



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
H-232 The Capitol
Washington, DC 20515

APR 12 2019

Dear Madam Speaker:

Enclosed for consideration by the Congress are draft legislative proposals to improve, expand, and harmonize the Federal Government's efforts to restructure and reshape the Federal workforce. These legislative proposals advance the President's efforts outlined in Executive Order 13781, *Comprehensive Plan for Reorganizing the Executive Branch*. The Office of Personnel Management (OPM) recognizes that Federal agencies may need additional tools and flexibilities as they seek to improve efficiency, effectiveness, and accountability. Further, OPM believes that the Federal Government will benefit from providing additional authorities to agencies in recruiting and developing top talent in their ranks. The proposals included in this transmission seek to address these important needs.

The legislative proposals included in this transmittal are as follows:

- **Amendment to the Expedited Hiring Authority for Post-Secondary Students**

This proposal would modify the intern recruitment and hiring process established in 2018 by removing the cap in the existing statute.

- **Changes to Streamlining Cause and Procedure for Adverse Actions Based on Efficiency of the Service**

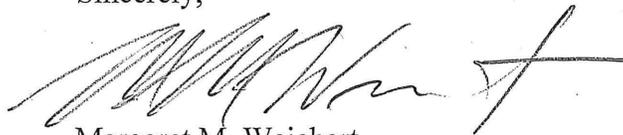
OPM prescribes by regulation a 1-year probationary period for an appointment to a position in the competitive service. OPM can provide for longer probationary periods (such as 2 years) when warranted, based on the nature of the position (such as extensive training required). However, any practical benefit of this authority is constrained by the current statutory definition of "employee", which defines when an individual receives procedural due process rights in the event an agency takes adverse action to address misconduct or unacceptable performance. This proposal would modify the definition of "employee" to provide greater flexibility for agencies to use longer probationary periods.

- **Eligibility of Employees in Time-Limited Appointments to Compete for Permanent Positions**

This proposal would allow Federal agencies to consider time-limited employees at their agency for permanent positions through merit promotion procedures. To be eligible, time-limited employees must be appointed initially through competitive examination, have acceptable performance, and serve for a specific duration. This proposal would create parity throughout the Government.

I urge the Congress to give prompt and favorable consideration to these legislative proposals. The Office of Management and Budget has advised that there is no objection to the transmittal of these draft legislative proposals to the Congress and that their enactment would be in accordance with the program of the President.

Sincerely,



Margaret M. Weichert
Acting Director

Enclosures



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

The Honorable Michael R. Pence
President of the Senate
United States Senate
S-212 Capitol
Washington, DC 20510

APR 12 2019

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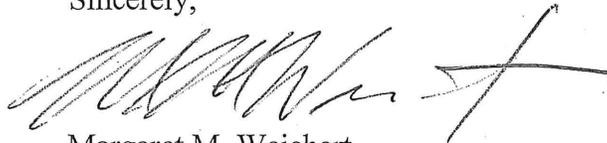
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A handwritten signature in black ink, appearing to read 'M. Weichert', with a large, stylized flourish extending to the right.

Margaret M. Weichert
Acting Director

Enclosures

Enclosure (1)

1
2 **SEC. __. AMENDMENT TO THE EXPEDITED HIRING AUTHORITY FOR POST-**

3 **SECONDARY STUDENTS.**

4 Section 3116 of title 5, United States Code, is amended—

5 (1) by striking subsection (d); and

6 (2) by redesignating the following subsections accordingly.

Section-by-Section Analysis

This proposal would remove the mandatory cap on the number of interns appointed under this authority based on the number of students appointed in the previous fiscal years. Basing the cap on hires made during the previous years, as in the current statute, could produce unintended consequences. An agency that reduces its student hiring or one that is unable to hire students during a particular year may not be able to use this authority in subsequent years. Under such circumstances, the cap is based on the percentage of a very low number of hires or even zero hires, which in effect renders this hiring authority unusable.

The Federal Government needs a viable authority to hire interns to ensure an effective pipeline to sustain the Federal workforce. Building a pipeline for the Federal workforce is critical to agencies' ability to continue to meet current and future mission needs. Intern programs allow agencies to hire students, while in school, and provide them with on-the-job training to prepare them for a career in the Federal Government. It also introduces students to the wide range of occupations and employment opportunities that the Federal Government employs and offers. In FY 2018, the Federal Government hired fewer than 4,000 students Government-wide (a small portion of the number of interns hired under the previous authority), and this low number of intern hires is insufficient to build the pipeline needed to support agencies.

Budget Implications: The Office of Personnel Management does not believe that this proposal has any significant Government-wide cost implications. A budget table is inapplicable and has not been provided.

Changes to Existing Law: This proposal would make the following changes to title 5, U.S.C.:

§ 3116. Expedited hiring authority for post-secondary students; competitive service

(a) Definitions.—In this section:

(1) Director.— The term “Director” means the Director of the Office of Personnel Management.

(2) Institution of higher education.— The term “institution of higher education” has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) Student.— The term “student” means an individual enrolled or accepted for enrollment in an institution of higher education who is pursuing a baccalaureate or graduate degree on at least a part-time basis as determined by the institution of higher education.

(b) Appointment.—

(1) In general.— The head of an agency may make a time-limited appointment of a student, without regard to any provision of sections 3309 through 3319 and 3330, to a position in the competitive service at the GS–11 level, or an equivalent level, or below for which the student is qualified.

(2) Restrictions.— An appointment under paragraph (1) shall be made in accordance with regulations prescribed by the Director.

(c) Public Notice.—

(1) In general.— The head of an agency making an appointment under subsection (b) shall publicly advertise positions available under this section.

(2) Requirements.— In carrying out paragraph (1), the head of an agency shall—

(A) adhere to merit system principles;

(B) advertise positions in a manner that provides for diverse and qualified applicants; and

(C) ensure potential applicants have appropriate information relevant to the positions available.

~~(d) Limitation on Appointments.—~~

~~(1) In general.— Except as provided in paragraph (2), the total number of students that the head of an agency may appoint under this section during a fiscal year may not exceed the number equal to 15 percent of the number of students that the agency head appointed during the previous fiscal year to a position in the competitive service at the GS–11 level, or an equivalent level, or below.~~

~~(2) Exceptions.— Under a regulation prescribed under subsection (g), the Director may establish a lower limit on the number of students that may be appointed under paragraph (1) of this subsection during a fiscal year based on any factor the Director considers appropriate.~~

~~(e)(d) Conversion.— The head of an agency may, without regard to any provision of chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, convert a student serving in an appointment under subsection (b) to a permanent appointment in the competitive service within the agency without further competition if the student—~~

~~(1) has completed the course of study leading to the baccalaureate or graduate degree;~~

~~(2) has completed not less than 640 hours of current continuous employment in an appointment under subsection (b); and~~

~~(3) meets the qualification standards for the position to which the student will be converted.~~

~~(f)(e) Termination.— The head of an agency shall, without regard to any provision of chapter 35 or 75, terminate the appointment of a student appointed under subsection (b) upon completion of the designated academic course of study unless the student is selected for conversion under subsection (d).~~

~~(g)~~(f) Regulations.— Not later than 180 days after the date of enactment of this section, the Director shall issue interim regulations, with an opportunity for comment, for the administration of this section.

~~(h)~~(g) Reporting.—

(1) In general.—Not later than September 30 of each of the first 3 fiscal years beginning after the date of enactment of this section, the head of an agency that makes an appointment under this section shall submit a report to—

(A) Congress that assesses the impact of the use of the authority provided under this section during the fiscal year in which the report is submitted; and

(B) the Director that contains data that the Director considers necessary for the Director to assess the impact and effectiveness of the authority described in subparagraph (A).

(2) Content.—The head of an agency shall include in each report under paragraph (1)—

(A) the total number of individuals appointed by the agency under this section, as well as the number of such individuals who are—

(i) minorities or members of other underrepresented groups; or

(ii) veterans;

(B) recruitment sources;

(C) the total number of individuals appointed by the agency during the applicable fiscal year to a position in the competitive service at the GS–11 level, or an equivalent level, or below; and

(D) any additional data specified by the Director.

~~(i)~~(h) Special Provision Regarding the Department of Defense.—

(1) Authority.— Nothing in this section shall preclude the Secretary of Defense from exercising any authority to appoint a post-secondary student under section 1106 of the National Defense Authorization Act for Fiscal Year 2017 (10 U.S.C. note prec. 1580), or any applicable successor statute.

(2) Regulations.— Any regulations prescribed by the Director for the administration of this section shall not apply to the Department of Defense during the period ending on the date on which the appointment authority of the Secretary of Defense under section 1106 of the National Defense Authorization Act for Fiscal Year 2017 (10 U.S.C. note prec. 1580), or any applicable successor statute, terminates.

Enclosure (2)

1 **SEC. ____.** **CHANGES TO STREAMLINING CAUSE AND PROCEDURE FOR ADVERSE**
2 **ACTIONS BASED ON EFFICIENCY OF THE SERVICE**

3
4 (a) Definitions; application.—Subsection (a) of section 7511 of title 5, United States Code, is
5 amended—

6 (1) in subsection (a)(1)(A)(i), by striking “; or” and inserting “; and” at the end; and

7 (2) in subsection (a)(1)(C)(i), by striking “; or” and inserting “; and” at the end.

8 (b) CONFORMING AMENDMENT.—Section 4303(f)(2) of title 5, United States Code is amended by
9 striking “or” and inserting “and” after “initial appointment”.

Section-by-Section Analysis

This proposal would further modify the definition of “employee” to provide greater flexibility for agencies to use longer probationary periods. Probationary periods are an important part of the hiring process and are the final stage of candidate assessment, as the candidate is demonstrating his/her ability to perform the work successfully in the true work environment with no artificial constraints. OPM can provide for longer probationary periods under its current authority, but any practical benefit of this authority is constrained by the current statutory definition of “employee”, which defines when an individual becomes an employee for purposes of receiving procedural due process right when an agency removes them from the Federal service.

These amendments are needed to address two decisions by the U.S. Court of Appeals for the Federal Circuit. The court extended procedural appeal rights to certain individuals in the Federal Government contrary to the intent of Congress and overturned years of consistent and appropriate case law by the Merit Systems Protection Board and the Federal Circuit. Among other things, the decisions granted to probationary employees in some cases the full range of employee procedural protections Congress had always reserved for long-time employees. The proposal would also simplify current statutory language by providing clarity to when an individual is covered by certain due process procedural protections.

Budget Implications: The Office of Personnel Management does not believe this proposal has any significant Government-wide cost implications. A budget table is inapplicable and has not been provided.

Enclosure (3)

1 **SEC. __. ELIGIBILITY OF EMPLOYEES IN TIME-LIMITED APPOINTMENTS TO**
2 **COMPETE FOR PERMANENT APPOINTMENTS**

3 Section 3304 of title 5, United States Code, is amended by adding at the end the
4 following new subsection:

5 “(g)(1) For the purpose of this subsection, the term 'time-limited appointment' means a
6 temporary or term appointment in the competitive service.

7 (2) Notwithstanding chapter 33 or any other provision of law relating to the examination,
8 certification, and appointment of individuals in the competitive service, an employee serving
9 under a time-limited appointment in the competitive service is eligible to compete for a
10 permanent appointment in the competitive service when their employing agency is accepting
11 applications from individuals within its own workforce under merit promotion procedures, or
12 when their employing agency is accepting applications from individuals outside its own
13 workforce under the merit promotion procedures, if—

14 “(A) the employee was appointed initially under open, competitive examination
15 under subchapter I of chapter 33 to the time-limited appointment;

16 “(B) the employee has served under one or more time-limited appointments
17 within the employing agency for a period or periods totaling more than 24 months
18 without a break of two or more years; and

19 “(C) the employee's performance has been at an acceptable level of performance
20 throughout the period or periods referred to in subparagraph (B).

21 “(3) An individual appointed to a permanent position in the competitive service, after
22 competing for that position under this section—

23 “(A) becomes a career-conditional employee, unless the employee has otherwise
24 completed the service requirements for career tenure; and

25 “(B) acquires competitive status upon appointment.

26 “(4) A former employee of the employing agency who served under a time-limited
27 appointment and who otherwise meets the requirements of this section shall be deemed a time-
28 limited employee for purposes of this section if—

29 “(A) such employee applies for a position covered by this section within the
30 period of 2 years after the most recent date of separation; and

31 “(B) such employee's most recent separation was for reasons other than
32 misconduct or performance.

33 “(5) The Office of Personnel Management shall prescribe regulations necessary for the
34 administration of this subsection.”.

Section-by-Section Analysis

This proposal would amend section 3304 of title 5, United States Code (U.S.C.), to provide certain time-limited employees of an agency the eligibility to compete for permanent employment when their agency is considering individuals from within or outside of the agency under merit promotion procedures. This proposal would rectify the inequities being created through agency-specific statutory authorities for similar flexibilities.

Budget Implications: The Office of Personnel Management does not believe this proposal has any significant Government-wide cost implications. A budget table is inapplicable and has not been provided.