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OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 900

RIN 3206-AH90

Intergovernmental Personnel Act Programs; Standards for a Merit System of Personnel Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is revising the regulations on the Standards for a Merit System of Personnel Administration. The revision reflects changes and revisions in laws or regulations that require State and local governments to establish and maintain merit systems of personnel administration. Specifically, the revised regulations eliminate any implied individual right of appeal to OPM, eliminate obsolete references to the Federal Personnel Manual, and provide a current list of covered programs.

EFFECTIVE DATE: July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Gary L. Smith, 202-606-2980, FAX 202-606-2663.

SUPPLEMENTARY INFORMATION: Section 900.606 of Subpart F, Standards for a Merit System of Personnel Administration, provided for publication of procedures implementing merit requirements in the Federal Personnel Manual (FPM). No procedures were ever issued under the FPM system which was abolished December 31, 1993. The section was unnecessary and is being withdrawn to be consistent with the sunset of the FPM. Appendix A is being revised to reflect changes in laws and regulations that have occurred since 1983 when the list of pertinent laws and regulations was last revised.

Our 1983 revisions (48 FR 9209) to these regulations promoted flexibility

and innovation at the State and local levels by eliminating standardized, detailed requirements. These new revisions continue that emphasis, and are consistent with the Intergovernmental Personnel Act's requirement to minimize Federal intervention in State and local government personnel administration. Consequently, we are modifying regulations at 5 CFR 900.604(b)(3) that require the Chief Executive to resolve compliance issues "to the satisfaction of the Office of Personnel Management." We are doing this for two reasons. First, OPM has no independent authority to adjudicate individual complaints. The Act restricts OPM from exercising "authority, direction or control over the selection, assignment, advancement, retention, compensation, or other personnel action with respect to any individual State or local employee." Second, the respective statutes which require State or local governments to establish merit systems do so pursuant to proper and efficient grants administration. We believe that issues of merit systems compliance should be raised and addressed in the context of State or local government performance in grants administration, and that this is appropriately done by or under the direction of the Federal grantor agency. Therefore, OPM's policy will be to accept allegations of non-compliance with the standards only from grantor agencies. As required by the Act, OPM will continue to provide, when requested, interpretation, advice, and technical assistance when such issues arise.

During the review and comment period following publication of these proposed regulations at 62 FR 4940, OPM received two comments from grantor agencies. One comment expressed agreement with the proposed changes to the regulations. The other comment recommended further revisions to Appendix A for recent legislation that will become effective on July 1, 1997. Those recommended revisions were incorporated into this final rule. No comments were received from individuals, organizations, or state and local governments.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities

because it imposes no new requirements on State or local governments.

List of Subjects in 5 CFR Part 900

Administrative practice and procedure, Civil rights, Government employees, Individuals with disabilities, Intergovernmental relations.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 900 of title 5, Code of Federal Regulations, as follows:

PART 900—INTERGOVERNMENTAL PERSONNEL ACT PROGRAMS

1. The authority citation for part 900, subpart F, continues to read as follows:

Authority: 42 U.S.C. 4728, 4763; E.O. 11589, 3 CFR part 557 (1971-1975 Compilation).

2. In Subpart F § 900.604, paragraphs (b)(3) and (b)(4) are revised to read as follows:

§ 900.604 Compliance.

* * * * *

(b) * * *

(3) When a chief executive requests the assistance of the Office of Personnel Management, the Office will provide consultation and technical advice to aid the State or local government in complying with the Standards.

(4) The Office of Personnel Management will advise Federal agencies on application of the Standards in resolving compliance issues and will recommend actions to carry out the purposes of the Intergovernmental Personnel Act. Questions regarding interpretation of the Standards will be referred to the Office of Personnel Management.

§ 900.606 [Removed]

3. Section 900.606 is removed.

4. Appendix A to Subpart F is revised to read as follows:

Appendix A to Subpart F—Standards for a Merit System of Personnel Administration

Part I: The following programs have a statutory requirement for the establishment and maintenance of personnel standards on a merit basis.

Program, Legislation, and Statutory Reference

Food Stamp, Food Stamp Act of 1977, as amended; 7 U.S.C. 2020(e)(6)(B).

Employment Security (Unemployment Insurance and Employment Services), Social Security Act (Title III), as amended by the Social Security Act Amendments of 1939, Section 301, on August 10, 1939, and the Wagner-Peyser Act, as amended by Pub. L. 81-775, section 2, on September 8, 1950; 42 U.S.C. 503(a)(1) and 29 U.S.C. 49d(b).

Grants to States for Old-Age Assistance for the Aged (Title I of the Social Security Act); 42 U.S.C. 302(a)(5)(A).¹

Aid to Families with Dependent Children, (Title IV-A of the Social Security Act); 42 U.S.C. 602(a)(5).²

Grants to States for Aid to the Blind, (Title X of the Social Security Act); 42 U.S.C. 1202(a)(5)(A).¹

Grants to States for Aid to the Permanently and Totally Disabled, (Title XIV of the Social Security Act); 42 U.S.C. 1352(a)(5)(A).¹

Grants to States for Aid to the Aged, Blind or Disabled. (Title XVI of the Social Security Act); 42 U.S.C. 1382(a)(5)(A).¹

Medical Assistance (Medicaid), Social Security Act (Title XIX), as amended, section 1902 (a)(4)(A); 42 U.S.C. 1396(a)(4)(A).

State and Community Programs on Aging (Older Americans), Older Americans Act of 1965 (Title III), as amended by the Comprehensive Older Americans Act Amendments of 1976, section 307 on October 18, 1978; 42 U.S.C. 3027(a)(4).

Federal Payments for Foster Care and Adoption Assistance, (Title IV-E of the Social Security Act); 42 U.S.C. 671(a)(5).

Part II: The following programs have a regulatory requirement for the establishment and maintenance of personnel standards on a merit basis.

Program, Legislation, and Regulatory Reference

Occupational Safety and Health Standards, Williams-Steiger Occupational Safety and Health Act of 1970; Occupational Safety and Health State Plans for the Development and Enforcement of State Standards; Department of Labor, 29 CFR 1902.3(h). Occupational Safety and Health Statistics, Williams-Steiger

Occupational Safety and Health Act of 1970; BLS Grant Application Kit, May 1, 1973, Supplemental Assurance No. 15A.

Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5196b), as amended; 44 CFR 302.4.

[FR Doc. 97-16425 Filed 6-23-97; 8:45 am]

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OFFICE OF GOVERNMENT ETHICS**5 CFR Part 2634**

RIN 3209-AA00

Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is amending the regulation governing confidential financial disclosure for executive branch employees, to update the standardized confidential disclosure report form's designation as OGE Form 450, which is replacing the Standard Form (SF) 450; and to provide authority for all executive branch agencies to adopt and use a standardized certificate of no new interests (OGE Optional Form 450-A) as an alternative procedure in lieu of OGE Form 450, for regular employee annual confidential disclosure filers who can make the required certifications.

EFFECTIVE DATE: July 24, 1997.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Associate General Counsel, Office of Government Ethics; telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037.

SUPPLEMENTARY INFORMATION:**I. Background**

On January 15, 1997, the Office of Government Ethics (OGE) published a proposed amendment to the confidential financial disclosure regulation for the executive branch, to modify 5 CFR 2634.601 and 2634.905. See 62 FR 2048-2052. Five departments and agencies submitted written comments that suggested modifications to the proposed amendment, and two submitted letters concurring in the amendment as proposed. After considering those comments, as discussed below, OGE has made some clarifying and corrective changes to the rule as proposed and to the draft OGE Optional Form 450-A, in adopting them as final. We are publishing the amended proposal herewith as a final rule, effective July 24, 1997.

The amendment to 5 CFR 2634.601 reflects the standardized confidential disclosure form's revision and redesignation in 1996 as OGE Form 450. A camera-ready copy of that form was distributed by OGE on February 27, 1996, to all designated agency ethics officials, for local copying and gradual phase-in as a replacement for the Standard Form (SF) 450. As indicated in the proposed rule, Paperwork Reduction Act clearance for the outdated SF 450 will expire on August 31, 1997, after which that form is no longer usable. This amended section also references the new OGE Optional Form 450-A which the amendment to § 2634.905 authorizes, as discussed below.

The amendment to 5 CFR 2634.905 exercises OGE's authority under current § 2634.905(c) of the regulation to approve, in writing, alternative procedures for confidential disclosure, which in this instance is being accomplished through the regulatory process with a new § 2634.905(d). That new subsection authorizes all executive branch agencies to permit the use of a standardized certificate of no new interests as an alternative procedure in lieu of filing OGE Form 450, for annual confidential disclosure filers (other than special Government employees) who can make the required certifications and who choose to use this method. That standardized certificate has been designated as OGE Optional Form 450-A. Users must certify that they (and their spouse and dependent children) have acquired no new reportable financial interests since filing their most recent previous OGE Form 450 (which they must first reexamine), and that they have not changed jobs (no new position description or other significant change in duties) at their agency since filing that previous report.

A form similar to the new OGE Optional Form 450-A was tested by a Cabinet-level department in 1995, which yielded highly favorable results. Following that test, OGE obtained comments from ethics officials throughout the executive branch by means of a written survey and a focus group. The general consensus of opinions expressed through these information-gathering efforts established the basis for the new OGE Optional Form 450-A and the procedures for its use, as outlined in this regulatory amendment. For those agencies that decide to permit filers to use OGE Optional Form 450-A, this alternative to an annual OGE Form 450 should help ease the administrative burden for both filers and ethics officials, while preserving general uniformity and

¹ Public Law 92-603 repealed Titles I, X, XIV and XVI of the Social Security Act effective January 1, 1974, except that "such repeal does not apply to Puerto Rico, Guam, and the Virgin Islands."

² Public Law 104-193 repealed the Aid to Families with Dependent Children program effective July 1, 1997.