

# 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 Part 300

RIN 3206-A152

#### Statutory Bar to Appointment of Persons Who Fail to Register Under Selective Service Law

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed regulations.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing proposed regulations to delegate authority to executive agencies to determine whether a man's failure to register with the Selective Service System (Selective Service) was knowing and willful. This will permit faster decisions for job seekers as well as applicants, and reduce paperwork. The proposed regulations also delete duplicative material, eliminate the "Statement of Selective Service Registration," and include editorial changes.

**DATES:** Comments must be received on or before April 28, 1999.

**ADDRESSES:** Send or deliver written comments to Mary Lou Lindholm, Associate Director for Employment, Office of Personnel Management, Room 6500, 1900 E Street, NW., Washington, DC 20415-9000.

**FOR FURTHER INFORMATION CONTACT:** Sylvia Cole or Robert Grady on (202) 606-0830, TDD (202) 606-0023, or FAX (202) 606-0390.

**SUPPLEMENTARY INFORMATION:** In 1985, section 3328, "Selective Service registration," was added to title 5, United States Code. It provided that men born in 1960 or later who are required to, but did not register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453), generally are ineligible for appointment to Federal executive agencies. A non-registrant who is not yet 26 years old may correct his ineligibility by registering. After age 26, a non-registrant can no longer register to correct his

failure. In the latter situation, section 3328 authorized OPM alone to determine if an individual's failure to register was knowing and willful. A 1987 amendment of the law permitted OPM to delegate the adjudication responsibility to Federal executive agencies. Because the law was new and we had little experience in reviewing cases of non-registrants, we felt delegation was not appropriate at that time.

#### Delegation to Agencies

Based on our experience over the years, we now propose to delegate to agencies the decision-making authority for adjudicating cases of non-registrants to determine if their failure to register was knowing and willful. This delegation will permit faster decisions for job seekers as well as agencies, and reduce paperwork. The workload for an individual agency would be minimal. In fact, only a few agencies submitted cases to OPM on a recurring basis in the past.

#### OPM Experience in Adjudicating Cases

Most of the cases submitted to OPM for adjudication were obvious and decision-making was not difficult. Very few were adjudicated unfavorably. We often saw the same type of situation. For example, a large number of non-registrants had served in the military and did not realize that Selective Service registration was still required if they were released from active duty before age 26 and had never registered. Others were former non-immigrant aliens (e.g., those on student visas) who were initially exempt from registration. However, when they became permanent residents and their status changed, they were not aware they had an obligation to register. Occasionally a person entered the United States right before the deadline for registration. A few cases involved individuals with a physical disability who knew they would not be able to perform military service and believed the registration requirement did not apply to them. Some of the other cases involved unique circumstances. We based our decisions on a review of supporting documentation submitted with each case such as a written statement supplied by the applicant or employee, a copy of form DD 214 (Certificate of Release or Discharge from Active Duty),

or a letter from the Selective Service rendering a favorable advisory opinion.

#### Consultation with the Selective Service

Non-registrants must provide a preponderance of evidence that their failure to register was not knowing and willful. In acting on individual cases, we routinely consulted with the Selective Service, and agencies will need to do likewise. To verify an individual's registration status, agencies should call Selective Service at (847) 688-6888. (Occasionally an applicant will state he did not register, when, in fact, he is registered.) Selective Service may also have other information in its records that may be helpful to agencies such as evidence that the individual was contacted about his registration responsibility (including the address used and number of times contacted), and it can verify an applicant's claim of being exempt from the registration requirement. Since OPM's regulations were developed in consultation with the Selective Service, we have listed some of the most common exemptions under Selective Service law directly in the regulations.

#### Elimination of "Applicant's Statement of Selective Service Registration Status"

OPM's current regulations, written in 1987, contain a self-certification statement of Selective Service registration to be completed by applicants and employees. Agencies reproduce this statement on a separate form. In 1987, the application for Federal employment, Standard Form 171, did not contain a question on Selective Service registration. Therefore, a separate form was necessary to collect the information required by 5 U.S.C. 3328. Today, agencies use different forms when considering employees for Federal jobs—the resume or the Optional Application for Federal Employment (OF 612), which are used to determine basic qualifications for positions, and a Declaration for Federal Employment (OF 306), used to determine an applicant's acceptability and suitability for Federal positions.

To streamline the application process and reduce paperwork, we are planning to eliminate the Applicant's Statement of Selective Service Registration and add a question on Selective Service registration to the OF 306. This form is completed by applicants who are under

serious employment consideration. It is completed early enough in the employment process so that if an agency encounters an applicant who did not register with the Selective Service, the agency would have sufficient time to determine if non-registration was knowing and willful prior to the individual's beginning his tour of duty. Since the revision of OF 306 requires approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act, OPM will request public comments at a later time through a separate notice to appear in the **Federal Register** relating specifically to revising the form.

#### Editorial Changes

The proposed regulations also contain editorial changes for clarity or to make them easier to read. We added paragraph headings so that information can be found more quickly, reformatted some of the material, and deleted the text of the statutory bar to appointing nonregistrants in executive agencies, because it is a duplication of 5 U.S.C. 3328.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the regulations only affect Federal job applicants and employees.

#### E.O. 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 300

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

Office of Personnel Management.

**Janice R. Lachance,**  
Director.

Accordingly, OPM proposes to amend 5 CFR part 300 as follows:

#### PART 300—EMPLOYMENT (GENERAL)

1. The authority citation for Part 300 is revised to read as follows:

**Authority:** 5 U.S.C. 552, 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803.

Sec. 300.301 also issued under 5 U.S.C. 1104 and 3341.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

Secs. 300.701 through 300.707 also issued under 5 U.S.C. 3328.

2. Subpart G is revised to read as follows:

#### Subpart G—Statutory Bar to Appointment of Persons Who Fail to Register Under Selective Service Law

Sec.

300.701 Statutory requirement.

300.702 Coverage.

300.703 Definitions.

300.704 Considering applicants for employment.

300.705 Agency action after determining registration status.

300.706 Adjudication.

300.707 Termination of employment.

#### Subpart G—Statutory Bar to Appointment of Persons Who Fail to Register Under Selective Service Law

##### § 300.701 Statutory requirement.

Section 3328 of title 5, United States Code, imposes compliance with Selective Service registration requirements as a condition of employment in executive agencies. This subpart contains the regulations that the Office of Personnel Management (OPM) has prescribed to carry out the statutory requirement.

##### § 300.702 Coverage.

These regulations cover appointments in Federal executive agencies.

##### § 300.703 Definitions.

In this subpart—

*Appointment* means any personnel action that brings onto the rolls of an executive agency as a civil service officer or employee as defined in 5 U.S.C. 2104 or 2105, respectively, a person who is not currently employed in that agency. It includes initial employment as well as transfer between agencies and subsequent employment after a break in service. Personnel actions that move an employee within an agency without a break in service are not covered. A break in service is a period of 4 or more calendar days during which an individual is no longer on the rolls of an executive agency.

*Covered individual* means a male—

(1) Whose application for appointment is under consideration by an executive agency or who is an employee of an executive agency;

(2) Who was born after December 31, 1959, and is at least 18 years of age or becomes 18 following appointment;

(3) Who is either a United States citizen or alien (including permanent

residents, parolees, refugees, and applicants for asylum) residing in the U.S.; and

(4) Who is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453).

*Executive agency* (or agency) means an agency of the Government of the United States as defined in 5 U.S.C. 105.

*Exemptions* means those individuals determined to be excluded from the requirement under section 3 and 6(a) of the Military Selective Service Act (50 U.S.C. App. 453 and 456(a)) or Presidential proclamation. Some of the individuals exempt from registration include:

(1) Non-immigrant aliens admitted under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101) who are residing in the United States temporarily, such as those on visitor or student visas and members of diplomatic or trade missions and their families;

(2) Men who are unable to register due to circumstances beyond their control, such as being hospitalized, institutionalized, or incarcerated (although they must register within 30 days of their release if they are not 26 years of age);

(3) Members of the Armed Forces on full-time active duty from their 18th through their 26th birthday. This exemption also applies to cadets and midshipmen at the United States service academies; and

(4) Men who entered the U.S. for the first time after age 26.

*Preponderance of the evidence* means that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

*Registrant* means an individual registered under Selective Service law.

*Selective Service law* means the Military Selective Service Act, rules and regulations, issued thereunder, and proclamations of the President under the Act.

*Selective Service System* means the agency responsible for administering the registration system and for determining who is required to register and who is exempt.

##### § 300.704 Considering applicants for appointment.

(a) *Requirement to determine registration status.* An executive agency must determine the registration status of each covered individual at an appropriate time during the

consideration process prior to appointment, and of each covered employee who becomes 18 after appointment. The individual must complete, sign, and date in ink Optional Form 306, Declaration for Federal Employment, or a form provided by the agency that requests information on registration status, unless the applicant furnishes other documentation as provided by paragraph (b) of this section.

(b) *Other acceptable proof of registration.* At his option, a covered individual may submit, in lieu of the forms described in paragraph (a) of this section, a copy of his Acknowledgement Letter or other proof of registration or exemption issued by the Selective Service System.

(c) *Failure to provide registration information.* An agency will give no further consideration for appointment to individuals who fail to provide the information on registration status described in paragraphs (a) and (b) of this section.

(d) *Prior evidence of registration.* An executive agency considering employment of a covered individual who is a current or former Federal employee, is not required to inquire about his registration status if it determined that the individual's Official Personnel Folder contains evidence indicating the individual is registered or was never required to register.

(e) *Individuals not yet eligible to register.* An agency hiring a male under the age of 18 must require the individual to provide proof that he registered with the Selective Service System within 6 months after his 18th birthday.

**§ 300.705 Agency action after determining registration status.**

(a) *Verifying registration status.* Agencies must resolve conflicts of information and other questions concerning an individual's registration status prior to appointment. An agency may verify an individual's registration status by requesting the individual provide proof of registration or exemption issued by the Selective Service System, or by contacting the Selective Service System directly.

(b) *When registration requirement has been met.* An agency may continue regular pre-employment consideration of individuals who have demonstrated they have registered or are exempt.

(c) *An individual under age 26 who did not register.* An agency will take the following actions when a covered individual who is required to register has not done so, and is under age 26:

(1) Advise him to register promptly and, if he wishes further consideration, to submit a new Optional Form 306, agency form or other appropriate document from the Selective Service immediately to the agency once he has registered. The agency may set a time limit for submitting this documentation.

(2) Provide written notice to an individual who still does not register after being informed of registration requirements, that he is ineligible for appointment according to 5 U.S.C. 3328 and will be given no further employment consideration.

(d) *An individual age 26 or over who did not register.* An agency will take the following actions when a covered individual who is age 26 or over was required to register prior to his 26th birthday, and has not done so:

(1) Provide written notice to the individual that, in accordance with 5 U.S.C. 3328, he is ineligible for appointment unless his failure to register was neither knowing nor willful and that the agency will decide whether this failure to register was knowing and willful if he submits a written request for such decision along with an explanation of his failure to register.

(2) Submit the individual's application, the Optional Form 306 or agency form, a copy of the written notice, his request for a decision and explanation of his failure to register, and any other papers pertinent to his registration status for determination to the official or employee the agency has designated to make determinations.

(3) An agency is not required to keep a vacancy open for an individual who seeks a determination.

(e) *Ineligibility for employment.* Individuals under age 26 described in paragraph (c) of this section who do not submit a documentation of registration or exception are not eligible for employment consideration, or continued employment if a current employee. Individuals age 26 or over described in paragraph (d) of this section are not eligible for employment consideration unless the agency finds that failure to register was neither knowing nor willful. Agencies are not required to follow the objection-to-eligibles procedures described in § 332.406 of this chapter concerning such individuals who were certified or otherwise referred by an OPM examining office or other office delegated examining authority by OPM. As part of its examining report, an agency will provide to the examining office a copy of the written notice sent to the individual.

**§ 300.706 Adjudication.**

(a) *Determining if non-registration was knowing and willful.* The official or employee designated by the employing agency will determine whether failure to register was knowing and willful when an individual has requested a decision and presented a written explanation, as described in § 300.705. The designated official or employee will make a determination based on the written explanation provided by the individual and any guidance the Office of Personnel Management and the Selective Service may provide. The burden of proof will be on the individual to show that failure to register was neither knowing nor willful.

(b) *Consultation with Selective Service System.* In making determinations, an agency should consult with the Selective Service System for any information that might be in its records which will assist in the adjudication process, e.g. evidence that the individual was contacted about his registration responsibility.

(c) *Written notification of determination.* The employing agency will notify the individual in writing of the determination. An individual may appeal an agency's determination by following the agency's administrative appeal process. The agency determination is final unless reconsidered by the Director of OPM or his or her designee. There is no further right to administrative review.

(d) *Determination by OPM.* The Director of OPM or his or her designee may reopen and reconsider a determination made by an agency. Individuals who believe they have been unfairly denied access to an agency's adjudication procedure may request a determination to be made by OPM.

(e) *Accepting the determination made by another agency.* A subsequent employing agency shall accept the determination of the initial employing agency, unless it can demonstrate to OPM that a different determination is clearly appropriate because it found additional or contradictory information since the original decision.

**§ 300.707 Termination of employment.**

A covered individual who is serving under an appointment made on or after November 8, 1985, and who is not exempt from registration, will be terminated by his agency under these regulations if he has not registered as required, unless he registers. If he is no longer eligible to register, the individual may continue serving *only* if the agency determines in response to his

explanation that his failure to register was neither knowing nor willful.

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BILLING CODE 6325-01-P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 326

RIN 3064-AC19

#### Minimum Security Devices and Procedures and Bank Secrecy Act Compliance

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Withdrawal of notice of Proposed Rulemaking.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) published a Notice of Proposed Rulemaking in the **Federal Register** on December 7, 1998. The proposed regulation would have required state nonmember banks to develop and maintain "Know Your Customer" programs. The FDIC received 254,394 comments from the public during the comment period. The overwhelming majority of the commenters were strongly opposed to the adoption of the proposed regulation. After considering the issues raised by the comments, and in view of the strong opposition to the proposed regulation, the FDIC is withdrawing the Notice of Proposed Rulemaking.

**DATES:** Proposed subpart C to part 326 is withdrawn on March 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Carol A. Mesheske, Chief, Special Activities Section, Division of Supervision (202) 898-6750, or Karen L. Main, Counsel, Legal Division (202) 898-8838.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On December 7, 1998, the FDIC published a proposed amendment to Part 326 of the FDIC's Rules and Regulations, "Minimum Security Devices and Procedures and Bank Secrecy Act Compliance" (63 FR 67529, Dec. 7, 1998). The proposed amendment was intended to provide guidance to state nonmember banks to facilitate and ensure their compliance with existing federal reporting and recordkeeping requirements, such as those found in the Bank Secrecy Act. It was intended to help protect the integrity and reputation of the financial services industry and assist the government in its efforts to combat money laundering and other

illegal activities that might be occurring through financial institutions.

The proposed amendment required each state nonmember bank to develop a program to determine the identity of its customers; determine its customers' sources of funds; determine the normal and expected transactions of its customers; monitor account activity for transactions that are inconsistent with those normal and expected transactions; and report any transactions of its customers that are determined to be suspicious, in accordance with the FDIC's existing suspicious activity reporting regulations.

The FDIC's proposal was substantially the same as the regulations proposed by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision in December 1998. The FDIC issued the proposed amendment pursuant to its authority under section 8(s)(1) of the Federal Deposit Insurance Act (FDI Act) (12 USC 1818(s)(1)), as amended by section 2596(a)(2) of the Crime Control Act of 1990 (Pub. L. 101-647), which requires the FDIC to issue regulations directing banks under its supervision to establish and maintain internal procedures reasonably designed to ensure and monitor compliance with the Bank Secrecy Act. The FDIC also relied on its general rulemaking authority under section 9(a) of the FDI Act (12 USC 1819(a)).

##### II. Comments Received

During the comment period, the FDIC received 254,394 comments from the public. Comments were received from community banks, multinational or large regional banks, members of Congress, trade and industry research groups, and regulatory bodies, as well as the general public. Only 105 commenters were in favor of the proposed regulation.

The overwhelming majority of commenters were individual, private citizens who voiced very strong opposition to the proposal as an invasion of personal privacy. Other issues raised by these commenters included that the FDIC lacked the authority to issue the proposal; the cost of any Know Your Customer program would be passed on to customers; and the regulation would be ineffective in preventing money laundering and other illicit financial activities.

Banks, bank holding companies and other banking trade groups that commented on the proposal uniformly opposed the proposed amendment. Their concerns included the following: (1) the regulation would be very costly

to implement, especially for small banks; (2) the Know Your Customer program would invade customer privacy; (3) commercial banks would be unfairly disadvantaged and lose customers if all segments of the financial services industry are not covered; (4) compliance with the regulation would divert resources from Y2K preparation; (5) the FDIC lacks authority to adopt the regulation; (6) public confidence in the banking industry would be harmed by the regulation; and (7) the regulation is both unnecessary and redundant, as banks are already familiar with their customers and have adequate procedures in place.

##### III. Paperwork Reduction Act

The FDIC submitted a collection of information associated with the Know Your Customer proposed rulemaking to the Office of Management and Budget for review. That request for review is withdrawn.

##### IV. Board Decision

The FDIC has carefully reviewed every comment received during the 90-day comment period. Based upon that review, and in light of the overwhelming objections raised by the public, the FDIC's Board of Directors has decided to withdraw the proposed regulation.

By Order of the Board of Directors.

Dated at Washington, D.C. this 23rd day of March, 1999.

Federal Deposit Insurance Corporation

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 99-7583 Filed 3-26-99; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### 12 CFR Part 563

[No. 99-12]

RIN 1550-AB15

#### Know Your Customer

**AGENCY:** Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The Office of Thrift Supervision ("OTS") published a Notice of Proposed Rulemaking in the **Federal Register** on December 7, 1998 that would have required savings associations to develop and maintain "Know Your Customer" programs. The Board of Governors of the Federal