

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213, 302, 315, 330, 334,
362, 531, 536, 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: Proposed rule with request for
comments.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations to implement the Pathways Programs established by E.O. 13562, signed December 27, 2010, to provide clear paths to Federal internships and potential careers in Government for students and recent graduates. As directed by the President, the Pathways Programs consist of the Internship Program, the Recent Graduates Program and the Presidential Management Fellows Program. The President determined that these programs should be excepted from the competitive service and placed in the newly created Schedule D of the excepted service.

OPM's proposed implementing regulations would provide for more transparency in Federal internship opportunities, limit the programs so they are used as a supplement to competitive examining and not a substitute for it, apply veterans' preference, and provide for OPM oversight. Agencies would only be permitted to use the Pathways Programs as part of an overall workforce planning strategy and pursuant to an agreement with OPM. The regulations would require agencies to make an investment in the program participants' development through training, mentorship, and other means. The regulations would further require agencies to conduct meaningful assessments of participant performance as part of an agency's determination as to whether the program participants

should be converted to permanent positions in the competitive service.

DATES: Comments must be received on or before October 4, 2011.

ADDRESSES: You may submit comments, which are identified by RIN 3206-AM34, by any of the following methods:

- *Federal eRuling Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* employ@opm.gov. Include "RIN 3206-AM34", Excepted Service, Career and Career-Conditional Employment; and Pathways Programs" in the subject line of the message.
- *Fax:* (202) 606-4430.
- *Mail:* Angela Bailey, Associate Director for Employee Services, U.S. Office of Personnel Management, Room 6566, 1900 E Street, NW., Washington, DC 20415-9700.

FOR FURTHER INFORMATION CONTACT: Gale Perryman, 202-606-1143, *Fax:* 202-606-4430, by TTY: 202-418-2532, or *e-mail:* gale.perryman@opm.gov.

SUPPLEMENTARY INFORMATION: 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. The President has also delegated to OPM the authority to except positions from the competitive service. 5 CFR 6.1(a). It has been a long-standing practice under these authorities for the President, and for OPM exercising its delegated authority, to permit positions that would otherwise be in the competitive service to be filled through excepted service appointments where conditions of good administration warrant exceptions from competitive examining procedures (e.g., people with disabilities and students). One of the purposes for which exceptions have been made in the past is to fulfill the merit system principles, which provide, in part, that "[r]ecruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society * * *." In keeping with that objective, President Obama issued Executive Order 13562, which established the concept of the Pathways Programs, "find[ing] 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." Exec. Order No. 13562, 75 FR 82,585 (Dec. 27, 2010). The Pathways Programs consist of three discrete excepted service internship programs for students and recent graduates: the Internship Program; the Recent Graduates Program; and the Presidential Management Fellows Program.

The Internship Program is for current students. It will consolidate provisions of the Student Educational Employment Program (SEEP) into a new student internship program designed to provide high school, vocational and technical, undergraduate, and graduate students opportunities to be exposed to the work of Government through Federal internships. This program is designed to attract the interest of students enrolled in a wide variety of educational institutions, with paid opportunities to work in agencies and explore Federal careers while still in school. Agencies may convert Interns who successfully complete program and academic requirements to any competitive service position for which the Intern is qualified, but they are not required to do so. It is expected that, even if an agency does not convert an Intern, service in the Internship Program will increase the likelihood that the Intern will consider applying for a Federal position at some point in the future, based upon the exposure to employment in the Pathways Program.

The Recent Graduates Program is a new program that will provide opportunities for individuals who have recently graduated (or obtained certificates) from qualifying educational institutions or programs. To be eligible, applicants must apply within 2 years of educational program completion (except that veterans who are precluded from applying within 2 years due to a military service obligation will have up to 6 years from the date they completed their educational program to participate in the Recent Graduates Program (i.e., A veteran's 2-year eligibility is postponed until completion of military service obligation. Thus, a veteran will have up to a 6-year period to exercise his or her 2-year eligibility). Successful applicants will be placed in a 2-year career development program. Agencies may convert Recent Graduates Program participants who successfully complete the program to competitive service jobs,

but they are not required to do so. Once again, it is expected that, even if an agency does not convert an employee participating in the Recent Graduates Program to a position in the competitive service at the expiration of the Recent Graduates Program, service in the Pathways Program will make it more likely that the Recent Graduate will want to pursue Federal service later in his or her career.

For more than three decades the Presidential Management Fellows (PMF) Program has been the Federal Government's premier leadership development program for advanced degree candidates. Executive Order 13562 expands the eligibility window for applicants, making it more "student friendly" by aligning it with academic calendars and including those who have received a qualifying advanced degree within the preceding 2 years. Like Recent Graduates, PMFs work in a 2-year developmental program and, upon successful completion of the program, may be converted to competitive service jobs. Indeed, the Recent Grads program, in some respects, is patterned after the PMF Program.

Each of these programs share 5 core principles that advance merit system principles and the policies established by the President in the Executive order:

1. *Transparency.* The Pathways Programs provide for more transparency in Federal internship or other developmental opportunities. Members of the public interested in these opportunities with the Federal Government will now be able to learn about them through USAJOBS.gov. That Web site is the portal to all Federal jobs in the competitive service, and it will now also be used to provide information to the public about agency internship needs and the process for applying for agency internships as these opportunities become available.

2. *Limited Scope.* The Pathways Programs are limited in nature, intended to provide agencies a supplemental authority to use as part of an overall workforce planning strategy. Accordingly, agencies must report the positions for which they intend to use the Pathways Programs to OPM on an annual basis. OPM will review the information provided by the agencies and, if appropriate, establish a cap on the number of individuals who may be converted from the Pathways Programs to positions in the competitive service. This safeguard will permit OPM to ensure that agencies use these programs in a limited way as part of an overall strategic plan rather than using them to avoid competitive examining altogether.

3. *Fairness to Veterans.* The Pathways Programs will be fair to veterans because they will honor veterans' preference and provide additional flexibility to veterans in recognition of their military service. Thus, when agencies are making selections for internship positions in any of the three Pathways programs, they must apply veterans' preference in accordance with Part 302 when selecting from among qualified applicants. Moreover, the eligibility rule for the Recent Graduates Program is more flexible for veterans than it is for non-veterans. Whereas the general rule is that, to be eligible for the Recent Graduates Program, an individual must have completed his or her educational program within the preceding 2 years, veterans who were precluded from applying within that period due to a military service obligation have up to 6 years from the date they completed their educational program to participate in the Recent Graduates Program.

4. *OPM Oversight.* The Pathways Programs will also be subject to OPM oversight. Agencies will be required to enter a memorandum of understanding (MOU) with OPM before using any of the Pathways Programs. The MOU will set forth the agency's obligations to the President and the Executive Branch in using the programs, and OPM will use the MOUs as an oversight tool. In addition, as mentioned above, agencies will be required to report to OPM annually on their usage of the Pathways Programs and will be subject to a cap on conversions of Pathways participants to non-Pathways positions in the competitive service if necessary.

5. *Agency Investment.* Agencies that use the Pathways Programs will have to be committed to investing in the participants. The Pathways Programs are intended to be more than simple excepted service hiring authorities; they are intended to fulfill a need for developmental programs that will inspire interest in more permanent Federal service. The purpose of the programs is to foster a positive experience for participants that will help prepare them for successful careers in Government—either immediately or at some future date. Agencies are encouraged to create cohorts of Pathways participants, and provide them with common training and developmental experiences. In order to continue participating in the programs, they will be required as well to conduct meaningful assessments of the participants for purposes of determining whether they should be converted to the competitive service.

By crafting the Pathways Programs around these core principles, we respond to the President's direction to address the special challenges the Federal Government faces in competing with private industry for the best candidates for Federal service, while safeguarding veterans' preference and ensuring that the normal competitive examining process is preserved to the greatest extent practicable.

Background

1. Steps OPM Took To Assess Student and Recent Graduate Hiring

OPM has conducted a thorough review of the Federal Government's ability to recruit and hire students and recent graduates. This review began in August of 2009, when OPM convened an interagency team consisting of Federal employees from six organizations—State, Education, Housing and Urban Development (HUD), Internal Revenue Service (IRS), OPM, and the Central Intelligence Agency (CIA). These employees worked for 90 days to examine the current Federal recruiting and hiring process as it relates to students and recent graduates.

On October 7, 2009, OPM hosted a "Roundtable Discussion on Federal Recruitment and Hiring at Colleges and Universities" (hereafter "OPM Roundtable"). The OPM Roundtable was attended by representatives from nine different academic and good government organizations. It explored whether there are barriers to hiring students and recent graduates into Federal jobs.

On June 25, 2010, OPM convened a public hearing to consider issues connected to hiring students and recent graduates. OPM issued a **Federal Register** notice inviting the public to submit comments on three issues: (1) Whether normal, competitive hiring is an effective avenue for bringing recent college graduates into the Federal workforce and, if so, why that is the case; (2) if not, whether this presents a problem for the Federal Government that is sufficiently significant to warrant action or changes to policy; and (3) if action or changes in policy are warranted, what changes should be effected and who should effect them. Members of the public who submitted written comments were also offered an opportunity to speak at the hearing. During the hearing, OPM heard testimony from three panels of experts: agency Chief Human Capital Officers, representatives from Federal employee unions and veterans' service organizations, and representatives from

good government and academic groups. Following the public hearing, OPM posted the hearing transcript and issued a **Federal Register** notice inviting the public to make any additional comments.

OPM also gathered and reviewed relevant literature on topics such as entry-level hiring, recruiting and hiring students and recent graduates, and the Federal Career Intern Program (FCIP).

Finally, OPM's qualifications and assessment experts provided information regarding the process for overhauling the currently predominant training- and experience-based approach to qualifications and assessments. The ubiquity of that approach has been identified as one of the barriers to recruiting and hiring students and recent graduates, because it places a premium on prior work experience rather than potential for success on the job.

This review informed the President's decision to issue E.O. 13562 and has also informed OPM in drafting these implementing regulations. The materials that OPM considered as part of its review are available for public review and comment at <http://www.opm.gov/open>.

2. Conclusions From OPM's Review

OPM has concluded that there are barriers to hiring students and recent graduates that can best be addressed through the implementation of effective excepted service internship programs. Even though studies "show strong match between what the Federal Government offers and what [students] seek in an employer, * * * relatively few students * * * report considering the government as a potential employer * * *." *Id.* at 53 (testimony of Marilyn Mackes, National Association of Colleges and Employers (NACE)). This observation is borne out by empirical data and expert testimony. The MSPB reported in 2005 that only 10% of new hires in GS-5, 7, and 9 jobs in the competitive service (typical entry-level grades) had less than one year of full-time work experience, which was less than half the number with that experience level hired into the excepted service. MSPB, *Attracting the Next Generation*, at 19. Conversely, 37% of the new hires in these entry-level grades had 11 or more years of experience, including 20% with over 20 years of experience. *Id.* Many of the participants in our public hearing acknowledged this reality. *See Tr.* at 4 (testimony of Marilee Fitzgerald, Chief Human Capital Officer, Department of Defense); *id.* at 26 (testimony of William Dougan, President, National Federation of

Federal Employees) ("it is difficult for many recent graduates or expected graduates to compete for government jobs through the competitive hiring system [because they] * * * do not have the experience necessary to compete * * *"); *id.* at 34 (testimony of Brian Hawthorne, Student Veterans of America) ("Recent college graduates are at a fundamental disadvantage in this economy * * *. [P]eople with more experience are seeking jobs which they are overqualified for, which fundamentally puts us out of the running."); *id.* at 50 (testimony of Laurel McFarland, Executive Director, NASPAA) ("[m]any undergrads and grads lack work experience * * * [p]articularly the professional work experience that documents the skills and abilities required in the current competitive system. If you want to skip the next generation of Federal workers and leaders, keep doing what you are doing and hire only those with significant work experience.").

Internship programs are essential to addressing these issues. By exposing students and recent graduates to jobs in the Federal civil service at the beginning of their careers, we will engage them at the outset of their work lives, before their career paths are fully established, inform them about the wide variety of interesting opportunities available in the Federal Government, and break through commonly held stereotypes about "government work." We will also be better equipped to recruit and appoint more expeditiously, thus negating what is otherwise a significant disadvantage in competing with the private sector for high-potential candidates emerging from educational institutions. Through participating in effective internship programs, talented individuals who may not otherwise have considered a career in the Federal civil service will become more open to the idea of pursuing Federal service, whether early in their careers, when considering a mid-career change, or when they become experts in their fields. In addition, current and former interns who enjoy their internship experiences will become our best recruiting sources. Having a larger supply of talented people who are interested in working for the Federal Government is a benefit to the country and the taxpayers, especially when "competition for high-quality talent among American employment sectors is heating up." Merit Systems Protection Board, *Attracting the Next Generation: A Look at Federal Entry-Level New Hires* (Jan. 2008), at 2. Exposing students and recent graduates to Federal jobs through

internships and similar programs is an effective way to accomplish this goal.

Internships also have the benefit of affording agencies "a low-risk means to assess potential employees on the job." Partnership for Public Service, *Leaving Talent on the Table: The Need To Capitalize on High Performing Student Interns* (April 2009), at 4. Indeed, under the Pathways Programs, interns will be given an extended "on-the-job tryout," which is a relatively high indicator of future success on the job, significantly higher than considering experience or educational level alone. *See* Merit Systems Protection Board, *Reforming Federal Hiring: Beyond Faster and Cheaper* (Sept. 1, 2006) at 19. Moreover, creating internship programs in the excepted service, as the President has done, allows for greater flexibility in evaluating inexperienced workers, as their internships last for 2 years, rather than the 1-year period applicable to the competitive service. To a large extent, recent graduates are hired based on their potential, rather than on their accomplishments. Without a proven record of success in a job related to their field, the period of evaluation takes on added significance. Similarly, we need to make allowance for the fact that new workers will require additional training and developmental opportunities. It may take them longer to become high performers. Accordingly, providing for a 2-year program serves multiple interests. It allows managers more time for more meaningful evaluation of inexperienced workers, while giving inexperienced workers a longer opportunity to grow into their jobs, develop their skills, and prove what they have to offer.

3. The President's Findings

OPM detailed a summary of this review process in a report to the President. Subsequently, the President concluded that conditions of good administration make necessary an exception to the competitive hiring rules for certain internship positions in the Federal civil service. In reaching this conclusion, the President made the following findings:

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.

Exec. Order No. 13562, 75 FR 82,585 (Dec. 27, 2010), Sec. 1.

These regulations implement the President's decision to create three distinct internship programs—the Pathways Programs—in Schedule D of the excepted service.

Summary of Changes

As directed by the President, positions filled under these programs would be in the excepted service under Schedule D in 5 CFR part 213, a new schedule created by Section 7 of Executive Order 13562. Schedule D would contain those positions for which competitive service requirements make it impracticable for agencies to recruit students attending qualifying academic institutions or individuals who have recently completed qualifying educational programs. Section 7(a)(i) of Executive Order 13562 also delegated additional authority to OPM to except certain positions from the competitive service.

Pursuant to the Executive order, OPM is also proposing to add a new regulation at the beginning of 5 CFR part 213, subpart A. The new section 213.102 would provide further guidance on excepting positions from the competitive service pursuant to applicable Executive orders. It would also clarify that positions may be excepted from the competitive service pursuant to 5 U.S.C. 3302 and 5 CFR 6.1 on either an indefinite or a temporary basis. Indefinite exceptions are appropriate when the nature of the position itself precludes it from being in the competitive service (such as attorney positions, for which examining is prohibited). Temporary exceptions are appropriate to allow for valid targeted recruiting and hiring of a particular class of persons, with the opportunity for the persons selected for those positions to convert to the competitive service at a later date.

This clarification reflects the President's (and several of his predecessors') interpretation of 5 U.S.C. 3302(1) and will permit OPM, exercising discretion delegated to it by the President, to continue its practice of allowing agencies to fill positions that would normally be in the competitive service through excepted service appointments in order to allow them to recruit and hire from among classes of individuals that are disadvantaged by competitive examining. For example, people with disabilities are hired into positions that are normally in the competitive service but are temporarily placed in the excepted service to allow for agencies to use targeted recruitment and hiring strategies in order to hire qualified people with disabilities. Individuals hired under this process convert into the competitive service after 2 years. For over 30 years, student interns and Presidential Management Fellows (formerly Presidential Management Interns) have been hired this same way—using excepted service appointments for jobs that were simultaneously being filled through competitive appointments by non-student interns and Fellows. The proposed new regulation would make more explicit that long-standing interpretation.

Next, OPM is proposing to remove the provisions in 5 CFR 213.3202(a) and (b), the Student Educational Employment Program (SEEP). We are proposing to remove these paragraphs because many of the provisions of the SEEP would be incorporated, with modifications, into the new Internship Program regulations in 5 CFR part 362. Section 8(b) of E.O. 13562 supersedes and revokes E.O. 12015, which authorized the establishment of career work-study programs, effective the date on which OPM issues final regulations for the Pathways Programs.

OPM is also proposing to remove paragraph (o) of 5 CFR 213.3202, the Federal Career Intern Program (FCIP). Section 8(a) of E.O. 13562 superseded and revoked E.O. 13162, which established the FCIP, effective March 1, 2011.

The proposed rule would redesignate part 362 as Pathways Programs. Part 362 currently contains provisions relating to the Presidential Management Fellows Program, but we are proposing to replace it with provisions governing all three of the Pathways Programs. Part 362 would now consist of four subparts: subpart A, General Provisions, which would contain rules pertaining to all three Pathways Programs; subpart B, Internship Program; subpart C, Recent Graduates Program; and subpart D, the

Presidential Management Fellows Program. Though we are addressing each program within part 362, the programs are distinct, targeting different classes of people and governed by different rules and procedures. Accordingly, each should be considered independently of the others.

The proposed rule would also make conforming changes to the appropriate sections relating to noncompetitive conversions, creditable service for career tenure, pay, and benefits administration in 5 CFR parts 213, 302, 315, 330, 334, 531, 536, 537, 550, 575, and 890.

General Provisions Common to all Pathways Programs

Program Administration

Subpart A of part 362, General Provisions, contains the overarching requirements applicable to all Pathways Programs. In some instances, we have consolidated and incorporated provisions of the current Student Educational Employment and Presidential Management Fellows Programs (SEEP, and PMFP, respectively) into the proposed Pathways Programs regulations. This subpart also contains new provisions necessary to implement E.O. 13562. The new subpart clarifies certain definitions and provisions relating to agencies' authority, requirements agencies must meet, how positions are filled, conversion to the competitive service, and program accountability and oversight. A description of these provisions follows.

General Provisions

Section 362.101 of the proposed regulations establishes the basic framework and purpose of the Pathways Programs. This section also directs agencies to provide for equal employment opportunities in the Pathways Programs.

Definitions

Section 362.102 contains the definitions necessary for the administration of this part. OPM is revising the definition of "qualifying educational institution" to expressly include home-school curricula that are recognized by the State or local government in which the curricula are administered (in the case of secondary home-school programs), or by a body recognized by the United States Department of Education (in the case of post-secondary, or vocational or technical home-school programs). This change makes clear that students using certain home-school curricula may

apply for consideration under the Pathways Programs.

Authority

Section 362.103 of the proposed regulations authorizes agencies to make time-limited appointments to positions placed, temporarily, in the excepted service, pursuant to the Pathways Programs, subject to certain prerequisites. The section establishes a requirement for the agency head or his or her designee to enter into a Pathways Memorandum of Understanding (Pathways MOU) with OPM prior to making appointments under any Pathways authority. This section also requires agencies to execute a Pathways agreement with each individual appointed under the Pathways Programs.

Agency Requirements

Section 362.104 of the proposed regulations establishes the requirements and criteria that must be addressed in the MOU with OPM, including that it should identify a Pathways Program officer for the agency and describe the process for accepting and assessing applications. Requirements for the MOU are essentially the same for all three Pathways Programs. An agency will have to describe in writing how it intends to use each Pathways Program and the requirements the agency will establish for each Pathways Program.

We propose removing the existing three-way agreement between the school, student and agency under the Student Career Experience Program (SCEP) because we believe the requirement to include the educational institution is an unnecessary burden on both the student and the agency. In its place, we propose to establish a requirement that a given agency sign a Pathways Agreement with each participant in its Pathways Programs. These written agreements must identify requirements such as work assignments, evaluation procedures, and any procedures for noncompetitive conversion upon successful completion of the program. OPM believes these agreements will make the Programs more effective for the Government by assisting both management and the Program participant in identifying and attaining program goals, as well as providing Program participants with a better understanding of expectations and requirements for successful completion of each Pathways Program. Agencies are not, however, precluded from entering into 3-way agreements with educational institutions that sponsor programs for formal student work/academic relationships.

In an effort to help students and recent graduates understand and compare available Federal career opportunities, E.O. 13562 requires the use of standard naming conventions for Pathways Programs across all agencies. Therefore, OPM proposes that an agency can adopt its own Pathways Program name provided the agency name includes the Pathways Program name identified in these regulations; for example, OPM Recent Graduates Program. Any agency-specific name for a Pathways Program must be identified in the agency policy.

Filling Positions

Section 362.105 of the proposed regulations requires agencies' workforce planning to address the need to have an adequate number of positions available to which successful Pathways Program participants can be converted. It also provides that agencies must fill Pathways Programs positions under Schedule D of the excepted service (5 CFR part 213). In addition, this section explains the general eligibility criteria individuals must meet in order to be appointed to a Pathways Program. These criteria include, but are not limited to, requirements relating to all Federal appointments such as qualifications and suitability.

This section further explains that Pathways appointments are for 2 years and may be extended by the agency for up to 120 days. The new Executive Order does not provide OPM the flexibility to extend Pathways Programs appointments for an additional year.

Conversion to the Competitive Service

Section 362.106 of the proposed regulations permits agencies to noncompetitively convert Pathways Program participants to term, or permanent appointments in the competitive service. It also makes clear that an agency that initially converts a Pathways Program participant to a term appointment may subsequently convert the individual noncompetitively to a permanent competitive service appointment.

This section also provides that an agency may convert a Pathways Program participant to a position in the same agency or to a position in another Federal agency. It clarifies that the provisions of the career transition assistance programs in subparts B, F and G of 5 CFR part 330 do not apply to conversions. Proposed section 362.106 would clarify that any time spent by a Pathways Program participant counts towards career tenure if the individual is converted to a permanent position in the competitive service. However,

participation in a Pathways Program does not provide any right to further employment.

Program Accountability and Oversight

The Executive Order authorizes the Director of OPM to "establish, if appropriate, a Government-wide cap on the number of noncompetitive conversions to the competitive service of Interns, Recent Graduates, or PMFs (or a Government-wide combined conversion cap applicable to all three categories together)." [See Sec. 7(b)(iii).] The proposed section 362.107 would establish that OPM would determine whether to establish any caps based on information it receives from the agencies about their use of the Pathways Programs. In the event the Director determined that a cap would be appropriate, OPM would publish it in the **Federal Register**, including how it would affect individual agencies participating in the Pathways Programs.

Proposed section 362.107 also specifies certain information agencies must include in their Human Capital Management planning documents relating to hiring in their Pathways Programs. OPM is requiring this information in order to gauge the effectiveness and usage of the Pathways Programs, and to determine whether to impose limitations on the number of appointments and/or conversions agencies may make each year.

OPM proposes, in section 362.108, adding a provision that would allow the Director to approve written requests for waivers of the regulatory requirements of the Pathways Programs under limited circumstances. This mirrors the provision currently appearing at 5 CFR 362.205.

OPM acknowledges, in proposed section 362.109, our requirements to issue written guidance for the orderly transition of current SEEP and PMF employees.

Internship Program

The Executive order establishing the Pathways Program framework provides for it to include an Internship Program, which replaces the existing Student Career Experience Program (SCEP). E.O. 13562 also supersedes and revokes E.O. 12015 (which authorized noncompetitive conversion to the competitive service for SCEPs), effective on the date the Pathways regulations become final. The Student Educational Employment Program (SEEP) at 5 CFR 213.3202 provides the existing framework for the SCEP.

Background on the SEEP

On December 16, 1994, OPM issued final regulations implementing the Student Educational Employment Program (SEEP). The SEEP consolidated 13 different student employment programs into one program with a standardized set of rules. The SEEP had two components, the Student Temporary Employment Program (STEP) and the Student Career Experience Program (SCEP). The SEEP was designed so that agencies could develop innovative work-study or temporary programs to attract students.

The SCEP component was designed to provide career-related work experience directly related to the student's educational program or curriculum. Agencies appoint students under SCEP to a job related to the student's academic field of study. After successful completion of academic and SEEP/SCEP program requirements, agencies can appoint SCEPs, without competition, to term, career, or career-conditional positions related to their academic field of study. The SCEP gives students valuable work experience in a field related to their academic course of study and allows them to experience firsthand the rewards of public service; at the same time, it gives agencies the opportunity to observe students' job performance in the work environment and evaluate them as potential employees.

The STEP component was created to provide jobs to students, on a temporary basis, which may or may not be related to their career goals or academic field of study. STEP was intended to provide agencies and students with maximum flexibility in meeting both their needs on a short-term basis. Though STEPs can convert into the SCEP, there is no provision that allows agencies to noncompetitively convert STEPs to term, career, or career-conditional appointments.

While OPM has refined the SEEP over the years, the original intent has remained constant: to provide students with an integrated program of academic study and related work experience while building a candidate pool of promising, high-potential graduates for entry-level positions in the Federal civil service. The most recent changes to the program were published in April 2006. These changes provided agencies with additional flexibility in crediting certain non-Federal work towards program requirements.

Abolishment of the SEEP

Executive Order 13562 provides a new framework for Government

internship programs and authorizes the noncompetitive conversion of interns to term or permanent competitive service appointments. The new Internship Program under Pathways eliminates the need for the existing SEEP. Therefore, OPM is implementing E.O. 13562 by ending SCEP and has determined to eliminate STEP as well, as it would now be largely redundant of elements of the new program. For the most part, OPM proposes to incorporate many of the current provisions of the SEEP into the new Internship Program.

Program Summary

Whereas the SEEP had two components, STEP and the SCEP, the Internship Program will exist as one program or appointing authority. Students hired into this program will be known as "Interns."

Nature of Work Assigned to Interns

Interns are intended to provide agencies a ready pipeline of talent from which to fill positions, as part of a balanced workforce strategy. Accordingly, agencies are generally required to provide Interns with meaningful developmental work. This benefits the Government both from a succession planning perspective and in recruiting for future job opportunities. Experience shows that Interns who have favorable impressions of their time working for an agency are the agency's most successful recruiters among their peers.

The Internship Program is flexible enough, however, to accommodate the need of some agencies to hire Interns to complete temporary projects, to perform labor intensive tasks not requiring subject-matter expertise, or to work in traditional "summer jobs," (e.g., routine clerical work). Accordingly, agencies are excused from the requirement that they provide meaningful developmental work for the Interns they hire to perform these types of tasks. Agencies are urged, however, to use this exception judiciously, as the clear intent of the Pathways E.O. is for agencies to use the Internship Program as a means for developing a pipeline of talent. Moreover, agencies should still follow best practices to make the experience of all Interns a favorable one that will leave them with a positive impression of Federal service.

Agency Authority

Proposed section 362.201 describes the intent and purpose of the Internship Program.

Definitions

Section 362.202 contains a modified definition of *student*, which eliminates redundant references to academic institutions and degrees and certifications that will be addressed in the definition of *qualifying educational institution* in proposed section 362.102. OPM proposes to retain the requirement that an individual must be accepted for enrollment or enrolled in a degree program on at least a half-time basis.

Announcement

Section 362.203(a) of the proposed regulations would require that agencies provide information to OPM about their Internship opportunities. This information would include the title, series, grade and location, as well as a link to the agency's Web site where individuals can find information about how to apply for specific Internship opportunities. OPM would note that it will make available to the public a summary of these Internship opportunities in a manner the Director will determine, including how to find agency-specific Internship opportunities. At this time, OPM intends to make this information available to the public through advertisements on USAJOBS.gov as these opportunities arise. It would be within each agency's discretion to determine the process for soliciting and accepting applications for specific Internship opportunities, consistent with applicable legal and policy requirements, including the President's hiring reform initiative (see May 11, 2010, Presidential Memorandum, at <http://www.whitehouse.gov/the-press-office/presidential-memorandum-improving-federal-recruitment-and-hiring-process>) and the requirement to collect applicant flow data.

Qualifications and Appointment

Agencies could continue to evaluate Interns using either agency-developed qualification standards or the OPM qualifications for the position and grade level of the position to which the Intern is appointed as specified in section 362.203(c).

Proposed section 362.203(d) would require agencies to make Internship appointments under Schedule D of the excepted service and maintain the provisions that agencies may appoint eligible individuals to any position for which the individual is qualified.

Under the terms of the proposed regulation, the duties of the position for which the individual is hired do not have to be directly related to the Intern's academic career goals or particular field

of study. We are proposing this change to provide both students and agencies with greater flexibility in terms of the type of Federal employment that may be offered to eligible students.

OPM is proposing to remove the provision in the current SCEP rules, which states that any OPM test requirements are waived when an agency is using OPM Governmentwide qualification requirements. OPM is removing this language because the Governmentwide qualification requirements no longer require tests. Therefore, no waiver mechanism is required.

OPM is proposing to allow agencies to appoint Interns on a temporary basis for up to 1 year or for an initial period expected to last more than 1 year, similar to appointments made under the STEP and SCEP programs, respectively. A temporary appointment may be extended by the agency.

Promotions

Section 362.203(e) authorizes agencies to promote Interns in a manner similar to how they promoted students serving on STEP and SCEP appointments. An agency should document the promotion of an Intern serving on a temporary appointment as a conversion to another Schedule D excepted service appointment, but using the original not-to-exceed date.

Classification

OPM proposes to retain, in section 362.203(f), the requirement that Interns be classified to the -99 series for occupational groups appropriate for the General Schedule or appropriate pay plan and to the -01 series for occupational groups appropriate for the Federal Wage System.

Schedules

OPM is proposing to retain, in section 362.205(g), the same criteria for student schedules as currently exist under the SEEP.

Breaks in Program

OPM is proposing to retain, in section 362.205(h), the same criteria for breaks in program that currently exist under the SEEP. We seek comments on the proposed changes from all interested parties, but especially from agencies, on whether breaks in program criteria are still needed in light of the modification of the definition of "student."

Conversions to the Competitive Service

OPM proposes to retain, in section 362.204, most of the requirements for noncompetitive conversion as they currently exist under SCEP. Under the

proposed rules agencies will continue to have 120 days to noncompetitively convert Interns to term or permanent positions in the competitive service. Agencies may subsequently convert Interns from term appointments to permanent competitive service appointments.

In order to be eligible for conversion, an intern must meet the OPM qualification standard for the position to which he or she will be converted, complete a course of academic study from a qualifying educational institution, complete a minimum of 640 hours of work experience while in the Internship Program, and receive a favorable recommendation by an official of the agency.

Interns may be converted to positions within the agency in which they have been serving as Interns, or to positions in other Federal agencies.

Agencies may credit time spent under one or more previous Federal appointments towards the 640 hours of required work experience.

OPM proposes to allow agencies to credit towards the 640-hour requirement work experience that is not in a field or functional area related to the Intern's target position or career field. This is a departure from the SCEP rules, which require that work creditable towards the 640 hours required for conversion be related to the student's academic goals and target position. OPM is proposing this change to allow both students and agencies more flexibility to convert Interns who successfully complete the program to positions that are not directly related to their field or functional area of study.

Otherwise, OPM proposes to retain the SCEP provisions pertaining to creditable service (for purposes of the 640-hour requirement). Creditable service for these purposes includes:

- Work performed by individuals who are not Federal employees, pursuant to a formal work-study program comparable to the Pathways Internship agreements;
- Work performed by individuals who are not Federal employees, pursuant to a written contract between the agency and the organization officially established to provide internship experiences to students;
- Volunteer service under 5 CFR part 308; and
- Active duty military service.

A credit of 320 hours means the Intern still must work a minimum of 640 hours to be eligible for noncompetitive conversion, but that 320 hours of certain non-Federal work experience may be applied towards the 640-hour requirement.

OPM also proposes to allow agencies to waive up to 320 hours of the 640-hour minimum service requirement for any Intern who performs work directly related to his or her academic field of study or career goals, and who demonstrates outstanding academic achievement and exceptional job performance. Agencies may apply this waiver in the same manner as they applied it under the SCEP. For clarity, in this context (as opposed to the credit context discussed above) a waiver means the Intern only needs to work a minimum of 320 hours to be eligible for noncompetitive conversion (provided that other program requirements are met).

Section 362.205 clarifies an Intern's coverage under part 351 of this chapter for the purposes of RIF. In addition, it identifies the appropriate tenure group for Interns based on the appointment type.

Recent Graduates Program

Executive Order 13562 recognizes the benefits of a diverse Federal workforce that includes recent graduates from academic institutions and technical programs. The E.O. also acknowledges that the normal rules for competitive hiring impose significant burdens and put the Government at a disadvantage, vis-a-vis the private sector, in competing for the best candidates emerging from educational institutions. In addition, agencies' current competitive hiring practices, at the entry levels, tend to favor job applicants who have significant previous work experience. This puts recent graduates at a competitive disadvantage—no matter the degree or technical training they possess—when applying to, and competing for, Federal job opportunities. In recognition of this disadvantage and of the value to the Government in being competitive with other sectors in recruiting and hiring recent graduates, the E.O. established a Recent Graduates Program under the Pathways Programs framework. To implement the Executive order, OPM proposes adding a new subpart C to 5 CFR part 362.

This new program will target individuals who have recently graduated from a qualifying educational institution or program. Qualifying educational institutions and programs include community colleges, colleges and universities, trade schools, and career and technical education programs. Advanced degree holders also are eligible to participate in the Recent Graduates Program. Though people holding advanced degrees tend to be highly educated in specialized fields,

that education often does not translate well under the training and experience based approach to evaluating applicants for competitive service jobs that most agencies now use. Accordingly, people with advanced degrees and little experience fare poorly under these assessment approaches, as do their colleagues with 2-year and 4-year degrees.

To be eligible for an appointment to the Recent Graduates Program, an applicant must apply within 2 years of the date on which he or she completed the academic degree or technical program requirements. The proposed regulations extend the eligibility period for veterans who were precluded from applying within the 2-year window because of a military service obligation. This extended eligibility period cannot end more than 6 years after the date on which the individual completed his or her academic degree or technical program requirements. In other words, a veteran's 2-year eligibility is postponed until completion of military service obligation. Thus, a veteran will have up to a 6-year period to exercise his or her 2-year eligibility veterans will have up to a 6 year window to exercise their 2-year eligibility.

Individuals selected for the Recent Graduates Program will generally be appointed to positions up to the General Schedule (GS)-9 level (or equivalent) and placed in a 2-year career development program. OPM is proposing, however, to allow agencies to hire individuals for science, technology, engineering, or mathematics occupations at the GS-11 level (or equivalent) if they possess a Ph.D. or equivalent doctoral degree directly related to the science, technology, engineering, or mathematics position the agency is seeking to fill. In addition, OPM is proposing to allow agencies to fill certain scientific and professional research positions at the GS-11 or 12 level (or equivalent), if the individuals possess the requisite qualifying education. After successfully completing the program, participants may be considered for noncompetitive conversion to a career job in the competitive service. A description of proposed new subpart C follows.

Program Summary

Program Administration

Proposed section 362.301 makes clear the purpose of the Recent Graduates Program, which is to provide developmental experiences to eligible recent graduates, with the potential to lead to careers in the Federal Government. Individuals appointed

under this authority will be referred to as Recent Graduates. This section introduces agency requirements particular to the Recent Graduates Program. These requirements address providing orientation, assignment of a mentor within 90 days of appointment, IDP development within 45 days of appointment, and providing Recent Graduates with a minimum of 40 hours of formal, interactive training per year. This will provide greater flexibility in meeting the training requirements, which we believe will prove beneficial to the Government as a whole, as well as the Recent Graduate and the agency. This change will allow conference attendance, on-line training and other non-conventional training formats to be credited toward meeting required training. It is important to note that on-line training and other non-conventional training methods would not include recurring training requirements such as yearly security training.

Eligibility

Proposed section 362.302 establishes eligibility for 2 years from the date on which the individual completed the academic degree or program requirements. The proposed regulations postpones the 2-year time limit for certain veterans.

Filling Positions

Section 362.303 of the proposed regulations covers announcements, appointments, qualifications, and promotions within the Recent Graduates Program.

Paragraph (a) of that section makes clear that an agency must provide information to OPM about opportunities available under the Recent Graduates Program. This information must list the types of positions the agency may fill under this program and the location of the position. OPM will make this information available to the public in a manner to be determined by the Director. As with the Internship Program, OPM is currently planning to make this information available to the public through advertisements available through USAJOBS.gov as these opportunities arise. It will be within each agency's discretion to determine the process for soliciting and accepting applications for specific Recent Graduates opportunities, consistent with applicable legal and policy requirements, including the President's hiring reform initiative (*see* May 11, 2010, Presidential Memorandum, at <http://www.whitehouse.gov/the-press-office/presidential-memorandum-improving-federal-recruitment-and->

hiring-process) and the requirement to collect applicant flow data.

Paragraph (b) of section 362.303 establishes that, subject to the requirements of subpart C of part 362 an agency may appoint a Recent Graduate to any position up to and including the General Schedule (GS)-09 level (or equivalent under other pay and classification systems such as the Federal Wage System). It also provides that an agency must appoint Recent Graduates to positions with progressively more responsible duties that provide career advancement opportunities. OPM has generally capped initial appointments under this authority at the GS-09 level because the Recent Graduates Program is intended to be a program for people seeking entry-level jobs who lack experience to compete with more experienced job seekers under the competitive examining process. However, OPM proposes to allow agencies to hire individuals at the GS-11 level for science, technology, engineering, or mathematics occupations if the individual possesses a Ph.D. or equivalent doctoral degree directly related to the science, technology, engineering, or mathematics position the agency is seeking to fill. In addition, OPM is proposing to allow agencies to fill certain scientific and professional research positions at the GS-11 or 12 level (or equivalent), if the individuals possess the requisite qualifying education.

Paragraph (c) of proposed section 362.303 provides that an agency may extend the 2-year program period for up to an additional 120 days when necessary due to rare or unusual circumstances or situations. This paragraph also requires an agency to identify the criteria for approving extensions in their Pathways Programs plans, and to record any extensions in writing and provide them to OPM.

Paragraph (d) of section 362.303 specifies that an agency must evaluate Recent Graduate candidates using OPM qualification standards for the occupation and grade level of the position being filled.

Paragraph (e) provides that an agency may promote any Recent Graduate who meets OPM qualification requirements in accordance with the agency's Pathways MOU. This section also makes clear that promotions are made at the agency's discretion and these provisions do not confer an entitlement to a promotion.

Paragraph (f) makes it clear that the first 2 years of a Recent Graduate's appointment is a trial period and

creditable in the same manner as prescribed in 5 CFR 315.802.

Movement Between Agencies

Section 362.304 provides that an individual may accept a new Recent Graduate appointment with another agency. This section explains the criteria under which a Graduate may move from one agency to another under this authority and remain in the program.

Proposed paragraph (c) explains that the new employing agency must appoint the Graduate without a break in service.

Paragraph (d) of this section provides that the time served by a Graduate under the previous Program with the first agency is creditable towards the 2-year requirement for noncompetitive conversion eligibility to the competitive service. It also provides that the Graduate does not begin a new 2-year period in the Program when he or she meets the conditions of subpart C of part 362. Finally, this section, in paragraph (e), requires the new or gaining agency to identify requirements for program completion and eligibility for noncompetitive conversion in the agency's Pathways Programs plan.

Reduction in Force and Termination

The proposed section 362.305, in paragraph (a), makes clear that Graduates are in excepted service Tenure Group II for reduction in force (RIF) purposes. It also provides that the expiration of a Recent Graduate appointment is not subject to RIF procedures under 5 CFR part 351.

Paragraph (b) of that section makes clear that a Recent Graduate's appointment expires at the end of the 2-year program period, plus any approved agency extension, unless the agency has selected the participant for noncompetitive conversion to the competitive service.

Conversion to the Competitive Service

Paragraph (a) of section 362.306 provides that an agency may noncompetitively convert a Recent Graduate to a term or permanent competitive service appointment in the agency in which the Graduate had been working or to another Federal agency. Though conversion to term appointments is discouraged, OPM proposes providing for conversion to a term appointment for Recent Graduates in order to maximize employment opportunities for Recent Graduates who successfully complete the Program when an agency cannot otherwise convert them to permanent competitive service appointments.

Section 362.306(b) specifies the conditions a Recent Graduate must meet to be eligible for noncompetitive conversion to the competitive service. These include citizenship requirements, all other applicable Recent Graduates Program requirements, qualification requirements for the position to which the Graduate will be converted, and maintenance of acceptable performance under the agency's approved performance appraisal system.

Section 362.306(c) specifies how to set the effective date of the conversion of a Recent Graduate to the competitive service.

Presidential Management Fellows (PMF) Program

The Presidential Management Intern (PMI) Program was established by Executive order in 1977 to attract highly-qualified persons with graduate degrees from a variety of academic disciplines who demonstrated an interest in, and commitment to, leadership in the Federal service. PMI candidates were nominated by their graduate schools, and, after a rigorous assessment process conducted by OPM, the best qualified finalists were identified as eligible for excepted appointments by Federal agencies. Following successful completion of a 2-year internship that included formal training and rotational assignments, PMIs could be appointed without further competition to positions in the competitive service.

In 2005 OPM revised the PMI Program to implement the provisions of Executive Order 13318, which included renaming the program as the Presidential Management Fellows Program to better reflect its high standards, rigor, and prestige. In addition, the PMF Program had two components: Presidential Management Fellows and Senior Presidential Management Fellows. Executive Order 13318 charged the Director of OPM with developing, managing, and evaluating the Program.

On December 27, 2010, the President signed Executive Order 13562, which, as noted earlier in this Supplementary Information, contains additional changes to the PMF Program. The E.O. places the PMF Program under the Pathways Programs framework to clarify its relationship to the other Pathways Programs. To implement the Executive order, OPM is placing the provisions relating to the PMF Program in a new subpart D of 5 CFR part 362. For the most part, the PMF Program will remain the same, with minor changes that are necessary to implement the Executive order.

Program Summary

Senior Fellows

OPM proposes to eliminate the Senior Fellows component of the PMF Program. E.O. 13562 does not provide for a Senior Fellows Program under the Pathways Programs framework, an aspect of the 2005 Executive order that was never actually implemented.

Definitions

In section 362.401, OPM proposes to modify the definition of *Presidential Management Fellow* to accommodate new requirements identified under the E.O., such as the new Schedule D appointing authority and the elimination of the school nomination process.

The definition of *qualifying college or university* has been replaced with a definition of *qualifying educational institution*. However, to provide a consistent treatment of educational institutions and consistent requirements across the three Pathways Programs, we are proposing to place the definition in section 362.102.

Proposed section 362.401 no longer includes a definition of *Senior Presidential Management Fellow* because E.O. 13562 did not include the Senior Fellows Program under the Pathways Programs framework.

Program Administration

Section 362.402 of the proposed regulations includes provisions currently in 5 CFR 362.201.

This section provides the Director with the discretion to determine the number of Fellows agencies may appoint during any given year. Current PMF rules require the OPM Director to make this determination on or about October 1. OPM is proposing to change this rule because E.O. 13562 no longer requires the OPM Director to make the determination by this specific date. The Director will also establish the qualifications requirements for evaluating individuals for entrance into the PMF Program. Agencies will continue to appoint Fellow finalists selected by OPM.

OPM also proposes new requirements in section 362.402(d) for agencies that hire PMFs for locations in the field.

Announcement, Eligibility, and Selection

OPM proposes to move most of the provisions currently in 5 CFR 362.202 to section 362.403, which will be renamed "Announcement, Eligibility, and Selection." We are proposing to remove from the section heading the reference to nomination, because the Executive

order governing the program no longer requires an individual to be nominated by faculty of his or her graduate school in order to apply to become a Fellow, and OPM believes it would be preferable to evaluate candidates solely on the basis of centrally-administered assessment tools.

Under the proposed rule an individual will be able to apply for positions under the PMF Program for up to 2 years after completing his or her degree or certificate requirements at a qualifying educational institution. This proposed section also makes clear there is no limit to the number of times an applicant can apply, provided it is within the 2-year time limit identified in E.O. 13562, though an individual who is a PMF finalist for a previous year will lose that status if he or she applies to the Program again. OPM will select and publish a list of Fellows finalists.

Appointment and Extensions

Section 362.404 of the proposed regulations provides that PMF appointments may be at the GS-09, 11, or 12 level (or equivalent) and are limited to 2 years. An agency may extend a PMF appointment (without OPM approval) for up to an additional 120 days under rare and unusual circumstances. Extensions must be recorded in writing and provided to OPM. Under current PMF rules, OPM, upon a request from an agency, may extend a PMF appointment for up to an additional year. The new Executive order does not provide OPM the flexibility to extend appointments under any Pathways Program. Therefore, this proposed section eliminates OPM's authority to extend a PMF for up to an additional year. This proposed section also makes clear that the first 2 years of a Fellow's appointment is a trial period.

This proposed section does not address citizenship requirements. That language has been moved to proposed subpart A, General Provisions.

Development, Evaluation, Promotion, and Certification

Proposed section 362.405(a) establishes a requirement for agencies to approve an Individual Development Plan (IDP) for each of their Fellows.

Proposed paragraph (b) provides for certain required developmental activities. Proposed paragraph (b)(1) requires OPM to provide an orientation program and information on available training opportunities to each class or cohort of Fellows.

Proposed paragraph (b)(2) removes the requirement for formal classroom training and replaces it with "interactive" training. As discussed in

the Recent Graduates section, this will provide greater flexibility in meeting the training requirements, which we believe will prove beneficial to both the PMF and the agency.

Proposed paragraph (b)(3) adds a new requirement that agencies will be responsible for assigning a mentor for each Fellow within 90 days of appointment. The mentor may not be part of the PMF's supervisory chain of command. Additionally, mentors must be members of the Senior Executive Service (SES) or equivalent, unless the PMF works in a location where an insufficient number of SES members are available for mentoring duties. In that event, mentors should be from the highest grade level from which a sufficient number of employees are available for mentoring duties. OPM is proposing the mentor requirement to emphasize the importance of the PMF Program and its role in leadership development. Mentors can provide Fellows with advice and counseling on a myriad of career decisions, such as training and developmental assignments. We believe the new mentor requirement will enhance and enrich not only the PMF Program, but each individual Fellow's development.

Proposed paragraph (b)(4) requires agencies to provide for a minimum of one developmental assignment of 4 to 6 months' duration. Alternatively, a Fellow may choose participation in an agency-wide, Presidential or Administration initiative that will provide experience comparable to the developmental assignment. In addition, this paragraph allows agencies to provide other short-term rotational assignments.

Proposed paragraph (b)(6) requires agencies to make Fellows available to assist OPM in the process of assessing candidates for future PMF classes. Any interactive training provided to a Fellow in connection with this responsibility would count toward the annual 80-hour requirement.

Performance and progress evaluation criteria in the current PMF Program are maintained in paragraph (c) of proposed section 362.405.

Proposed paragraph (d) makes it clear that Fellows may be promoted up to the GS-13 level or equivalent, provided they meet the OPM qualification standard for the grade level of the position.

Paragraph (e) of proposed section 362.405 retains the existing requirements for certification of an agency's Executive Review Board upon a Fellow's completion of the Program.

Waiver

The existing waiver provision for the PMF Program has been moved to subpart A of part 362.

Movement Between Agencies

We are proposing to eliminate references to Senior Fellows from section 362.406 (currently 5 CFR 362.206) because E.O. 13562 no longer provides for a Senior PMF Program.

Withdrawal and Readmission

OPM proposes to retain, in new section 362.407, the provisions currently in 5 CFR 362.207, allowing Fellows to withdraw and reapply to the program. We have made necessary conforming edits to those provisions, such as removing references to Senior Fellows.

Resignation, Termination, Reduction in Force, and Appeal Rights

OPM proposes to clarify the circumstances under which a Fellow may be terminated in new section 362.408, and to include necessary conforming edits, such as the removal of references to Senior Fellows.

Placement Upon Completion of the Program

The current provisions of section 362.209 will be retained in new section 362.409, with necessary conforming edits, such as the removal of reference to Senior Fellows, and the following additional changes:

Under E.O. 13562, an agency may convert any Pathways participant to a term or permanent competitive service appointment. As explained earlier, service in a Pathways Program confers no right to further employment. Agencies will no longer be required to convert Fellows to the competitive service.

The requirement for OPM to issue transition guidance has been moved to subpart A of proposed part 362.

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 proposes to amend title 5, Code of Federal Regulations, as follows:

* * * * *

PART 213—EXCEPTED SERVICE

1. Revise the authority citation for part 213 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 5 CFR 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 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 § 213.3102(r) and (s) and § 213.3402(a), (b), and (c), and authorities granted to individual agencies for use in connection with internship, fellowship, residency, or student programs.

* * * * *

Subpart C—Excepted Schedules

Schedule A

§ 213.3102 [Amended]

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

Schedule B

§ 213.3202 [Amended]

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

7. At the end of subpart C add Schedule D (undesignated 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. Appointments under this authority may not exceed 2 years except as provided in subpart C of part 362 of this chapter. 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:

(1) 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 PhD or equivalent doctoral degree directly related to the STEM position the agency is seeking to fill.

(2) 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.

(3) 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 PhD or equivalent doctoral degree directly related to the position the agency is seeking to fill.

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 either 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. 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.

§ 302.101 [Amended].

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), (b)(1)(xvii), (b)(1)(xviii), and (b)(1)(xix) and add paragraphs (b)(1)(xx), (xxi), and (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 was 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.

* * * * *

(xiii) 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 was 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;

* * * * *

(xvii) The starting date of active service as an administrative enrollee in the United States Merchant Marine Academy;

(xviii) The date on which an employee became eligible for benefits under Public Law 83-121, unless an earlier date can be chosen because of prior nontemporary service;

(xix) Appointment as a career intern under Schedule B, § 213.3202(o) of this chapter, provided the employee's appointment was 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);

(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); 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).

* * * * *

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

§ 315.708 [Removed and Reserved]

12a. In subpart G, remove and reserve § 315.708.

§ 315.712 [Removed and Reserved]

12b. In subpart G, remove and reserve § 315.712.

12c. In subpart G, add § 315.713 to read as follows:

§ 315.713 Conversion based on service in a Pathways Program.

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

(1) Interns who satisfactorily complete the Internship Program and meet all eligibility requirements for conversion as outlined in subpart B of part 362 of this chapter;

(2) Recent Graduates who satisfactorily complete the Recent Graduates Program and meet all eligibility requirements for conversion as outlined in subpart C of part 362 of this chapter; and

(3) Presidential Management Fellows who satisfactorily complete the Fellows Program and meet all eligibility requirements for conversion as outlined in subpart D of part 362 of this chapter.

(b) *Tenure on conversion.* An employee whose appointment is converted 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.*

(1) A Recent Graduate or Presidential Management Fellow converted to a full-time career or career-conditional position in the competitive service under this section does not serve a probationary period and acquires competitive status immediately upon conversion.

(2) An Intern acquires competitive status upon completion of a probationary period following conversion.

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

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

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 19 FR 7521, 3 CFR, 1954–58, Comp., p. 218. Section 330.102 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. Subpart G also issued under 5 U.S.C. 8337(h) and 8456(b). Subpart K also issued under sec. 11203 of Pub. L. 105–33 (111 Stat. 738) and Pub. L. 105–274 (112 Stat. 2424). Subpart L also issued under sec. 1232 of Pub. L. 96–70, 93 Stat. 452.

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

362.101 Program administration.
362.102 Definitions.
362.103 Authority.
362.104 Agency requirements.
362.105 Filling positions.
362.106 Conversion to the competitive service.
362.107 Program accountability and oversight.
362.108 Waiver.
362.109 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.

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 (RIF) and terminations.

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 Resignation, termination, and reduction in force.
 362.409 Conversion to the competitive service.

Authority: E.O. 13562.

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 above provided that the agency specific name includes the Pathways Program name identified in (a), e.g., OPM 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:

Agency means an Executive agency as defined in 5 U.S.C. 105, except that 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.

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

OPM means the Office of Personnel Management.

Pathways Program participant means any individual appointed under a Pathways Program.

Qualifying educational institution means—

(1) A high school whose curriculum has been approved by a State or local governing body, or a home-school curriculum that has been approved by such a body or 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 home-school curriculum.

§ 362.103 Authority.

An agency may make an appointment under this part to a position defined in 5 CFR 213.3402, provided the head of the agency or his or her designee executes a memorandum of understanding with OPM and a Pathways Agreement with each appointee in accordance with § 362.104.

§ 362.104 Agency requirements.

(a) In accordance with this part, the head of an agency, or his or her designee, must execute:

(1) A memorandum of understanding (Pathways MOU) with OPM for the administration and use of Pathways Programs, to be re-executed every 2 years. The Pathways MOU must:

- (i) Describe how the agency will:
 - (A) Accept applications for positions;
 - (B) Assess candidates for positions;
 - (C) Rate and arrange qualified applicants;
 - (D) Ensure adherence to veterans' preference requirements in accordance with the provisions of Part 302 of this chapter; and
- (ii) 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);
- (iii) State the delegations of authority for the agency's use of the Pathways Programs (e.g., department-wide vs. bureaus or components);

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

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

(v) Prescribe criteria and procedures for agency-approved extensions, not to exceed 120 days, of the 2-year appointments authorized under the Pathways Programs;

(vi) Specify the roles and responsibilities of supervisors and other key officials in Pathways Programs, such as, to the extent applicable, human resources staff, budget and finance staff, career counselors, and mentors;

(vii) Describe how the agency will design, implement, and document formal training and/or development of employees selected under the provisions of these Programs, the type and duration of assignments, and necessary exceptions for short term temporary work, such as summer jobs;

(viii) Describe the on-boarding process, designed for each Pathways Program;

(ix) Include a commitment from the agency to:

(A) Provide in its annual Human Capital Management Reports under part 250 of this chapter (or through alternative means, as authorized by OPM) the information required by OPM on the agency's usage of the Pathways Programs;

(B) Adhere to any caps on conversion of Pathways Program participants imposed by the Director; and

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

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

(xi) Include any implementing policy or guidance that the agency determines, in its discretion, would facilitate successful implementation and administration for each Pathways Program.

(2) [Reserved].

(b) An agency must also execute a Pathways Agreement with each Pathways Program participant.

(c) The Pathways Agreement is a written agreement between the agency and each Pathways Program participant that clearly identifies expectations, including but not limited to:

- (1) General description of duties;
- (2) Evaluation procedures that will be used for the participant;
- (3) Requirements for continuation and successful completion of the program;
- (4) Work schedules;
- (5) Minimum eligibility requirements for noncompetitive conversion to term or permanent competitive service employment according to the requirements of the applicable Pathways Program; and

(6) The length of the appointment and termination date.

§ 362.105 Filling positions.

(a) *Workforce planning.* Agencies should include measures in their workforce planning to ensure that an adequate number of permanent spots will be available to convert Pathways Program participants who successfully complete their programs.

(b) *Announcements.* Agencies must announce the availability of Pathways Programs job opportunities as provided in each of the three Pathways Programs.

(c) *Appointments.* (1) Agencies must fill positions under the Pathways Programs using the excepted service appointing authority provided by 5 CFR 213.3402(a), (b), or (c), 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.* (1) 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 Program 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 Program 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 Program 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, Internship Program, appointments under this authority are for 2 years plus any agency approved extension of up to 120 days.

(h) *Terminations.* An agency may terminate a Pathways Participant for reasons related to misconduct, poor performance, or suitability. The appointment of a Pathways participant

who is not converted to a career or career-conditional appointment automatically expires at the end of the program period, or upon expiration of an agency-approved extension, if applicable. Agencies must terminate Interns and Recent Graduates who are not converted at the end of the program period. Termination rules for Presidential Management Fellows are set forth in § 362.408 of this part.

§ 362.106 Conversion to the competitive service.

(a) Subject to any limits on conversion imposed by the Director, an agency may noncompetitively convert an eligible Pathways Program participant to a term or permanent competitive service position.

(b) A Pathways Program 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 may be to a position within the same agency or any other agency within the Federal Government.

(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 Program participant counts towards career tenure when the individual is noncompetitively converted to a permanent position in the competitive service upon completion of the Program.

(f) A Pathways appointment expires of its own terms. Though Pathways Program 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 Program participant must therefore execute the required actions to do so.

§ 362.107 Program accountability and oversight.

(a) The Director may limit the number of noncompetitive conversions to the competitive service of Interns, Recent Graduates, and PMFs under subparts B, C, and D, respectively, of this part. Any such limit may apply to any of the Pathways Programs individually, or to all three Pathways Programs collectively. If the Director establishes a Governmentwide limit on conversions for any or all of the Pathways Programs,

he or she may implement the limits by establishing agency-specific limits, to be reflected in each affected agency's Pathways MOU.

(1) In determining whether establishment of any Governmentwide limits on conversions is appropriate, the Director will consider whatever factors and information the Director deems relevant.

(2) In implementing any Governmentwide limitations through agency-specific limits, the Director will consider:

(i) The agency's compliance with its Pathways MOU;

(ii) The agency's overall approach to entry-level hiring, including:

(A) Whether the agency is engaging in sound workforce planning to ensure that an adequate number of permanent spots will be available to convert Pathways Program participants who successfully complete its programs; and

(B) The agency's record in using the Pathways Programs as a supplement to competitive examining, rather than as a substitute for it;

(iii) The agency's record of publicizing its positions in the Pathways Programs and recruiting and selecting from a broad array of sources; and

(iv) Any other information the Director deems relevant.

(3) In the event the Director determines that any limits would be appropriate, OPM will publish the limits, including how they apply to individual agencies participating in the Pathways Programs, as a notice in the **Federal Register**.

(b) Agencies must provide in their Human Capital Management planning documents or another form prescribed by OPM, workforce planning strategies that include:

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

(2) The percentage of overall hiring expected in the coming year under the Internship, Recent Graduates, and Presidential Management Fellows Programs established under subparts B, C, and D, respectively, of this part; and

(3) For the previous year:

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

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

(iii) The number of Pathways Program participants, per program, converted to the competitive service; and

(iv) The number of Pathways Program participants, per program, who were separated.

§ 362.108 Waiver.

Under limited circumstances, the Director may approve a written request by an agency for a waiver of any of the regulatory requirements set forth in this part.

§ 362.109 Transition.

OPM will provide written guidance for the orderly transition of employees currently appointed as students under E.O. 13562, or as Fellows under E.O. 13318, to the Pathways Program under E.O. 13562 and may revise that guidance as necessary.

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

The Internship Program provides students in high schools, colleges, trade 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 who has been accepted for enrollment or who is enrolled and seeking a degree (diploma, certificate, *etc.*) in a qualifying educational institution as defined in § 362.102, on a full or half-time basis (as defined by the institution in which the student is enrolled), including students in 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 in the class enrollment period immediately prior to graduating is still considered a student for purposes of this program.

§ 362.203 Filling positions.

(a) *Announcement.* (1) An agency must provide OPM, information concerning opportunities to participate in the agency's Internship Program. 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 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, individuals must meet the definition of *student* in § 362.202 of this part throughout the duration of their Internship appointment.

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

(d) *Appointment.* (1) An agency may make appointments to the Internship Program, pursuant to its Pathways MOU, using the Schedule D excepted service appointing authority provided in 5 CFR 213.3402(a).

(2) Appointments may be made to any position, at any General Schedule grade (or equivalent level under another pay and classification system, including the FWS), for which the individual is qualified. The duties of the position to which the individual is appointed do not have to be related to the Intern's academic or career goals.

(3) An agency may appoint an Intern on either a temporary basis or for an initial period expected to last more than 1 year.

(i) Temporary appointments are made for a period not to exceed 1 year. The agency may extend the temporary appointment as provided in 213 of this chapter.

(ii) Appointments for an initial period expected to last more than 1 year are not required to have an end date. However, agencies are required to specify an end date for the appointment in the Pathways Agreement with the Intern.

(e) *Promotion.* An agency may promote an Intern.

(f) *Classification.* (1) An Intern whose position is under the General Schedule or appropriate pay plan must be classified as a student trainee, to the –99 series of the appropriate occupational group.

(2) An Intern whose position is under the Federal Wage System must be classified as a student trainee, to the –01 series of the appropriate occupational group.

(g) *Schedules.* An Intern may work a full-time or part-time schedule. An agency is responsible for establishing a work schedule for an Intern in accordance with 5 CFR 610.121. An Intern's work schedule should not interfere with his or her academic schedule. Agencies and students should agree on a formally-arranged schedule of school and work so that:

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

(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 and prepared for the student's periods of employment; and

(4) Requirements for noncompetitive conversion to 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 break in program.

§ 362.204 Conversion to the competitive service.

(a)(1) An Intern who is a U.S. citizen may be noncompetitively converted from the Internship Program under this subpart to a term or permanent position in the competitive service when the Intern has:

(i) Completed at least 640 hours of work experience acquired through the Internship Program while otherwise enrolled as a full-time or part-time, degree-seeking student;

(ii) 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;

(iii) Received a favorable recommendation regarding such an appointment by an official of the agency or agencies in which the Internship was served;

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

(v) Met all agency-specific requirements, if any, as specified in the agency's Pathways Agreement with the Intern.

(2) Up to 320 hours acquired through a comparable non-Federal internship program meeting the criteria set forth in paragraph (b) and (c) of this section may be credited toward the 640-hour minimum required under paragraph (a)(1)(i) of this section.

(b) To be creditable under paragraph (a) of this section, work experience must be acquired under an Internship Program appointment under this subpart, another previous Federal appointment (*e.g.*, fellowships and similar programs in accordance with 5 CFR 213.3102(r)), or while the student:

(1) 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, including as a student volunteer as defined by part 308 of this chapter;

(2) 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 which is comparable to the Internship Program under this subpart; or

(3) Served as an active duty member of the armed forces of the United States (including the National Guard and Reserves), as defined in 5 U.S.C. 2101, and has been discharged or released from active duty in the armed forces under honorable conditions.

(c) An agency may waive up to one-half (*i.e.*, 320 hours) of the 640-hour minimum service requirement in paragraph (a)(1) of this section if a student enrolled in an accredited college or university completes 320 hours of career-related work experience under an Internship Program appointment, and has demonstrated high potential as evidenced by outstanding academic achievement and exceptional job performance.

(1) Outstanding academic achievement must be demonstrated by 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. Notwithstanding these differences, agencies may still refer to "superior academic achievement" in OPM's Qualifications Standards for General Schedule Positions available on the OPM Web site at <http://www.opm.gov> to obtain specific guidance on grade point average, class standing, and nationally recognized honor societies.

(2) Exceptional job performance must be demonstrated by a formal evaluation conducted by the student's internship supervisor(s), in a manner consistent with the applicable performance appraisal program established under an approved performance appraisal system and resulting in a rating of record (or summary rating) higher than Fully Successful or equivalent.

(d) In no event may an agency grant a credit or waiver (or a combination of a credit and waiver) totaling more than 320 hours of the 640-hour minimum service requirement in paragraph (a)(1) of this section.

(e) Student volunteer service under part 308 of this chapter and Fellows appointed under 5 CFR 213.3102(r) may be evaluated, considered, and credited

under this section when that experience is determined by the agency to be comparable in scope to experience gained in the Internship Program.

§ 362.205 Reduction in force (RIF) and terminations.

Interns are covered by part 351 of this chapter for purposes of RIF.

(a) An Intern serving under an appointment for an initial period expected to last more than 1 year is in excepted service Tenure Group II for purposes of § 351.502 and is accorded the same retention rights as other excepted service employees.

(b) *Terminations.* As a condition of employment, a Recent Graduate appointment expires at the end of the 2-year program period, plus any agency-approved extension, unless the participant is selected for noncompetitive conversion under § 362.204.

(c) An Intern serving under a temporary appointment is in excepted service Tenure Group III for purposes of § 351.502, provided he or she has completed at least 1 year of current continuous service. If not, the Intern is in Tenure Group 0 for purposes of § 351.502.

Subpart C—Recent Graduates Program

§ 362.301 Program administration.

The Recent Graduates Program provides a 2-year developmental experience designed to lead to a civil service career in the Federal Government. Individuals appointed under this authority are referred to as Recent Graduates. Agencies wishing to participate in the Recent Graduates Program must:

(a) Ensure, within 90 days of appointment, that each Recent Graduate is assigned a mentor from the appropriate level that is outside his or her chain of command;

(b) 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

(c) 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, within the previous 2 years, completed a qualifying associates, bachelors, masters, professional,

doctorate, vocational or technical degree or certificate from a qualifying educational institution as defined in § 362.102 of this part.

(b)(1) Except as provided in paragraph (b)(2) of this section, an application for a position in the Recent Graduates Program may be considered only if it is received not later than 2 years from the date all requirements for a degree or certificate from a qualifying educational institution as defined in § 362.102 of this part are met.

(2) A veteran who, due to a military service obligation, was precluded from applying in to the Recent Graduates Program during the 2-year eligibility period after obtaining a degree or certificate will begin his or her 2-year window of eligibility upon on his or her release or discharge from active duty. The individual's eligibility period may not extend beyond 6 years from the date on which the Graduate received his or her degree or certificate.

§ 362.303 Filling positions.

(a) *Announcement.* (1) An agency must provide OPM, information concerning opportunities to participate in the agency's Recent Graduates Program. 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; 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) *Appointments.* (1) An agency may make 2-year 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 5 CFR 213.3402(b).

(3)(i) An agency may make an initial appointment of a Recent Graduate to any position identified to be 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 paragraph (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 doctoral 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 doctoral 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.*, there must be the opportunity for career ladder advancement).

(c) *Extensions.* An agency may extend the 2-year 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. Any such extensions must be recorded in writing and reported to OPM.

(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 OPM qualification requirements for the position in accordance with the agency's Pathways MOU. This provision does not confer entitlement to promotion.

(f) *Trial period.* The first 2 years of a Recent Graduate's service is a trial period. Prior Federal civilian service is credited toward the completion of the required trial period in the same manner as prescribed in 5 CFR 315.802.

§ 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 2-year requirement 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 or gaining agency's plan must identify requirements for Program completion and eligibility for noncompetitive conversion.

§ 362.305 Reduction in force and termination.

(a) *Reduction in force.* Recent Graduates are in excepted service Tenure Group II for purposes of 5 CFR 351.502. 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 2-year 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 employing agency's discretion, be placed in a permanent competitive service position, as appropriate, in that agency.

§ 362.306 Conversion to the competitive service.

(a) An agency may noncompetitively convert a Recent Graduate to a term or permanent appointment in the competitive service under 5 CFR 315.713(b).

(b) A Recent Graduate who is a U.S. citizen may be noncompetitively converted from the Recent Graduates Program under this subpart to a term or permanent position in the competitive service when the Recent Graduate has:

(1) Successfully completed 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.

(c) When converting a Recent Graduate, an agency must make the noncompetitive conversion effective on the date the 2-year service requirement is met, or at the end of an agency-approved extension, if applicable.

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 Program Officer may also serve as the PMF Coordinator.

Executive Resources Board (ERB) has the same meaning as specified in 5 CFR 317.501(a); 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 5 CFR 213.3402(c).

Qualifications Review Board (QRB) has the same meaning as specified in 5 CFR 317.502(a).

§ 362.402 Program administration.

(a) The Director may determine the number of Fellows that 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, as set forth in 5 U.S.C. 1103(c)(2)(C).

(c) The Director will establish the qualification requirements for

evaluating applicants for the Presidential Management Fellows (PMF) Program;

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

(1) Discuss with each Fellow, in advance of making the appointment, whether he or she 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) Coordinate with its Federal Executive Board (FEB) in promoting interaction with other Fellows in that region. In addition, an agency hiring Fellows in field locations must permit them 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) Individuals who completed an advanced degree from a qualifying educational institution within the 2 years, preceding the Program announcement described in paragraph (a) of this section, or who are scheduled to complete an advanced degree prior to the date that PMF finalists are announced, are eligible to apply for the Program. 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.

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

(d) OPM will publish a list of Fellows finalists. OPM will send all participating agencies the list of Fellows finalists for appointment consideration.

§ 362.404 Appointment and extension.

(a) *Appointment.* (1) An agency must appoint a Fellow using the Schedule D excepted service appointing authority provided in 5 CFR 213.3402(c).

(2) An agency may appoint a Fellow for an initial period of 2 years. The first 2 years of a Fellow's appointment is a trial period.

(3) An agency may appoint a Fellow at any time during the 12-month period

beginning on the date OPM publishes the list of Fellows finalists.

(4) 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. Any such extensions must be recorded in writing and reported to OPM.

(b) *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.

§ 362.405 Development, evaluation, promotion, and certification.

(a) *Individual Development Plans.* The appointing agency must approve 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 appointing agency must provide each Fellow a minimum of 80 hours of interactive training per year that addresses the competencies outlined in the IDP.

(3) Within the first 90 days of a Fellow's appointment, the appointing agency must assign the Fellow a mentor, who is outside the Fellow's chain of command and who is a member of the SES (or equivalent), or other senior-level manager, as appropriate.

(4) The appointing 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. However, 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.

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

the agency, or in another Federal agency.

(5) In addition, the Fellow may receive other short-term rotational assignments of 1 to 6 months in duration, at the appointing 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. This may require travel on the part of the Fellow to be paid for by the appointing agency. 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) *Performance and progress evaluation.* (1) Each Fellow 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 Fellow as well as the elements and standards established for the duties assigned.

(2) Each Fellow must receive an annual performance evaluation in accordance with the agency's performance management program. The rating is to include an evaluation of the Fellow's success in completing developmental activities designed to prepare the Fellow to meet the developmental and performance expectations described in his or her performance plan. In addition to the formal evaluation, the agency is expected to provide regular feedback concerning the Fellow's performance.

(3) If a Fellow does not meet expectations set forth in the performance plan with regard to his or her developmental progress or assignments, the agency may take appropriate action.

(d) *Promotion.* (1) An agency may promote a Fellow according to the agency's Program plan, provided the Fellow meets the OPM qualification standard for the grade level of the position. A Fellow may be promoted up to the GS-13 level (or the equivalent under another pay and classification system, such as the Federal Wage System).

(e) *Certification of completion.* (1) Upon a Fellow's completion of the Program, the appointing agency's ERB must evaluate each Fellow and determine whether it can certify in writing that he or she has met all of the requirements of the Program, including

the performance and developmental expectations set forth in the individual's performance plan and IDP.

(2) The ERB may consult the Fellow's mentor in reaching its determination.

(3) In the event the Director has approved a waiver of one or more Program requirements in a particular case pursuant to § 362.108 of this part, the ERB must certify that such a waiver has been granted and that any remaining requirements were met.

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

(5) ERB certifications must be forwarded to OPM.

(6)(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 period in the Program 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) The new appointing agency must notify OPM when a Fellow moves to that agency from another 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, subpart A, of this chapter) still apply. 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.

(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 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 Resignation, termination, and reduction in force.

(a) *Resignation.* A Fellow who resigns at any time prior to completion of the Program does not have reinstatement eligibility for competitive service positions based on his or her appointment as a Fellow.

(b) *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 § 362.403, 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.

(c) *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 § 362.403 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) As provided in part 315.713(c) of this chapter, an agency may convert, without a break in service, an ERB-certified Fellow to a term or permanent appointment in the competitive service.

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—
a. 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 5 CFR 213.3402(a).

* * * * *

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) * * *

(5) 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 5 CFR 213.3402(c);

(7) A Recent Graduates Program appointment under 5 CFR 213.3402(b); 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) introductory text 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 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 5 CFR 213.3402(c).

* * * * *

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 5 CFR 362.203(e)), 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, Public Law 108–411, 118 Stat. 2305; subpart C also issued under 5 U.S.C. 5754 and sec. 101, Public Law 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 Public Law 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 5 CFR 213.3402(a).

* * * * *

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 5 CFR 213.3402(a) 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.

* * * * *

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