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Date

DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT

HUMAN RESOURCES (HR) BULLETIN #260, FY22

SUBJECT: Hiring Authority for Post-Secondary Students

EFFECTIVE DATE: Upon release of this HR Bulletin

EXPIRATION DATE: Effective until canceled or superseded

SUPERSEDES: None

BACKGROUND: On August 13, 2018, the President signed Public Law 115-232, the National Defense Authorization Act (NDAA) for Fiscal Year 2019. Section 1108 of the NDAA established a new hiring authority, codified at 5 United States Code (U.S.C.) 3116, for appointing certain post-secondary students to certain positions in the competitive service. The intended effect of the authority is to provide additional flexibility in hiring eligible and qualified individuals.

This flexibility enables the Department of Commerce to continue to meet current and future mission needs. Intern programs allow Federal agencies to hire students while in school, and provide them with on-the-job training to prepare them for a career in the Federal Government. This program introduces students to the wide range of occupations and employment opportunities the Federal Government employs and offers.

On August 18, 2021, the Office of Personnel Management (OPM) issued an interim rule to use the authority, with a request for comments. The interim rule became effective on September 17, 2021, and comments were accepted through October 18, 2021.

PURPOSE: HR Bulletin #260 sets forth policy and guidance for the Department to use the new post-secondary student hiring authority.

AUTHORITY: Title 5, Code of Federal Regulations (CFR) § 316.901 has been established for post-secondary student employment. In accordance with the authority, an agency may appoint an eligible and qualified post-secondary student (enrolled or accepted at an institution of higher education and pursuing a baccalaureate or graduate degree), under a time-limited appointment, to any position in the competitive service at the General Schedule (GS)-11 level or below (or

equivalent) without regard to the provisions of 5 U.S.C. 3309-3319, and 3330.¹

After appropriate public notice is provided, any eligible individual who meets the minimum qualification standard for the position may be selected without regard to the application of veterans' preference or the provision of Career Transition Assistance Plans/Interagency Career Transition Assistance Plans (CTAP/ICTAP). Appointments must adhere to Merit System Principles.

Individuals may be appointed for an initial period not to exceed 1 year (temporary appointment), or for an initial period expected to last more than 1 year but less than 4 years (term appointment), to coincide with the individual's academic curriculum. In either case, the initial appointment may be extended, in accordance with the appointment type, for a period that will allow the student to complete their degree requirements, provided the criteria for the post-secondary student appointment continue to be met.

Note: Individuals may not move between temporary and term appointments. Individuals expected to finish school within 1 year should be placed on a temporary appointment, with the option to extend an additional year if needed, for a total of 24 months. Individuals expected to finish school with more than 1 year left should be placed on a term appointment, with the option to extend it up to a total of 4 years. Any extensions beyond the maximum limitation, 24 months for temporary or 4 years for term appointments, must be approved by OPM.

LIMITATION ON THE NUMBER OF APPOINTMENTS: In accordance with 5 CFR § 316.901, Subpart 1, all agencies (i.e., the Department of Commerce) have a limited number of appointments (also known as 'slots') that can be made each fiscal year under the authority. The number of authorized non-competitive post-secondary appointments are based on 15% of the number of qualifying student appointments made during the previous fiscal year to positions at the GS-11 level, or below (or equivalent).

Appointments made using direct hire authorities, non-competitive authorities, excepted service authorities (except the Pathways Internship Program), or selections under merit promotion authorities, may not be counted when establishing the limit.

Note: Using data from the National Finance Center (NFC) for the last pay period of the fiscal year, the Office of Human Resources Management (OHRM) shall determine the total number of allocated appointments for the entire Department each fiscal year. In conjunction with the Principal Human Resources Managers (PHRMs), OHRM will determine the methodology used each fiscal year to determine the allocations to bureaus/operating units (OUs), as this may vary each year based on the data. (See OHRM Responsibility, below.)

Reserved or Unused Available Appointments:

¹ 5 U.S.C. 3309 – 3319, 3330 (veterans' preference, competitive service, alternative ranking and selection procedures, and the Government-wide list of vacant positions)

If the methodology used provides for a pool of reserved slots, bureaus/OUs may request to be allocated slots from this pool. The request must be submitted to the Director, OHRM, through their Servicing Human Resources Office (SHRO)/Enterprise Services (ES), and include a justification on why the additional slot(s) are needed.

ELIGIBILITY: To be eligible for a post-secondary student position under this authority, an individual must be enrolled or accepted for enrollment in an accredited institution of higher education and be pursuing a baccalaureate or graduate degree on at least a part-time basis, as determined by the academic institution. An institution of higher education is an entity defined by the Higher Education Act of 1965, in a section codified at 20 U.S.C. 1001(a).

QUALIFICATIONS: Eligible post-secondary students must meet the Government-wide, OPM-prescribed minimum qualification standard or an OPM-approved, agency-specific qualification standard for the position being filled.

CLASSIFICATION: Post-secondary student positions under the GS, or equivalent, must be classified to the “-99” series of the appropriate occupational group. Federal Wage System positions filled under the authority in this subpart must be classified to the “-01” series of the appropriate occupational group.

PUBLIC NOTICE REQUIREMENT: The Department must adhere to Merit System Principles, and must provide public notification in a manner that recruits qualified individuals from appropriate sources from all segments of society. Post-secondary student Job Opportunity Announcements (JOAs), under 5 CFR § 316.901, are not required to be advertised on *USAJOBS*; however, *USAJOBS* may be used. In accordance with HR Bulletin #210, FY17, *Creating a Job Opportunity Announcement*, JOAs must remain open for a minimum of 7 calendar days.

If *USAJOBS* is not used, the JOA must be publicly displayed, at a minimum, on the bureau/OU’s public facing home page by either providing the actual JOA or a link to the JOA. Bureaus/OU must maintain a record of the job posting to meet periodic accountability and compliance requirements. Each bureau/OU should consider whether additional recruitment and advertisement (LinkedIn, etc.) activities are necessary or appropriate to further Merit System Principles.

A JOA must include, at a minimum, the following information:

1. Position title, series, grade/band level
2. Geographic location
3. Starting salary of the position
4. Minimum qualifications of the position
5. Promotion eligibility, if applicable, and the terms of such promotion
6. Time-limitation of the position (i.e., not-to-exceed date), and the option to extend the appointment (i.e., up to a total of 24 months for a temporary appointment, and up to a total of 4 years for a term appointment), if applicable
7. Potential for conversion to the bureau/OU’s permanent workforce (i.e., career-conditional/career appointment)

8. Any other relevant information about the position such as telework opportunities, recruitment incentives, etc.
9. Specific information instructing applicants on how to apply for the position.

CTAP/ICTAP: Selection priority under 5 CFR part 330, subparts F and G, pertaining to CTAP and ICTAP, does not apply to this hiring authority.

OHRM RESPONSIBILITY:

- Using data from the NFC for the last pay period of the fiscal year, OHRM shall determine the total number of allocated appointments for the entire Department each fiscal year.
- In coordination with the PHRMs, OHRM will determine the methodology used each fiscal year to determine the allocations to bureaus/OU, as it may vary each year based on the data.
- As soon as possible at the beginning of each fiscal year, OHRM will provide the PHRMs the designated number of allocations for each of their serviced bureaus/OU.
- OHRM will also manage any ‘reserved’ or unused allocated appointments that may be available for that fiscal year.

SHRO/ENTERPRISE SERVICES RESPONSIBILITY:

The SHRO/ES, in conjunction with their serviced bureau(s)/OU(s), are responsible for:

- Tracking the use of the designated number of non-competitive appointments available for that fiscal year.²
- Appropriately applying the provisions of 5 CFR § 316.901.
- Submitting requests on behalf of a serviced client, to the Director, OHRM, for the allocation of ‘reserved’ or unused slots, if available.
- Responding to data calls on the use of the authority.
- Maintaining a record of job postings to meet periodic accountability and compliance requirements.

COMPETITIVE STATUS: Time spent on a time-limited appointment under the post-secondary student authority may count toward fulfillment of a probationary period in accordance with 5 CFR § 315.802(b). Competitive status is acquired only upon completion of a probationary period after any non-competitive conversion to a permanent appointment.

CAREER TENURE: An individual appointed under 5 CFR § 316.901 becomes a career-conditional employee upon completion of academic requirements and noncompetitive conversion to a permanent appointment in accordance with § 316.910, unless the individual has already satisfied the requirements for career tenure or is exempt from the service requirement for career tenure pursuant to Title 5, CFR § 315.201(c).

BREAKS: A “break in program” is defined as a period of time when a student is working for the bureau/OU but is unable to go to school, or is neither attending school nor working for the bureau/

² OPM established parameters on the use of this non-competitive hiring authority during a fiscal year.

OU. A bureau/OU may use its discretion in either approving or denying a request for a break in program. An approved break in program, where a student remains on the rolls in a pay or non-pay status, does not require a restart to the 640-continuous-hours' requirement. A break in program other than this requires a restart of the 640-continuous-hours' requirement.

PROMOTION: Post-secondary students appointed for an initial period expected to last more than 1 year but less than 4 years (**term**) under this part may be promoted non-competitively, provided:

- The individual meets the qualification requirements for the higher-graded position;
- Time-in-grade requirements have been met; and
- The JOA used to fill the original position stated that promotions to a higher grade/band level are possible.

Students on initial appointments for less than 1 year (**temporary**) are not eligible for promotion; however, they may be converted to a new temporary appointment at a higher grade/band level, provided the student meets the qualification requirements for the higher grade/band position.

CONVERSION: An individual may be converted while serving in an appointment, before the expiration date of the appointment, to a permanent position in the competitive service in the bureau/OU without further competition if they have met the eligibility requirements for conversion under 5 CFR § 316.910. To be eligible for conversion, an individual must have completed at least 640 hours of current continuous³ employment and meet the OPM-prescribed minimum qualification standard for the position. The individual must also have completed the course of study leading to the baccalaureate or graduate degree (or certificate as appropriate), and meet the time-in-grade requirements in accordance with 5 CFR part 300, subpart F, if converting to a higher grade/band.

REDUCTION IN FORCE: Post-secondary students are covered for purposes of a reduction in force (RIF). Students whose initial appointment was for a period of 1 year or less (**temporary**) are not assigned a tenure group and do not compete with other employees in a RIF. Students whose initial appointment was for a period expected to last more than 1 year (**term**) are placed in Tenure Group III.

TERMINATION: Any appointment made under this authority expires on the not-to-exceed date of the appointment unless the bureau/OU extends the appointment prior to before expiration. A bureau/OU must terminate the appointment of any student without regard to any provision of 5 U.S.C. chapter 35 or 75 who is no longer eligible under 5 CFR § 316.902; does not meet the requirements for conversion under 5 CFR § 316.910; or is not converted in accordance with 5 CFR § 316.910.⁴

³ If an individual has an approved break in program and they remain on the rolls in a pay or non-pay status, the requirement for 640 hours of continuous employment does not restart.

⁴ 5 U.S.C. chapter 35 is titled and covers "Retention Preference, Voluntary Separation Incentive Payments, Restoration and Reemployment." 5 U.S.C. chapter 75 addresses "Adverse Actions."

It is recommended that an individual be non-competitively converted to a permanent position in the competitive service as soon as possible, that is, when they meet the conditions for conversion, including the completion of the academic course of study.

REPORTING: The Department is required to provide an annual report to OPM on the use of the authority to include information such as: total number of appointments; grade/band levels and occupational series of the positions filled; numerical limit established for the authority; number of those appointed who have been separated; recruitment activities; and any difficulties encountered in using the authority. The SHROs/ES are required to respond to any requests for information from OHRM.

CHANGES TO THE CODE OF FEDERAL REGULATIONS: In order to implement the post-secondary student authority, OPM is creating a new subpart I of part 316, title 5, CFR, “Hiring Authority for Post-Secondary Students,” and revising part 315, “Career and Career-Conditional Employment,” and part 330, “Recruitment, Selection, and Placement (General).”

REFERENCES: The National Defense Authorization Act (NDAA) for Fiscal Year 2019; Interim Rule by OPM, “Subpart I – Hiring Authority for Post-Secondary Students”; 5 CFR 316, Subpart I; 5 CFR 315 and 330.

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