

# Proposed Rules

Federal Register

Vol. 71, No. 140

Friday, July 21, 2006

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 553

RIN 3206-AI32

### Reemployment of Civilian Retirees To Meet Exceptional Employment Needs

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing proposed regulations to amend the criteria under which OPM may grant dual compensation (salary off-set) waivers on a case-by-case basis, or delegate waiver authority to agencies. This amendment clarifies that OPM may grant or delegate to agencies the authority to grant such waivers in situations resulting from emergencies posing an immediate and direct threat to life or property or situations resulting from unusual circumstances that do not involve an emergency. The proposed changes will make it easier for agencies to reemploy needed individuals when faced with unusual circumstances. In addition, we are proposing to amend the section headings to avoid redundancy. This amendment is also removing information concerning military employees.

**DATES:** We will consider comments received on or before September 19, 2006.

**ADDRESSES:** You may submit comments, which are identified by RIN 3206-AI32, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [employ@opm.gov](mailto:employ@opm.gov). Include "RIN 3206-AI32, Reemployment of Military and Civilian Retirees to Meet Exceptional Employment Needs" in the subject line of the message.
- Fax: (202) 606-2329.
- Mail: Nancy H. Kichak, Associate Director for Strategic Human Resources Policy, U.S. Office of Personnel

Management, Room 6551, 1900 E Street, NW., Washington, DC 20415-9700.

- Hand Delivery/Courier: U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415-9700.

**FOR FURTHER INFORMATION CONTACT:**

Janice Warren, 202-606-2367, FAX: 202-606-2329, by TDD: 202-418-3134, or e-mail: [janice.warren@opm.gov](mailto:janice.warren@opm.gov).

**SUPPLEMENTARY INFORMATION:** The current regulations provide OPM the authority to grant dual compensation (salary off-set) waivers on a case-by-case basis or delegate waiver authority to agencies in order to meet emergencies posing immediate and direct threat to life or property or emergencies resulting from other unusual circumstances. Under this proposed rule, OPM may grant a waiver or delegate waiver authority for unusual circumstances, which do not cause or create an emergency. Unusual circumstances may include, but are not limited to, the need to conform to a congressional or other mandate to meet new or expanded mission requirements by a particular date, as well as other unforeseen developments that will adversely impact an agency's ability to carry out its mission. To effectuate this change for individual waivers, we are removing the reference to "other unusual circumstances" in § 553.201(c) and adding a new paragraph, "Requests based on other unusual circumstances," at § 553.201(f). Similarly, for agency requests for delegated authority, we are modifying section 553.202(b)(1) to separate unusual circumstances from emergency situations. These changes will more closely align the regulations to the authorizing statutes at 5 U.S.C. 8344(i)(1)(B) and 8468(f)(1)(B), which distinguish between emergencies and other unusual circumstances. We are amending the titles of § 553.201 and 202 to make clear these provisions include termination of annuity. Consequently, we are removing § 553.201(b)(4) because this subsection is no longer needed with the change in the section titles. In addition, we are removing any references to "military employees" in the title of this regulation and eliminating § 553.203(b), because it is no longer needed. The Federal Employees Pay Comparability Act of 1990 (FEPCA) permitted OPM to authorize exceptions to the reduction in pay and retirement benefits normally

required for either civilian or military retirees reemployed in the Federal Government. On October 5, 1999, President Clinton signed the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65). Section 651 of this law repeals section 5532 of title 5, United States Code. This action ended the reductions in retired or retainer pay previously required of retired members of a uniformed service who are employed in a civilian office or position of the U.S. Government. As a result, we are deleting all information concerning military employees from this subpart.

### 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 Part 553

Administrative practice and procedure, Government employees, Military personnel, Retirement, and Wages.

Office of Personnel Management.

**Linda M. Springer,**  
Director.

Accordingly, OPM is proposing to amend 5 CFR part 553 subpart B, as follows:

### PART 553—REEMPLOYMENT OF CIVILIAN RETIREES TO MEET EXCEPTIONAL EMPLOYMENT NEEDS

1. The authority for part 553 continues to read as follows:

**Authority:** 5 U.S.C. 8344, 8468, Sec. 651, Pub. L. 106-65 (113 Stat. 664).

2. The heading for part 553 is revised as set forth above.

### Subpart B—Special Provisions for Reemployment Without Penalty To Meet Exceptional Recruiting or Retention Needs

3. Section 553.201 is amended by revising the section heading; paragraphs (a), (b)(2) and (c) introductory text; removing paragraph (b)(4); redesignating

paragraph (f) as paragraph (g); and adding a new paragraph (f) to read as follows:

**§ 553.201 Requesting OPM approval for reemployment without reduction or termination of annuity in individual cases.**

(a) *Request by agency head.* The head of an agency may request OPM to approve individual exceptions on a case-by-case basis to meet temporary hiring needs based on an emergency or other unusual circumstances or when the agency has encountered exceptional difficulty in recruiting or retaining a qualified candidate for a particular position. Authority to submit such a request may not be redelegated to an official below the agency's headquarters level.

(b) \* \* \*

(2) The request must be submitted in accordance with the criteria set out in paragraphs (c), (d), (e), or (f) of this section.

\* \* \* \* \*

(c) *Requests based on an emergency hiring need.* An agency may request reemployment without penalty for an individual whose services are needed on a temporary basis to respond to an emergency involving a direct threat to life or property. Requests submitted on that basis must meet the following criteria:

\* \* \* \* \*

(f) *Requests based on other unusual circumstances.* An agency may request reemployment without penalty for an individual whose services are needed on a temporary basis due to unusual circumstances. Agencies must provide justification describing the unusual circumstances.

\* \* \* \* \*

4. Section 553.202 is amended by revising the section heading, and paragraph (b)(1) to read as follows:

**§ 553.202 Request for delegation of authority to approve reemployment without reduction or termination of annuity in emergencies or other unusual circumstances.**

\* \* \* \* \*

(b) \* \* \*

(1) Description of the situations for which authority is requested. The situation must result from emergencies posing immediate and direct threat to life or property or from other unusual circumstances.

\* \* \* \* \*

5. Section 553.203 is revised to read as follows:

**§ 553.203 Status of individuals serving without reduction.**

*Reemployed civilian annuitants.*  
Annuitants reemployed with full salary

and annuity under an exception granted in accordance with this part are not considered employees for purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code. They may not elect to have retirement contributions withheld from their pay; they may not use any employment for which an exception is granted as a basis for a supplemental or recomputed annuity; and they may not participate in the Thrift Savings Plan.

[FR Doc. E6-11618 Filed 7-20-06; 8:45 am]

BILLING CODE 6325-39-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[REG-153037-01]

RIN 1545-BA31

#### **Suspension of Statutes of Limitations in Third-Party and John Doe Summons Disputes and Expansion of Taxpayers' Rights To Receive Notice and Seek Judicial Review of Third-Party Summonses**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed amendments to the regulations relating to third-party and John Doe summonses. These proposed regulations reflect amendments to sections 7603 and 7609 of the Internal Revenue Code of 1986 made by the Internal Revenue Service Restructuring and Reform Act of 1998, the Omnibus Budget Reconciliation Act of 1990, the Technical and Miscellaneous Revenue Act of 1988, and the Tax Reform Act of 1986, which were enacted subsequent to adoption of the current regulations. These proposed regulations provide guidance relating to the manner in which summonses may be served on third-party recordkeepers, the expanded class of third-party summonses subject to notice requirements and other procedures, and the suspension of periods of limitations if a court proceeding is brought involving a challenge to a third-party summons, or if a third party's response to a summons is not finally resolved within six months after service. These proposed regulations affect third parties who are served with a summons, taxpayers identified in a third-party summons, and other persons entitled to notice of a third-party summons.

**DATES:** Written comments and requests for a public hearing must be received by October 19, 2006.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-153037-01), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-153037-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Comments may also be submitted electronically to <http://www.irs.gov/regs> or the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-153037-01).

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Rawlins at (202) 622-3630 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### **Background**

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) under sections 7603 and 7609 of the Internal Revenue Code of 1986 (Code). The proposed regulations reflect amendments to sections 7603 and 7609 enacted in the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105-206, 112 Stat. 685) (RRA 1998), the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647, 102 Stat. 3343) (TAMRA 1988), and the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085) (TRA 1986). The proposed regulations also reflect changes made to section 6503(j) in the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, 104 Stat. 1388) (OBRA 1990).

#### **Explanation of Provisions**

In general, section 7609 provides that if a summons is served on a third party requiring the third party to give testimony or produce records relating to a taxpayer or other person identified in the summons, the Internal Revenue Service (IRS) must provide notice of the summons to the taxpayer and to any other person identified in the description of summoned records and testimony within three days of the date on which the summons was served, but no later than 23 days prior to the date fixed in the summons as the day on which the examination of the summoned person or materials is scheduled. Persons entitled to notice of a third-party summons are entitled to bring a proceeding to quash the summons by filing a petition in district court within 20 days after notice is