



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

July 26, 2006

MEMORANDUM FOR CHIEF HUMAN CAPITAL OFFICERS

FROM: LINDA M. SPRINGER
DIRECTOR

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Subject: Excepted Service – Appointment of Persons with Disabilities and
Career and Career-Conditional Employment Regulation

The Office of Personnel Management (OPM) is pleased to announce the issuance of the final regulation concerning the excepted service appointments of persons with mental retardation, severe physical disabilities, and psychiatric disabilities. In addition to the regulation, OPM is issuing a “Questions and Answers” fact sheet which provides additional guidance. Copies of both documents are attached.

The final regulation changes the procedures that govern the employment of persons with disabilities. The changes support the President’s “New Freedom Initiative” introduced in 2001, which encourages Federal agencies to increase employment opportunities for people with disabilities. These provisions represent a significant step towards removing possible barriers to the employment of persons with disabilities. The changes to the regulation —

- Expand the types of entities from which an agency can accept proof of disability and certification of an applicant’s job readiness.
- Consolidate the three separate appointing authorities into one appointing authority.
- Clarify the employment and conversion options under the appointing authority.

Please share the attachments with those in your agency involved in the hiring process and encourage the use of the appointing authority for persons with disabilities. In addition, you may find this regulation helpful as you look for ways to incorporate the Career Patterns (CP) initiative into your human capital planning. This rule may be particularly useful when examining job requirements and adapting work environments against the Time in Career and flexible arrangements CP dimensions.

If you have any questions or need additional information, please contact your OPM Human Capital Officer. Thank you for your continued support in the employment of disabled individuals in the Federal Government’s workforce.

Attachments

cc: Human Resources Directors

Excepted Service – Appointment Of Persons With Disabilities And Career And Career-Conditional Employment Regulation

Questions And Answers

The regulations guiding the Excepted Service -- Appointment of Persons with Disabilities and Career and Career-Conditional Appointment are found in the Code of Federal Regulations (CFR). The citation is 5 CFR 213.3102(u). The questions and answers listed here are not meant to be a substitute for reading the regulations. We hope this information will be helpful to your agency's managers, Human Resources offices and Special Program Coordinators.

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Overview

Q. Where can the new regulation be found?

A. The Federal Register has posted the new regulation on the Federal Register web site at www.gpoaccess.gov/fr, and the Office of Personnel Management (OPM) has posted it on its website at www.opm.gov/fedregis and www.opm.gov/disability. OPM provided notification to Federal agencies through the Chief Human Capital Officer Council.

Q. What is the effective date of the new regulation?

A. The date the regulation goes into effect is 30 days after publication in the Federal Register.

Q. Why are the rules on employment of individuals with disabilities changing?

A. OPM is changing the procedures in support of the President's "New Freedom Initiative" introduced in 2001, which encourages Federal agencies to consider employment opportunities for people with disabilities. The regulation improves the Federal Government's ability to hire persons with these disabilities. It is designed to remove possible barriers and increase employment opportunities for persons with disabilities.

Q. What are the new changes?

A. The regulation modernizes the appointment processes in several significant ways:

- The appointing authorities for persons with disabilities (excepted service) Schedule A appointing authorities 5 CFR 213.3102(t) (mental retardation), (u) (severe physical disabilities), and (gg) (psychiatric disabilities) are combined into one streamlined authority, 5 CFR 213.3102(u).
- Agencies may accept proof of disability and certification of job readiness from an expanded number of entities, i.e., a licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine); a licensed vocational rehabilitation specialist (i.e., State or private); or any Federal agency, State agency or agency of the District of Columbia or a U.S. territory that issues or provides disability benefits.
- The distinction between proof of disability and certification of job readiness is clarified (i.e., documentation of mental retardation, severe physical disability or psychiatric disability vs. certification the applicant is likely to succeed in performing the duties of the position for which he or she is applying).
- The temporary employment options for appointments under the new authority,

5 CFR 213.3102(u), are clarified. Agencies may make temporary (for positions not expected to last more than 1 year), time-limited or permanent appointments under this authority.

- The employment options for appointments under this authority are clarified. In cases where an applicant does not have certification of job readiness, an agency may appoint the individual to a temporary appointment to determine the applicant's readiness for continued employment.

Q. Why is the term “mental retardation” used in the new regulation instead of cognitive disability, developmental disability, or intellectual disability?

A. OPM used this term in the new regulation because it is the official terminology used in the authorizing Executive Order 12125, dated March 15, 1979.

Q. Why should agencies consider using this hiring authority?

A. Agencies should use this hiring authority for a number of good reasons:

- Individuals with disabilities are a source of excellent applicants.
- No public notice is required. This may shorten the time to hire a well qualified candidate.
- It can support an agency's Career Patterns initiative. Technological advances and growing emphasis on telework may dovetail with the needs of many applicants with disabilities.
- Agencies don't have to clear surplus employees lists prior to using the appointing authority.

Application Procedures

Q. How does a person with mental retardation, severe physical disability or psychiatric disability apply for Federal jobs the new regulations?

- A. Individuals with disabilities may be considered for excepted service positions under the 213.3102(u) appointment authority by reviewing vacancy announcements posted on www.usajobs.opm.gov and submitting resumes for positions that are of interest to the applicant, or they may contact agency Special Placement Coordinator(s) in the agency for which they wish to work. (Special Placement Coordinators are involved with the hiring, placement, and advancement of individuals with disabilities at their agency; a list of these coordinators can be found at www.opm.gov/disability). Because appointments under 5 CFR 213.3102(u) are excepted service appointments, agencies may accept resumes without posting job notices. Applicants should indicate “5 CFR 213.3102(u)” on their resumes for both application methods.

Q. In what other ways may a person with disabilities apply for Federal jobs?

A. OPM provides information about the application process at www.opm.gov/disability. There are several other application options available to applicants with disabilities. For example:

- **Competitive Appointments.** Many applicants with disabilities find employment through standard competitive procedures in the same manner as individuals without disabilities. (www.usajobs.opm.gov)
- **Student Employment Programs.** This program helps Federal employers find the right people to fill current and future hiring needs. It also gives student the opportunity to get hands-on experience. This program has two major components – the Student Temporary Employment Program (STEP) and the Student Career Experience Program (SCEP). (www.usajobs.opm.gov/students.asp)
- **Federal Career Intern Program.** This program is designed to help agencies recruit and attract exceptional individuals into a variety of occupations. It was created under Executive Order 13162, and is intended for positions at grade levels GS-5, 7, and 9. In general, individuals are appointed to a 2-year internship. Upon successful completion of the internships, the interns may be eligible for permanent placement within an agency. (www.opm.gov/careerintern/)
- **Veterans Appointments.** There are a number of authorities available to assist veterans who are seeking, or wish to change, Federal employment including, Veterans Recruitment Appointment (VRA), 30% or More Disabled Veterans Program, and Veterans Employment Opportunity Act (VEOA) appointments. See OPM’s VetGuide at www.opm.gov/veterans/vetguide.

Proof of Disability/Certification of Job Readiness

Q. What is proof of disability documentation?

A. The following is a list of some examples of documents that agencies may accept as proof of mental retardation, a severe physical disability or a psychiatric disability. Ultimately, it is the agency’s choice what type(s) of documentation will be acceptable:

- Statements or letters on a physician’s/medical professional’s letterhead stationary.
- Statements, records or letters from a Federal Government agency that issues or provides disability benefits.
- Statements, records or letters from a State Vocational Rehabilitation Agency counselor.
- Certification from a private Vocational Rehabilitation or other Counselor that issues or provides disability benefits.

As the regulation is implemented and used by agencies, this list may grow to include other types of certification. OPM will issue additional guidance to agencies on what constitutes “appropriate documentation” on an “as needed” basis.

Q. Must applicants with disabilities provide proof of his/her disability?

A. Yes, proof of the disability is required for appointments of persons with mental retardation, severe physical disabilities, or psychiatric disabilities. This regulation allows agencies to accept as proof of disability documentation from a licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine); a licensed vocational rehabilitation specialist (i.e., State or private); or any Federal agency, State agency, or an agency of the District of Columbia or a U.S. territory that issues or provides disability benefits.

Q. What is certification of job readiness?

A. The certification of job readiness is a determination that applicants with disabilities are likely to succeed in the performance of the duties of the position he or she is seeking. Certification of job readiness is required for appointments of persons with mental retardation, severe physical disabilities, or psychiatric disabilities unless the hiring agency appoints the individual to a temporary appointment in lieu of the job readiness certification (see following Q & A). The same entities who may provide proof of disability may also certify an individual's job readiness.

Q. Who may certify disability and job readiness?

A. OPM expanded the types of entities from which an agency may accept proof of disability and certification of an applicant's job readiness. Agencies may accept proof and certification from a licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine); a licensed vocational rehabilitation specialist (i.e., state or private); or any Federal agency; State agency, or agency of the District of Columbia or a U.S. territory that issues or provides disability benefits.

Q. Can a person with a disability submit the same documentation or certification more than once when applying for a position under this authority? Must the documentation be dated within a specific timeframe?

A. Provided the information is accurate, there are no OPM imposed limitations on the number of times an applicant may submit such documentation or requirements concerning the timeframe which the documentation must be dated.

Eligibility Requirements**Q. What are the eligibility requirements for an applicant to be appointed under 5 CFR 213.3102(u)?**

A. Applicants with disabilities must have mental retardation, a severe physical disability or a psychiatric disability; have proof of the disability; certification of job readiness (if

not hired on a temporary appointment in lieu of the job readiness certification); and meet all required qualifications for the position.

Q. Do the new rules apply to all applicants with disabilities?

A. No, the new rules apply only to those individuals with mental retardation, severe physical disabilities, or psychiatric disabilities. (References: Executive Orders 12125 and 13124)

Q. Why do the changes apply only to those with mental retardation, severe physical disabilities, or psychiatric disabilities?

A. The Executive Orders authorizing these appointments are limited to people with mental retardation, severe physical disabilities, and psychiatric disabilities. Executive Order 12125 dated March 15, 1979, and Executive Order 13124 dated June 4, 1999, permit individuals with mental retardation, severe physical disabilities, or psychiatric disabilities to obtain competitive status after two years of satisfactory service in an excepted service position. These Executive Orders were established to assist these individuals with disabilities and to build a Federal workforce that draws from the strength of America's diversity.

Q. Is there a comprehensive list of the specific disabilities that are included (or excluded) under the new rules?

A. This regulation covers individuals with mental retardation, severe physical disabilities, or psychiatric disabilities. The new rules do not specifically include or exclude any one particular type of disability under these three classes of disability. Different Federal programs use different operational definitions of disability, as do researchers, advocacy groups, and other interested parties. Variations occur because many groups define disability for different purposes. Determinations whether a specific disability is included or excluded under the new rules for the purposes of appointment under 5 CFR 213.3102(u) are made by the expanded entities previously identified in this document. Hiring agencies may also consult the Americans with Disabilities Act, the Rehabilitation Act of 1973, agencies such as the Department of Veterans Affairs, and State Vocational Rehabilitative Services offices for additional guidance regarding particular medical conditions.

Selection of Applicants with Disabilities

Q. How many times can an individual be appointed under this authority?

A. There is no limit on the number of times an individual may be appointed as long as he/she meets the regulatory requirements for appointment.

Q. Do the new rules create a hiring priority for individuals with disabilities?

A. No, the new regulation does not provide for priority in Federal hiring. The regulation applies to excepted service appointments.

Appointment Type

Q. What is the appointment authority for people with disabilities under this regulation?

A. People with disabilities are appointed under 5 CFR 213.3102(u).

Q. What is the Federal agency's process to convert employees currently under 5 CFR 213.3102(t) and 5 CFR 213.3102(gg) appointments to the new single authority, 5 CFR 213.3102(u) authority?

A. Agency Human Resources Offices will process Standard Form 50's, Notification of Personnel Actions, in accordance with OPM's Guide to Processing Personnel Actions. This Guide will be updated with the appropriate codes for use when converting current employees on the (t) or (gg) authorities to (u). OPM will issue official guidance concerning correct coding procedures.

Temporary Appointments

Q. May agencies appoint individuals to temporary appointments in lieu of a job readiness certification?

A. Yes, at agency discretion, an individual may be appointed to a temporary position under the 5 CFR 213.3102(u) authority in lieu of a job readiness certification. The hiring agency may then convert the individual to a time-limited or permanent appointment, again under 5 CFR 213.3102(u), at any time during the temporary appointment. (The beginning date of creditable service, for conversion to career/career conditional conversion purposes, is the effective date of the conversion to the excepted appointment). The agency may also, at its discretion, accept service under another type of temporary appointment in the competitive or excepted service as proof of job readiness.

Q. What are the temporary appointment options under the new regulation?

A. Under the new 5 CFR 213.3102(u) appointing authority, a hiring agency may make:

- A temporary appointment for an individual who has the proof of disability but not the certification of job readiness. Using some type of temporary appointment in lieu of certification of job readiness has long been available to agencies. OPM is continuing this practice but clarifying it in the context of the revised appointing authority. The individual may work under the 5 CFR 213.3102(u) appointment until the agency determines that the individual is able to perform the duties of the

position, or he/she gains the certification from one of the entities listed in this document. Once certification is obtained, the agency may then appoint the individual to a time-limited or permanent appointment under the 5 CFR 213.3102(u) authority. If the individual does not gain certification during the appointing authority timeframe, or does not demonstrate satisfactorily his or her ability to perform the duties of the job, the agency must separate the employee. (Refer to 5 CFR 213.104 for the definition and restrictions on temporary appointments in the excepted service.)

- A temporary appointment of an individual who provides proof of a disability and certification of job readiness, when the duties of the position do not require it to be filled on a permanent basis. (Refer to 5 CFR 213.104 for the definition of temporary appointment)

Nontemporary Appointments

Q. What are other appointment options under the new appointing authority?

A. Under the new 5 CFR 213.3102(u) appointing authority, a hiring agency may also, in addition to the temporary appointments identified in the question above, make:

- A time-limited appointment of an individual who provides proof of disability and certification of job readiness, when the duties of the position do not require it to be filled on a permanent basis. (Refer to 5 CFR 213.104 for the definition of time-limited appointment.)
- A permanent appointment of an individual who provides proof of disability and certification of job readiness. *Note to hiring agencies: the intent of Executive Orders 12125 and 13124 is to permit these deserving individuals (upon meeting the requirements) to obtain civil service competitive status which is obtained through conversion to the competitive service rather than remaining in the excepted service.*

Reduction-in-Force

Q. What is the impact of the consolidation of the three appointing authorities in a Reduction in Force (RIF)?

A. The final regulations establish a new 5 CFR appointing authority (5 CFR 213.3102(u)) that consolidates multiple excepted appointing authorities into one expanded excepted appointing authority. Impact will depend on the actual circumstances of the restructuring, and how an agency decides to effect the RIF. Agencies have discretion in determining which positions to abolish, as well as discretion to provide affected competing excepted service employees with certain assignment rights. Therefore, impact (positive, neutral, or negative) depends on the implementation of a RIF by the agency.

Safeguarding Confidential Information

Q. How will agencies safeguard confidential medical information?

A. There are no changes to the current procedures. Per OPM's Guide to Personnel Recordkeeping (<http://www.opm.gov/fedddata/recguide.pdf>), the employing agency must maintain any authoritative medical documentation, certificate of disability, statement of employability, etc., in a separate, confidential folder, rather than in the person's Official Personnel Folder (OPF). The information must be treated as confidential medical records with access limited only to those whose official duties require such access. OPM encourages agencies to develop written policies to further ensure that the confidentiality and security of private information is maintained.

Conversion – Temporary 5 CFR 213.3102(u) Appointment to Permanent 5 CFR 213.3102(u) Appointment

Q. Does an individual's work experience, while on a temporary appointment, count towards the 2 year time period required for noncompetitive conversion to career-conditional employment if that individual is subsequently converted to a non-temporary 5 CFR appointment?

A. Yes.

Conversion – Permanent 5 CFR 213.3102(u) Appointment to Career or Career-Conditional Appointment

Q. How can applicants with disabilities appointed under 5 CFR 213.3102(u) receive a career or career conditional appointment under these regulations?

A. An agency may noncompetitively convert to a career or career conditional appointment in the competitive service an employee who has completed 2 years of satisfactory service under this authority. Satisfactory service is service that begins with a nontemporary (e.g., permanent or indefinite) 5 CFR 213.3102(u) appointment. (Refer to 5 CFR 315.709)

Q. Is conversion to a career or career conditional appointment mandatory after two years on a 5 CFR 213.3102(u) appointment?

A. No, conversion to a career or career-conditional appointment is not mandatory. The hiring agency maintains the discretion to determine whether an employee is ready for placement in the permanent career workforce. The agency is not required to convert an individual on the 5 CFR 213.3102(u) appointing authority; however, the intent of Executive Orders 12125 and 13124 concerning employment of persons with mental retardation, severe physical disabilities, and psychiatric disabilities is to permit these individuals to obtain "civil service competitive status." Civil service competitive status is

obtained through conversion to the competitive service, rather than remaining in the excepted service.

Q. Are individuals with disabilities eligible for noncompetitive conversion to a career or career-conditional appointment only in the agency where he or she worked prior to completion of the 2 year period?

A. No, individuals with disabilities are eligible to be noncompetitively converted in any Federal agency. Agency selective placement coordinators are urged to try and place disabled people with other agencies, if placement in their own agency is not possible. Checking the job listings on the OPM USAJOBS (www.usajobs.opm) is one way to locate appropriate positions for these individuals.

Q. If an agency wants to hire a person with a disability converting from a 5 CFR 213.3102(u) appointment who worked, while on the appointment, with another agency, does the gaining agency have to clear the Reemployment Priorities List (RPL)?

A. Yes, if the individual is from a different agency. However, if the person is going from one location/activity/component to another location/activity/component in the same agency, the agency would not have to clear the RPL. For purposes of the RPL, all DOD agencies are considered the same agency. DOD agencies (e.g., Defense Logistics Agency, Defense Investigative Service) and the Departments of Army, Navy, and Air Force are all considered DoD.

Q. Are candidates subject to a new 2-year conversion period if they move from one position to another position?

A. No, in a case of a 5 CFR 213.3102(u) appointee transferring from one agency to another, time previously spent under a Schedule A appointment counts toward the completion of the 2 year period if the person is reappointed without a break in service.