

**OFFICE OF PERSONNEL
MANAGEMENT****5 CFR Part 334**

RIN 3206-AG61

**Intergovernmental Personnel Act
Mobility Program****AGENCY:** Office of Personnel
Management.**ACTION:** Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing mobility assignments between Federal agencies and non-Federal entities. In keeping with the OPM philosophy of transferring more responsibility for operational programs to agencies, these revised regulations will allow agencies to operate the mobility program in a more efficient and productive manner.

EFFECTIVE DATE: May 29, 1997.

FOR FURTHER INFORMATION CONTACT:
Tony Ryan on 202-606-1181 or FAX
202-606-3577.

SUPPLEMENTARY INFORMATION: By Executive Order 11589 of April 1, 1971, the President delegated to the Office of Personnel Management the authority to issue regulations necessary to administer the temporary assignment of personnel between the Federal Government and State or local governments, institutions of higher education, Indian tribal governments and other eligible organizations (the Intergovernmental Personnel Act Mobility Program).

On December 11, 1996, OPM published a proposed revision of its regulations (61 FR 65189) dealing with this program for a 30-day comment period. We received comments from sixteen Federal agencies. The Department of Energy (DOE) recommended that we remove federally funded research and development centers from the definition of "other organization" in § 334.102. Since an "other organization" must be certified to participate, and federally funded research and development centers which are on a list maintained by the National Science Foundation (NSF) are automatically eligible, we agree with this suggestion and, consequently, § 334.102, as it currently appears in the regulations, will not be changed.

Throughout the proposed regulations there are references to "the head of the Federal agency." The Department of Justice suggested that we add "or his or her designee" after this phrase. Since, in many agencies, the IPA program has already been delegated to Bureau or

Component level or below, this suggestion seems to mirror the way things actually are. Changes have been made where needed.

Section 334.103 deals with organizations which must be approved for participation in the IPA program. This approval or certification process is being shifted from OPM to agencies. Federal agencies will now deal directly with those non-Federal entities with whom they hope to share an assignment. If an organization is certified by an agency, this certification is permanent and may apply throughout the Federal Government. Another agency can accept this certification or require the organization to submit the appropriate paperwork for review. If an organization is denied certification, it may appeal this denial to OPM. The Department of Transportation asked if those organizations that have already been certified will be "grandfathered" in when this change occurs. No, they will not. As of the effective date of these regulations, any organization wishing to participate in the mobility program will need to be certified or recertified when they enter into an IPA agreement. Those organizations in a current assignment on the effective date of these regulations may complete those assignments, but will need to go through the certification process before starting a new assignment.

Many agencies, including the Departments of Commerce and Defense as well as the Equal Employment Opportunity Commission, thought that OPM should maintain a clearinghouse of organizations which have had their eligibility certified. However, we feel that a clearinghouse is unnecessary. An agency could simply ask an organization whether it had already been certified by another Federal agency. If it had, then that certification, once verified, would allow an agency to move ahead with a new IPA assignment. This removes a heavy administrative responsibility from OPM but does not unduly impact other Federal agencies. One agency, DOE, pointed out that it is actually "eligibility" which agencies are certifying, not "notprofit status." We have revised § 334.103(a) to reflect this distinction.

We received numerous comments regarding § 334.104, which deals with the length of the IPA assignment. Some agencies believe that the proposed provisions are more restrictive than the present ones. A few agencies, including NSF, felt that rather than providing additional flexibility, the suggested changes actually limit the flexibility they now have under the current regulations.

Section 334.104(b) would place a 6-year lifetime on both Federal and non-Federal assignees. This drew quite a bit of criticism from agencies, especially those involved in research and development (R&D) like the Office of Naval Research. They felt that this regulation could severely damage their ability to utilize non-Federal scientific expertise. They argue that it takes a considerable amount of time for a scientist to become knowledgeable on a research project and it would be fiscally irresponsible to have to bring in a new person because of the 6-year limit. We certainly don't want to limit the flexibility agencies will need to effectively operate this program by placing unnecessary regulatory burdens on them. Section 334.104(b) has been changed in order to remove the 6-year limit on non-Federal assignees. The limit remains for Federal employees.

There was also considerable concern with § 334.104(c), which would require individuals to return to their original employers at the end of an assignment for a length of time equal to the assignment before participating again in the IPA program. The Department of Transportation felt that there might be a valid situation, because of an individual's special expertise, when such a break could be detrimental to the agency. Others thought the proposal has the potential to increase costs dramatically and impact mission accomplishment. We will modify § 334.104(c) to reflect the current requirement of a 12-month break after four years on assignment.

Section 334.105(a) requires Federal employees to serve with the Federal Government upon completion of their assignment for a period equal to the length of the assignment. This is known as the obligated service requirement. The Department of the Navy would like to see this section done away with. However, one of the original objectives of the mobility program was to "provide program and developmental experience which will enhance the assignee's performance in his or her regular job." This requirement assures that the individual will return to his or her Federal Government job with newly acquired skills. Therefore, we feel it is too important to discard. There are no changes to this section.

Section 334.105(b) requires an employee, who fails to carry out the provisions of § 334.105(a), to reimburse the Federal agency for its share of the costs of the assignment. These costs, however, do not include salary or, as noted by one of the agencies, benefits. This requires a minor change to § 334.105(b). In addition, this section

also allows for a waiver of the reimbursement when the agency head, or his or her designee, feel there is good and sufficient reason to do so. This waiver authority should provide sufficient flexibility for those agencies concerned about the severity of § 334.105(a).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

List of Subjects in 5 CFR Part 334

College and universities, Government employees, Indians, Intergovernmental relations.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 334 of title 5, Code of Federal Regulations:

PART 334—TEMPORARY ASSIGNMENT OF EMPLOYEES BETWEEN FEDERAL AGENCIES AND STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS, INSTITUTIONS OF HIGHER EDUCATION, AND OTHER ELIGIBLE ORGANIZATIONS.

1. The authority citation for part 334 continues to read as follows:

Authority: 5 U.S.C. 3376; E.O. 11589, 3 CFR 557 (1971–1975).

2. Section 334.103 is revised to read as follows:

334.103 Approval of instrumentalities or authorities of State and local governments and “other organizations”.

(a) Organizations interested in participating in the mobility program as an instrumentality or authority of a State or local government or as an “other organization” as set out in this part must have their eligibility certified by the Federal agency with which they are entering into an assignment.

(b) Written requests for certification should include a copy of the organization's:

- (1) Articles of incorporation;
- (2) Bylaws;
- (3) Internal Revenue Service nonprofit statement; and
- (4) Any other information which indicates that the organization has as a principal function the offering of professional advisory, research, educational, or development services, or related services to governments or universities concerned with public management.

(c) Federally funded research and development centers which appear on a master list maintained by the National Science Foundation are eligible to enter into mobility agreements.

(d) An organization denied certification by an agency may request reconsideration by the Office of Personnel Management.

3. Section 334.104 is revised to read as follows:

§ 334.104 Length of assignment.

(a) An assignment may be made for up to 2 years and may be extended by the head of a Federal agency, or his or her designee, for up to 2 more years, given the concurrence of the other parties to the agreement.

(b) A Federal agency may not send on assignment an employee who has served on mobility assignments for more than a total of 6 years during his or her Federal career. This applies only to Federal employees. The Office of Personnel Management may waive this provision upon the written request of the agency head, or his or her designee.

(c) A Federal agency may not send or receive on assignment an employee who has served under the mobility authority for 4 continuous years without at least a 12-month return to duty with the organization from which originally assigned.

4. Section 334.105 is revised to read as follows:

§ 334.105 Obligated Service Requirement.

(a) A Federal employee assigned under this subchapter must agree as a condition of accepting an assignment to serve with the Federal Government upon completion of the assignment for a period equal to the length of the assignment.

(b) If the employee fails to carry out this agreement, he or she must reimburse the Federal agency for its share of the costs of the assignment (exclusive of salary and benefits). The head of the Federal agency, or his or her designee, may waive this reimbursement for good and sufficient reason.

5. Section 334.106 is revised to read as follows:

§ 334.106 Requirement for written agreement.

(a) Before an assignment is made the Federal agency and the State, local, or Indian tribal government, institution of higher education, or other eligible organization and the assigned employee shall enter into a written agreement which records the obligations and responsibilities of the parties as specified in 5 U.S. Code 3373–3375.

(b) Agencies must maintain a copy of each assignment agreement form as well as any modification to the agreement.

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2640

RIN 3209–AA09

Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; correcting amendment.

SUMMARY: The Office of Government Ethics is correcting a minor error in its final personal financial interests regulation.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: On December 18, 1996, OGE published its executive branchwide final regulation on interpretation, exemptions and waiver guidance concerning 18 U.S.C. 208 (acts affecting a personal financial interest). See 61 FR 66830–66851 (part III), as corrected at 62 FR 1361 (January 9, 1997), and now codified at 5 CFR part 2640. In the December 1996 final rule preamble, at 61 FR 66837, OGE indicated that in response to an agency comment it had determined to delete the word “vested” in a passage of § 2640.203(a) referring to pension plans as set forth in the prior proposed rule text. However, in the regulatory text of that section of the final rule, as issued at 61 FR 66847, OGE inadvertently did not delete the word “vested”. This amendatory document corrects that oversight by removing the word “vested” from that section of the regulation.

Executive Order 12866

In promulgating this final rule correcting amendment, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This amendment has not been reviewed