

exclude partnerships in which one partner stays at home while the other is the primary breadwinner.

We have made a slight change to the wording of criterion (vii). That criterion is intended to prohibit recognition of domestic partnerships between individuals who are related in a manner that would preclude them from marrying were they of opposite sexes. We are maintaining this criterion, but clarifying that the determination is to be made at the time the domestic partnership is formed. It should not be re-examined if the couple relocates to a different jurisdiction. This approach is consistent with treatment of opposite-sex marriages.

For the reasons outlined in the President's June 17, 2009, and June 2, 2010, memoranda, these regulations extend domestic partnership benefits only to same-sex couples who are currently unable to obtain spousal benefits by entering a Federally recognized marriage.

Documentation or proof of a family member relationship for purposes of noncompetitive appointment eligibility would be based on each agency's internal policies. Agencies have authority to request additional information in cases of suspected abuse or fraud, and they would continue to be able to exercise that authority under these proposed regulations. Agencies would be expected to apply the same standards for verification for all dependent and family member relationships, including domestic partners.

#### **E.O. 12866 and E.O. 13563 Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866 and Executive Order 13563.

#### **Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal agencies and employees.

#### **List of Subjects**

Government employees.

U.S. Office of Personnel Management.

**John Berry,**  
Director.

Accordingly, OPM is proposing to amend 5 CFR part 315 as follows:

#### **PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT**

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

**Authority:** 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp. p. 218, unless otherwise noted; and E.O. 13162. 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. 2560. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(c). Sec. 315.611 also issued under 5 U.S.C. 3304(f). Sec. 315.612 also issued under E.O. 13473. Sec. 315.708 also issued under E.O. 13318, 3 CFR, 2004 Comp. p. 265. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp. p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp. p. 264.

2. In § 315.608, paragraph (e)(1) is revised and paragraphs (e)(6) and (e)(7) are added to read as follows:

#### **§ 315.608 Noncompetitive appointment of certain former overseas employees.**

(e) \* \* \*

(1) *Family member.* An unmarried child under age 23, a spouse, or a domestic partner. An individual must have been a family member at the time he or she met the overseas service requirement and other conditions but does not need to be a family member at the time of noncompetitive appointment in the United States.

\* \* \* \* \*

(6) *Domestic partner.* A person in a domestic partnership with an employee or annuitant of the same sex

(7) *Domestic partnership.* A committed relationship between two adults, of the same sex, in which the partners:

(i) Are each other's sole domestic partner and intend to remain so indefinitely;

(ii) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(iii) Are at least 18 years of age and mentally competent to consent to contract;

(iv) Share responsibility for a significant measure of each other's financial obligations;

(v) Are not married or joined in a civil union to anyone else;

(vi) Are not the domestic partner of anyone else;

(vii) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(viii) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, shall be determined by the agency; and

(ix) Are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

\* \* \* \* \*

[FR Doc. 2011–18971 Filed 7–27–11; 8:45 am]

**BILLING CODE 6325–39–P**

#### **OFFICE OF PERSONNEL MANAGEMENT**

#### **5 CFR Parts 550 and 591**

**RIN 3206–AM31**

#### **Change in Definitions; Evacuation Pay and the Separate Maintenance Allowance at Johnston Island**

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The U.S. Office of Personnel Management is proposing to revise its regulations on evacuation pay and the separate maintenance allowance for duty at Johnston Island to ensure that same-sex domestic partners of Federal employees and the children of such domestic partners have access to these benefits to the same extent as spouses of Federal employees and their children. These changes would fulfill the Administration policy expressed in Sections 1(a)(v) and (a)(vii) of the President's June 2, 2010, memorandum on the "Extension of Benefits to Same-Sex Domestic Partners of Federal Employees."

**DATES:** Comments must be received on or before September 26, 2011.

**ADDRESSES:** You may submit comments, identified by RIN number "3206–AM31" using either of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

*Mail:* Jerome D. Mikowicz, Deputy Associate Director, Pay and Leave, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415-8200.

**FOR FURTHER INFORMATION CONTACT:** Kurt Springmann, by telephone at (202) 606-2858 or by e-mail at *pay-leave-policy@opm.gov*.

**SUPPLEMENTARY INFORMATION:** The U.S. Office of Personnel Management (OPM) is issuing proposed regulations to amend its current regulations on evacuation pay at title 5 CFR, part 550, subpart D, and separate maintenance allowance for duty at Johnston Island, at title 5 CFR, part 591, subpart D. These changes would ensure that same-sex domestic partners of Federal employees and the children of such domestic partners have the same access to these benefits that spouses of Federal employees and their children have.

### Background

On June 17, 2009, President Obama issued a memorandum regarding Federal benefits and non-discrimination that requested the Secretary of State and the Director of OPM, in consultation with the Department of Justice, to extend previously identified statutorily based benefits that those agencies believed could be extended to qualified same-sex domestic partners of Federal employees consistent with underlying law. This memorandum also directed the heads of executive departments and agencies, in consultation with OPM, to conduct a review of the benefits offered by their respective departments and agencies to determine whether they had the authority to extend such benefits to the same-sex domestic partners of Federal employees. The memorandum further requested that OPM, in consultation with the Department of Justice, make recommendations regarding any additional measures that could be taken to provide benefits to the same-sex domestic partners of Federal Government employees, consistent with existing law.

On June 2, 2010, the President issued another memorandum, entitled "Extension of Benefits to Same-Sex Domestic Partners of Federal Employees," that published the results of the review and identified the benefits that could be extended to same-sex domestic partners and their families. This proposed regulation responds to two portions of the President's memorandum, which identified additional benefits OPM had concluded it could offer and requested OPM to (1) "clarify that under appropriate circumstances, employees' same-sex

domestic partners and their children qualify as dependents for purposes of evacuation payments made under 5 U.S.C. 5522-5523"; and (2) "clarify that employees' same-sex domestic partners qualify as dependents for purposes of calculating the extra allowance payable under 5 U.S.C. 5942a to assist employees stationed on Johnston Island, subject to any limitations applicable to spouses."

Also on June 2, 2010, OPM issued a Memorandum for the Heads of Executive Departments and Agencies, entitled "Implementation of the President's Memorandum Regarding Extension of Benefits to Same-Sex Domestic Partners of Federal Employees" to help fulfill the Administration's policy. The memorandum provides definitions to help ensure its consistent application across the Federal Government.

### Changes to Evacuation Pay Regulations

The law and regulations governing evacuation pay (5 U.S.C. 5522-5523 and subpart D of 5 CFR, part 550) provide for payments to offset certain expenses incurred because of the evacuation of an employee's dependents. In response to the Administration's policy to extend benefits to domestic partners of employees, and their children, where consistent with law, OPM has undertaken to clarify the evacuation pay regulations. OPM is altering its definition of *dependent*, and is adding new definitions for *domestic partner*, *domestic partnership*, and *family member*.

In the current regulations at § 550.402, *dependent* is defined as "a relative of the employee residing with the employee and dependent on the employee for support." OPM proposes to change the definition of *dependent* to read "a family member of the employee residing with the employee and dependent on the employee for support." In order to ensure consistent implementation of the Administration's policy and to clarify the definition of *dependent*, OPM is also adding definitions for *domestic partner*, *domestic partnership*, and *family member*.

These definitions are based upon those contained in the Memorandum for the Heads of Executive Departments and Agencies, entitled "Implementation of the President's Memorandum Regarding Extension of Benefits to Same-Sex Domestic Partners of Federal Employees," which OPM issued on June 2, 2010.

Paragraph (4) of the *domestic partnership* definition requires that the partners "share responsibility for a

significant measure of each other's financial obligations." This criterion, which appears in this and in prior regulations promulgated pursuant to the President's June 2, 2010, memorandum, [requires only that there be financial interdependence between the partners; it should not be interpreted to exclude partnerships in which one partner stays at home while the other is the primary breadwinner].

We have made a slight change to the wording of criterion (7). That criterion is intended to prohibit recognition of domestic partnerships between individuals who are related in a manner that would preclude them from marrying were they of opposite sexes. We are maintaining this criterion, but clarifying that the determination is to be made at the time the domestic partnership is formed. It should not be re-examined if the couple relocates to a different jurisdiction. This approach is consistent with treatment of opposite-sex marriages.

For the reasons outlined in the President's June 17, 2009, and June 2, 2010, memoranda, these regulations extend domestic partnership benefits only to same-sex couples, who are currently unable to obtain spousal benefits by entering a Federally recognized marriage.

The definition of *family member* is derived from a regulation recently published in response to the President's original memorandum that amended OPM's regulations on sick leave, voluntary leave transfer, voluntary leave bank, and emergency leave transfer. This final regulation was published on June 14, 2010 (75 FR 33491), in response to Section 1 of the President's original memorandum.

We believe the modification of the definition of *dependent* and the addition of definitions for *domestic partner*, *domestic partnership*, and *family member*, read together, provide a full picture of who qualifies for benefits authorized in 5 CFR part 550, subpart D.

Documentation or proof of a dependent or family member relationship for purposes of eligibility for evacuation payments would be based on each agency's internal policies. Agencies have authority to request additional information in cases of suspected abuse or fraud, and they would continue to be able to exercise that authority under these proposed regulations. Agencies would be expected to apply the same standards for verification of requests for payments for all dependent and family member relationships, including domestic partners.

### Changes to Separate Maintenance Allowance for Duty at Johnston Island

In response to the directive to clarify the separate maintenance allowance for duty at Johnston Island for purposes of calculating the extra allowance payable under 5 U.S.C. 5942a, OPM is altering its current definition of *family member*, and is adding new definitions for *domestic partner* and *domestic partnership*.

The current regulations found at § 591.402 define a *family member* as “one or more of the following relatives of an employee who would normally reside with the employee except for circumstances warranting the granting of a separate maintenance allowance, but who does not receive from the Government an allowance similar to that granted to the employee and who is not deemed to be a family member of another employee for the purpose of determining the amount of a separate maintenance allowance or similar allowance:

OPM proposes to revise the definition of *family member* to add applicable references to domestic partners.

We believe the modification of the definition of *family member* and the addition of definitions for *domestic partner* and *domestic partnership*, clarify coverage for purposes of separate maintenance allowance. The definitions for *domestic partner* and *domestic partnership* are the same as those proposed for the evacuation pay regulations in this publication.

Documentation or proof of a family member relationship for purposes of eligibility for a separate maintenance allowance at Johnston Island will be based on each agency’s internal policies. Agencies have authority to request additional information in cases of suspected abuse or fraud, and they would continue to be able to exercise that authority under these proposed regulations. Agencies would be expected to apply the same standards for verification of requests for payments for all family members relationships, including domestic partners.

### Amount of Payment

OPM is also adding a reference to domestic partner in § 591.403(a). The current regulations read: “The annual rate of the separate maintenance allowance paid to an employee shall be determined by the number of individuals, including a spouse and/or one or more other family members, that are maintained at a location other than Johnston Island.” OPM proposes to change the regulations to say: “The annual rate of the separate maintenance allowance paid to an employee shall be determined by the number of

individuals, including a spouse, a domestic partner, and/or one or more other family members, who are maintained at a location other than Johnston Island.” We believe this helps to clarify the coverage.

### E.O. 12866, Regulatory Review

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

### Regulatory Flexibility Act

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

### List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

Accordingly, OPM is proposing to amend 5 CFR parts 550 and 591 as follows:

### PART 550—PAY ADMINISTRATION (GENERAL)

#### Subpart D—Payments and Flexibilities During an Evacuation

1. The authority citation for subpart D of part 550 continues to read as follows:

**Authority:** 5 U.S.C. 5527; E.O. 10982, 3 CFR 1959–1963, p.502.

2. In § 550.402, the definition of “dependent” is revised and the definitions of “domestic partner”, “domestic partnership”, and “family member” are added to read as follows:

#### § 550.402 Definitions.

\* \* \* \* \*

*Dependent* means a family member of the employee residing with the employee and dependent on the employee for support.

\* \* \* \* \*

*Domestic partner* means a person in a domestic partnership with an employee or annuitant of the same sex.

*Domestic partnership* means a committed relationship between two adults of the same sex in which the partners—

(1) Are each other’s sole domestic partner and intend to remain so indefinitely;

(2) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(3) Are at least 18 years of age and mentally competent to consent to contract;

(4) Share responsibility for a significant measure of each other’s financial obligations;

(5) Are not married or joined in a civil union to anyone else;

(6) Are not the domestic partner of anyone else;

(7) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(8) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, will be determined by the agency; and

(9) Are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

\* \* \* \* \*

*Family member* means an individual with any of the following relationships to the employee:

(1) Spouse, and parents thereof;

(2) Sons and daughters, and spouses thereof;

(3) Parents, and spouses thereof;

(4) Brothers and sisters, and spouses thereof;

(5) Grandparents and grandchildren, and spouses thereof;

(6) Domestic partner, and children and parents thereof, including a domestic partner of any individual in paragraphs (2)–(5) of this definition; and

(7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

\* \* \* \* \*

### PART 591—ALLOWANCES AND DIFFERENTIALS

#### Subpart D—Separate Maintenance Allowance for Duty at Johnston Island

3. The authority citation for subpart D of part 591 continues to read as follows:

**Authority:** 5 U.S.C. 5942a(b); E.O. 12822, 3 CFR, 1992 Comp., p. 325.

4. In § 591.402, the definitions of “domestic partner” and “domestic partnership” are added, and the definition of “family member” is revised to read as follows:

§ 591.402 Definitions.

\* \* \* \* \*

Domestic partner means a person in a domestic partnership with an employee or annuitant of the same sex.

Domestic partnership means a committed relationship between two adults of the same sex in which the partners—

- (1) Are each other's sole domestic partner and intend to remain so indefinitely;
- (2) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);
- (3) Are at least 18 years of age and mentally competent to consent to contract;
- (4) Share responsibility for a significant measure of each other's financial obligations;
- (5) Are not married or joined in a civil union to anyone else;
- (6) Are not the domestic partner of anyone else;
- (7) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;
- (8) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, will be determined by the agency; and
- (9) Are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

Family member means one or more of the following relatives of an employee who would normally reside with the employee except for circumstances warranting the granting of a separate maintenance allowance, but who does not receive from the Government an allowance similar to that granted to the employee and who is not deemed to be a family member of another employee for the purpose of determining the amount of a separate maintenance allowance or similar allowance:

- (1) Children who are unmarried and under 21 years of age or who, regardless of age, are incapable of self-support, including natural children, step and adopted children, and those under legal guardianship or custody of the

employee, or of the employee's spouse or domestic partner, when they are expected to be under such legal guardianship or custody at least until they reach 21 years of age and when dependent upon and normally residing with the guardian;

(2) Parents (including step and legally adoptive parents) of the employee, or of the employee's spouse or domestic partner, when such parents are at least 51 percent dependent on the employee for support;

(3) Sisters and brothers (including step or adoptive sisters and brothers) of the employee, or of the employee's spouse or domestic partner, when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are incapable of self-support;

(4) Spouse, excluding a spouse independently entitled to and receiving a similar allowance; or

(5) Domestic partner, excluding a domestic partner independently entitled to and receiving a similar allowance.

\* \* \* \* \*

4. In § 591.403, revise paragraph (a) to read as follows:

§ 591.403 Amount of payment.

(a) The annual rate of the separate maintenance allowance paid to an employee shall be determined by the number of individuals, including a spouse, a domestic partner, and/or one or more other family members, who are maintained at a location other than Johnston Island.

\* \* \* \* \*

[FR Doc. 2011-18975 Filed 7-27-11; 8:45 am]

BILLING CODE 6325-39-P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 792

RIN 3206-AL36

Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management is proposing to revise its regulations on agencies' use of appropriated funds to provide child care subsidies for lower-income civilian employees, to make the regulations clearer and more concise. It also would make certain technical corrections, and

substantive changes including in the definition of "child" for purposes of the subpart. The proposed regulations also clarify the scope of regulations concerning alcohol and drug abuse counseling programs for employees and expand the regulations to extend coverage to domestic partners of Federal employees.

DATES: Comments must be received on or before August 29, 2011.

ADDRESSES: Send or deliver comments to Ingrid Burford, Work Life Program Specialist, U.S. Office of Personnel Management, 1900 E Street, NW., Rm. 7456, Washington, DC 20415-9700; or FAX to (202) 606-9939. Comments may also be sent through the Federal eRulemaking Portal at http://www.regulations.gov. All submissions received through the Portal must include the agency name and docket number or the Regulation Identifier Number (RIN) for this rulemaking. Please specify the subpart and section number for each comment.

FOR FURTHER INFORMATION CONTACT: Ingrid Burford, (202) 606-0416.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing a proposed rule revising part 792 of title 5, Code of Federal Regulations. The proposed rule would make changes in both subparts of that part, concerning employee assistance programs and child care subsidies for low-income employees, respectively, in accordance with the Obama Administration's policy, expressed in Presidential Memoranda dated June 17, 2009, and June 2, 2010, to extend benefits, where possible, to same-sex domestic partners. The changes to subpart A also would remove obsolete references to title 42 of the United States Code.

Background

On June 17, 2009, President Obama issued a Memorandum regarding Federal benefits and non-discrimination that requested the Secretary of State and the Director of OPM, in consultation with the Department of Justice, to extend previously identified statutorily based benefits that those agencies believed could be extended to qualified same-sex domestic partners of Federal employees consistent with underlying law. This Memorandum also directed the heads of executive departments and agencies, in consultation with OPM, to conduct a review of the benefits offered by their respective departments and agencies to determine whether they had the authority to extend such benefits to the same-sex domestic partners of Federal employees. The Memorandum