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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 230, 301, 316, 333, 337, and 410

RIN 3206-AJ 99

Organization of the Government for Personnel Management, Overseas Employment, Temporary and Term Employment, Recruitment and Selection for Temporary and Term Appointments Outside the Register, Examining System, and Training

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement certain Governmentwide human resources flexibilities contained in the Homeland Security Act of 2002. This regulation provides agencies with: increased flexibility in assessing applicants using alternative (category-based) rating and selection procedures; the ability to select qualified candidates for positions, including temporary and term positions, in the competitive service using direct-hire procedures; the authority to pay or reimburse the costs of academic degree training from appropriated or other available funds under specified conditions; and increased flexibility in the use of academic degree training to address agency-specific human capital requirements and objectives. This interim regulation will also remove part 333 of title 5, Code of Federal Regulations, Recruitment and Selection for Temporary and Term Appointments Outside the Register, and all related references to this part, including the authority to appoint using temporary appointments pending establishment of a register (TAPER).

DATES: These regulations are effective June 13, 2003. We will consider comments received on or before August 12, 2003.

ADDRESSES: Send, deliver or fax written comments to Ms. Ellen E. Tunstall, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415-9700; e-mail employ@opm.gov; fax: (202) 606-2329.

FOR FURTHER INFORMATION CONTACT: On alternative rating and selection procedures and direct-hire authority, Ms. Suzy Barker by telephone at (202) 606-0830, fax at (202) 606-2329 or by e-mail at smbarker@opm.gov. On emergency indefinite appointments, overseas employment, TAPER, and outside the register appointments, Ms. Diane Tyrrell by telephone at (202) 606-0830, fax at (202) 606-2329 or by e-mail at dmtyrrel@opm.gov. On training, Ms. LaVeen M. Ponds by telephone at (202) 606-1394, fax at (202) 606-2329 or by e-mail at lmponds@opm.gov. Ms. Barker, Ms. Tyrrell and Ms. Ponds may also be contacted by TTY at (202) 418-3134.

SUPPLEMENTARY INFORMATION: On November 25, 2002, the President signed the Homeland Security Act of 2002 (Act), Public Law 107-296, into law. This Act provides Federal agencies with a number of human resources (HR) flexibilities. These flexibilities include direct-hire authority and alternative (that is, category) rating and selection procedures, which will aid in recruitment and hiring. The Act also provides Federal agencies with the authority to pay or reimburse employees for the costs of academic degree training.

Direct-Hire Authority

Title 5 U.S.C. 3304 provides agencies with the authority to appoint candidates directly to jobs for which OPM determines that there is a severe shortage of candidates or a critical hiring need. The requirements and justification for the direct hire authorities are presented separately and distinct from each other in these interim regulations.

We are soliciting comments on whether we should combine the requirements and justification for a severe shortage of candidates and critical hiring needs into a single section

or keep them in separate sections as written.

OPM may decide, on its own, that a severe shortage of candidates or a critical hiring need exists, either Governmentwide or in specified agencies, for one or more specific occupational series, grades (or equivalent), or geographic locations. Alternatively, an agency may, in a written request to OPM, identify the position(s) for which it believes a severe shortage or a critical hiring need exists. The agency must include relevant evidence, as described below, to support its request. Agencies that use this direct-hire authority must adhere to public notice requirements, as set forth in 5 U.S.C. 3327 and 3330, and 5 CFR part 330, subpart G.

To demonstrate that a severe shortage of candidates exists for a position or group of positions, an agency must provide information showing that it is unable to identify candidates possessing the competencies required to perform the necessary duties of the position despite extensive recruitment, extended announcement periods, and the use, as applicable, of hiring flexibilities such as recruitment and relocation incentives. In determining whether there is a severe shortage of candidates for a position or group of positions, OPM will consider all relevant evidence, including an agency's demonstrated recruitment efforts, human capital management strategic plans that forecast agency workforce needs, relevant analyses made in connection with an agency's workforce planning efforts, labor market data, and employment trends. OPM will also consider whether a nationwide or geographical skills shortage exists, as well as the extent to which the position(s) at issue are located in an undesirable geographic location, will require the incumbent to perform onerous or undesirable duties, or will require the incumbent to work under extraordinary or extreme conditions.

To prove that a critical hiring need exists, an agency must demonstrate that it has a critical need to fill the position or positions to meet mission requirements brought about by an exigency such as a national emergency, threat or potential threat, environmental disaster, or other unanticipated or unusual event or mission requirement. A critical hiring need may also be triggered by the need to conform to