

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-AK05

Employment (General)

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed regulation regarding the detail of executive branch employees to the legislative branch. The purpose of the revision is to set forth guidelines for executive branch detailees to the legislative branch.

DATES: Comments must be received on or before October 24, 2003.

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

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Mahoney by telephone on 202-606-0960, by FAX 202-606-2329, or by TDD on 202-418-3134, e-mail mjmahone@opm.gov.

SUPPLEMENTARY INFORMATION: OPM is issuing proposed regulations under 5 U.S.C. 1103, setting forth guidelines for executive branch detailees to the legislative branch. The purpose of this proposed regulation is to maintain the separation of powers under the Constitution and prevent conflicts of interest among the branches and individuals involved.

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 300

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

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is proposing to amend part 300 of Title 5 of the Code of Federal Regulations as follows:

PART 300—EMPLOYMENT (GENERAL)

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

Authority: 5 U.S.C. 552, 3301, and 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.

Secs. 300.311 through 300.316 also issued under 5 U.S.C. 1103.

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.

2. Amend part 300 by adding §§ 300.311 through 300.316 and a new center heading to read as follows:

Detail of Government Employees From the Executive Branch to the Legislative Branch

§ 300.311 Definitions.

In this part: *Agency* means a military department and an executive agency as defined in this section;

Employee has the same meaning as in 5 U.S.C. 2105 and a member of the uniformed services as defined in this section;

Executive agency has the same meaning as in 5 U.S.C. 105, exclusive of the General Accounting Office;

Military department has the same meaning as in 5 U.S.C. 102;

OPM means The United States Office of Personnel Management;

Uniformed Services has the same meaning as in 10 U.S.C. 101.

§ 300.312 Detail of executive branch employees to the legislative branch.

No executive agency (agency) shall detail, assign, or otherwise make available an employee of such agency for the performance of functions within or under the supervision of the

legislative branch, without the approval of the Director of the Office of Personnel Management ("Director of OPM"). The Director of OPM shall not approve such detail, assignment, or making available for a period exceeding 180 days, except that, upon request from the office of the legislative branch to which the employee is detailed, assigned, or made available, the Director of OPM may approve one additional period not to exceed 180 days.

§ 300.313 Approval of Details.

The Director of OPM shall not give approval with respect to an employee under § 300.312 unless:

(a) The functions to be performed by the employees within or under the supervision of the legislative branch:

(1) Will not involve;

(i) A conflict with respect to present or potential differing interests of the executive branch and the legislative branch; or

(ii) Any breach of applicable rules of professional conduct, including those governing the conduct of attorneys; and

(2) Will not involve disclosure, or any significant risk of disclosure, of information within the constitutional authority of the Executive to withhold because disclosure could impair foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties; and

(b) The detail, assignment, or making available is consistent with applicable law, including section 1301(a) of title 31, United States Code.

§ 300.314 Termination.

The Director of OPM may direct the head of an agency to, and upon such direction, the head of such agency shall, terminate the detail, assignment, or making available of an employee of such agency for the performance of functions within or under the supervision of the legislative branch, whether made before or after the publication of this regulation in the **Federal Register**, when, in the Director's judgment after consultation with the head of the agency, the continuation of such detail, assignment, or making available would not be consistent with the criteria for approval set forth in § 300.313.

§ 300.315 Reporting.

On a semi-annual basis, heads of agencies shall file a written report with