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OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 335

RIN 3206-AN77

Promotion and Internal Placement

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to give agencies, in individual hiring processes, the discretion to select and reinstate certain former Federal employees, to fill vacancies at any grade level or with promotion potential for which the individual is qualified, notwithstanding the grade of the position the individual had previously held on a permanent basis in the competitive service. An agency will be able to effectuate such reinstatements non-competitively, pursuant to a job opportunity announcement open to outside candidates, provided the former employee qualifies for the position as posted. The regulations will help agencies to recruit former Federal employees who have developed more enhanced or higher-level skill-sets than they had when they left government to apply for agency vacancies at grade levels appropriate to their current knowledge, skills, and abilities. Previously, an agency could reinstate an individual, without competition, only to a position at a grade level that was no higher than the grade level of a position the individual had held on a permanent basis in the competitive service. Reinstatement to a higher-graded position, or to a position with greater promotion potential, required competition. The intended effect of this hiring authority is to broaden the choices available to agencies when filling vacant positions and to promote a workforce in which individuals who have developed their competencies

through extended service in the Federal Government and individuals who have developed their competencies in the private or non-profit sectors can enhance each other's strengths by sharing knowledge and perspectives.

DATES: This rule is effective July 8, 2021.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On December 26, 2019, the Office of Personnel Management (OPM) published proposed regulations in the **Federal Register** at 84 FR 70906 to change the criteria for how an agency may reinstate certain former Federal employees to a position in the competitive service in part 335 of title 5, Code of Federal Regulations (CFR). OPM received 36 comments on the proposed rule: 20 from individuals, 11 from Federal agencies, 4 from professional associations, and 1 from a Federal employees' union ("the Federal Employees' Union").

Ten individuals, eight Federal agencies, and 2 professional associations expressed their general support for the proposed changes.

Three Federal agencies recommended OPM place a limitation on the number of times an individual can be noncompetitively reinstated under this hiring authority. OPM is not adopting this suggestion because the purpose of this rule is to broaden choices for an agency seeking to fill a vacancy by enabling an agency to choose to reinstate a former employee, non-competitively, when such a former employee applies for the position and establishes qualifications at the appropriate level, and regardless of the grade or promotion potential of that employee's prior Federal position. Limitations on the number of times an individual could apply for a position through this reinstatement authority could act as a disincentive for individuals who have developed their knowledge, skills, and abilities through experiences outside of the Federal Government to attempt to return to Federal service. The Federal government can benefit when an employee leaves Federal service if the employee obtains new experiences in the private sector, the non-profit sector,

academia, or state and local government that enrich the knowledge, skills, and abilities of the employee. Facilitating the return to Government of people who have broadened their work experience in this way advances the civil service's goal of an effective and efficient government. Apart from providing the agency with additional choices in making selections for current vacancies, it enables agencies to build a workforce of individuals who bring a variety of knowledge, training, and experiences to their work. Accordingly, OPM seeks to remove barriers to reinstating Federal employees who have already competed for a Federal position once or who otherwise meet the service requirement for career tenure in accordance with 5 CFR 315.201 and reinstatement eligibility under 5 CFR 315.401, performed successfully, and subsequently gained valuable new skills and experiences when they apply to positions commensurate with their current level of qualification.

One commenter asked whether this rule waives the three-year time limit on reinstatement eligibility in 5 CFR 315.401(b) for individuals who did not complete the requirement for career tenure. OPM is not waiving the time limitations in 5 CFR 315.401(b). Former career-conditional employees are eligible for reinstatement for three years. Former career employees have lifetime eligibility for reinstatement.

Another individual commented that an employee who leaves an agency before completing 52 weeks at their current grade level should not be allowed to be reinstated after one year to a position at a higher grade level because the employee did not obtain all of the knowledge, skills, experience, and training at the lower grade to be eligible for work at the higher grade. OPM agrees, in part, with this comment, but it has already addressed through existing regulation. Individuals seeking reinstatement to a higher-graded position under this rule must meet time-in-grade (TIG) restrictions in accordance with 5 CFR part 300 subpart F; reinstatement is not an exclusion from TIG restriction per 5 CFR 315.603(b)(2). OPM disagrees with the commenter's belief that an individual could not meet the qualifications for higher-graded work if the requisite education or experience was obtained outside of Federal employment. OPM has

concluded that some individuals can and do acquire such skills and or experience from work with other employers. The proposed regulation acknowledges this possibility and provides that, when it arises, such former employees may apply for positions at higher levels, or with higher promotion potential, than the positions they previously held, and agencies may reinstate such individuals at that grade level, just as agencies do now when appointing other individuals from outside the agency's workforce who apply under other non-competitive hiring authorities (*e.g.*, when agencies hire individuals under the non-competitive appointment of certain military spouses, or the non-competitive appointment of present and former Peace Corps personnel). OPM believes its rationale for this rule is sound: That individuals who have previously proven their ability to be successful in Federal employment over an extended period should be allowed to apply for vacant positions at the grade level for which they currently qualify, and agencies should be able to appoint them, non-competitively, through this expansion to the reinstatement provision. The presence of restrictions on the grade level to which an individual could be reinstated could serve as a disincentive for highly qualified individuals to apply for positions that would enable them to rejoin the Federal workforce.

Three Federal agencies and three individuals suggested OPM limit reinstatement under this provision to one grade level higher than the highest grade level an individual held. OPM is not adopting this suggestion because the intent of this rule is to allow individuals to be reinstated at any grade level for which a position is posted and for which the individual qualifies.

Four individuals, one professional association, one Federal agency, and the Federal Employees' Union stated this proposed rule should also apply to current Federal employees who have completed one year of service after a competitive appointment and were rated at least fully successful on their most recent performance appraisal. OPM cannot adopt this recommendation. Current Federal employees cannot be reinstated; reinstatement is a personnel action that applies to certain former Federal employees. The scope of the proposed regulation concerned reinstatement of former Federal employees only.

Seven individuals, two Federal agencies, and the Federal Employees' Union commented that this hiring authority will be abused and questioned the fairness of allowing former Federal

employees to come back to Federal service at higher grade levels noncompetitively when current Federal employees must compete for higher grade levels. There are many safeguards built into this enhanced flexibility. This flexibility was proposed as a discretionary action under 5 CFR part 335. This means an agency may except reinstatement actions from the competitive procedures of part 335 but is not required to do so. Discretionary actions must be taken in accordance with the hiring agency's merit promotion plans pursuant to 5 CFR 335.103, and any collective bargaining agreements the hiring agency has in place. Before an agency may select a former employee and reinstate him or her to a position at a higher grade level or with higher promotion potential than the position the individual previously held, the agency must provide public notice through a job opportunity announcement, clear its Reemployment Priority List (RPL) as well as its Career Transition Assistance Plans (CTAP), and Interagency Career Transition Assistance Plans (ICTAP); consider applicants under the Veterans Employment Opportunities Act of 1998, as amended (VEOA), 5 U.S.C. 3304(f) and the Land Management Workforce Flexibilities Act, as applicable; and assess whether the individual meets all qualifications requirements for the position to which the individual is being reinstated. OPM will assess agency use of this flexibility as part of its on-going oversight work or will consider whether to conduct a specific evaluation of this flexibility after it has been in operation for a year, depending on how widely it is used. OPM's purpose in modifying its reinstatement regulation is to expand agency choice by permitting an agency to select and reinstate into Government former successful Federal employees who have obtained new knowledge, skills, and abilities from outside government that qualifies them for the positions posted. An agency may also consider and select from among candidates who qualified through the normal progression through established steps and grades and the agency's merit promotion program. OPM believes that permitting these choices will enhance the quality of hiring, and thus Government, generally, and enable agencies to exploit knowledge, skills, and abilities acquired and developed both within and outside the Federal sector, enhancing diversity of thought and methods and enriching the workforce. In that scenario, the Federal government recoups the value of the training and development

invested in the employee when he or she was previously in Federal service and recoups the benefit of the additional training and development the person received while working outside of government. It can be a benefit for Federal workers to gain new perspectives on how to best deliver agency missions from jobs outside of government, and OPM seeks to facilitate agencies' ability to pursue that benefit by permitting them to select former Federal employees non-competitively, when they qualify for posted positions, even if the grade level of or promotion potential for the position exceeds the grade the former employee previously held.

Seven individuals, two Federal agencies and the Federal Employees' Union state the changes will discourage current Federal employees, if someone is hired noncompetitively, because current Federal employees do not have the same opportunity to compete for a higher graded position; they believe this hiring will be abused. It is more accurate to view the two methods of qualifying for selection as counterparts for two different groups of people with prior experience in Government. Both former successful Federal employees and current successful employees will have the ability to qualify and be selected through methods that recognize the knowledge, skills, and abilities they have acquired, though through different paths. We also note that an agency that ultimately reinstates an individual to a higher grade level or with greater promotion potential, using this authority, must first have complied with public notice requirements, met CTAP/ICTAP procedures, considered other candidates from outside their agency pursuant to the VEOA and Land Management requirements; assessed that the individual met all qualifications requirements; and concluded that the former employee was the candidate with the highest relative level of knowledge, skills, and experience, in accordance with the Merit Systems Principles. As previously noted, OPM believes these safeguards are adequate to protect this discretionary flexibility from abuse. OPM will assess agency use of this flexibility as part of its on-going oversight work or consider whether to conduct a specific evaluation of this flexibility after it has been in operation for a year, depending on how widely it is used. This proposal also does not eliminate an agency's discretion to limit the area of consideration to agency employees when filling positions. We are simply providing a new option for agencies that expands choices and

reflects the fact that employees who have moved to jobs outside government to develop their abilities may wish to come back to Federal service in a position that makes good use of newly acquired skills. Agencies may lose out on such candidates if their only means of re-entry continues to be to return to a position at the last grade they occupied or apply again through the sort of open competitive examination that they underwent when they originally entered Government service.

Two individuals and 3 Federal agencies questioned OPM's assertion that former employees actually acquire skills or experience in private industry that would qualify them for non-competitive appointment to higher graded positions under this rule. In addition, these commenters stated OPM's argument is not substantive and lacks merit and logic. OPM is not asserting that all former employees will have acquired the sorts of skills or experience in the private sector that would qualify them for appointment to higher-graded positions than the positions in the Government they previously held, or that they will necessarily be among the best candidates for the position. OPM simply recognizes that some individuals may, in fact, acquire such skills and or experience. If they, do, the proposed rule provides agencies the flexibility to select and reinstate such individuals in hiring processes for particular positions, at the grade level for which those individuals qualify, just as agencies may appoint other individuals from outside of the agency's workforce at a grade level appropriate to their knowledge, skills, and abilities. OPM believes its rationale for this rule is sound: That permitting individual agencies to appoint a former successful Federal employee at a grade level for which the employee qualifies, benefits Government, by attracting former employees who have obtained important new knowledge, skills, and abilities from outside of government and thus enhancing the choices available to the agency under the Merit System Principles. For example, the an agency could secure a huge benefit if an individual was first hired into an entry-level position through a normal competitive process, spent several years with the agency learning about a program and obtaining valuable training and development, then went to private industry to experience the impact of the program first hand, then went to a state government to become a program manager of a similar state program, and now wants to return to her original

agency as a program manager for the Federal program. There is value in facilitating an agency's ability to select such an individual, in a particular hiring action, through a non-competitive process. The presence of restrictions on the grade level to which an individual may be reinstated currently serves as a disincentive for individuals to consider rejoining the Federal workforce.

One individual commented that the proposed rule is not in the best interest of the American people. OPM disagrees. First, we note that the proposed rule is a discretionary action but used requires: The applicant to be reinstatement eligible, meet time-in-grade requirements, and meet all qualifications requirements needed for the position the individual is seeking. It also requires the agency to adhere to the Merit System Principles when using this authority. Because of these safeguards, OPM believes the proposed language is in the public interest; it provides wider choice to agencies by encouraging qualified former employees to apply, thereby enhancing merit.

One Federal agency commented that the language at the new proposed paragraph 335.103(c)(3)(viii) does not clearly emphasize that these enhanced skills/experiences were obtained in the private sector. The comment is ambiguous; OPM interprets it to mean, "Proposed paragraph 335.103(c)(3)(viii) does not clearly emphasize that these enhanced skills/experience, putatively gained in the private sector, were *actually acquired*." When using this authority, a hiring agency must determine, based on an assessment of all of the pertinent skills, abilities and experience the applicant possesses, that the applicant possesses the qualifications required for the position to which he or she has applied and the agency is seeking to fill, including the grade level at which the agency intends to fill it. Reinstatement is available only if the agency determines the applicant does possess such qualifications. If the agency determines the applicant is qualified, for example, for a higher grade than that of the position the applicant had in a prior federal job, this rule rules allows the agency the discretion to appoint the applicant at that level, notwithstanding the grade of the position the applicant previously occupied.

One Federal agency suggested OPM provide an exception to ICTAP under this hiring authority. OPM is not adopting this suggestion. The purpose of ICTAP is to restore employees who were involuntarily separated to comparable positions for which they are deemed to be well-qualified. In other words, ICTAP

is a means to 'make an employee whole' whose career was disrupted through no fault (or action) of that employee. An exception to ICTAP would vacate the selection priority that ICTAP eligible individuals would otherwise have when applying for positions.

One Federal agency suggested OPM include a statement that former employees who received a Voluntary Separation Incentive Payment (VSIP) must repay the VSIP if rehired under this rule. OPM is not adopting this recommendation because VSIP repayment provisions already exist at 5 CFR part 576 subpart B. Agencies must ensure that any hiring action is made in accordance with 5 CFR 576 subpart B regardless of the authority under which the individual is being appointed.

An individual asked what research OPM conducted to support the claim that the proposed rule would "benefit" both agencies as well as individuals seeking reemployment with the government. OPM believes the benefits to agencies to be self-evident: The regulation will provide greater choice to agencies, and provide an ability to recruit back to Government former Federal employees who have developed enhanced or higher-level skillsets than they had when they left government.

This proposed regulation is part of OPM's on-going efforts to provide tools to help agencies attract and retain the talent they need to carry out their mission requirements.

One individual and three Federal agencies asked OPM to clarify the phrase "most recent" in the context of using the performance rating from an individual's last Federal appointment. These commenters also asked that OPM explain the value of relying on the most recent performance rating if the former employee has been out of Federal service for many years. The term "most recent" means the last Federal rating of record under 5 CFR part 430 an individual received from his or her last career or career-conditional position. The value of using a former employee's most recent (*i.e.*, last) rating of record under 5 CFR part 430 for these purposes is to ensure the individual was performing to expectations at the time he or she left Federal service and to provide consistency with other requirements for career advancement in the competitive service. Under 5 CFR 335.104, performance is an important factor for advancement to a higher grade level. Typically, agencies consider an individual's performance during the rating cycle that precedes the personnel action to be taken or the most recent rating of record. This is especially so for appointments (including

reinstatements) or promotions to higher grades. Absence of this requirement for this noncompetitive appointment by reinstatement would create unnecessary disparate treatment among individuals vying for the same position.

Two Federal agencies suggested OPM eliminate the proposed requirement that an individual must have received a rating of record of Fully Successful to be eligible under these rules. These agencies suggested that OPM replace this requirement with consideration of an individual's entire Federal employment record. OPM is not adopting this suggestion. The requirement that an individual must have a rating of record under 5 CFR part 430 aligns with 5 CFR 335.104, thus providing consistency and fairness with respect to Federal employees vying for the same position through career ladder promotions. An individual whose last rating was not fully successful or its equivalent may still compete for Federal positions under normal competitive processes.

Four Federal agencies stated there are inconsistencies by using the word "if" at 335.103(c)(1)(vi) and the word "provided" at 335.103(c)(3)(viii) and recommends changing and use the same word in both places for consistency. OPM disagrees. Section 335.103(c)(1)(vi) originally said that an agency must apply competitive procedures to reinstatement at a higher grade level or with more promotion potential. This rule added the phrase "if" the individual did not wait at least a year to reapply or did not have a most recent rating of record of Fully Successful or above. 335.103(c)(3)(viii) is a new section that provides that an agency may except from competitive procedures reinstatement of an employee at a higher grade level or with more promotion potential, "provided" that the employee has waited at least a year and has a most recent rating of record of Fully Successful or above. Thus, the two provisions are not parallel. "If" connotes "on the condition that" and "provided" connotes "as long as". As a result, OPM is not adopting this suggestion.

Three Federal agencies recommend OPM also allow individuals separated "involuntarily" due to reduction in force (RIF), or recovered after disability retirement or medical inability to be eligible under these rules. OPM agrees these provisions should apply to individuals who are separated involuntarily as a result of a RIF. We have modified proposed § 335.103(c)(3)(viii) by removing the word "voluntary" in this section. This change extends eligibility to any

individual who is separated for at least 1 year before being reinstated and has a rating of record for his or her most recent career or career-conditional position of at least Fully Successful (or equivalent). Individuals returning to work after disability retirement must be qualified for higher-graded work the same as anyone else and may be subject to any requirements pertaining to reemployed annuitants and/or provisions affecting their retirement payments in accordance with 5 U.S.C. 8837(d) and 5 U.S.C. 8455(a), and the corresponding implementing provisions at 5 CFR parts 831 and 843. OPM is not adopting the suggestion to include individuals who recovered after medical inability because regulations at 5 CFR part 353 subpart C address restoring an individual to duty after compensable injury or illness.

Seven individuals, four Federal agencies, one professional organization and the Federal Employees' Union believe this proposal is contrary to Merit System Principles and deprives certain bargaining unit employees of their collectively bargained right to first consideration. OPM disagrees these rules are contrary to Merit System Principles. These rules allow an agency (at its own discretion) to consider an individual who has previously succeeded as a Federal employee and achieved career status at the grade level for which the individual currently qualifies through a non-competitive process. The rules do not require an agency to use this authority or to hire any particular individual. Agencies must still adhere to their merit promotion plans and Merit Systems Principles in making hiring decisions under this authority. An agency could require competition under 5 CFR 335, Promotion and Internal Placement, if the agency chose to do so. OPM also disagrees that this proposal will deprive employees of any rights those employees may have pursuant to their agency's collective bargaining agreement (CBA). As to any right of first consideration, making selections for a position from any appropriate source is a management right. 5 U.S.C. 7106(a)(2)(C)(ii). It would abrogate that management right to require an agency to limit a selection to bargaining unit employees. However, whether a currently applicable collective-bargaining provision relating to "first consideration" of bargaining-unit employees is negotiable and therefore enforceable is a case-by-case determination to be adjudicated by the FLRA and the courts. OPM expresses no views concerning any particular

proposal or provision. In addition, the final rule merely allows agencies additional flexibility to rehire former federal employees but does not require them to do so. Thus, we do not agree that the final rule will inevitably deprive bargaining unit employees of first consideration in accordance with law. We note that any hiring mechanism or authority that permits or requires agencies to consider candidates from outside the agency's existing workforce can impact the ability for a current employee to advance to a higher graded position, but, in this case, the changes will benefit the effectiveness and efficiency of Government and further Merit System Principles, by enhancing choices.

One Federal agency requested that OPM clarify whether applicants eligible under these rules could be eligible for the superior qualifications pay-setting authority, and, if so, how an individual would meet these requirements.

Agencies may use superior qualifications pay-setting authority (which is not a hiring authority) to set the rate of basic pay upon the first appointment as a civilian employee of the Federal government or for reappointment to a GS position after a break in service of 90-days or more, as stated at 5 CFR 531. The mechanics of how to apply this pay flexibility are beyond the scope of the proposed rule. Agencies interested in using the superior qualifications pay authority should refer to 5 CFR 531.212 as well as OPM's Pay Administration guidance at <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/superior-qualifications-and-special-needs-pay-setting-authority>.

One individual asked OPM to clarify how positions filled using this flexibility will be advertised or otherwise made available to job-seekers. Reinstatement actions made under these rules are subject to public notice requirements in accordance with 5 U.S.C. 3327 and 3330 as well as the provisions for selection priority for displaced Federal employees. This means agencies are required to post any vacant positions they may fill through reinstatement on the USAJOBS website (www.usajobs.gov). Applicants should visit the USAJOBS website for information about positions for which they may be interested in applying.

One agency recommended OPM address the parameters for using this reinstatement hiring flexibility to ensure compliance with merit system principles and address how OPM oversight will be conducted. Use of this hiring authority is discretionary on the part of agencies. When using this

authority agencies are required to assess an applicant's qualifications for the position being filled and avoid relying on prohibited considerations in making selections in the same manner as they would when making any other appointment.

A professional executive association suggested OPM develop a legislative proposal to further cement the goals of this regulation. Further legislation is not necessary; 5 U.S.C. 3301 and 3302 provides the President the statutory authority to craft rules governing competitive status, career tenure, and discretion in hiring. The President delegated much of his authority to OPM through presidential Civil Service Rules, see, especially, 5 CFR 2.2, and provided in Rule VII, 5 CFR 7.1, that agencies have discretion to fill positions in the competitive service by competitive appointment or by noncompetitive selection of a present or former Federal employee.

Two of the comments we received were beyond the scope of the proposed changes. One individual could not locate a copy of the proposed regulation on the *regulations.gov* website. The other commenter recommended OPM re-evaluate the 40-hour basic work week.

OPM is making two clarifying changes to the final rule which commenters did not address. We have added references to Civil Service Rules II and VII in the "authority" listing which are OPM's authority, pursuant to the President's delegation of his own authority under 5 U.S.C. 3301 and 3302, to establish and administer a system that provides for career appointments for former employees eligible for career appointment upon reinstatement, and agencies' authority to select for positions in the competitive service by competitive appointment or by noncompetitive selection of a present or former Federal employee.

OPM has modified the wording in 5 CFR 335.103(c)(3)(viii) by inserting the words, "before applying for reinstatement," to parallel the language used in 5 CFR 335.103(c)(1)(vi).

Regulatory Flexibility Act

I certify that this regulation will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies and employees.

E.O. 13563 and E.O. 12866, Regulatory Review

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is

necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a "significant regulatory action," under Executive Order 12866 and was not reviewed by OMB.

E.O. 13132, Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E.O. 12988, Civil Justice Reform

This regulation meets the applicable standard set forth in section 3(a) and (b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 335

Government employees.

Office of Personnel Management

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, OPM is amending 5 CFR part 335 as follows:

* * * * *

PART 335—PROMOTION AND INTERNAL PLACEMENT

■ 1. The authority citation for part 335 is revised to read as follows:

Authority: 5 U.S.C. 2301, 2302, 3301, 3302, 3330; E.O. 10577, E.O. 11478, 3 CFR 1966–1970, Comp., page 803, unless otherwise noted, E.O. 13087; and E.O. 13152, 3 CFR 19554–58 Comp., p.218; 5 U.S.C. 3304(f), and Pub. L. 106–117, and 5 CFR 2.2 and 7.1.

Subpart A—General Provisions

■ 2. In § 335.103, revise paragraph (c)(1)(vi) and add paragraph (c)(3)(viii) to read as follows:

§ 335.103 Agency promotion programs.

* * * * *

(c) * * *

(1) * * *

(vi) Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service if the individual did not wait 1 year or more after separating from Federal employment before applying for reinstatement, or did not receive a rating of record for his or her most recent career or career-conditional position of at least Fully Successful (or equivalent).

* * * * *

(3) * * *

(viii) Reinstatement in accordance with 5 CFR part 315 to any position in the competitive service for which the individual is qualified at a higher grade level or with more promotion potential than a career or career-conditional position previously held by the individual; provided: The individual has been separated for at least one year before applying for reinstatement, and the individual must have received a rating of record for his or her most recent career or career-conditional position of at least Fully Successful (or equivalent).

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