Director may determine.

(b) *Appointments.* (1) An agency may make appointments to the Recent Graduates Program, pursuant to a Pathways MOU executed with the OPM, under Schedule D of the excepted service in accordance with part 302 of this chapter.

(2) An agency must appoint a Recent Graduate using the excepted service appointing authority provided by § 213.3402(b) of this chapter.

(3)(i) An agency may make an initial appointment of a Recent Graduate to any position filled under this authority for which the Recent Graduate qualifies, up to the GS–09 level (or equivalent under another pay and classification system, such as the Federal Wage System), except as provided in paragraphs (b)(3)(ii) through (iv) of this section.

(ii) Initial appointments to positions for science, technology, engineering, or mathematics (STEM) occupations may be made at the GS–11 level, if the candidate possesses a Ph.D. or equivalent degree directly related to the STEM position the agency is seeking to fill.

(iii) Initial appointments to scientific and professional research positions at the GS–11 level for which the classification and qualification criteria for research positions apply, if the candidate possesses a master’s degree or equivalent graduate degree directly related to the position the agency is seeking to fill.

(iv) Initial appointments to scientific and professional research positions at the GS–12 level for which the classification and qualification criteria

for research positions apply, if the candidate possesses a Ph.D. or equivalent degree directly related to the position the agency is seeking to fill.

(v) Positions must have progressively more responsible duties that provide career advancement opportunities (i.e., positions must provide for career ladder advancement).

(c) *Extensions.* An agency may extend the Program period for up to an additional 120 days to cover rare or unusual circumstances or situations. The agency’s Pathways MOU must identify criteria for approving extensions.

(d) *Qualifications.* An agency must evaluate candidates using OPM Qualification Standards for the occupation and grade level of the position being filled.

(e) *Promotions.* An agency may promote any Recent Graduate who meets the qualification requirements for the position. This provision does not confer entitlement to promotion.

(f) *Trial period.* The duration of the Recent Graduates appointment in the excepted service is a trial period.

#### § 362.304 Movement between agencies.

(a) A Recent Graduate may apply for and accept a new Recent Graduates appointment with another agency covered by this part, as long as the agency meets all the requirements for participating in the Recent Graduates Program.

(b) To move to the new agency, the Recent Graduate must separate from the current employing agency.

(c) The new employing agency must appoint the Recent Graduate without a break in service.

(d) Time served under the previous agency’s Recent Graduates Program is credited toward the Program requirements for noncompetitive conversion eligibility to the competitive service. Because there is no break in service, the Recent Graduate does not begin a new period in the Program upon moving to the new agency.

(e) The new employing agency’s plan must identify requirements for Program completion and eligibility for noncompetitive conversion.

#### § 362.305 Conversion to the competitive service.

(a) An agency may noncompetitively convert a Recent Graduate who is a U.S. citizen to a competitive service term or permanent position when the Recent Graduate has:

(1) Successfully completed at least 1-year of continuous service in addition to all the requirements of the Recent Graduates Program;

(2) Demonstrated successful job performance consistent with the applicable performance appraisal program established under the agency’s approved performance appraisal system that results in a rating of record (or summary rating) of at least Fully Successful or equivalent and a recommendation for conversion by the first-level supervisor; and

(3) Met the OPM Qualification Standard for the competitive service position to which the Recent Graduate will be converted.

(b) An agency must make the noncompetitive conversion effective on the date the service requirement is met, or at the end of an agency-approved extension, if applicable.

#### § 362.306 Reduction in force and termination.

(a) *Reduction in force.* Recent Graduates are in excepted service Tenure Group II for purposes of § 351.502 of this chapter. Expiration of the Recent Graduates appointment is not otherwise subject to part 351 of this chapter.

(b) *Terminations.* (1) Except as provided in paragraph (b)(2) of this section, as a condition of employment, a Recent Graduate appointment expires at the end of the agency prescribed Program period, plus any agency-approved extension, unless the Participant is selected for noncompetitive conversion under § 362.306.

(2) A Recent Graduate who held a career-conditional or career appointment in an agency immediately before entering the Program, and fails to complete the Program for reasons that are not related to misconduct, poor performance, or suitability, may, at the agency’s discretion, be placed in a permanent competitive service position, as appropriate, in the employing agency.

#### Subpart D—Presidential Management Fellows Program

##### § 362.401 Definitions.

For purposes of this subpart:

*Agency PMF Coordinator* is an individual, at the appropriate agency component level, who coordinates the placement, development, and other Program-related activities of PMFs appointed in his or her agency. The agency Pathways Programs Officer may also serve as the PMF Coordinator.

*Executive Resources Board (ERB)* has the same meaning as specified in § 317.501(a) of this section; in those agencies that are not required to have an ERB pursuant to that section, it means the senior agency official or officials

who have been given responsibility for executive resources management and oversight by the agency head.

*Presidential Management Fellow (PMF)* or *Fellow* is an individual appointed, at the GS-9, GS-11, or GS-12 level (or equivalent under a non-GS pay and classification system such as the Federal Wage System), in the excepted service under § 213.3402(c) of this chapter.

**§ 362.402 Program administration.**

(a) The Director may determine the number of Fellows who may be appointed during any given year. This determination will be based on input from the Chief Human Capital Officers Council, as well as input from agencies not represented on the Council.

(b) Thereafter, subject to the provisions and requirements of this chapter, an agency may appoint individuals selected by the Director as Fellows finalists according to its short-, medium-, and long-term senior leadership and related (senior policy, professional, technical, and equivalent) recruitment, development, and succession requirements.

(c) The Director will establish the qualification requirements for evaluating applicants for the PMF Program.

(d) An agency that hires Fellows in field locations outside the Washington, DC, Metropolitan Area may:

(1) In advance of making the appointment, discuss whether the finalist wants to do a developmental rotation to agency headquarters and, if so, make a commitment to allow and fund such a rotation, to the maximum extent practicable, in accordance with § 362.405(b) of this part; and

(2) Promote interaction among regional Fellows with the agency Federal Executive Board (FEB) and permit Fellows to attend FEB-sanctioned activities in that region.

**§ 362.403 Announcement, eligibility, and selection.**

(a) OPM will announce the opportunity to apply for the PMF Program and conduct a competition for the selection of finalists as set forth in this section.

(b) A Presidential Management Fellow is an individual who, within the previous 2 years, completed an advanced degree from a qualifying educational institution.

(c) An individual may apply for the PMF Program if:

(1) The individual has obtained an advanced degree within the 2-year period preceding the Program announcement described in paragraph (a) of this section, or

(2) The individual is still a student attending a qualifying educational institution, as defined in paragraph (2)(iii) of the definition of *Qualifying educational institution* in § 362.102, and he or she expects to complete a qualifying advanced degree by August 31 of the academic year in which the competition is held.

(d) An individual may apply for the PMF Program more than once as long as he or she meets the eligibility criteria. However, if an individual becomes a finalist and subsequently applies for the Program during the next open announcement, the individual will forfeit his or her status as a finalist.

(e) OPM will select Fellow finalists based on an OPM evaluation of each candidate's experience and accomplishments according to his or her application and the results of a rigorous structured assessment process.

(f) OPM will publish and provide participating agencies the Fellow finalists list for appointment consideration.

**§ 362.404 Appointment and extension.**

(a) *Appointments.* (1) An agency may make 2-year appointments to the PMF Program, pursuant to a Pathways MOU executed with the OPM, under Schedule D of the excepted service in accordance with part 302 of this chapter.

(2) An agency must appoint a PMF using the excepted service appointing authority provided by § 213.3402(c) of this chapter.

(3) OPM will establish an eligibility period during which agencies may appoint Fellow finalists.

(b) *Extension.* An agency may extend a Fellow's appointment for up to 120 days to cover rare or unusual circumstances or situations. The agency's Pathways MOU must identify the criteria for approving extensions.

(c) *Grade.* An agency may appoint a Fellow at the GS-09, GS-11, or GS-12 level or equivalent depending on his or her qualifications.

(d) *Trial period.* The duration of the PMF appointment in the excepted service is a trial period.

**§ 362.405 Development, evaluation, promotion, and certification.**

(a) *Individual Development Plans.* An agency must approve, within 45 days, an Individual Development Plan (IDP) for each of its Fellows that sets forth the specific developmental activities that are mutually agreed upon by each Fellow and his or her supervisor. The IDP must be developed in consultation with the Agency PMF Coordinator and/or the mentor assigned to the Fellow under paragraph (b)(3) of this section.

(b) *Required developmental activities.*

(1) OPM will provide an orientation program for each class or cohort of Fellows and will provide information on available training opportunities known to it.

(2) The agency must provide each Fellow a minimum of 80 hours of formal interactive training per year that addresses the competencies outlined in the IDP. Mandatory annual training, such as information security and ethics training, does not count towards the 80-hour requirement.

(3) Within the first 90 days of a Fellow's appointment, the agency must assign the Fellow a mentor, who is a managerial employee outside the Fellow's chain of command.

(4) The agency must provide each Fellow with at least one rotational or developmental assignment with full-time management and/or technical responsibilities consistent with the Fellow's IDP. With respect to this requirement:

(i) Each Fellow must receive at least one developmental assignment of 4 to 6 months in duration, with management and/or technical responsibilities consistent with the Fellow's IDP. As an alternative, a Fellow may choose to participate in an agency-wide initiative or other Presidential or Administration initiative that will provide the Fellow with the experience he or she would have gained through the 4-to-6-month developmental assignment; and

(ii) The developmental assignment may be within the Fellow's organization, in another component of the agency, or in another Federal agency.

(5) The Fellow may receive other short-term rotational assignments of 1 to 6 months in duration, at the agency's discretion.

(6) Upon the request of OPM, the appointing agency must make Fellows available to assist in the assessment process for subsequent PMF classes. Any interactive training provided to a Fellow in connection with assisting OPM in the assessment process may be counted toward the minimum 80-hour training requirement in paragraph (b)(2) of this section.

(c) *Promotion.* An agency may promote any Fellow who meets the qualification requirements for the position. This provision does not confer entitlement to promotion.

(d) *Certification of completion.* (1) Upon completion of the Program, the agency's ERB must evaluate each Fellow and determine whether it can certify in writing that the Fellow met all of the requirements of the Program, including the performance and developmental

expectations set forth in the individual's performance plan and IDP. The ERB may consult the Fellow's mentor in reaching its determination.

(2) The ERB must notify the Fellow of its decision regarding certification of successful completion.

(3) ERB certifications must be forwarded to OPM.

(4)(i) If the ERB decides not to certify a Fellow, the Fellow may request reconsideration of that determination by the Director. Such reconsideration must be requested in writing, with appropriate documentation and justification, within 15 calendar days of the date of the agency's decision. The Director's decision on reconsideration is not subject to appeal.

(ii) The Fellow may continue in the Program pending the outcome of his or her request for reconsideration. The agency must continue to provide appropriate developmental activities during this period.

#### **§ 362.406 Movement between agencies.**

(a) At any time during his or her appointment in the Program, a Fellow may move to another agency covered by this part, as long as the agency meets all the requirements for participating in the PMF Program. To move from one agency to another during the Program, the Fellow must separate from the current agency. The new employing agency must appoint the Participant without a break in service.

(b) The Fellow does not begin a new Program period upon appointment by the new employing agency. Because there is no break in service, time served under the previous Program appointment will apply towards the completion of the Program with the new employing agency.

(c) An agency must notify OPM when appointing a Fellow currently appointed in another agency.

(d) If the move occurs within the first 6 months of the Fellow's appointment, the original appointing agency may request reimbursement of one-quarter of the placement fee from the new appointing agency.

#### **§ 362.407 Withdrawal and readmission.**

(a) *Withdrawal.* (1) A Fellow may withdraw from the Program at any time. Such withdrawal will be treated as a resignation from the Federal service; however, any obligations established upon admission and appointment (for example, as a result of accepting a recruitment incentive under part 575 of this chapter) still apply.

(2) A Fellow who held a permanent appointment in the competitive service in an agency immediately before

entering the Program, and who withdraws from the Program for reasons that are not related to misconduct, poor performance, or suitability, may, at the employing agency's discretion, be placed in a permanent competitive service position, as appropriate, in that agency. The employing agency's determination in this regard is not subject to appeal.

(3) An agency must notify OPM when a Fellow withdraws from the Program.

(b) *Readmission.* (1) If a Fellow withdraws from the Program for reasons that are related to misconduct, poor performance, or suitability, as determined by the agency, he or she will not be readmitted to the Program at any time.

(2) If a Fellow withdraws from the Program for reasons that are not related to misconduct, poor performance, or suitability, he or she may petition the employing original agency for readmission and reappointment to the Program. Such a petition must be in writing and include appropriate justification. The agency may approve or deny the request for readmission. An agency must submit written notification of approved readmission requests to OPM. The individual's status in the Program upon readmission and reappointment must be addressed as part of the agency's submission. The Director may overrule the agency's decision to readmit and reappoint, and the Director's decision is not subject to appeal.

#### **§ 362.408 Termination and reduction in force.**

(a) *Termination.* (1) An agency may terminate a Fellow for reasons related to misconduct, poor performance, or suitability.

(2) As a condition of employment, a Fellow's appointment expires at the end of the 2-year Program period, plus any agency-approved extension, unless the Participant is selected for noncompetitive conversion. If an agency does not convert a Fellow at the end of the Program, as provided in § 362.409 of this part, or extend the individual's initial appointment under § 362.404, the appointment expires when certification for Program completion is denied or when the Director denies the agency's request for an extension.

(3) The agency must provide written notification to OPM when a Fellow is terminated for any reason.

(b) *Reduction in force.* Fellows are in the excepted service Tenure Group II for purposes of § 351.502 of this chapter.

#### **§ 362.409 Conversion to the competitive service.**

(a) A Fellow must complete the Program within the time limits prescribed in § 362.404 of this part, including any agency-approved extension. At the conclusion of that period, the Fellow may be converted, as provided in paragraph (b) of this section.

(b) An agency may convert, without a break in service, an ERB-certified Fellow to a competitive service term or permanent appointment.

### **PART 531—PAY UNDER THE GENERAL SCHEDULE**

■ 20. The authority citation for part 531 continues to read as follows:

**Authority:** 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Public Law 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5305, 5333, 5334(a) and (b), and 7701(b)(2); Subpart D also issued under 5 U.S.C. 5335 and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304 and 5305; E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

#### **Subpart B—Determining Rate of Basic Pay**

■ 21. In § 531.212, revise paragraph (a)(3)(v) to read as follows:

#### **§ 531.212 Superior qualifications and special needs pay-setting authority.**

(a) \* \* \*

(3) \* \* \*

(v) Employment under an Internship Program appointment under § 213.3402(a) of this chapter.

\* \* \* \* \*

### **PART 536—GRADE AND PAY RETENTION**

■ 22. The authority citation for part 536 continues to read as follows:

**Authority:** 5 U.S.C. 5361–5366; sec. 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103–89), 107 Stat. 981; § 536.301(b) also issued under 5 U.S.C. 5334(b); § 536.308 also issued under section 301(d)(2) of the Federal Workforce Flexibility Act of 2004 (Pub. L. 108–411), 118 Stat. 2305; § 536.405 also issued under 5 U.S.C. 552, Freedom of Information Act, Public Law 92–502.

#### **Subpart A—General Provisions**

■ 23. In § 536.103, revise the definition of *management action* to read as follows:

#### **§ 536.103 Definitions.**

\* \* \* \* \*

Management action means an action (not for personal cause) by an agency official not initiated or requested by an employee which may adversely affect the employee's grade or rate of basic pay. However, an employee's placement in or transfer to a position under a formal employee development program established by an agency for recruitment and employee advancement purposes (e.g., Recent Graduates Program) is considered a management action even though the employee initiates or requests such placement or transfer.

Subpart C—Pay Retention

24. In § 536.301, revise paragraph (a)(5) to read as follows:

536.301 Mandatory pay retention. (a) A management action that places an employee in a formal employee development program generally utilized Governmentwide (e.g., Recent Graduates Program); or

PART 537—REPAYMENT OF STUDENT LOANS

25. The authority citation for part 537 continues to read as follows:

Authority: 5 U.S.C. 5379(g).

26. In § 537.102, revise paragraphs (6) and (7) in the definition of time-limited appointment to read as follows:

537.102 Definitions. Time-limited appointment (6) A Presidential Management Fellows Program appointment under § 213.3402(c) of this chapter; (7) A Recent Graduates Program appointment under § 213.3402(b) of this chapter; and

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart B—Advances in Pay

27. Revise the authority citation for subpart B of part 550 to read as follows:

Authority: 5 U.S.C. 5524a, 5545a(h)(2)(B); E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316.

28. In § 550.202, revise paragraph (c) of the definition of newly appointed to read as follows:

§ 550.202 Definitions.

Newly appointed (c) A permanent appointment in the competitive service following termination of employment in an Internship Program (as described in 5 CFR part 362, subpart B), provided such employee—

Subpart G—Severance Pay

29. The authority citation for subpart G of part 550 continues to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257, 3 CFR, 1964–1965 Comp., p. 357.

30. In § 550.703, revise paragraph (f)(5) in the definition of nonqualifying appointment to read as follows:

550.703 Definitions. Nonqualifying appointment (f) (5) A Presidential Management Fellows Program appointment under § 213.3402(c) of this chapter.

Subpart M—Firefighter Pay

31. The authority citation for subpart M of part 550 continues to read as follows:

Authority: 5 U.S.C. 5545b, 5548, and 5553.

32. In § 550.1302, revise paragraph (2)(iii) of the definition of firefighter to read as follows:

550.1302 Definitions. Firefighter (2) (iii) Covered by the General Schedule and classified in the GS–0099, General Student Trainee Series (as required by § 362.203(e) of this chapter), if the position otherwise would be classified in the GS–0081 series.

PART 575—RECRUITMENT, RELOCATION, AND RETENTION INCENTIVES; SUPERVISORY DIFFERENTIALS; AND EXTENDED ASSIGNMENT INCENTIVES

33. The authority citation for part 575 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2) and 5307; subparts A and B also issued under 5 U.S.C.

5753 and sec. 101, Pub. L. 108–411, 118 Stat. 2305; subpart C also issued under 5 U.S.C. 5754 and sec. 101, Pub. L. 108–411, 118 Stat. 2305; subpart D also issued under 5 U.S.C. 5755; subpart E also issued under 5 U.S.C. 5757 and sec. 207 of Pub. L. 107–273, 116 Stat. 1780.

Subpart A—Recruitment Incentives

34. In § 575.102, revise paragraph (3)(vi) in the definition of newly appointed to read as follows:

575.102 Definitions. Newly appointed (3) (vi) Employment under an Internship Program appointment under § 213.3402(a) of this chapter.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

35. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–3, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

36. In § 890.102, revise paragraph (c)(2) to read as follows:

890.102 Coverage. (c) (2) An employee who is expected to work less than 6 months in each year, except for an employee who receives an appointment of at least 1 year's duration as an Intern under § 213.3402(a) of this chapter and who is expected to be in a pay status for at least one-third of the total period of time from the date of the first appointment to the completion of the Internship Program.