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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 330

RIN 3206-AI39

Career Transition Assistance for Surplus and Displaced Federal Employees

AGENCY: U.S. Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management is issuing final regulations on the current career transition assistance programs. These programs assist Federal employees displaced from their jobs by downsizing. These programs began in 1995 as a temporary replacement for the Interagency Placement Program, with a planned sunset date of September 30, 1999. Interim regulations published July 27, 1999, extended the sunset date for an additional 2 years. These final regulations address comments submitted on the interim regulations.

DATES: This regulation is effective on September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Jacqueline Yeatman on (202) 606-0960, FAX (202) 606-2329, TDD (202) 606-0023, email: jryeatma@opm.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1999, OPM published interim regulations with a request for comment on the government's career transition assistance programs in 5 CFR part 330. These regulations extended the Career Transition Assistance Plan (CTAP) and the Interagency Career Transition Assistance Plan (ICTAP) until September 30, 2001. The regulations also made some technical changes and clarifications.

Four agencies and one union commented on the interim regulations.

All supported OPM's extension of these programs in light of their successful placement rates.

One agency stated its desire to move employees from one component to another, or to jobs in the same component located in a different commuting area, without checking for CTAP eligibles. We understand the concerns agencies have with this requirement. However, this was not part of the interim regulation as published—it would constitute a major change in the program, and the interim regulations included only minor technical changes and clarifications. Reassignments within a component and commuting area continue to be exempt from the CTAP requirements.

One agency asked for clarification on how the ICTAP exception in § 330.705(c)(19) relates to § 330.708(b) on selection. The exception in § 330.705(c)(19) allows an agency to select an ICTAP eligible at any time with or without announcing the vacancy. However, if the vacancy is announced and more than one well-qualified ICTAP eligible applies, then the agency is free to select any of them. Another agency commented that the term "reassignment" should be deleted from this paragraph. Since these eligibles would only be appointed through a transfer or reinstatement action, we agree that the word "reassignment" is unnecessary and have deleted it.

One agency recommended that we eliminate the requirement for a second review when an ICTAP eligible fails to meet the well-qualified requirement. The agency preferred to conduct this review only when the ICTAP eligible requested it. This provision was part of the final regulations published June 9, 1997, and no change to this provision was proposed in the July 27, 1999, interim regulation. Therefore, this provision remains unchanged.

Another agency suggested that we further define the type of documentation described in § 330.607(b) that the agency could use when they have no CTAP eligibles in a given location. We have considered this suggestion but feel that agencies should have the flexibility to use the type of documentation that best suits their needs.

Finally, we discovered a typographical error in the interim

regulation which we are correcting here. In the process of adding a clarifying sentence in § 330.607(b), another sentence was accidentally deleted. We are restoring that dropped sentence here.

Regulatory Flexibility Act

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

Executive Order 12866, Regulatory Review

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

List of Subjects in 5 CFR Part 330

Armed forces reserves, Government employees.

U.S. Office of Personnel Management

Janice R. Lachance,
Director.

Accordingly, the interim rule amending part 330 of title 5, Code of Federal Regulations, published at 64 FR 40506 on July 27, 1999, is adopted as final with the following changes:

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

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

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954-58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; subparts F-G also issued under Presidential memorandum dated September 12, 1995, entitled "Career Transition Assistance for Federal Employees"; subpart H also issued under 5 U.S.C. 8337(h) and 8457(b); subpart I also issued under 106 Stat. 2720, 5 U.S.C. 3301 note and sec. 4432 of Pub. Law 102-484, 106 Stat. 2315; subpart K also issued under sec. 11203 of Pub. Law 105-33, 111 Stat. 251

Subpart F—Agency Career Transition Assistance Plans (CTAP) for Local Surplus and Displaced Employees

2. In § 330.607, paragraph (b) is revised to read as follows:

§ 330.607 Notification of surplus and displaced employees.

* * * * *

(b) Agencies must take reasonable steps to ensure eligible employees are notified of all vacancies the agency is filling in locations where there are CTAP eligibles, and what is required for them to be determined well-qualified for the vacancies. Vacancy announcements within an agency must contain information on how eligible employees within the agency can apply, what proof of eligibility is required, and the agency's definition of "well-qualified." If there are no CTAP eligibles in a local commuting area, the agency may document this fact as an alternative to posting the vacancy under the CTAP program.

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Subpart G—Interagency Career Transition Assistance Plan for Displaced Employees

3. In § 330.705, paragraph (c)(19) is revised to read as follows:

§ 330.705 Order of selection in filling vacancies from outside the agency's workforce.

* * * * *

(c) * * *

(19) Transfer or reinstatement of an individual who meets the eligibility requirements of § 330.704 to a position having promotion potential no greater than the potential of a position the individual currently holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons.

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2640

RIN 3209-AA09

Exemption Under 18 U.S.C. 208(b)(2) for Financial Interests of Non-Federal Government Employers in the Decennial Census

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing a final rule, permitting certain temporary employees of the Department of Commerce Bureau of the Census (the Bureau) who have been hired under authority of 13 U.S.C. 23 to perform duties in connection with the decennial census, notwithstanding these employees' disqualifying financial

interest under 18 U.S.C. 208(a) arising from the interests of their non-Federal employers.

EFFECTIVE DATE: September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Kimball, Associate General Counsel, Office of Government Ethics, telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037.

SUPPLEMENTARY INFORMATION: Section 208(a) of title 18 of the United States Code prohibits Government employees from participating in an official capacity in particular Government matters in which, to their knowledge, they, or, *inter alia*, any organization in which they are serving as an employee, have a financial interest, if the particular matter would have a direct and predictable effect on that interest. Section 208(b)(2) of title 18 permits the Office of Government Ethics to promulgate branchwide regulations describing financial interests that are too remote or inconsequential to warrant disqualification pursuant to section 208(a).

On March 29, 2000, the Office of Government Ethics (OGE) published an interim rule with a 30-day request for comments to provide for an additional exemption under 5 CFR 2640.203 from the prohibition in the conflict of interest statute at 18 U.S.C. 208(a). See 65 FR 16511-16513 (March 29, 2000).

The new exemption, to be codified at 5 CFR 2640.203(l), permits employees who work for State, local, or tribal governments to work temporarily as enumerators, crew leaders, and field operations supervisors in a Local Census Office or an Accuracy and Coverage Evaluation function at the Department of Commerce Bureau of the Census (the Bureau). These employees have been hired under authority of 18 U.S.C. 23 to perform duties in connection with the decennial census, notwithstanding these employees' disqualifying interest under 18 U.S.C. 208(a) arising from the interests of their non-Federal employers. However, the exemption does not cover employees who work for State, local, or tribal governments whose positions are filled through public election.

The interim rule was published after obtaining the concurrence of the Department of Justice pursuant to section 201 of Executive Order 12674. Also, as provided in section 402 of the Ethics in Government Act of 1978, as amended, 5 U.S.C. appendix, section 402, OGE has consulted with both the Department of Justice (as additionally required under 18 U.S.C. 208(d)(2)) and the Office of Personnel Management on the interim rule. No further consultation

with the Department of Justice or the Office of Personnel Management is required because the interim rule is being adopted without change.

As noted, the interim rule provided for a 30-day comment period. Comments were received from two sources, one from the Department of Commerce and one from a private citizen. After carefully considering these comments, the Office of Government Ethics is adopting the interim rule as final without change.

Summary of Comments

The Department of Commerce recommended a change to the exemption to provide for a newly created position of "crew leader assistant" and to cover any future positions that the Department might create within the occupations of enumerator, crew leader, or field operations supervisor. These newly created positions would have similar duties and responsibilities as those occupations covered by the exemption, but would be performed at different activity levels, such as crew leader assistant. In OGE's view, it would not be necessary to amend the regulation to cover such newly created positions since all activity levels within those designated occupations in a Local Census Office or an Accuracy and Coverage Evaluation function would automatically be covered by the exemption.

The second commenter, an elected member of a city council, raised two concerns. The commenter believes that the distinction between elected and nonelected officials is arbitrary and both too broad and, at the same time, too narrow in that some elected officials (e.g., coroners) would have no interest in the outcome of the census while some nonelected officials (e.g., city managers) serve in policy-making positions and would have an interest in the outcome of the census. The commenter recommends that the line be drawn to exclude those employees who serve in policy-making positions.

As indicated in the preamble to the interim rule, the distinction between elected and nonelected officials was a general attempt to eliminate concerns about appearances arising from the greater interest that elected officials might have regarding the impact of the census count on their employers. The distinction represents the best line that could be drawn to include the greatest number of individuals who might be perceived as having an interest in the outcome of the census. It also serves the Department of Commerce's need to quickly and easily identify those