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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213, 297, 315, 334, 362,
537, and 550

RIN 3206-AK27

Excepted Service, Privacy Procedures for Personnel Records, Career and Career-Conditional Employment, Temporary Assignment of Employees Between Federal Agencies and State, Local, and Indian Tribal Governments, Institutions of Higher Education, and Other Eligible Organizations, Presidential Management Fellows Program, Repayment of Student Loans, and Pay Administration (General)

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations modifying the Presidential Management Intern (PMI) Program. The regulations implement Executive Order 13318, which renames the PMI Program as the Presidential Management Fellows (PMF) Program, with two components: Presidential Management Fellows (Fellows) and Senior Presidential Management Fellows (Senior Fellows). The regulations prescribe OPM and agency responsibilities with respect to administration of the PMF Program and amend other regulations to reflect the changes established by the Executive Order. In addition, the regulations allow the OPM Director to provide guidance for an orderly transition from the PMI Program to the PMF Program.

DATES: *Effective Date:* This final rule is effective June 20, 2005.

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SUPPLEMENTARY INFORMATION: The President signed Executive Order (E.O.) 13318 on November 21, 2003, modernizing the Presidential Management Intern (PMI) Program, in keeping with his emphasis on the strategic management of the Federal Government's human capital. The E.O. changed the name of the PMI Program to the Presidential Management Fellows (PMF) Program to better reflect its high standards, rigor, and prestige. The PMF Program has two components: Presidential Management Fellows (generally comparable to PMIs and hereafter referred to as Fellows); and new Senior Presidential Management Fellows (hereafter referred to as Senior Fellows). The E.O. charges the OPM Director with prescribing regulations for the PMF Program and with providing for an orderly transition from the PMI Program to the PMF Program.

On January 26, 2004, OPM issued proposed regulations at 69 FR 3526 and requested comments by March 26, 2004. OPM received written comments from 12 agencies, 1 public service organization, 11 current Fellows, 1 former PMI, and 1 Federal employee.

Discussion of Comments

Generally, the comments were very supportive of the proposed regulations. Below we summarize and respond to comments that suggested changes or requested clarification.

Definitions

One agency commented the new Senior Fellows component will be used to circumvent requirements for Senior Executive Service (SES) placements to the detriment of civil servants. OPM disagrees. We believe the Senior Fellows program will be attractive to highly qualified mid-career applicants from inside and outside the Federal Government and selection will be merit-based.

One agency noted excepted service agencies are not required to have Executive Resources Boards (ERBs). Our research confirmed this. We learned some small agencies and some very large agencies have assigned agency-wide executive development responsibilities to other senior agency positions, boards, committees, or groups. We agree the PMF regulations need to accommodate all Executive agencies.

Accordingly, we expanded the ERB definition at 5 CFR 362.101(b) to also mean the agency head or senior agency official or officials who have been given executive resource management and oversight responsibility by the agency head. We did this to accommodate differences among Executive agencies, while maintaining the Program's requirement for ERB-level participation and certification for both Fellows and Senior Fellows.

In addition, we are also clarifying the definition of a qualifying college or university for consistency with OPM's longstanding policy on the acceptability of higher education.

Agency Programs—Number of Fellows and Senior Fellows

One agency suggested we clarify whether the OPM Director will determine separately the total number of Fellow appointments and the total number of Senior Fellow appointments. We agree and have changed 5 CFR 362.201(a) to specify that the OPM Director will determine annually the number of Fellows and the number of Senior Fellows appointments.

One former PMI and a current Fellow asserted that removing the cap (the maximum number of PMI appointments allowed under the now-superseded E.O.) will hurt the image of the program by lowering standards and expectations. Another Fellow suggested raising the cap. OPM does not believe removal of a fixed limit or cap will impugn the image of the program. We note the regulations require the OPM Director to determine the number of Fellows and Senior Fellows, annually, based on input from the Chief Human Capital Officers Council and agency needs, especially with regard to managerial and leadership succession.

Selection

One agency suggested we define "exceptional record" and the criteria used to identify an exceptional record in 5 CFR 362.202(c)(1). We are not adopting this suggestion. OPM believes the experiences and accomplishments of Senior Fellow candidates may vary to such an extent that a "one size fits all" definition or set of criteria may dissuade interested candidates from applying to the program. In addition, we prefer to give the Senior Presidential Management Fellows Selection Committee (SPMFSC) the flexibility to

evaluate each candidate's records without constraints in regulation. The Committee and OPM may develop criteria to evaluate applications.

Three agencies expressed concerns with the ability and performance of nominating schools to determine preliminary eligibility for veterans' preference and suggested OPM provide training or additional guidance. We agree and plan to review and revise the current guidance or provide training as needed.

One agency requested clarification regarding how veterans' preference procedures apply when selecting Program finalists for positions in the agency. We added references to 5 CFR 302 in part 362. Part 302 describes the application of veterans' preference in the excepted service. In addition, we will review current guidance and provide additional guidance if needed.

An agency suggested OPM expand the evaluation and selection process for Fellows to include a PMF Selection Committee with interagency representation, similar to what is proposed for Senior Fellows. We do not agree a PMF selection committee is necessary; the current process works well.

Appointment and Extensions

One agency suggested it is inappropriate for the OPM Director, a political appointee, to appoint members to the SPMFSC, which determines and recommends finalists. The agency recommends OPM ask agencies to nominate eligible members to serve on the committee, *e.g.*, Chief Human Capital Officers or other high-level career managers, because agencies have a significant interest. OPM sees no conflict of interest in having the OPM Director appoint members to the SPMFSC. We point out the SPMFSC will be chaired by a career member of the SES and will include other senior agency career executives as members.

One agency suggested OPM specifically reference 5 CFR 317.502 in 5 CFR 213.3102(jj) and 5 CFR 362.209(c). Section 317.502 pertains to the Qualifications Review Board certification. We have modified 5 CFR 362.209(c) to include the reference, where we think it is appropriate.

The same agency suggested changing 5 CFR 317.502 to add a Senior Fellows category. We find no reason to change 5 CFR 317.502 because 5 CFR 362.204(e)(1) provides that ERB-certified Senior Fellows are considered in the same manner as a graduate of an OPM-approved SES Candidate Development Program (CDP).

An agency asked us to clarify whether Fellows who have served the initial 2-year period, and then are appointed as Senior Fellows, are subject to a new 2-year period. Although the answer is yes, the Senior Fellows component is not designed for those graduating Fellows who may lack the significant work and supervisory experience needed to demonstrate their readiness for senior management. We agree some clarification is needed and will provide this in guidance rather than in the regulation.

One agency suggested OPM not allow non-citizens to be appointed as Fellows. The agency noted in today's climate of security issues and terrorism, appointing non-citizens is not practical and may present problems. OPM is not adopting this suggestion because it would limit agency flexibility. Current rules allow certain non-citizens to be appointed in the excepted service, and we see no reason to treat the PMFs differently. Agencies may establish more restrictive citizenship requirements for appointments into their PMF positions. Fellows and Senior Fellows must be U.S. citizens at the time of conversion into the competitive service.

One agency suggested we clarify who may extend the appointment of Fellows and Senior Fellows for up to 1 additional year. Section 362.203(a)(3)(iii) now reads, "The OPM Director, or the Director's designee, may approve an extension."

One agency suggested agency requests for extension of Fellowships come from an appropriate agency representative (supervisor or PMF Coordinator), rather than requiring it from the agency head. OPM agrees extension requests may come from someone other than the agency head and have changed the regulations in § 362.203(a)(3)(iii) to allow the chair of the agency's ERB, or equivalent, to make such requests.

Development, Evaluation, Promotion, and Certification

One agency suggested we either combine the Senior Fellow and SES CDP or afford Senior Fellows noncompetitive promotion and conversion eligibility only to the GS-15 (or equivalent) level. If we accepted the latter recommendation, the agency recommended Senior Fellows interested in SES positions would have to compete for SES and CDP vacancies in accordance with the same procedures and under the same conditions as other employees. We are not adopting this suggestion for several reasons. The Senior Fellows program is intended to produce candidates as part of a

progression towards placement in the SES. However, Senior Fellows are not entitled to placement in the SES. Placement depends upon the individual's level of readiness for SES placement as well as upon agency needs. Limiting the conversion of Senior Fellows to the GS-15 level would eliminate a key flexibility of this program; *i.e.*, agencies' ability to select truly exceptional individuals for placement in the SES. The SES CDP provides a separate pool of candidates, who most likely will come from different recruitment sources, for SES placement. They are complementary programs for SES succession planning.

One individual questioned the legal basis for excepting Senior Fellows from the requirement to compete under SES merit staffing requirements as a prerequisite to appointment in the SES. Subchapter VIII of chapter 33, title 5, United States Code, gives OPM authority to prescribe SES appointment criteria and also to establish programs for the systematic development of candidates for the SES. Executive Order 13318 authorizes the establishment of the PMF Program and OPM has chosen to make this Program a part of its SES development effort. Section 6 of E.O. 13318 gives OPM the authority to prescribe regulations for the Senior Fellow program. In addition, we note the structure of the Senior Fellows program requires competitive entry and developmental rigor comparable to SES CDPs as required by 5 CFR part 412.

One agency suggested OPM determine the grade level for which each finalist is qualified. The agency noted that a decentralized process for determining whether Fellows qualify for grades above the GS-9 level would result in significant hiring delays and hinder the ability of Fellows to enter on duty in a timely fashion. We are not adopting this suggestion because agencies may develop their own qualification requirements for Schedule A positions and are in the best position to evaluate the relevance of the individual's specialized education or experience to the position. OPM will determine whether applicants are minimally qualified, and agencies can apply the qualification standards and make appropriate decisions for hiring Fellows and Senior Fellows above the minimum level as they routinely do for any excepted service hire.

Another agency suggested an alternative to the proposed rules for hiring Fellows above the GS-9 level. This alternative is based on a model the agency currently uses when making certain excepted service appointments at various grade levels. OPM is not

adopting this suggestion because we believe each agency should have the flexibility to develop policies and criteria for promotion, which best meet its needs as required by 5 CFR 362.204(d)(1). Further, all that is required to hire a Fellow above the GS-9 level is for the agency to determine whether the Fellow meets the qualifications for the grade level.

One Fellow assumed incorrectly that those entering at the GS-12 level could not be promoted for 2 years. The PMF regulations allow agencies to promote Fellows to GS-13 at any time during the 2-year period.

Two agencies and one Fellow doubted that their agency will hire above the GS-9 level; one agency believed they will instead continue to use available recruitment options such as student loan repayment, superior qualifications appointment, and accelerated promotion, while another agency pointed to tight budgets as a deterrent to use of this flexibility. We understand some agencies will not need or want to hire above the GS-9 level. However, we believe this flexibility is extremely useful in accommodating agency and candidate-specific circumstances. Accordingly, we are adopting the regulations in this area without substantive change.

One agency suggested the requirement to assign a mentor to a Senior Fellow be made optional. OPM is not adopting this suggestion because we believe assigning senior level mentors to Senior Fellows is critical to the training and development of individuals who are being groomed for possible future placement in the SES. For the same reason, we established a comparable requirement for SES CDPs, see 5 CFR 412.104(e)(3).

One agency suggested changing the requirement that Senior Fellows complete formal training through, "the OPM-approved SES candidate development program," to "an OPM-approved SES candidate development program." Another agency commented that agencies must have the latitude to determine whether they will use an existing SES CDP of their choice, and to determine if an SES CDP is appropriate based on succession planning requirements. Agencies may use any OPM-approved SES CDP, and we have revised the proposed 5 CFR 362.204(b)(2)(ii) to state this.

One agency suggested the long-term developmental assignment requirement for Senior Fellows will deter agencies with limited travel and training budgets from using this program. The agency recommended OPM give agencies the option of placing Senior Fellows on

long-term developmental assignments or providing a plan of acceptable short-term developmental assignments. We agree that 12-month developmental assignments may be burdensome, so we changed their duration to a minimum of 9 months (in addition to classroom training). We have revised the proposed 5 CFR 362.204(b)(4)(ii) accordingly.

One agency wanted OPM to define "developmental assignment" and the optional "rotational assignment." The agency sought clarification as to what constitutes acceptable developmental and rotational assignments and whether both agency external and internal assignments would be acceptable. OPM is not adopting this suggestion because we believe defining these terms may limit agencies' creativity in terms of designing these assignments. We prefer to give agencies discretion to define the nature or content of their assignments and to tailor them to meet agency-specific needs.

One agency suggested holding Senior Fellows to the same requirements as participants in a formal SES Candidate Development Program. We disagree and note that Senior Fellows are appointed in the excepted service, and they are not subject to time-in-grade (TIG) requirements. This condition provides agencies with added flexibility to promote these individuals when they qualify.

One agency noted that eliminating TIG requirements for promoting Fellows could result in perceptions of inequities among non-Fellow employees and lead to morale problems for agencies not authorized to use pay banding. Another agency commented that the more rapid promotion of Fellows will negatively impact coworkers. OPM considered these comments and decided to give agencies the same ability to accelerate promotions as exists for other excepted service positions and require agencies to establish criteria and procedures for accelerated promotions.

Another agency recommended retaining the TIG limitation for Fellows until TIG is eliminated for the competitive service. For the reasons stated in the paragraph above we see no reason to require TIG for Fellows and Senior Fellows when it does not apply to other excepted service employees.

One Fellow asked OPM to clarify how promotions without TIG will work, and one agency asked OPM to define the criteria and qualifications for accelerated promotion. Promotions without TIG work in the same fashion as career ladder promotions, but without regard to the 12-month rule; *i.e.*, when an individual meets the qualification requirements for the next

highest grade, the agency may promote the individual. The regulations require agencies to establish policies and criteria for promotion. We will provide guidance identifying relevant issues and provide access to any relevant samples or models agencies may give us.

One agency anticipated the elimination of TIG may result in a "hodge-podge of implementation schemes" that "will be used to circumvent civil service regulations." We disagree because agencies currently have the same discretion for any excepted service employees. Therefore, removing the TIG restriction for Fellows does not circumvent civil service regulations. We will provide agencies with supplementary guidance for developing criteria and procedures for accelerated promotion.

Accordingly, we are adopting regulations regarding TIG without substantive change.

For the sake of clarity and to avoid redundancy OPM has removed the references to coverage under parts 432 and 752 in section 362.204, paragraph (c)(3). The appeal rights for Fellows and Senior Fellows are found in section 362.208, paragraph (d), which for purposes of determining whether Fellows and Senior Fellows have appeal rights, says they are treated as excepted service employees. Fellows and Senior Fellows in systems not subject to appeal rights under 5 U.S.C. chapters 43 or 75, such as the Department of Homeland Security, Central Intelligence Agency and National Security Personnel System, have the appeal rights as provided by the equivalent authorities under their systems, if any.

Graduate Degree Waiver

One agency suggested OPM develop criteria for waiving the graduate study requirement for Senior Fellow candidates to assist agencies in attracting quality leaders, while ensuring high-level program standards. OPM does not believe adding criteria to the regulations is necessary. We revised the regulations in section 362.205 to provide the OPM Director, or the Director's designee, one general waiver authority.

Two agencies and one Fellow recommended we require a graduate degree for Senior Fellows. We are retaining the flexibility for the OPM Director, or the Director's designee, to waive the graduate degree requirement per section 362.205 because Senior Fellow candidates may have substantially high-level work experience or accomplishments, which may be substituted for a graduate degree in certain situations.

One agency suggested OPM define what an "exceptional candidate" is for the purpose of waiving the graduate degree requirement. We choose not to define "exceptional candidate" in regulations because doing so could limit the Senior Fellow Selection Committee's ability to evaluate exceptional candidates on a case-by-case basis.

One agency suggested the regulations include information on how to request graduate degree waivers. We agree "how to" information should be readily available. However, we plan to provide this as guidance rather than placing it in regulation.

Another agency suggested agencies should be able to require Senior Fellows, who received a waiver of the graduate degree requirement, to get a graduate degree. We disagree and are not adopting this suggestion. A waiver signifies an individual's exceptional record of accomplishment is a sufficient substitute for a graduate degree.

Program Completion and Placement

Seven agencies and one Fellow recommended we drop the requirement for an agency ERB to certify each Fellow's and Senior Fellow's successful completion of all Program requirements. We disagree. Generally ERBs (or equivalents) have relevant competent evaluation experience, and we believe they should have oversight of their agency's PMF Program. Fellows may one day be selected for senior executive level positions; therefore, ERB certification should be required for these individuals. Further, we believe ERB certification reinforces the agency's commitment to this Program while protecting the prestige and competitive nature of this Presidential Program. As discussed above, we have expanded the definition of ERB for the purposes of this regulation to include agency officials or bodies who have equivalent responsibility. See 5 CFR 362.101(b) below.

Two agencies suggested conversion to the competitive service following successful completion of the Senior Fellows program be discretionary rather than mandatory. We disagree and believe the lack of mandatory conversion, following successful completion of the program and 2 years of rigorous training, will dissuade talented individuals from participating in the program and adversely affect the significant investment in the selection and development of high potential individuals. We also received a similar comment concerning Fellows and disagree for the same reasons.

One agency recommended more flexibility with regard to the timing of placements. We note 5 CFR 362.209(b)(1) requires agencies to appoint a Fellow or Senior Fellow who has been certified as having successfully completed the Program, "effective on, or before the expiration of the individual's excepted appointment, including extensions." We agree the immediate placement requirement has the potential to create an unnecessary administrative burden on agencies. To alleviate any processing difficulties which may arise from this requirement, we are delegating to agencies the authority to extend an appointment up to 120 days. Agencies may appoint a Fellow or Senior Fellow who has been certified as having successfully completed the Program at any time during this 120-day period. This new provision is consistent with flexibilities contained in other programs, such as the Federal Career Intern Program, which allows for conversion to the competitive service upon successful completion of the program. OPM retains the authority for extensions beyond 120 days up to 1 year. Accordingly, we have added language at 5 CFR 362.203(a)(3)(iv) and revised 5 CFR 362.209(b)(1) to reflect this.

Transition From the Presidential Management Intern (PMI) Program

Comments from three agencies and 10 Fellows noted the proposed regulations did not address how individuals appointed as PMIs under the previous Executive order and implementing regulations will transition to the new PMF regulations. Most agencies and Fellows suggested such individuals be covered by these new regulations. Several agencies and Fellows suggested current Fellows be transitioned into the PMF Program and be subject to its provisions. We agree that agencies be permitted to avail themselves of the new flexibilities contained in this regulation with respect to existing fellows.

In addition, two agencies and four Fellows suggested OPM issue guidance addressing various transition issues, including "how and when to implement each * * * "program change." OPM agrees agencies need transition guidance on this subject as well. We have revised these regulations to provide that OPM will issue such guidance to agencies.

One Fellow and one former PMI suggested highly qualified Fellows and PMIs with substantial high-level work experience should have an opportunity to be evaluated in advance and appointed to Senior Fellow positions. We disagree. The Senior Fellows program is for truly exceptional

individuals who already possess exemplary leadership, managerial, or professional experience. Qualified Fellows and former PMIs may apply for the Senior Fellows program the same as any individual.

Miscellaneous Comments

One organization recommended requiring the Chief Human Capital Officers Council to include an evaluation of the PMF Program in its annual report to Congress. We decided not to include such a requirement at this time. However, we will add specific authority codes in the Guide to Processing Personnel Actions to facilitate future Program evaluation using data submitted by agencies for the Central Personnel Data File.

One agency asked if there was a "fallback eligibility" for Federal employees who become Senior Fellows and do not successfully complete the Senior Fellow program. Agencies will not be required to place Senior Fellows who fail to successfully complete the Senior Fellow program. When selecting a Senior Fellow who is a Federal employee in a competitive service position, agencies must follow notification and documentation procedures in 5 CFR 302.102(b). Further, agencies may use existing appointing authorities when appropriate and desirable to reinstate former competitive service employees.

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 potential applicants and Federal 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 Parts 213, 297, 315, 334, 362, 537, and 550

Administrative practice and procedure, Claims, Colleges and universities, Government employees, Indians, Intergovernmental relations, Privacy, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Dan G. Blair,

Acting Director.

■ Accordingly, OPM is amending 5 CFR parts 213, 297, 315, 334, 362, 537, and 550 as follows:

PART 213—EXCEPTED SERVICE

- 1. Revise the authority citation for part 213 to read as follows:

Authority: 5 U.S.C. 3161; 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; Sec. 213.101 also issued under 5 U.S.C. 2103; Sec. 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 3391–3396, 8337(h), and 8456; E.O. 13318; 38 U.S.C. 4301 *et seq.*; Pub. L. 105–339, 112 Stat 3182–83; and E.O. 13162.

- 2. Revise paragraph (ii) of § 213.3102 and add paragraph (jj) to read as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(ii) Positions of Fellows in the Presidential Management Fellows Program. Initial appointments of Fellows are made at either the GS–9, GS–11, or GS–12 level (or their equivalents), depending on the candidate's qualifications.

Appointments are made under this authority for 2 years; however, upon approval of OPM, the head of the department, agency, or component within the Executive Office of the President may extend the appointment for up to 1 additional year. Upon the Fellow's satisfactory completion of the Program, as certified by the employing agency's Executive Resources Board (ERB) or equivalent, the employing agency must noncompetitively appoint the Fellow to a full-time, permanent position in the competitive service as prescribed in § 315.708 and part 362 of this chapter.

(jj) Positions of Senior Fellows in the Presidential Management Fellows Program. Initial appointments are made at the GS–13, GS–14, or GS–15 level (or their equivalents), depending on the candidate's qualifications.

Appointments may be made under this authority for up to 2 years; however, upon approval of OPM, the head of the department, agency, or component within the Executive Office of the President may extend the Senior Fellow's appointment for up to 1 additional year. Upon the Senior Fellow's satisfactory completion of the Program, as certified by the employing agency's Executive Resources Board (ERB) or equivalent, the employing agency must noncompetitively appoint the Fellow to a full-time, permanent position in the competitive service as prescribed in § 315.708 and part 362 of this chapter. If a Senior Fellow successfully completes the Program, as certified by the appointing agency's ERB or equivalent, he/she may, at the agency's discretion, be appointed to a position in the Senior Executive Service (SES) (or the equivalent) without further

competition and only one time, in the same manner, and subject to the same Qualifications Review Board review, as an individual who has successfully completed an OPM-approved SES candidate development program under parts 317 and 412 of this chapter.

* * * * *

PART 297—PRIVACY PROCEDURES FOR PERSONNEL RECORDS

- 3. The authority citation for part 297 continues to read as follows:

Authority: Sec. 3, Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

Subpart E—Exempt Records

- 4. Revise paragraph (b)(6) of § 297.501 to read as follows:

§ 297.501 Exemptions.

* * * * *

(b) * * *

(6) *Presidential Management Fellows Program Records (OPM/CENTRAL–11)*. All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the data subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

* * * * *

PART 315—CAREER OR CAREER-CONDITIONAL EMPLOYMENT

- 5. Revise the authority citation for part 315 to read as follows:

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218, unless otherwise noted; and E.O. 13162. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp., p. 111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp., p. 303. Sec. 315.607 also issued under 22 U.S.C. 2506. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(d). Sec. 315.611 also issued under Section 511, Pub. L. 106–117, 113 Stat. 1575–76. Sec. 315.708 also issued under E.O. 13318. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp., p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

Subpart B—The Career-Conditional Employment System

- 6. Revise paragraph (b)(1)(xiii) of § 315.201 to read as follows:

§ 315.201 Service requirement for career tenure.

* * * * *

(b) * * *

(1) * * *

(xiii) The date of appointment as a participant in the Presidential Management Fellows Program under the provisions of Executive Order 13318, provided the employee's appointment is converted without a break in service to career or career-conditional appointment under § 315.708;

* * * * *

Subpart G—Conversion to Career or Career-Conditional Employment From Other Types of Employment

- 7. Revise § 315.708 to read as follows:

§ 315.708 Conversion based on service as a Fellow or Senior Fellow in the Presidential Management Fellows Program.

(a) *Agency authority.* (1) An agency, not excepted from the competitive service, must appoint a Fellow or Senior Fellow to a full-time, permanent position in the competitive service without further competition when the Fellow or Senior Fellow:

(i) Has satisfactorily completed the Program as outlined in part 362 of this chapter; and

(ii) Meets the citizenship requirement set forth in part 338 of this chapter.

(2) A Fellow or Senior Fellow who was initially appointed to a permanent position in an agency excepted from the competitive service upon completion of the Program may be appointed subsequently to a full-time permanent position in the competitive service without further competition subject to paragraph (a)(1)(ii) of this section.

(b) *Tenure upon conversion.* (1) Except as provided in paragraph (b)(2) of this section, a Fellow or Senior Fellow appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A Fellow or Senior Fellow appointed under paragraph (a) of this section becomes a career employee when he/she has completed the service requirement for career tenure or is excepted from it under § 315.201(c).

(c) *Acquisition of Competitive Status.* A Fellow or Senior Fellow appointed to a full-time, permanent position in the competitive service under this section does not serve a probationary period and acquires competitive status immediately upon appointment.

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

■ 8. The authority citation for part 334 continues to read as follows:

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

■ 9. Revise the definition of *Employee* in § 334.102 to read as follows:

* * * * *

Employee 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, and Fellows and Senior Fellows in the Presidential Management Fellows Program; 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;

* * * * *

■ 10. Revise part 362 to read as follows:

PART 362—PRESIDENTIAL MANAGEMENT FELLOWS PROGRAM

Subpart A—Definitions

Sec.

362.101 Definitions.

Subpart B—Program Administration

362.201 Agency programs.

362.202 Announcement, nomination, and selection.

362.203 Appointment and extensions.

362.204 Development, evaluation, promotion, and certification.

362.205 Waiver.

362.206 Movement between departments or agencies.

362.207 Withdrawal and readmission.

362.208 Resignation, termination, reduction in force, and appeal rights.

362.209 Placement upon completion.

362.210 Transition.

Authority: E.O. 13318 of Nov. 21, 2003, 3 CFR, 2003 Comp., p. 265.

Subpart A—Definitions

§ 362.101 Definitions.

For purposes of this part,

An *agency* means a component within the Executive Office of the President, or an Executive department, Government corporation, or independent establishment as defined in 5 U.S.C. 101, 103, and 104, respectively.

An *Executive Resources Board (ERB)* has the same meaning as specified in

§ 317.501(a) of this chapter; in those agencies that are not required to have an ERB pursuant to that section, it means the senior agency official or officials who have been given executive resource management and oversight responsibility by the agency head.

A *Presidential Management Fellow* or *Fellow* is an individual appointed, at the GS–9, GS–11, or GS–12 level (or equivalent), in the excepted service under § 213.3102(ii) of this chapter, or under an agency-specific authority if the agency is excepted from the competitive service. The individual must have completed a graduate course of study at a qualifying college or university, received the nomination of the dean or academic director, successfully completed an Office of Personnel Management (OPM) administered assessment process, been selected as a finalist, and been appointed by an agency as a Presidential Management Fellow.

A *Qualifications Review Board (QRB)* has the same meaning as specified in § 317.502(a) of this chapter.

A *qualifying college or university* is an academic institution that meets the requirements as stated in the “General Policies and Instructions” section of the Office of Personnel Management’s “Operating Manual: Qualification Standards for General Schedule Positions,” under “Educational and Training Provisions or Requirements.” The Operating Manual is available on OPM’s Web site at <http://www.opm.gov>.

A *Senior Presidential Management Fellow* or *Senior Fellow* is an individual appointed, at the GS–13, GS–14, or GS–15 level (or equivalent), in the excepted service under § 213.3102(jj) of this chapter, or under an agency-specific authority if the agency is excepted from the competitive service. The individual must have completed a graduate course of study at a qualifying college or university; have an outstanding record of achievement in an applicable leadership, policy, managerial, professional, or technical position or area; have successfully completed an OPM-administered assessment process; been selected as a finalist by the OPM Director, or the Director’s designee; and been appointed by an agency as a Senior Fellow.

Subpart B—Program Administration

§ 362.201 Agency programs.

(a) On or about October 1 of each year, the OPM Director will determine the number of Fellows and the number of Senior Fellows that may be appointed during that fiscal year. Those determinations will be based on input

from the Chief Human Capital Officers Council, as well as input from agencies not represented on the Council.

(b) Thereafter, subject to the provisions and requirements of this chapter, an agency may appoint individuals selected by the OPM Director, or the Director’s designee, as Fellows finalists and/or Senior Fellows finalists according to its short-, medium-, and long-term senior leadership and related (senior policy, professional, technical, and equivalent) recruitment, development, and succession requirements, as set forth in 5 U.S.C. 1103(c)(2)(C).

§ 362.202 Announcement, nomination, and selection.

(a) At least once each year, OPM will announce the availability of Fellow and Senior Fellow appointments and conduct a competition for the selection of finalists as set forth below.

(b) *Fellows.* (1) Graduate students from all academic disciplines who complete or expect to complete an advanced degree from a qualifying college or university by August 31 of the academic year in which the competition is held, are eligible to become Fellows. These individuals must demonstrate an exceptional ability for, as well as a clear interest in and commitment to, leadership in the analysis and management of public policies and programs.

(2) For an individual to apply to become a Fellow:

(i) His/her school must first establish a competitive nomination process to ensure that all eligible graduate students are aware of the Presidential Management Fellows Program and know how to apply for nomination. The school must establish procedures to ensure that each candidate receives careful and thorough review and receives equal opportunity for nomination.

(ii) He/she must compete in the school’s nomination process.

(iii) His/her school must rate those who want to be considered for nomination either qualified or not qualified. The school will determine preliminary eligibility for veterans’ preference, and must nominate any student who is eligible for veterans’ preference and is found qualified for nomination. Students eligible for veterans’ preference who believe they met the school’s nomination

qualification requirements, but were not nominated, may obtain a review by OPM by requesting it in writing.

(iv) He/she must be officially nominated by the dean, chairperson, or

academic program director using an OPM-provided application form.

(3) OPM will select Fellow finalists based on an OPM evaluation of each candidate's experience and accomplishments based on his/her application and the results of a rigorous structured assessment process.

(4) OPM will notify individual candidates of their selection as a Fellow finalist. OPM will send all participating agencies the list of Fellows finalists for consideration. Agencies may select and appoint a finalist as a Fellow.

(5) Veterans' preference will be applied pursuant to part 302 of this chapter.

(c) *Senior Fellows.* (1) Any individual with an exceptional record of experience and achievement in a leadership (supervisory or managerial), policy, professional, or technical position, in an area relevant to the appointing agency's mission or succession requirements, and who has completed a graduate course of study from a qualifying college or university, may apply for appointment as a Senior Fellow. Candidates should evidence a strong commitment to public service and be able to clearly demonstrate that, by virtue of their competencies and accomplishments to date, they have the potential to assume a senior executive or senior level policy, professional, or technical position in the Federal Government after a relatively brief but intensive period of training and development.

(2) The OPM Director, or the Director's designee, will select Senior Fellow finalists based on an evaluation of each candidate's experience and accomplishments based on his/her application, the results of a structured assessment process, and applying veterans' preference in accordance with part 302 of this chapter.

(i) The OPM Director will appoint a Senior Presidential Management Fellows Selection Committee to oversee the evaluation of Senior Fellow candidates and recommend finalists.

(ii) The Selection Committee will be chaired by a career member of the Senior Executive Service (SES) and may comprise other individuals from within the Federal Government, such as members of the Chief Human Capital Officers Council, as appropriate, and/or others, such as non-Federal employees, when deemed appropriate by the OPM Director.

(3) OPM will notify each individual candidate of his/her selection as a Senior Fellow finalist. OPM will send all participating agencies the list of Senior Fellow finalists for consideration. Agencies may select and

appoint a finalist as a Senior Fellow, subject to the application of veterans' preference requirements in part 302 of this chapter.

§ 362.203 Appointment and extensions.

(a) *Appointment.* (1) Except as provided in paragraph (a)(2) of this section, an agency must appoint a Fellow or Senior Fellow using the excepted service appointing authority provided by 5 CFR 213.3102(ii) or (jj), as applicable, of this chapter.

(2) An agency excepted from the competitive service must appoint a Fellow or Senior Fellow under an agency-specific appointing authority.

(3)(i) Fellows are appointed for an initial period of 2 years.

(ii) Upon approval of the agency's ERB, Senior Fellows are appointed for an initial period of up to 2 years, depending on individual qualifications and competencies.

(iii) The OPM Director, or the Director's designee, may approve an extension of a Fellow's or Senior Fellow's appointment for up to 1 additional year upon written request by the chair of the agency's ERB or equivalent; such requests must be received at least 90 days before the end of the initial appointment.

(iv) Agencies may extend, without prior OPM approval, a Fellow's or Senior Fellow's appointment for up to an initial 120 days.

(4) An agency may appoint a Fellow or Senior Fellow any time after the individual has been notified that he/she has been selected as a finalist, but not more than 12 months after the Fellow or Senior Fellow was so selected. However, the OPM Director, or the Director's designee, may approve a written agency request to appoint a Fellow or Senior Fellow after that deadline, so long as the agency request is submitted no later than 30 days prior to the end of the 12-month period.

(5)(i) An agency may not appoint a Fellow or Senior Fellow unless and until he/she has met all graduate degree requirements.

(ii) If a Fellow or Senior Fellow does not complete all degree requirements by August 31 of the year in which the Fellow or Senior Fellow was selected as a finalist, the Fellow's or Senior Fellow's finalist status is terminated.

(b) *Citizenship.* (1) An agency is authorized to appoint a Fellow or Senior Fellow who is not a U.S. citizen only under the following conditions:

(i) The individual is lawfully admitted to the United States as a permanent resident or is otherwise authorized by the Department of Homeland Security's Bureau of

Citizenship and Immigration Services to be employed in the U.S.; and

(ii) The agency is authorized to pay the noncitizen under the annual appropriations Act ban or any agency-specific enabling appropriations statute.

(c) *Grade.* (1) An agency must appoint a Fellow at the grade GS-9 level, or its equivalent, at a minimum. However, if the agency determines that a Fellow meets the requisite qualification requirements, the agency may appoint the Fellow at the grade GS-11 or GS-12 level, or their equivalents.

(2) An agency must appoint a Senior Fellow at the grade GS-13 level, or its equivalent, at a minimum. However, if the agency determines that a Senior Fellow meets the requisite qualification requirements (general leadership, managerial, or specialized experience, academic credentials, professional certifications, etc.), the agency may appoint the Senior Fellow at the grade GS-14 or GS-15 level, or their equivalents.

§ 362.204 Development, evaluation, promotion, and certification.

(a) *Individual development plans.* The appointing agency will approve an Individual Development Plan (IDP) for each of its Fellows and Senior Fellows that sets forth the specific developmental activities designed to impart the competencies of the occupation or functional discipline in which the Fellow or Senior Fellow is most likely to be placed. The IDP of a Senior Fellow must be approved by the appointing agency's ERB or equivalent.

(b) *Required developmental activities.* (1) OPM will provide orientation and graduation programs for each class or cohort of Fellows and Senior Fellows, and will provide information on available training opportunities.

(2) The appointing agency will provide each Fellow and Senior Fellow with formal classroom training during the Program:

(i) For each Fellow, the appointing agency will provide a minimum of 80 hours per year of formal classroom training that addresses the core competencies required of the occupation or functional discipline in which the Fellow will most likely be placed upon completion of the program and conversion to a full-time, permanent position.

(ii) For each Senior Fellow, the appointing agency will provide a minimum of 80 hours of formal interagency classroom training provided through an OPM-approved SES candidate development program. The OPM Director, or the Director's

designee, may approve alternative sources of such training.

(3) The appointing agency will assign each Senior Fellow a mentor, who is a member of the SES (or equivalent). The mentor will assist the Senior Fellow in the development of his/her IDP.

(4) The appointing agency will provide each Fellow and Senior Fellow with at least one rotational or developmental assignment with full-time management and/or technical responsibilities consistent with the Fellow's or Senior Fellow's IDP. With respect to this requirement:

(i)(A) Each Fellow must receive at least one developmental assignment of 4 to 6 months in duration in the occupation or functional discipline in which the Fellow will most likely be placed, with full-time management and/or technical responsibilities consistent with the Fellow's IDP.

(B) In addition, the Fellow may receive other short-term rotational assignments of 1 to 6 months in duration, at the appointing agency's discretion, to occupations or functional areas different from the one in which the Fellow will most likely be placed;

(ii) Each Senior Fellow will receive at least one long-term developmental assignment of at least 9 months in duration during which time the Senior Fellow will serve with full responsibilities for accomplishing the duties of that position.

(c) *Performance and progress evaluation.* (1) Each Fellow and Senior Fellow will be placed on a performance plan, as prescribed by part 430 of this chapter or other applicable law or regulation, establishing performance elements and standards that are directly related to acquiring and demonstrating the various leadership, technical, and/or general competencies expected of the Fellow or Senior Fellow as well as the elements and standards established for the duties assigned.

(2) Each Fellow and Senior Fellow must receive an annual performance evaluation in accordance with the agency's performance management program. The rating is derived from an evaluation of the Fellow's or Senior Fellow's success in completing developmental activities designed to prepare the Fellow or Senior Fellow to meet the developmental and performance expectations described in his/her performance plan.

(3) If a Fellow or Senior Fellow does not meet expectations (set forth in the performance plan) with regard to his/her developmental progress or assignments, the agency may take appropriate action.

(d) *Promotion.* (1) An agency must establish policies and criteria for the promotion of Fellows and Senior Fellows. A Fellow may be promoted up to the GS-13 level or its equivalent. A Senior Fellow may be promoted up to the GS-15 level or its equivalent.

(2) Time-in-grade requirements in part 300 of this chapter do not apply to the promotion of Fellows or Senior Fellows while they are appointed under § 213.3102(ii) or (jj) of this chapter.

(e) *Certification of completion.* (1)(i) Upon a Fellow's or Senior Fellow's completion of the Program, the appointing agency's ERB must evaluate each Fellow or Senior Fellow, as applicable, and determine whether it can certify in writing that he/she has met all of the requirements of the Program, including the performance and developmental expectations set forth in the individual's performance plan and IDP, as established by this regulation, and, if so, make that certification. In the event the OPM Director, or the Director's designee, has approved a waiver of one or more of those requirements in a particular case pursuant to § 362.205, the ERB must certify that such a waiver has been granted and that any remaining requirements were met. The mentor may be consulted during this process. Any certifications are forwarded to OPM.

(ii) Once Senior Fellows have been certified by the agency ERB, they are eligible for consideration by the QRB in the same manner as a graduate of an OPM-approved SES candidate development program.

(iii) The agency must complete its evaluation, make a decision regarding certification of successful completion, and notify the Fellow or Senior Fellow, no later than 30 calendar days prior to the expiration of the Fellow's or Senior Fellow's appointment in the Program.

(2)(i) If the ERB decides not to certify a Fellow or Senior Fellow, the Fellow or Senior Fellow may request reconsideration of that determination by the OPM Director, or the Director's designee. Such reconsideration must be requested in writing, with appropriate documentation and justification, within 15 calendar days of the date of the agency's decision.

(ii) The Fellow or Senior Fellow may continue in the Program pending the outcome of his/her request for reconsideration. The agency must continue to provide appropriate developmental activities during this period.

(iii) The OPM Director's, or the Director's designee's, determination in this regard shall be final and not subject to further review or appeal.

§ 362.205 Waiver.

Under limited circumstances, the OPM Director, or the Director's designee, may approve a written request for a waiver of any of the requirements enumerated in this part.

§ 362.206 Movement between departments or agencies.

(a) A Fellow or Senior Fellow may move to another agency at any time during his/her appointment in the Program. To move from one agency to another during the Program, the Fellow or Senior Fellow must separate from the current agency. The new employing agency must appoint the participant without a break in service under the appropriate Fellow or Senior Fellow appointing authority. The gaining agency's ERB must approve the Senior Fellow's appointment for continuation in the Program.

(b) The Fellow or Senior Fellow does not begin a new period in the Program upon appointment by the new employing agency. Because there is no break in service, time served under the previous Program appointment will apply towards the completion of the Program with the new employing agency.

(c) The new appointing agency must notify OPM when a Fellow or Senior Fellow moves to that agency from another agency.

§ 362.207 Withdrawal and readmission.

(a) *Withdrawal.* (1) A Fellow or Senior Fellow may withdraw from the Program at any time by resigning from his/her appointment. Such withdrawal will be treated as a resignation from the Federal service; however, any obligations established upon admission and appointment (for example, as a result of accepting a recruitment bonus under part 575, subpart A, of this chapter) still apply.

(2) A Fellow or Senior Fellow who held a career or career-conditional appointment in an agency immediately before entering the Program, and who withdraws from the Program for reasons that are not related to misconduct, poor performance, or suitability, may, at the employing agency's discretion, be placed in a career or career-conditional position, as appropriate, in that agency. The employing agency's determination in this regard is not subject to appeal.

(3) An agency must notify OPM when a Fellow or Senior Fellow withdraws from the Program.

(b) *Readmission.* (1) If a Fellow or Senior Fellow withdraws from the Program for reasons that are related to misconduct, poor performance, or suitability, as determined by the agency,

he/she will not be readmitted to the Program at any time.

(2) If a Fellow or Senior Fellow withdraws from the Program for reasons that are not related to misconduct, poor performance, or suitability, he/she may petition the employing agency for readmission and reappointment to the Program; such a petition must be in writing and include appropriate justification. Upon consideration of that petition, the agency may, at its discretion, submit a written request seeking OPM approval to readmit and reappoint the individual to the Program; the individual's status in the Program upon readmission and reappointment must be addressed as part of the agency's submission. The OPM Director's, or the Director's designee's, final determination regarding readmission and reappointment is not subject to appeal.

§ 362.208 Resignation, termination, reduction in force, and appeal rights.

(a) *Resignation.* A Fellow or Senior Fellow who resigns at any time prior to completion of the Program does not have reinstatement eligibility for competitive service positions based on his/her Fellow or Senior Fellow appointment.

(b) *Termination.* If an agency does not appoint a Fellow or Senior Fellow at the end of the Program, as provided in § 362.209, or extend the individual's initial appointment under § 362.203, the appointment expires when certification for Program completion is denied or when the OPM Director, or the Director's designee, denies the agency's request for an extension. The agency must provide written notification to OPM when a Fellow or Senior Fellow is terminated for this or any reason.

(c) *Reduction in force.* Fellows and Senior Fellows are in the excepted service Tenure Group II for purposes of § 351.502 of this chapter.

(d) *Appeal rights.* Fellows and Senior Fellows are excepted service employees within the meaning of chapters 43 and 75 in title 5, United States Code, and have appeal rights as provided therein. For systems not covered by 5 U.S.C. chapters 43 or 75, Fellows and Senior Fellows have appeal rights as provided by the equivalent authorities under their system, if any.

§ 362.209 Placement upon completion.

(a) A Fellow or Senior Fellow must complete the Program within the time limits prescribed in § 362.203, including any extensions approved by OPM. At the conclusion of that time period, the Fellow or Senior Fellow must be

appointed, as provided in paragraph (b) of this section.

(b)(1) As provided in part 315 of this chapter and/or Executive Order 13318, and except as provided in paragraph (c) of this section, an agency must appoint without further competition an ERB-certified Fellow or Senior Fellow to a full-time, permanent position, in the competitive or excepted service, as applicable. Appointments must be effective on or before the expiration of the individual's PMF appointment, including extensions.

(2) A Fellow or Senior Fellow who was initially appointed to a permanent position in an agency excepted from the competitive service upon completion of the Program may be appointed subsequently to a full-time permanent position in the competitive service without further competition one time only in accordance with the requirements prescribed in § 315.708 and Executive Order 13318.

(c) As provided for in § 362.204(e)(1)(ii), an agency may appoint a Senior Fellow who has been certified as having successfully completed the Senior Fellows program to a position in the SES, without further competition, in the same manner and subject to the same QRB review prescribed in § 317.502 of this chapter as a graduate of an OPM-approved SES candidate development program.

§ 362.210 Transition.

OPM shall provide written guidance for the orderly transition of employees from the Presidential Management Intern Program to the Fellow program and may revise it as necessary.

PART 537—REPAYMENT OF STUDENT LOANS

■ 11. The authority citation for part 537 continues to read as follows:

Authority: 5 U.S.C. 5379.

■ 12. Revise paragraph (d) of § 537.104 to read as follows:

§ 537.104 Employee eligibility.

* * * * *

(d) Employees serving on excepted appointments who are eligible for noncompetitive conversion to a term, career, or career-conditional appointment (including, but not limited to, Career Interns, Presidential Management Fellows, or Senior Presidential Management Fellows).

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart G—Severance Pay

■ 13. The authority citation for subpart G continues to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257, 3 CFR, 1964–1965 Comp., p. 357.

■ 14. Revise paragraph (f)(6) of the definition of “*Nonqualifying appointment*” in § 550.703 to read as follows:

§ 550.703 Definitions.

* * * * *

Nonqualifying appointment * * *
(f) * * *

(6) A Presidential Management Fellow or Senior Presidential Management Fellow appointment under part 362 of this chapter.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 97

[Docket Number ST–02–02]

RIN 0581–AC31

Plant Variety Protection Office, Supplemental Fees

AGENCY: Agricultural Marketing Service, USDA

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is establishing supplemental fees for the Plant Variety Protection (PVP) Office covering a variety of administrative services that are not currently charged by the program. These include administrative service requests for: Replenishment of seed low in germination or seed number; submission of new application data after notice of allowance, but prior to certificate issuance; recording any revision, withdrawal, or revocation of an assignment; and protest to the issuance of a certificate. The allowance and issuance fee is increased also to recover the costs of enhancing the PVP program's electronic archiving capabilities. Also, technical amendments are made which revise or remove obsolete language.

DATES: Effective June 20, 2005.

FOR FURTHER INFORMATION CONTACT: Janice M. Strachan, USDA, AMS, Science and Technology (S&T), PVP