

# 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 334

RIN 3206-AJ94

### Temporary Assignment of Employees Between the Federal Government and State, Local, and Indian Tribal Governments, Institutions of Higher Education, and Other Eligible Organizations

**AGENCY:** Office of Personnel  
Management (OPM).

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management is proposing a plain language rewrite of its regulations regarding the Intergovernmental Personnel Act (IPA) Mobility Program as part of a broader review of OPM's regulations. The purpose of the revision is to make the regulations more readable.

**DATES:** Comments must be received on or before October 21, 2003.

**ADDRESSES:** Send or deliver comments to Susan M. Barker, Manager, Recruitment, Examining, and Assessment Group, Office of Personnel Management, Room 6500, 1900 E Street NW., Washington, DC, 20415, fax: (202) 606-0390, or e-mail them to [smbarker@opm.gov](mailto:smbarker@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** Susan M. Barker by telephone at (202) 606-2226; by fax at (202) 606-0390; or by e-mail at [smbarker@opm.gov](mailto:smbarker@opm.gov).

**SUPPLEMENTARY INFORMATION:** OPM is issuing proposed regulations implementing the provisions in 5 U.S.C. 3371-3376 that concern the temporary assignment of employees to and from States. The purpose of these proposed revisions to part 334 is not to make substantive changes, but rather to enhance the clarity and improve the readability of the regulations. To achieve these ends, we have converted the regulations to a question-and-answer format. In addition, to further clarify

this rule, we are soliciting comment on whether certain entities define themselves as: (1) an "instrumentality or authority of a state or states or local government" as cited in 5 U.S.C. 3371; and/or (2) a "Federal-State authority or instrumentality" as cited in 5 U.S.C. 3371.

### E. O. 12866, Regulatory Review

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

### Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

### List of Subjects in 5 CFR part 334

Colleges and universities,  
Government employees, Indians,  
Intergovernmental relations.

### Key Coles James,

*Director, Office of Personnel Management.*

Accordingly, OPM is proposing to revise 5 CFR part 334 to read as follows:

### PART 334—TEMPORARY ASSIGNMENT OF EMPLOYEES BETWEEN THE FEDERAL GOVERNMENT AND STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS, INSTITUTIONS OF HIGHER EDUCATION, AND OTHER ELIGIBLE ORGANIZATIONS

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**Authority:** 5 U.S.C. 3376; E.O. 11589, 3 CFR 557 (1971-1975).

### § 334.101 What is the purpose of this part?

The purpose of this part is to implement the objectives of title IV of the Intergovernmental Personnel Act of 1970 and title VI of the Civil Service

Reform Act. These statutes authorize the temporary assignment of employees between the Federal Government and State, local, and Indian tribal governments, institutions of higher education and other eligible organizations.

### § 334.102 Definitions.

In this part:

*Assignment* means a period of service under chapter 33, subchapter VI of title 5, United States Code;

*Employee*, for purposes of participation in this program, means an individual serving in a Federal agency under a career or career-conditional appointment, including career appointees in the Senior Executive Service, individuals under appointments of equivalent tenure in excepted service positions (including, e.g., Presidential Management Intern program, the Federal Career Intern program, Student Career Experience program, and Veterans' Recruitment Appointments (VRA)); 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;

*Federal agency* has the same meaning as in 5 U.S.C. 3371(3);

*Indian tribal government* has the same meaning as in 5 U.S.C. 3371(2)(C);

*Institution of higher education* means a domestic, accredited public or private 4-year college or university, or a technical or junior college;

*Local government* has the same meaning as in 5 U.S.C. 3371(2)(A) and (B);

*Other organization* has the same meaning as in 5 U.S.C. 3371(4); and

*State* has the same meaning as in 5 U.S.C. 3371(1).

### 334.103 What are the requirements for an organization to participate in this program?

(a) Organizations interested in participating in the mobility program as an instrumentality or authority of a State or local government or as an "other organization" as set out in this part must have their eligibility certified by the Federal agency with which they are entering into an assignment.

(b) Written requests for certification should include a copy of the organization's:

- (1) Articles of incorporation;
- (2) Bylaws;
- (3) Internal Revenue Service nonprofit statement; and

(4) Any other information which indicates that the organization has as a principal function the offering of professional advisory, research, educational, or development services, or related services to governments or universities concerned with public management.

(c) Federally funded research and development centers which appear on a master list maintained by the National Science Foundation are eligible to participate in the program.

(d) An organization denied certification by an agency may request reconsideration by the Office of Personnel Management (OPM).

**§ 334.104 What is the duration of an assignment in this program?**

(a) The head of a Federal agency, or his or her designee, may make an assignment for up to 2 years, which may be extended for up to 2 more years if the parties agree.

(b) A Federal agency may not send an employee on an assignment if that person is a Federal employee and has participated in this program for more than a total of 6 years during his or her Federal career. OPM may waive this provision upon the written request of the agency head, or his or her designee.

(c) A Federal agency may not send or receive an employee on an assignment if the employee has participated in this program for 4 continuous years without at least a 12-month return to duty with the organization from which the employee was originally assigned.

**§ 334.105 Must Federal employees return to the Government at the end of an assignment?**

(a) A Federal employee assigned under this subchapter must agree, as a condition of accepting an assignment, to serve with the Federal Government upon completion of the assignment for a period equal to the length of the assignment.

(b) If the employee fails to carry out this agreement, he or she must reimburse the Federal agency for its share of the costs of the assignment (exclusive of salary and benefits). The head of the Federal agency, or his or her designee, may waive this reimbursement for good and sufficient reason.

**§ 334.106 Is there a requirement for a written agreement?**

(a) Before the assignment begins, the assigned employee and the Federal agency, the State, local, or Indian tribal government, institution of higher education, or other eligible organization shall enter into a written agreement recording the obligations and

responsibilities of the parties, as specified in 5 U.S. Code 3373–3375.

(b) Federal agencies must maintain a copy of each assignment agreement form as well as any modification to the agreement.

**§ 334.107 What are the rules for terminating an assignment?**

(a) An assignment may be terminated at any time at the request of the Federal agency or the State, local, or Indian tribal government, institution of higher education, or other organization participating in this program. Where possible, the party terminating the assignment prior to the agreed upon date should provide 30-days advance notice along with a statement of reasons to the other parties to the agreement.

(b) Federal assignees continue to encumber the positions they occupied prior to assignment, and the position is subject to any personnel actions that might normally occur. At the end of the assignment, the employee must be allowed to resume the duties of his/her position or must be reassigned to another position of like pay and grade.

(c) An assignment is terminated automatically when the employer/employee relationship ceases to exist between the assignee and his/her original employer.

(d) The Office of Personnel Management shall have the authority to direct Federal agencies to terminate assignments or take other corrective actions when assignments are found to have been made in violation of the requirements of the Intergovernmental Personnel Act and/or this part.

**§ 334.108 Are any reports required with this program?**

A Federal agency which assigns an employee to, or receives an employee from, a State, local, or Indian tribal government, institution of higher education or other eligible organization in accordance with this part shall submit to the Office of Personnel Management such reports as the Office of Personnel Management may request.

[FR Doc. 03–21417 Filed 8–21–03; 8:45 am]

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**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Part 532**

RIN 3206–AJ78

**Prevailing Rate Systems; Redefinition of the North Dakota and Duluth, MN, Appropriated Fund Wage Areas**

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Office of Personnel Management is issuing a proposed rule that would redefine the North Dakota and Duluth, MN, Federal Wage System (FWS) appropriated fund wage areas. The proposed rule would redefine Clearwater and Mahnommen Counties and the White Earth Indian Reservation portion of Becker County from the North Dakota FWS wage area to the Duluth FWS wage area. These changes would assign all blue-collar Federal employees working in Indian Health Service facilities in northern Minnesota to one FWS wage schedule.

**DATES:** We must receive comments on or before September 22, 2003.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, e-mail [payleave@opm.gov](mailto:payleave@opm.gov), or FAX: (202) 606–4264.

**FOR FURTHER INFORMATION CONTACT:** Mark A. Allen at (202) 606–2848, e-mail [maallen@opm.gov](mailto:maallen@opm.gov), or FAX: (202) 606–4264.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) is proposing to redefine the North Dakota and Duluth, MN, Federal Wage System (FWS) appropriated fund wage areas. This proposed rule would redefine Clearwater and Mahnommen Counties and the White Earth Indian Reservation portion of Becker County from the North Dakota FWS wage area to the Duluth FWS wage area. We are taking this action because FWS employees who work for closely related Bemidji Area Indian Health Service (IHS) facilities in northern Minnesota are currently in two separate FWS wage areas. The Department of Health and Human Services has requested that OPM redefine the North Dakota and Duluth wage areas so that blue-collar employees of its IHS facilities in northern Minnesota would be covered by one wage schedule.