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U.S. OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 300, 362, 410

RIN: 3206-AO25

Pathways Programs

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to modify the regulations for the Pathways Programs to align the program to better meet the Federal government's needs for recruiting and hiring interns and recent graduates.

OPM proposes to update the regulations for the Pathways Programs to facilitate a better applicant experience, to improve developmental opportunities for Pathways Program participants, and to streamline agencies' ability to hire participants in the Pathways Programs, especially those who have successfully completed their Pathways requirements and are eligible for conversion to a term or permanent position in the competitive service. Robust Pathways Programs with appropriate safeguards to promote its use as a supplement to, and not a substitute for, the competitive hiring process is essential to boosting the Federal government's ability to recruit and retain early career talent.

DATES: Comments must be received on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by the Regulation Identifier Number (RIN) “3206-AO25”, and title using following method:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for sending comments.

The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Katika Floyd at (202) 606-0960, or by e-mail at employ@opm.gov.

SUPPLEMENTARY INFORMATION: OPM is proposing to revise its regulations for the Pathways Programs. The proposed rule will clarify and update information on a variety of issues including reporting requirements, eligibility requirements, training requirements for Internship positions, and rotational assignments for Presidential Management Fellows. The proposed rule will also make changes to the public notification requirement for appointing Interns and Recent Graduates. Additionally, we propose to make several technical corrections to remove references to the former Student Career Program. OPM also invites feedback on potential modifications to several aspects of this rulemaking.

OPM is adopting a 45-day comment period to balance the need for robust public comment with agencies’ operational considerations regarding the timing for students and recent graduates recruitment and hiring. The traditional agency recruiting season for early career talent, including interns, begins as early as winter to allow for internships to begin in the spring/summer. Agencies also start extending offers for full-time positions in the spring to students who expect to graduate in the summer. Prospective interns and job applicants frequently

choose between numerous offers and opportunities in the winter and spring; agencies can maximize their chances of attracting and hiring great candidates if their recruiting and hiring activities are strategically timed. Applicants also benefit from having greater certainty about employment decisions as soon as possible.

To allow agencies a reasonable amount of time to modify their practices by the effective date of the final rule, OPM aims to review public comments on this proposed rule and make any necessary modifications expeditiously.

Background Information

The Pathways Programs were established on December 27, 2010, with the issuance of E.O. 13562 (75 FR 82585) pursuant to 5 U.S.C. 3301 and 3302. The programs are designed to provide students and recent graduates with the opportunity for Federal internships and potential careers in the Federal government through three components.

- The Internship Program exposes current high school students, undergraduate students, including those enrolled in community and technical colleges, and graduate students to the work of government by providing paid opportunities to work in agencies and explore Federal careers while still in school.
- The Recent Graduates Program (Recent Graduates) provides opportunities for individuals who have received qualifying degrees or certificates within the previous two years (up to six years for qualifying veterans) to obtain entry-level developmental experience designed to lead to a career in the Federal government after successfully completing the Program, which is generally one year in length and in certain cases may be two years in length.

- The Presidential Management Fellows Program (PMF) promotes careers in the Federal government by offering leadership development opportunities to individuals who have received advanced degrees within the preceding two years.

The Pathways Programs became effective on July 10, 2012.¹ In the final implementing regulations, OPM identified five core principles shared by each of the programs to advance merit system principles and the policies established by the President in E.O. 13562:

1) Transparency – In an effort to promote transparency, agencies have to provide OPM with information about Internship Program and Recent Graduates Program opportunities and how interested members of the public can apply so that OPM can inform potential applicants.

OPM designated USAJOBS, a website used to announce Federal jobs in the competitive service, for the purpose of notifying the public of these opportunities and how to apply at each agency. For the PMF Program, OPM itself publishes the vacancy announcement in USAJOBS. Under the discontinued Federal Career Intern Program (FCIP) and previous student programs, public notice using USAJOBS was not required, which created the appearance of restrictive, rather than open, recruitment practices.

2) Limited Scope – Agencies are to use the Pathways Programs as part of an overall workforce planning strategy to supplement competitive examining, rather than a substitute for it. If agencies are not using the hiring authorities as intended, OPM may place caps on the number of individuals who may be initially appointed to or converted from Pathways positions to positions in the competitive service.

¹ Final regulations were issued on May 11, 2012, and the five core principles are outlined in the supplemental information accompanying the final regulations for the Pathways Programs. See Excepted Service, Career and Career-Conditional Employment; and Pathways Programs, 77 Fed. Reg., 28,195 (2012).

3) Fairness to Veterans – The Pathways Programs honor and protect the rights of veterans in the Federal hiring process. Veterans’ preference rules in the excepted service governed by sections 3308-3318, title 5, U.S.C. pursuant to section 3320, apply to Pathways positions through the application of part 302 of OPM’s regulations in title 5 of the CFR. Veterans also have greater flexibility in meeting eligibility requirements for the Recent Graduates Program in that those unable to apply due to military service obligations have up to six years from the date they completed their educational programs to apply, whereas non-veterans must apply within two years of completion. This flexibility, along with providing public notice and safeguarding veterans’ preference, helps ensure the hiring process is fair and veteran-friendly.

4) Agency Investment – To meet the training and developmental requirements for the Pathways Programs, especially for the Recent Graduates and PMF Programs, agencies must commit resources to foster a positive experience that will help prepare their Pathways hires for potential conversion to the competitive service and success in their careers as Federal employees.

5) OPM Oversight – To use the Pathways Programs, agencies must enter into Memoranda of Understanding (MOUs) with OPM and report to OPM annually on their use of the Pathways authorities. Agencies are also subject to any caps OPM may place on initial appointments or conversions to positions in the competitive service. In addition, the use of Pathways Programs is subject to evaluation by OPM or the agency as part of its independent audit program.

In general, these five principles, as outlined in the 2012 implementing regulation, are retained throughout this proposal. However, OPM invites comments on whether we should consider modification to, or addition to, these principles.

The Federal government benefits from a diverse workforce that includes students and recent graduates, who contribute enthusiasm, talents, and unique perspectives. OPM assessed the Pathways regulations to consider the need for changes to make the regulations better advance the goals of E.O. 13562. It has also received substantial input from agencies that utilize Pathways.

In August 2016, OPM published a special report titled, “The Pathways Programs Their Use and Effectiveness Two Years After Implementation.”² This report documents a study OPM performed in fiscal year (FY) 2015 to determine how the Programs were being used and whether they were operating within the spirit and intent of the five core principles OPM identified in its implementing regulations: transparency, limited scope, fairness to veterans, agency investment, and OPM oversight. Additionally, OPM analyzed agencies’ usage, highlighted notable practices, identified challenges and compliance concerns, and developed recommendations for improvement in the effective and efficient use of the Pathways Programs.

OPM has received qualitative feedback directly from agencies since the Programs’ implementation. Between FY 2012 and FY 2016 OPM hosted monthly office hours meetings with agencies. During these office hours OPM and agencies discussed solutions and recommendations to challenges agencies encountered when using the Programs. Pathways Programs Officers and Presidential Management Fellows (PMF) Coordinators have and continue to contact OPM directly for advice and guidance on using the Programs since their inception.

² <https://www.opm.gov/policy-data-oversight/hiring-information/students-recent-graduates/reference-materials/report-on-special-study-of-the-pathways-programs.pdf>.

The Chief Human Capital Officers Council convened a working group to discuss challenges, issues, and successes of using the Pathways Programs during FY 2019. The working group also provided OPM staff with a number of ideas and recommendations for ways that the Programs could be improved.

Based on agency feedback and OPM's own analysis, we are proposing several changes aimed at enhancing the robust usage of the Pathways Programs as a key source of early career talent in the Federal government, as a supplement to, and not a substitute for, the competitive hiring process. Overall, the purpose of this proposal is to streamline the Pathways regulations, making it easier for agencies to recruit and hire Pathways program participants, and to optimize the Pathways program as a tool to recruit and retain diverse and highly-qualified early career talent. The proposed changes, which are explained in greater detail below, cover a variety of issues related to the way agencies use the Pathways Programs to recruit and hire students and recent graduates including:

- Outlining the specific responsibilities of the Presidential Management Fellows (PMF) Coordinator;
- Expanding the time period for converting Pathways Interns from 120 to 180 days;
- Modifying the public notice requirement for vacancy announcements for Pathways Interns and Recent Graduates;
- Clarifying and streamlining the training and development requirements;
- Allowing Recent Graduate and Presidential Management Fellows participants to be converted to term or permanent positions in any agency, when appropriate;
- Clarifying the time period for required reporting;
- Allowing the use of part-time work schedules for PMFs in certain situations;

- Clarifying information about the use of developmental assignments for PMFs; and
- Expanding eligibility for the Recent Graduates Program to include those who have completed certain career or technical education programs.

In addition to seeking comment on the proposed changes summarized above and discussed in greater detail throughout, please see the Request for Comment and Data section below for additional requests for data and additional comments on specific topics.

Section by Section Analysis

Part 300 Employment (General)

Section 300.301 Authority

OPM is proposing to modify the regulations in 5 CFR 300.301(b) to allow agencies to detail employees appointed under the Pathways Programs (Schedule D of the excepted service) to positions in the competitive service without approval from OPM. Current regulations under Schedule A, Schedule B, or the Veterans Recruitment Appointment authority allow an agency to detail an employee in an excepted service position under those authorities without approval from OPM. Prior to the creation of the Pathways Programs, both the former Student Education Employment Program (SEEP) and the predecessor to the PMF Program were a part of Schedules A and B of the excepted service. However, the Pathways Internship Program, which replaced the SEEP, and the PMF Program are now filled under Schedule D of the excepted service, which currently requires OPM approval for details to the competitive service. OPM is proposing to modify the Schedule D regulations to allow agencies to detail Pathways employees to positions in the competitive service without approval from OPM, similar to how details were executed under the SEEP.

Part 362 Pathways Programs

Subpart A General Provisions

Section 362.102 Definitions

OPM is proposing to revise the definition of an advanced degree and certificate program in § 362.102. We are proposing that the definition of advanced degree be revised to mean a master's degree, professional degree, doctorate degree, or other formal degree pursued after completing a bachelor's degree. We believe that the revised definition may lead to less confusion among applicants and agencies about the types of degrees required for eligibility under the Pathways Programs. We are proposing to revise the definition of a certificate program to include a qualifying career or technical education program that awards a recognized postsecondary credential or industry-recognized credential.

OPM is also proposing to add definitions for terms related to career and technical education. These terms are: certificate of completion of a Registered Apprenticeship Program; industry-recognized credential; qualifying career or technical education program; recognized postsecondary credential; and Registered Apprenticeship Program. These definitions are being proposed as a part of the proposed changes to the eligibility criteria for the Internship and Recent Graduate Programs, as discussed more extensively in the Supplemental Information related to Section 362.302.

We are proposing to define certificate of completion of a Registered Apprenticeship Program to mean documentation (i.e., an official record) given to an individual who has successfully completed a registered apprenticeship program (29 Part 29 and 29 CFR Part 30).

The term career or technical education program is used in Section 3 and Section 4 of E.O. 13562 but is not currently defined in the regulation. We are proposing to define qualifying career or technical education program to mean:

- ② an organized educational program, administered through a Federal agency, that focuses on providing rigorous academic content and relevant technical knowledge and skills needed to prepare the individual for further education and a career in a current or emerging profession and provides technical skill proficiency, and a recognized postsecondary credential (which may include an industry-recognized credential, a certificate, or an associate degree); or
- ② a Registered Apprenticeship Program; or
- ② service in a Federally administered local, state, national, or international volunteer service program or organization designed to give individuals work and or educational experiences in volunteer programs that benefit the Federal government or local communities.

This proposed definition is based in part on the definition found in 20 U.S.C. 2302(5). Examples of eligible programs would include the Department of Labor Job Corps programs, Registered Apprenticeship Programs, the Peace Corps, and AmeriCorps.

We are proposing to define industry-recognized credential as either a certificate or credential developed and offered by, or endorsed by, a nationally- or regionally recognized industry association or organization representing a sizeable portion of the industry sector, or credential that is sought or accepted by companies within the industry sector for purposes of hiring or recruitment, which may include credentials from vendors of certain products.

We are proposing to define recognized postsecondary credential to mean documentation of an industry-recognized certificate or certification, a certificate of completion of a Registered Apprenticeship Program, a license recognized by the State involved or Federal government, or an associate or baccalaureate degree. This proposed definition is based on the definition found in

29 U.S.C. 3102(52). Our intent in incorporating these definitions is to provide agencies clarity that both career and technical education programs and industry recognized credentials, as defined herein, are suitable demonstrations of relevant experience for Pathways purposes.

We are proposing to define Registered Apprenticeship Program as a program that meets the requirements in 29 CFR part 29. Approval of registration would be evidenced by a Certificate of Registration or other written documentation as provided by the respective career or technical education establishment. This proposed definition would align with DOL regulations.

We are proposing these changes based on the authority given to OPM in E.O. 13562 to promulgate regulations for the implementation and use of the Pathways Programs and the statutory authority in 5 U.S.C. 3301 and 3302.

Section 362.104 Agency requirements.

Currently, an agency must execute a memorandum of understanding (MOU) with OPM before using the Pathways Programs. The original Pathways regulations contained this requirement because the MOU was the mechanism for OPM to obtain from agencies a listing in advance of the positions the agencies intended to fill through Pathways Programs. The MOU requirement allows for OPM to play a role in considering and approving those positions, a key oversight safeguard that promotes the use of these programs as supplements to, and not substitutes for, competitive hiring. OPM is proposing to replace the use of an MOU with a requirement that an agency must have a Pathways Policy in accordance with § 362.104 in order to make appointments under the Pathways authority. Similar to the MOU, the agency policy will outline the parameters under which the agency will use the Pathways Programs. In lieu of the MOU, OPM will tie oversight to agency compliance with its Pathways Policy in revised § 362.108(b)(1). OPM may limit an agency's use of this authority if we determine the agency is

not in compliance with its Pathways Policy in accordance with revised § 362.104, or E.O. 13562 in general. This proposed change will do what the MOU would otherwise require, and we think it is an appropriate modification based on 10 years of experience overseeing the Pathways Programs that will streamline administration.

If this proposed change is adopted, each agency would be required to submit a copy of its Pathways Policy to OPM within 120 days of the effective date of the final rule. Once approved, the submission of an updated policy would only be required when the agency made substantive or significant changes to the policy. This is in line with how OPM approves delegated examining for agencies in the regular competitive hiring process. Agencies with existing Pathways MOUs³ may continue to use the Pathways Programs subject to the new regulations in lieu of an updated Pathways Policy while they are developing and updating their policies in accordance with the new regulations. Agencies without existing MOUs must submit a copy of their agency Pathways Policy before they begin making Pathways appointments.

OPM is also proposing to clarify the role of the Presidential Management Fellows Coordinator in § 362.104(a)(8) to outline the specific responsibilities of the role. We have found that there is inconsistency in the importance that agencies place on this role. The PMF Program is the premier leadership development program for the Federal government. Each year, the best qualified candidates are selected through a rigorous assessment process. Then, the PMF finalists apply for placement to PMF-designated positions at federal agencies. But placement rates vary year-to-year, and many years, hundreds of finalists do not get placed. Moreover, for those who are placed in agencies, the experience varies widely, as some agencies are more highly invested

³ A sample MOU is available online in the Pathways Transition and Implementation Guidance at <https://www.opm.gov/policy-data-oversight/hiring-information/students-recent-graduates/reference-materials/pathways-transition-and-implementation-guidance.pdf>.

in the professional development of their PMFs. By bolstering the role of the PMF Coordinator, OPM seeks to offer agencies a better way to share information about the PMF Program throughout agencies and standardized practices associated with the use of the Program. This increased communication and added consistencies in practice may help agencies place more PMF finalists and provide a more positive developmental experience for those finalists who get placed. Accordingly, we are proposing that an agency must have at least one PMF Coordinator in a position at the agency's headquarters, in a position at or higher than grade 12 of the General Schedule (GS) or other equivalent pay and classification system. In addition, OPM recommends building the capacity within agencies, by designating PMF Coordinators at the headquarters level of a departmental component or sub-agency level.. Additionally, we are proposing that the PMF Coordinator will be responsible for administering the agency's PMF Program including coordinating the recruitment of PMF finalists, coordinating and overseeing the on-boarding and certification processes for PMF Program Participants, coordinating the agency's PMF Program plan to ensure it is integrated with agency-wide workforce plans, and reporting to OPM on the agency's implementing of its PMF program. If an agency chooses to use more than one PMF Coordinator, at least one must be at the headquarters level and in a position at the GS-12 level or higher. If an agency designates multiple PMF Coordinators, they must work collaboratively to administer the agency's PMF Program. For example, a large agency may have a GS-12 PMF Coordinator at the headquarters level and additional coordinators in the component level offices may be at whatever grade level the agency finds appropriate.

Section 362.107 Conversion to the Competitive Service

OPM is proposing to revise § 362.107(c)(2) to allow a Recent Graduate, who has successfully completed program requirements, to be converted to a position in the competitive

service within the employing agency or another agency within the Federal government. This change will provide agencies additional flexibilities to capitalize on the Federal government's investment in training and development of a Recent Graduate when the employing organization has determined resource restrictions prevent the agency from converting a Recent Graduate to a permanent or term position within the agency.

OPM continues to expect an eligible Recent Graduate to convert to a position at the agency that hired them as a Recent Graduate (either in the organization in which they are employed, or another component within the same Department or agency) before the Recent Graduate may convert to a different Department or agency. Indeed, agencies who hire Recent Graduates are required to have engaged in sufficient strategic workforce planning to allow for a plan to convert the Recent Graduate to a permanent position in the agency upon successful completion of the program. This is an important safeguard to protect against the possibility of agencies becoming overly reliant on Recent Graduates who cycle through every few years but never land permanent positions with the agency.

Nonetheless, it is reasonable to expect that an agency may encounter obstacles that prevent conversion within the agency. For example, unforeseen budgetary constraints may affect the agency's ability to convert the Recent Graduate. New priorities brought about by a new law or policy could require agencies to shift resources and focus away from the jobs to which the Recent Graduate is eligible to convert. OPM believes that, given the nature of such unexpected obstacles, it is in the interests of efficient and effective administration of the civil service to provide for opportunities for Recent Graduates who have successfully completed their program and meet the requirements for conversion to be able to convert at agencies other than the one that initially hired them as a Recent Graduate. Such conversion can occur for any position for which

the Recent Graduate is qualified and at the grade level to which the Recent Graduate would have been converted within the agency that appointed them had the opportunity been available. The position in another component of the same agency or at the new agency must have a full performance level that is equivalent or less than the position at the prior agency. The initial agency has invested in the development of the Recent Graduate and, if it is unable to convert them, other agencies should have that opportunity so that the investment in the Recent Graduate is not lost to the Federal government. OPM proposes that the employing agency should determine within a reasonable period of time (e.g., 90 to 120 days before conversion deadline) whether or not they intend to convert the Recent Graduate to a position in either the component or the broader agency. If the agency is unable to convert the eligible Recent Graduate, then the Recent Graduate may be converted to a position in a different agency. .

We welcome comments on how to balance an agency right of first refusal in converting their Recent Graduates with Recent Graduates choosing whether to convert if there are opportunities at other agencies. We are also interested in comments on whether conversion at other agencies should be limited to situations where the employing agency is unable to convert due to a lack of resources or if conversion should occur at another agency for any reason. Comments in favor of conversion at another agency for any reason should address the types of reasons or situations where conversion at another agency may be allowed.

For the same reasons stated above with respect to eligible Recent Graduates, OPM is also proposing to allow eligible Presidential Management Fellows to be converted to a position in the competitive service either within the employing agency or at another agency within the Federal government. For reader clarity we are proposing to move the revised provision on PMFs to proposed § 362.107(c)(3).

Section 362.108 Oversight

OPM is proposing to revise § 362.108 by amending § 362.108(b)(1) to remove the reference to an MOU and replace it with a reference to the agency's Pathways Policy in accordance with the proposed change at § 362.104 described above.

Section 362.109 Reporting requirements

The regulations in §362.109 require agencies to provide OPM with information on workforce planning strategies and their use of the Pathways Programs on an annual basis. OPM is proposing to clarify this requirement by modifying section 362.109 to indicate that reporting is required on a fiscal year basis. OPM proposes starting the updated requirement in FY 2024 because that is the target fiscal year for publication of the final rule. In addition, since FY 2010, OPM has required reporting on an annual basis. Because the Pathways rules and programs have been effective since that time and OPM receives regular feedback on these programs on an on-going basis, we believe a 3-year reporting cycle is more appropriate and will reduce any administrative burdens this requirement may present to agency Pathways users. Accordingly, we are proposing to modify the reporting requirement to once every three years, i.e., beginning in FY 2024 and then again in FY 2027, and so on.

Section 362.111 Severability

Severability is an important remedial doctrine that arises in cases challenging the legality of statutes and agency rules. When reviewing a rule, if a court determines that a particular provision is unlawful, severability addresses whether judicial relief should extend to the entire rule or whether it can be limited to the invalid provision, leaving in effect the remainder of the rule.⁴ OPM is proposing to add a new section 362.11 to address the issue of severability. OPM

⁴ <https://www.acus.gov/sites/default/files/documents/tailoring-the-scope-of-judicial-remedies-in-administrative-law-final-report.pdf>

intends and expects that if any part or section is held to be invalid or unenforceable as applied to any person or circumstance, that part or section shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this Part and shall not affect the remainder thereof. We have come to this determination because the Pathways Programs encompassed three discrete programs with different implementing provisions. Should provisions related to one of the programs be held to be invalid we believe that the other programs should be severable and would not be impacted.

Subpart B Internship Program

362.202 Definitions

OPM is proposing to include a definition for Intern not-to-exceed (Intern NTE). We are proposing this change because it is the general way that Interns and agencies refer to Interns who have been appointed for an initial period of up to one year.

OPM is also proposing to modify the definition of student to include individuals enrolled or accepted for enrollment in a qualifying career or technical education program. We are proposing this change to make the Pathways Internship Program more inclusive of individuals in career or technical education programs that award a post-secondary certification or credential. Eligible career or technical education programs would include programs such as Registered Apprenticeship programs and the Job Corps programs. Section 3 of E.O. 13562 states that the Internship Program shall provide opportunities for, "...students in high schools, community colleges, 4-year colleges, trade schools, career and technical education programs, and other

qualifying educational institutions and programs, as determined by OPM...”. Consistent with the direction in E.O. 13562, OPM has determined that career and technical education programs that provide a recognized post-secondary credential such as Registered Apprenticeships and Jobs Corps programs meet the criteria of career and technical education programs expressed in E.O. 13562.

362.203 Filling Positions

Since the implementation of the Pathways Internship Program in 2012, OPM, through administrative guidance, has required that agencies must post internship positions on USAJOBS.gov before filling these positions. Over the years, agencies have noted that this requirement can substantially lengthen the hiring process and can hinder agencies’ ability to effectively recruit and retain early career talent. Therefore, OPM is proposing changes to this requirement to give agencies greater flexibility to recruit and retain early career talent and therefore to advance the goals of E.O. 13562. It should be noted that the flexibility to recruit in an efficient manner must be balanced with the agency’s responsibility to uphold fair and open competition.

OPM proposes that agencies can meet the public notice requirement in one of two ways: 1) posting a searchable announcement on www.USAJOBS.gov, as is currently required; or 2) posting job information on the agency’s public facing career or job information web page with a link to a USAJOBS custom posting.

With respect to this second option, a USAJOBS custom posting generates a unique URL that agencies can use for the job announcement. An agency can create a custom job posting in its talent acquisition system (TAS). OPM will have the posting stored within USAJOBS, and therefore can use USAJOBS to collect applicant data analytics for trend reporting and applicant

flow data purposes, but the custom job posting will not appear in USAJOBS searches.

Therefore, to facilitate applicants' access to these internship opportunities, OPM will provide a centralized source through which applicants can be directed to the locations on agency-specific webpages where applicants can learn about these opportunities.

For either of these two options—either a searchable announcement on USAJOBS or a link to a USAJOBS custom posting on the agency's public career or job information web page—agencies can promote the job posting on third party websites and recruitment boards or recruiting platforms, social media platforms, in trade publications, and at college and university events.

OPM is proposing these changes to assist agencies in their recruitment and retention efforts and as informed by the public notification requirements provided in recent statutory changes for early career hiring authorities for Post-Secondary Students and College Graduates (5 U.S.C. 3116 and 3115). OPM specifically invites comments regarding these changes and whether they will assist agencies and ultimately improve the hiring experience for Interns and Recent Graduates, thereby better advancing the purposes of E.O. 13562.

OPM is proposing to revise § 362.203(d) to remove the reference to an MOU and replace it with a reference to the agency's Pathways Policy. The conforming change is necessary due the proposed change in § 362.104 described above.

Both agencies and employees have asked for clarity on the ability of an agency to promote Interns. Eligibility for promotion is determined based on the type of appointment given. Employees on temporary appointments (initial appointments of not-to-exceed one year) are not eligible for promotions. Employees on non-temporary appointments (initial appointments of more than one year made without a not-to-exceed date) are eligible for promotion. For this reason, we are revising § 362.203(e) to reflect that those Interns whose appointments are

expected to last more than one year without a not-to-exceed date may be promoted when they meet the qualification requirements for a higher graded position. The change also provides that Interns NTEs (on temporary appointments not-to-exceed one year) are not eligible for promotions.

Agencies participating in the Pathways Internship Program are required to provide Interns with meaningful developmental work and set clear expectations regarding the work experience of the Intern as indicated in § 362.104. Identifying and allowing Interns to participate in training opportunities such as job training activities, formal training classes, mentoring sessions, testing products or tools, organizing work activities or functions, and assisting colleagues with projects or tasks will help ensure that Interns have meaningful work experiences that will help to adequately prepare Interns for Federal service. For this reason, we are proposing to modify the regulations at § 362.203 by adding a new subsection (i) that requires agencies to provide Interns with meaningful onboarding activities and training and development opportunities. Agencies should document training information using training plans, Individual Development Plans (IDP) or the Pathways Participant Agreement. Appropriate training opportunities may include but are not limited to on-the-job training activities, formal training classes, mentoring sessions, testing products or tools, organizing work activities or functions, and assisting colleagues with projects or tasks.

Section 362.204 Conversion to the competitive service

Currently, agencies must convert an Intern to a permanent position in the competitive service within 120 days of the Intern's completion of a degree and the program requirements. Agencies have indicated that they face challenges in completing additional background investigations and adjudications that may be required to encumber the position following

conversion. OPM is proposing to extend this time for conversion from 120 calendar days to 180 calendar days in § 362.204(b)(2). Though we are extending the timeline to assist agencies and Interns in securing conversion, we continue to urge agencies to move promptly to complete conversion upon the Intern's completion of the degree or qualifying career or technical education program and program requirements. Lengthy delays in conversion can pose a financial hardship on the Intern and lead to them seeking employment elsewhere.

Currently, an Intern must complete a minimum of 640 hours of work experience while in the Internship Program to be eligible for conversion. Under § 362.204(c) an agency may credit time served in comparable non-Federal Internships, in which an Intern is working in, but not for, a Federal agency, for up to half of that time (320 hours) when that service occurred prior to an Internship appointment. OPM proposes to modify the provisions in § 362.204(c) to allow agencies to also credit time served in a Registered Apprenticeship Program at a Federal agency prior to the appointment as an Intern toward the 640-hour requirement. As with the time served in non-Federal internships, time served in Registered Apprenticeship Program can count for up to half of the minimum 640 hours. We are also proposing that an agency may count time spent in a Department of Labor Job Corps program, prior to appointment as an Intern, toward the 640-hour work requirement. It is important to note that all time served by participants in Registered Apprenticeship Programs or Job Corps Programs (after the publication of the final rule) while appointed as a Pathways Intern will be creditable toward the 640-hour requirement as allowed by § 362.204(b). This provision for crediting time toward conversion would only be needed for those Interns who may have participated in a Registered Apprenticeship Program or Job Corps program prior to a current Intern appointment where eligibility was based on enrollment in a subsequent qualifying program after completing the Registered Apprenticeship Program. For

example, an Intern currently enrolled in a bachelor's degree program has completed 320 work hours as an Intern prior to completing her degree. The Intern had participated in a Registered Apprenticeship Program at a Federal agency two years before their appointment as an Intern. Up to 320 hours from the prior Registered Apprenticeship Program may be credited toward the 640-hour requirement.

OPM invites comments on other ways to strengthen the provisions that agencies may credit or waive up to 320 hours toward an Intern's 640-hour service requirement.

Section 362.205 Reduction in force (RIF) and termination.

OPM is proposing to change the provision for termination of an Intern appointment from 120 days after completion of a degree to 180 days after the completion of a degree. This conforming change is necessary based on the proposed change in § 362.204(b)(2) pertaining to the conversion window described above.

We are also proposing to make conforming changes in this section to incorporate the new term Intern NTE.

Subpart C Recent Graduates Program

Section 362.301 Program administration.

OPM is proposing to revise § 362.301(a) to remove the reference to an MOU and replace it with a conforming reference to the agency's Pathways Policy in accordance with the proposed change at § 362.104.

Section 362.302 Eligibility

One objective of E.O. 13562, as stated under Section 1, is to enable the Federal Government to "compete effectively" for talent and avoid "being at a competitive disadvantage compared to private-sector employees when it comes to hiring qualified applicants for entry level

positions.” In the years since the creation of the Pathways Programs, employment trends in other sectors have shifted to better recognize the value of and utilize skills-based hiring over reliance on degrees. The Governors of Colorado,⁵ Alaska,⁶ and Pennsylvania⁷ among others, have issued Executive Orders to promote skills-based hiring for state government jobs and reduce or eliminate degree requirements. According to a Burning Glass Institute report, major companies in the technology services field are dropping degree requirements for a significant share of their entry-level and above positions.⁸ Federal policies have also started to change, as demonstrated by E.O. 13932 of June 26, 2020, Modernizing and Reforming the Assessment and Hiring of Federal Job Candidates, which directed the Federal government to increase its use of skills-based hiring to fill positions. Consistent with E.O. 13562’s objective of enabling the Federal government to compete effectively for qualified applicants to fill entry-level positions under current workforce and job marketplace conditions, OPM is proposing to modify the eligibility criteria for the Recent Graduate Program in Section 362.302 to include individuals who have completed a career or technical education program.

The current regulation includes a definition of the term “qualifying educational institutions” under § 362.102 but does not include a definition of “qualifying career or technical education program.” As noted in the discussion of Section 362.102, we are proposing a

⁵ [Executive Order D-2022-015: Concerning Skills-based Hiring for the State Workforce \(https://www.colorado.gov/governor/sites/default/files/inline-files/D%202022%20015%20Skills%20Based%20Hiring%20EO.pdf\)](https://www.colorado.gov/governor/sites/default/files/inline-files/D%202022%20015%20Skills%20Based%20Hiring%20EO.pdf)

⁶ [Administrative Order No. 343 \(https://gov.alaska.gov/admin-orders/administrative-order-no-343/\)](https://gov.alaska.gov/admin-orders/administrative-order-no-343/)

⁷ [Executive Order 2023-03: Creating Opportunities by Prioritizing Work Experience for State Government Jobs \(https://www.oa.pa.gov/Policies/eo/Documents/2023-03.pdf\)](https://www.oa.pa.gov/Policies/eo/Documents/2023-03.pdf)

⁸ [The Emerging Degree Reset \(https://static1.squarespace.com/static/6197797102be715f55c0e0a1/t/6202bda7f1ceee7b0e9b7e2f/1644346798760/The+Emerging+Degree+Reset+%2822.02%29Final.pdf\)](https://static1.squarespace.com/static/6197797102be715f55c0e0a1/t/6202bda7f1ceee7b0e9b7e2f/1644346798760/The+Emerging+Degree+Reset+%2822.02%29Final.pdf)

definition of career or technical education programs to include programs such as Registered Apprenticeship Programs, the Department of Labor-administered Job Corps, the Peace Corps, and AmeriCorps. Individuals who have completed such career or technical education programs, much like college graduates who have graduated from a qualifying educational institution, may be at a disadvantage for competitive service hiring, as they lack significant previous work experience. *See* E.O. 13562, Sec. 1 (noting that existing competitive hiring process favors job applicants who have significant previous work experience and therefore finding it necessary to create an excepted hiring authority for the Pathways Programs).

OPM has specifically identified four Federal programs that meet the criteria under this definition of “qualifying career or technical education program”: Registered Apprenticeship Programs, the Department of Labor-administered Job Corps Programs, the Peace Corps, and AmeriCorps. Graduates and alumni from these programs are uniquely positioned to apply for Federal positions because they have been accepted into a government-administered program that is regulated by specific standards, and the Federal government has already invested funding and personnel resources toward their success. Many of these participants have been pre-screened with background checks or investigations before joining these programs, and they have already demonstrated an inclination toward government service through their participation.

Additionally, these programs attract more diverse participants relative to the broader U.S. workforce and creating a more robust applicant pipeline from these programs to Pathways Programs would help further the objective of E.O. 13562 to draw from all parts of American society. OPM believes that overtly defining this term will assist agencies as they seek to access additional talent pools that they can draw upon to meet their missions.

OPM invites comments regarding the inclusion of career and technical education programs in the eligibility criteria for the Recent Graduate Program. OPM is particularly interested whether we should establish restrictions or criteria for the types of programs that would meet the eligibility criteria.

Section 362.303 Filling positions

For the reasons discussed above regarding Section 362.203, OPM is proposing to revise 362.303(a)—the job posting requirements for Recent Graduates—in the same manner as has been proposed for Interns in 362.203(a). OPM believes that these changes will enable agencies to better recruit and retain early career talent and therefore advance the goals of E.O. 13562. OPM invites comments on these changes, as discussed above.

OPM is proposing to revise § 362.303(b)(1) and (c) to remove the reference to an agency's MOU and replace it with a reference to the agency's Pathways Policy. The conforming change is necessary due the proposed change in § 362.104.

OPM's qualification standards for white collar jobs allows education alone to be qualifying for non-research positions at the GS-11 level and below. The standards also allow education alone to be qualifying at the GS-12 level for research positions. For this reason, OPM is proposing to revise § 362.303(b)(i) to allow initial appointments of a Recent Graduate to any position filled under the authority up the GS-11 level. The existing provisions in the regulations to allow appointments at the GS-12 level for research positions in § 362.303(b)(iv) remains unchanged.

Section 362.305 Conversion to the competitive service.

OPM is proposing to modify Section 362.305 to permit conversion to a term or permanent position in a different agency. The proposed change adds a new paragraph (c) which

provides that conversion at a different agency may only occur when the employing agency documents it is unable to convert the Recent Graduate. An agency may determine that it is unable to convert the Recent Graduate for reasons related to a lack of available positions for which the Recent Graduate is qualified due to unforeseen funding or budgetary constraints or limitations, reorganizations, abolishment of positions, or other appropriate reasons. It is important to note that a Recent Graduate is not entitled to conversion at the employing agency or another agency. Conversions may only be offered to those Recent Graduates who have successfully completed the Recent Graduate Program requirements and demonstrated successful job performance resulting in a rating of record (or summary rating) of at least Fully Successful or equivalent and have a recommendation for conversion from the first level supervisor. Recent Graduates who do not meet these criteria or have misconduct issues or unsuccessful performance may not be converted to a position in the employing agency or another agency. Additionally, such a conversion must occur on or before the end of the agency prescribed Program period, plus any agency-approved extension, and the position at the new agency must have a career ladder or full promotion potential that is the same or lower than the position at the former agency.

Subpart D Presidential Management Fellows Program

Section 362.401 Definitions

OPM is proposing to revise the definition of Agency PMF Coordinator in § 362.401. This conforming change is necessary due to the proposed change in § 362.104(a)(8).

Section 362.404 Appointment and Extension

OPM is proposing to revise § 362.404(a)(1) and (b) to remove the references to an agency's MOU and replace it with a reference to the agency's Pathways Policy. This conforming change is necessary due to the proposed change in § 362.104.

Presidential Management Fellows (Fellows) are generally given full-time work schedules. However, there are times when an agency may need the flexibility to offer a part-time work schedule to Fellows for limited periods of time. For example, as a reasonable accommodation due to a medical condition, illness, or injury, or caregiving responsibilities for family members, an agency could authorize a part-time work schedule for a period of 3 to 6 months while the Fellow recovers. For this reason, OPM is proposing to modify § 362.404 by adding subsection (e) to provide agencies with the discretion to authorize a part-time work schedule for limited period of up to 6 months during the program if the agency and Fellow have determined that it would not negatively impact the Fellow's ability to meet all program requirements by the expiration of the Fellow's appointment. An agency is not required to approve a part-time schedule. When a part-time schedule is being approved, it should be approved for the shortest amount of time necessary because the Fellow must complete all program requirements within the two-year program period and any approved extension. In situations where the Fellow may have entitlements under the Family Medical Leave Act, the use of a part-time work schedule may supplement those entitlements.

Section 362.405 Development, evaluation, promotion, and certification.

Currently, Section 362.405(a) provides that a Fellow must (1) have an Individual Development Plan (IDP) in place within 45 days upon entering on duty, (2) have a Mentor in place within 90 days, and (3) be able to consult the Mentor in the development of the IDP. The different time frames for developing an IDP and identifying a mentor creates a situation where most Fellows do not have a Mentor in place prior to and during the initial development of their IDP. For this reason, we are proposing to modify § 362.405(a) to require an IDP within 90 days. This will allow the Mentor to participate in the development of the IDP with the Fellow and the

manager. OPM encourages agencies and Fellows to identify Mentors and create IDPs as soon as practicable but no later than 90 days after the appointment.

OPM is proposing to modify § 362.405(b)(1) to reflect that OPM will provide leadership development activities and general program resources instead of an orientation program. Years of experience with the PMF program has led us to conclude that the agency-specific PMF orientation is far more valuable to individuals selected as Fellows than a centrally provided orientation program. Fellows are going to work for a particular agency. While there are centrally managed activities for Fellows, the employing agency is primarily responsible for the day-to-day activities of their PMF Fellow cohort. Fellows need to learn about their agency and where their job fits into it. Clarifying that agencies are responsible for PMF orientation—which many already are providing—reduces confusion between agencies and OPM about responsibilities and provides a better on-boarding experience for Fellows. OPM views its role as providing meaningful leadership development activities and resources throughout the program lifecycle. This proposed change will better reflect the reality of how the program is administered today, which is a model that will lead to a better on-boarding experience for Fellows.

Currently, § 362.405(b)(4)(i) requires agencies to provide for a minimum of one developmental assignment of 4 to 6 months' duration. It also allows that as an alternative to this developmental assignment Fellows may choose to participate in an agency-wide, Presidential or Administration initiative that will provide experience comparable to the developmental assignment. Fellows and agencies have found this description of an alternative to be confusing and duplicative. Accordingly, we are instead providing examples that we expect will assist agencies and Fellows alike. Specifically, we note that developmental assignments could include projects requiring implementation of a new Executive Order, major piece of legislation, agency

reorganization, or cross-agency collaboration on a major Administration initiative. Cross-agency collaboration on a new program or service, establishment of a new program or office, or drafting a report would be additional types of projects that could serve as a developmental assignment.

We welcome further comment on other examples.

Agencies may also provide Fellows with an additional short term rotational assignment of up to 6 months. Over the years, Fellows and agencies have inquired about whether such assignments are limited to the employing agency or if they may also occur in other agencies. To clarify this matter OPM is proposing to revise § 362.405(b)(4)(ii) to indicate that short term rotational assignments may take place within the Fellow's organization, in another component of the agency, or in another Federal agency at the employing agency's discretion.

OPM is proposing to clarify the information about Executive Resource Board (ERB) certification of completion to indicate how certification relates to the eligibility for conversion in the current agency or a different agency. We are proposing to modify § 362.405(d)(2) and (4) to indicate that a Fellow who is successfully certified may be converted in accordance with § 362.409 and that a Fellow who is not approved for ERB certification is not eligible for conversion. This change is necessitated by the change in § 362.107 to allow the conversion of a Fellow in the employing agency or a different agency. The losing agency is responsible for the ERB certification.

Section 362.409 Conversion to the competitive Service

OPM is proposing to modify in Section 362.409 to allow conversion to a term or permanent position in a different agency. The proposed change adds a new paragraph (c), which would require that conversion at another agency is allowed only when the employing agency documents that there no available positions in the current organizational unit or elsewhere in the

employing agency (including its various components) for which the Fellow is qualified. An agency may determine that it is unable to convert the Fellow for reasons related to a lack of available positions for which the Fellow is qualified due to unforeseen funding or budgetary constraints or limitations, reorganizations, abolishment of positions, or other appropriate reasons. It is important to note that a Fellow is not entitled to conversion at the employing agency or another agency. Conversions may only be offered to those Fellows who have successfully completed the PMF Program requirements including the performance and developmental expectations set forth in the Fellow's performance plan and IDP; and has received ERB-certification of completion. Fellows who do not meet this criteria or have misconduct issues or unsuccessful performance may not be converted to a position in the employing agency or another agency. The proposed change would also require that such conversion must occur on or before the end of the agency prescribed Program period, plus any agency-approved extension, and the position at the new agency must have a career ladder or full promotion potential that is the same or lower than the position at the former agency.

OPM welcomes comments on whether the employing agency should have priority in converting their Recent Graduates or Fellows or if, instead, the Recent Graduates or Fellows should be able to choose where to convert if there are opportunities at other agencies.

Part 410 Training

Section 410.306 Selecting and assigning employees to training.

OPM is proposing to replace the outdated reference to the former Student Career Experience Program (SCEP) program in 5 CFR 10.306(c) with a reference to the Pathways Internship Program.

Expected Impact of this Proposed Rule

A. Statement of Need

OPM is proposing these regulations to update the Pathways Programs to facilitate a better applicant experience, to improve developmental opportunities for Pathways Programs participants, and to streamline agencies' ability to hire Pathways Program participants and convert to permanent employment those that have successfully completed their Pathways requirements. Robust Pathways Programs with appropriate safeguards to promote its use as a supplement to, and not a substitute for, the competitive hiring process is essential to boosting the Federal government's ability to recruit and retain early career talent.

B. Impact

The proposed rule modifies existing regulations for the Pathways Programs for hiring Interns and Recent Graduates and for the Presidential Management Fellowship Program. We anticipate that these changes will improve and enhance the effectiveness of the Pathways Programs consistent with E.O. 13562, which requires OPM to support agency use of programs to recruit students and recent graduates.

In fiscal year 2021, agencies made 8,039 new appointments using the Pathways Programs hiring authorities (4,873 Interns, 2,828 Recent Graduates and 338 Presidential Management Fellows). It is important to note that, while these proposed changes may enhance the way the agencies use the program, they are only one of several factors impacting whether the number of appointments made will increase or decrease. Other factors not addressed or impacted by these regulations such as agency resources available for hiring and recruiting will also need to be considered when evaluating the effectiveness of the programs in helping agencies reach their recruiting and hiring goals.

C. Costs

This proposed rule will affect the operations of over 80 Federal agencies—ranging from cabinet-level departments to small independent agencies. We estimate that this rule will require individuals employed by these agencies to modify policies and procedures to implement the rule and perform outreach and recruitment activities when using the authority. For the purpose of this cost analysis, the assumed average salary rate of Federal employees performing this work will be the rate in 2022 for GS-14, step 5, from the Washington, DC, locality pay table (\$143,064 annual locality rate and \$68.55 hourly locality rate). We assume that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of \$137.10 per hour.

In order to comply with the regulatory changes in this NPRM, affected agencies would need to review the final rule and update their policies and procedures. We estimate that, in the first year following publication of the final rule, this would require an average of 250 hours of work by employees with an average hourly cost of \$137.10. This would result in estimated costs in that first year of implementation of about \$34,275 per agency, and about \$2,742,000 in total Governmentwide. We do not believe this rule will substantially increase the ongoing administrative costs to agencies (including the administrative costs of administering the programs and hiring and training new staff). This is because the rule is modifying existing programs and recruitment of students and recent graduates is an ongoing need.

D. Benefits

The proposed changes will boost the Federal government's ability to recruit and retain early career talent. For example, the proposed change to modify the public notice requirement will provide agencies with additional flexibility when recruiting and may also lead to a better

applicant experience. The proposed changes to allow the conversion of eligible Recent Graduates and Presidential Management Fellows to competitive service positions in the employing agency or another agency will provide flexibility when resource restrictions would otherwise prevent conversion. When an agency is unable to convert the eligible Recent Graduate or Presidential Management Fellow the agency and the government lose the expertise and knowledge the participant has gained during the program. However, the opportunity for conversion at another agency may prevent that loss. The extension of the 120-day period for the conversion of Interns to 180 days provides agencies the benefit of being able to convert those interns who may have been separated when the background investigation or vetting process exceeded the 120-day limit.

Executive Order 14035 of June 25, 2021, Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce, establishes an initiative on diversity, equity, inclusion, and accessibility (DEIA) in the Federal workforce. As part of OPM's work, a Government-Wide Strategic Plan to Advance Diversity, Equity, and Accessibility in the Federal Workforce was released in November 2021.⁹ This plan directs agencies to prioritize a number of efforts to support sustainability and continued improvement on DEIA matters. This includes seeking opportunities to promote paid internships, fellowships, and apprenticeships. The proposed updates to the Pathways Programs will help inform and support agency efforts to use and promote paid internships.

E. Regulatory Alternative

⁹ <https://www.whitehouse.gov/wp-content/uploads/2021/11/Strategic-Plan-to-Advance-Diversity-Equity-Inclusionand-Accessibility-in-the-Federal-Workforce-11.23.21.pdf>.

E.O. 13562 authorized OPM to establish regulations to implement the Pathways Programs. Over the years OPM has issued guidance in addition to these regulations to assist agencies in using the Programs. However, the proposed changes in this notice of proposed rulemaking (NPRM) address issues that require a modification of the existing regulations and cannot be changed by guidance alone. For example, OPM believes that agencies need additional flexibility to convert participants in the Recent Graduate and PMF programs to positions in another agency. The existing regulations limit the conversion of Recent Graduate or PMF participants to positions in the employing agency. We have determined that a change to these regulatory provisions is required to provide the additional flexibility agencies requested.

Request for Comment and Data

In addition to the information contained in the regulatory analysis, OPM requests comment on whether to modify several aspects of this rulemaking. Such information will be useful for better understanding the impact of these regulations on hiring by Federal agencies. OPM welcomes the public's views on the following:

- Whether Recent Graduates and Presidential Management Fellows should be able to convert to positions at a different agency. OPM recognizes that agencies may encounter obstacles preventing the conversion of Recent Graduates and Presidential Management Fellows. OPM believes that given the nature of such unexpected obstacles, it is in the interests of efficient and effective administration to provide for opportunities for Recent Graduates and Presidential Management Fellows who have successfully completed their program and meet the requirements for conversion to be able to convert at agencies other than the one that initially hired them as a Recent Graduate. The initial agency has invested in the development of the Recent Graduate and Presidential Management Fellow and, if it is unable to convert them, other

agencies should have that opportunity so that the investment in the Recent Graduate or Presidential Management Fellow is not lost to the Federal government.

- Whether the employing agency should have a right of first refusal in converting their Recent Graduates and Presidential Management Fellows, as currently proposed, or if, instead, the Recent Graduates and Presidential Management Fellows should be able to choose where to convert if they have multiple offers.
- How could OPM structure the Pathways Intern conversion process to maximize the Federal enterprise's ability to recruit and retain qualified interns following the conclusion of their internship? Should OPM consider alternative conversion timelines (e.g., greater than 180 days), alternative internship service requirements, alternative interagency conversion rules, or specific waiver/exception conditions?
- Whether the proposed public notice options for filling positions under the Internship Program and Recent Graduates Program will enable agencies to more effectively recruit and retain early career talent than the current process. In addition to allowing agencies to post searchable job opportunities at USAJOBS, OPM is also proposing to allow agencies to post job information with a link to a USAJOBS custom posting on their agency websites, with OPM providing a centralized place where applicants can be directed to those postings on the agency websites. OPM specifically invites comments on these changes and whether they will assist agencies with better advancing the purposes of E.O. 13562.
- .
- Ways to strengthen the proposed provision that allows agencies to waive or credit up to 320 hours toward an Intern's 640-hour service requirement for these programs.

OPM encourages commenters to provide examples of alternate criteria that could be used for the credit or waiver provisions. Are there practical considerations or specific waiver/exception conditions OPM should consider when setting the 640-hour requirement? Should agencies be able to consider and credit work experience from non-Federal Internships for up to 320 hours? Comments in favor of crediting non-Federal experience should address the types of criteria and documentation that could be used to evaluate such experiences..

- Whether OPM should consider making a change to the 640-hour service requirement that must be met for conversion of an Intern. Although this proposal retains the existing 640-hour Pathways hours of service requirement to be eligible for non-competitive conversion, OPM is open to adopting a different hourly requirement in the final rule. OPM is interested in learning more about non-Federal entities' best practices with regard to internship conversion pipelines, especially if there are innovative programs that integrate specific internship requirements (hours of service, content, skill-based assessment) with defined pathways into career paths. OPM encourages commenters who suggest a different length for the work hour requirement to discuss the advantages and/or disadvantages of such a change.
- Whether to revise the PMF regulations by clarifying the developmental assignment requirement by providing examples that we expect will assist agencies and Fellows alike. Projects requiring implementation of a new Executive Order, major piece of legislation, agency reorganization, or cross-agency collaboration on a major Administration initiative would be the sorts of projects that could serve as a

developmental assignment. OPM welcomes further comments and other examples that could satisfy this requirement from the public.

OPM invites comments regarding the inclusion of career and technical education programs as meeting the eligibility criteria for the Recent Graduate Program. In this proposed regulation, the definition includes Federal programs: Job Corps, Registered Apprenticeship Programs, Peace Corps, and AmeriCorps. We are interested in comments as to whether these programs are appropriate. We are also interested in whether we should include non-Federal programs in the definition of career and technical education programs. Comments that advocate for inclusion of non-Federal programs should address the types of criteria and documentation that could be used to justify why those who complete such programs should be eligible for the Recent Graduates Program. OPM welcomes data showing the effectiveness and comparability to federal programs that could support an expansion of eligibility..

Executive Orders 13563, 12866, and 14094 Regulatory Review

Executive Orders 13563, 12866, and 14094 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. In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget as a significant, but not significant under Section (3)(f)(1), rule.

Regulatory Flexibility Act

The Director of the Office of Personnel Management certifies that this rule will not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and employees.

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, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. Thus, no written assessment of unfunded mandates is required.

Paperwork Reduction Act (44 U.S.C. 3501–3521)

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves the following OMB-approved collections of

information subject to the PRA: OMB Control Number 3206-0219, USAJOBS 3.0 and OMB Control Number 3206-0082, OPM 1300 (PMF Program Annual Application)

OPM believes any additional burden associated with this proposed rule falls within the existing estimates currently associated with these control numbers. We do not anticipate that the implementation of this proposed rule will increase the cost burden to members of the public. Additional information regarding these collections of information – including all background materials -- can be found at <https://www.reginfo.gov/public/do/PRAMain> by using the search function to enter either the title of the collection or the OMB Control Number.

List of Subjects in 5 CFR Parts 300, 315, 362 and 410

5 CFR Parts 300 and 315

Government employees.

5 CFR Part 362

Administrative practice and procedure, Colleges and universities, Government employees.

5 CFR Part 410

Education, Government employees.

Office of Personnel Management

Kiran A. Ahuja
Director

For reasons stated in the preamble, the Office of Personnel Management proposes to amend 5 CFR Part 300, 315, 362, and 410 as follows:

PART 300—EMPLOYMENT GENERAL

1. The authority citation for part 300 continues 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. 300.401 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.

Subpart C—Details of Employees

2. Revise §300.301(b) to read as follows:

§300.301 Authority.

* * * * *

(b) In accordance with 5 U.S.C. 3341, an agency may detail an employee in the excepted service to a position in the excepted service and may also detail an excepted service employee serving under Schedule A, Schedule B, Schedule D, or a Veterans Recruitment Appointment, to a position in the competitive service.

* * * * *

PART 362—PATHWAYS PROGRAMS

3. The authority citation for part 362 continues to read as follows:

Authority: E.O. 13562, 75 FR 82585. 3 CFR, 2010 Comp., p. 291

Subpart A – General Provisions

4. Amend § 362.102 by:

a. Revising the definitions for the terms advanced degree and certificate program.

b. Adding in alphabetical order definitions of certificate of completion of a Registered Apprenticeship Program; industry-recognized credential; qualifying career or technical education program; recognized postsecondary credential; and Registered Apprenticeship Program to read as follows:

§ 362.102 Definitions.

* * * * *

Advanced degree means a master’s degree, professional degree, doctorate degree, or other formal degree pursued after completing a bachelor’s degree.

* * *

Certificate of completion of a Registered Apprenticeship Program means the documentation given to individuals who have successfully completed a Registered Apprenticeship Program.

Certificate program means post-secondary education in a:

(a) qualifying educational institution, equivalent to at least one academic year of full-time study that is part of an accredited post-secondary, technical, trade, or business school curriculum; or

(b) qualifying career or technical education program that awards a recognized postsecondary credential or industry recognized credential.

* * *

Industry-recognized credential means:

(a) a credential or certificate that is developed and offered by, or endorsed by, a nationally or regionally recognized industry association or organization representing a sizeable portion of the industry sector, or

(b) a credential that is sought or accepted by companies within the industry sector for purposes of hiring or recruitment, which may include credentials from vendors of certain products.

* * *

Qualifying career or technical education program means:

(a) an organized educational program, administered through a Federal agency, that focuses on providing rigorous academic content and relevant technical knowledge and skills needed to prepare the individual for further education and/or a career in a current or emerging profession and provides technical skill proficiency and a recognized postsecondary credential (which may include an industry-recognized credential, a certificate, or an associate degree); or

(b) a Registered Apprenticeship Program; or

(c) service in a Federally-administered local, state, national, or international volunteer service program or organization designed to give individuals work and or educational experiences in volunteer programs that benefit the Federal government or local communities.

Qualifying volunteer service must be documented with written information from the Federally sponsored program of successful completion of at least one year of volunteer service.

* * *

Recognized postsecondary credential means documentation (e.g., official record) of an industry-recognized certificate or certification, a certificate of completion of a Registered Apprenticeship Program, a license recognized by the State involved or Federal government, or an associate's or baccalaureate degree.

Registered Apprenticeship Program means a program that meets the requirements in 29 CFR part 29. Approval of registration is evidenced by a Certificate of Registration or other written documentation as provided by the respective career or technical education establishment.

* * * * *

5. Revise § 362.104 to read as follows:

§ 362.104 Agency requirements.

(a) Agency Policy. In order to make any appointment under a Pathways authority, an agency must establish a Pathways Policy. The Pathways Policy must:

(1) Include information about any agency-specific program labels that will be used, subject to the Federal naming conventions identified in § 362.101 (e.g., OPM Internship Program);

(2) State the delegations of authority for the agency's use of the Pathways Programs (e.g., department-wide vs. bureaus or components);

(3) Include any implementing policy or guidance that the agency determines would facilitate successful implementation and administration for each Pathways Program;

(4) Prescribe criteria and procedures for agency-approved extensions for Recent Graduates and PMFs, not to exceed 120 days. Extension criteria must be limited to circumstances that would render the agency's compliance with the regulations impracticable or impossible;

(5) Describe how the agency will design, implement, and document formal training and/or development, as well as the type and duration of assignments;

(6) Include a commitment from the agency to:

- (i) Provide to OPM any information it requests on the agency's Pathways Programs;
 - (ii) Adhere to any caps on the Pathways Programs imposed by the Director;
 - (iii) Provide information to OPM about opportunities for individuals interested in participating in the Pathways Programs, upon request from OPM;
 - (iv) Provide a meaningful on-boarding process for each Pathways Program;
- (7) Identify the agency's Pathways Programs Officer (PPO), who:
- (i) Must be in a position at the agency's headquarters level, or at the headquarters level of a departmental component, in a position at or higher than grade 12 of the General Schedule (GS) (or the equivalent under the Federal Wage System (FWS) or another pay and classification system);
 - (ii) Is responsible for administering the agency's Pathways Programs, including coordinating the recruitment and on-boarding process for Pathways Programs Participants, and coordinating the agency's Pathways Programs plan with agency stakeholders and other hiring plans (e.g., merit promotion plans, and agency plans pursuant to Executive Order (EO) 14035, “Diversity, Equity, Inclusion, and Accessibility (DEIA) in the Federal Workforce”);
 - (iii) Serves as a liaison with OPM by providing updates on the agency’s implementation of its Pathways Programs, clarifying technical or programmatic issues, sharing agency best practices, and other similar duties; and
 - (iv) Reports to OPM on the agency’s implementation of its Pathways Programs and individuals hired under these Programs, in conjunction with the agency’s Pathways Policy; and
- (8) Identify the agency's Presidential Management Fellows (PMF) Program Coordinator who:

(i) Must be in a position at the agency’s headquarters level, or at the headquarters level of a departmental component, or sub-agency level, in a position at or higher than grade 12 of the General Schedule (GS) (or the equivalent under the Federal Wage System (FWS) or another pay and classification system);

(ii) Is responsible for administering the agency’s PMF Program including coordinating the recruitment, on-boarding, and certification processes for PMF Program Participants, and coordinating the agency’s PMF Program plan to ensure it is integrated with agency-wide workforce plans;

(iii) Serves as a liaison with OPM by providing updates on the agency’s implementation of its PMF Program, clarifying technical or programmatic issues, sharing agency best practices, and other similar duties; and

(iv) Reports to OPM on the agency’s implementation of its PMF Program and individuals hired under the PMF Program.

(b) Submission of agency policies to OPM. Beginning in FY 2024 an agency must make an initial submission of the agency’s Pathways Policy to OPM as required in paragraph (a). Submission of an updated policy is required only when the agency makes substantive changes to the policy.

6. Amend § 362.107 by:

- a. Revising paragraph (c)(2); and
- b. Adding paragraph (c)(3).

The revision and addition should read as follows:

§362.107 Conversion to the competitive service

* * * * *

(c) Noncompetitive conversion.

* * *

(2) A Recent Graduate may be converted to a position within the employing agency or any other agency within the Federal government. Conversion to a different agency may occur when the employing agency is unable to convert the Recent Graduate to a term or permanent position in the competitive service in the agency (including its various components).

(3) A Presidential Management Fellow (Fellow) may be converted within the employing agency or any other agency within the Federal government. Conversion to a different agency may occur when the employing agency is unable to convert the Fellow to a term or permanent position in the competitive service in the employing agency (including its various components).

.

* * * * *

7. Revise § 362.108 (b)(1) to read as follows:

§ 362.108 Program oversight.

* * * * *

(b) * * *

(1) An agency's compliance with its Pathways Policy;

* * * * *

8. Revise § 362.109 to read as follows:

§ 362.109 Reporting requirements.

Agencies must provide information requested by OPM regarding workforce planning strategies that includes:

(a) Information on the entry-level occupations targeted for filling positions under this part in the coming three fiscal years;

(b) The percentage of overall hiring expected in the coming three fiscal years under the Internship, Recent Graduates, and Presidential Management Fellows Programs; and

(c) Every three fiscal years beginning with fiscal year (FY) - 2024 (i.e., FY24 and then again in FY27, etc.):

(1) The number of individuals initially appointed under each Pathways Program;

(2) The percentage of the agency's overall hires made from each Pathways Program;

(3) The number of Pathways Participants, per Program, converted to the competitive service; and

(4) The number of Pathways Participants.

9. Add § 362.111 to read as follows:

§ 362.111 Severability.

Any provision of Part 362 held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this Part and shall not affect the remainder thereof.

Subpart B – Internship Program

10. Revise § 362.202 to read as follows:

§ 362.202 Definitions.

In this subpart:

Intern Not-to-Exceed (Intern NTE) means an Intern appointed for an initial period not to exceed one year.

Student means an individual who is:

(a) accepted for enrollment or enrolled and seeking a degree (diploma, certificate, etc.) in a qualifying educational institution, on a full or half-time basis (as defined by the institution in which the student is enrolled), including awardees of the Harry S. Truman Foundation Scholarship Program under Public Law 93-842. Students need not be in physical attendance, so long as all other requirements are met. An individual who needs to complete less than the equivalent of half an academic/vocational or technical course-load immediately prior to graduating is still considered a student for purposes of this Program; or

(b) enrolled or accepted for enrollment in a qualifying career or technical education program that awards a recognized postsecondary credential.

11. Amend § 362.203 by:

- a. Revising paragraphs (a), (d)(1) and (e);
- b. Adding paragraph (i).

The revisions and addition read as follows:

§362.203 Filling positions.

(a) *Announcement.*

(1) Public Notice Requirement. An agency must adhere to merit system principles and thus must provide public notification in a manner designed to recruit qualified individuals from appropriate sources in an endeavor to draw from all segments of society. For the purposes of this paragraph (a), “agency” means an Executive agency as defined in 5 U.S.C. 105 and the

Government Printing Office. An Executive department may treat each of its bureaus or components (i.e., the first major subdivision that is separately organized and clearly distinguished from other bureaus or components in work function and operation) as a separate agency or as part of one agency but must do so consistent with its Delegated Examining Agreement.

(2) Meeting the Public Notice Requirement. An agency may use the following options for meeting the public notice requirement:

(i) Posting a searchable announcement on www.USAJOBS.gov; or

(ii) Posting job information with a link to a USAJOBS custom job announcement on the agency's public facing career or job information web page. This custom posting must provide applicants with information about how to apply or seek additional information about the position(s) being filled, while also providing information regarding that job announcement to OPM.

(iii) The agency may also consider whether additional recruitment and advertisement activities to supplement paragraphs (a)(2)(i) and (ii), such as posting to third-party websites, are necessary or appropriate to further support merit system principles.

(3) Contents of Announcements. Announcements used to meet the public notice requirement must include:

(i) Position title, series, and grade;

(ii) Geographic location where the position will be filled;

(iii) Duration of the appointment;

(iv) The starting salary of the position;

(v) The minimum qualifications of the position;

(vi) Whether the individual in the position will be eligible for promotion to higher grade levels;

(vii) The potential for conversion to the agency's permanent workforce;

(viii) How to apply. A public source (e.g., a link to the location on the agency's website with information on how to apply) for interested individuals to seek further information about how to apply for Intern opportunities;

(ix) Equal employment opportunity statement (Agencies may use the recommended equal employment opportunity statement located on OPM's USAJOBS website);

(x) Reasonable accommodation statement;

(xi) Any other relevant information about the position such as telework opportunities, recruitment incentives, etc.; and

(xii) Any other information OPM considers appropriate.

(4) OPM will publish information on Internship opportunities in such form as the Director may determine.

* * * * *

(d) *Appointments.*

(1) An agency may make Intern appointments, pursuant to its Pathways Policy, under Schedule D of the excepted service in accordance with part 302 of this chapter.

* * *

(e) *Promotion.* An agency may promote an Intern, on an initial appointment expected to last more than one year (without a not to exceed (NTE) date) who meets the qualification requirements for the position. An Intern NTE on a temporary appointment is not eligible for promotion. This provision does not confer entitlement to promotion.

* * * * *

(i) *Required Developmental Activities.* Agencies are required to provide appropriate training and development activities to Interns regardless of the length of the appointment. OPM recommends that agencies ensure, within 45 days of appointment, that each Intern, appointed for an initial period expected to last more than 1 year, or an Intern NTE appointed for more than 90 days, an agency documents its planned use of training activities in a training plan, Individual Development Plan (IDP), or the Pathways Participant Agreement that is approved by his or her supervisor. Documenting of training activities for is also recommended for an Intern NTE appointed for an initial period less than 90 days. Appropriate training opportunities may include but are not limited to on-the-job training activities, formal training classes, mentoring sessions, testing products or tools, organizing work activities or functions, and assisting colleagues with projects or tasks.

12. Amend § 362.204 by:

- a. Revising paragraph (b)(2);
- b. Revising paragraph (c)(1)(ii) (iii);
- c. Adding paragraph (c)(1)(iv)
- d. Revising paragraph (c)(2)

The revisions and addition to read as follows:

§ 362.204 Conversion to the competitive service.

* * * * *

(b) * * *

(1) * * *

(2) Completed a course of academic study, within the 180-day period preceding the appointment, at a qualifying educational institution conferring a diploma, certificate, or degree; or successful completion in a qualifying career or technical educational program.

* * * * *

(c) * * *

(1) * * *

(ii) Worked in, but not for, a Federal agency, pursuant to a written contract with a third-party internship provider officially established to provide internship experiences to students that are comparable to the Internship Program under this subpart;

(iii) Served as an active-duty member of the armed forces (including the National Guard and Reserves), as defined in 5 U.S.C. 2101, provided the veteran's discharge or release is under honorable conditions; or

(iv) Worked in a Registered Apprenticeship Program at a Federal Agency (prior to appointment as an Intern).

(2) Student volunteer service under part 308 of this chapter, and other Federal programs designed to give internship experience to students (e.g., fellowships and similar programs) including a Department of Labor Job Corps Program prior to an intern appointment may be evaluated, considered, and credited under this section when the agency determines the experience is comparable to experience gained in the Internship Program.

* * * * *

13. Revise § 362.205 to read as follows:

§ 362.205 Reduction in force (RIF) and termination.

(a) *Reduction in force.* Interns and Interns NTE are covered by part 351 of this chapter for purposes of RIF.

(1) Tenure Groups.

(i) An Intern serving under an appointment for an initial period expected to last more than 1 year is in excepted service Tenure Group II.

(ii) An Intern NTE who has not completed 1 year of service, is in excepted service Tenure Group 0.

(iii) An Intern NTE serving under a temporary appointment not to exceed 1 year, who has completed 1 year of current, continuous service, is in excepted service Tenure Group III.

(2) [Reserved]

(b) *Termination.*

(1) Intern. As a condition of employment an Intern appointment expires 180 calendar days after completion of the designated academic course of study, unless the Participant is selected for noncompetitive conversion under § 362.204.

(2) Intern NTE. As a condition of employment an Intern NTE appointment expires upon expiration of the temporary Internship appointment, unless the Participant is selected for noncompetitive conversion under § 362.204.

Subpart C – Recent Graduate Program

14. In § 362.301 revise paragraph (a) to read as follows:

§362.301 Program Administration

* * *

(a) Identify in its Pathways Policy the duration of its Recent Graduates Program, including any criteria used to determine the need for a longer and more structured training program that exceeds 1 year;

* * * * *

15. In §362.302 revise paragraph (a) to read as follows:

§362.302 Eligibility

(a) A Recent Graduate is an individual who obtained a qualifying associate’s, bachelor’s, master's, professional, doctorate, vocational or technical degree or certificate from a qualifying educational institution or completed a qualifying career or technical education program within the previous 2 years or other applicable period provided below.

* * * * *

16. In § 362.303 revise paragraphs (a), (b)(1), and (b)(3)(i) to read as follows:

§362.303 Filling positions.

(a) *Announcement.*

(1) Public Notice Requirement. An agency must adhere to merit system principles and thus must provide public notification in a manner designed to recruit qualified individuals from appropriate sources in an endeavor to draw from all segments of society. For the purposes of this paragraph (a), “agency” means an Executive agency as defined in 5 U.S.C. 105 and the Government Printing Office. An Executive department may treat each of its bureaus or components (i.e., the first major subdivision that is separately organized and clearly distinguished from other bureaus or components in work function and operation) as a separate

agency or as part of one agency but must do so consistent with its Delegated Examining Agreement.

(2) Meeting the Public Notice Requirement. An agency may use the following options for meeting the public notice requirement:

(i.) Posting a searchable announcement on www.USAJOBS.gov; or

(ii) Posting job information with a link to a USAJOBS custom job announcement on the agency's public facing career or job information web page. This custom posting must provide applicants with information about how to apply or seek additional information about the position(s) being filled, while also providing information regarding that job announcement to OPM.

(iii) The agency may also consider whether additional recruitment and advertisement activities to supplement paragraphs (a)(2)(i) and (ii), such as posting on third-party websites, are necessary or appropriate to further support merit system principles.

(3) Contents of Announcements. Announcements used to meet the public notice requirement must include:

(i) Position title, series, and grade;

(ii) Geographic location where the position will be filled;

(iii) The starting salary of the position;

(iv) The minimum qualifications of the position;

(v) Whether the individual in the position will be eligible for promotion to higher grade levels;

(vi) The potential for conversion to the agency's permanent workforce;

(vii) How to apply. A public source (e.g., a link to the location on the agency's website with information on how to apply) for interested individuals to seek further information about how to apply for Recent Graduate opportunities; and

(viii) Equal employment opportunity statement (Agencies may use the recommended equal employment opportunity statement located on OPM's USAJOBS website);

(ix) Reasonable accommodation statement;

(x) Any other relevant information about the position such as telework opportunities, recruitment incentives, etc.; and

(xi) Any other information OPM considers appropriate.

(4) OPM will publish information on Recent Graduate opportunities in such form as the Director may determine.

(b) *Appointments.*

(1) An agency may make appointments to the Recent Graduates Program pursuant to its Pathways Policy under Schedule D of the excepted service in accordance with part 302 of this chapter.

* * *

(3)

(i) An agency may make an initial appointment of a Recent Graduate to any position filled under this authority for which the Recent Graduate qualifies, up to the GS-11 level (or equivalent under another pay and classification system, such as the Federal Wage System), except as provided in paragraphs (b)(3)(ii) through (iv) of this section.

* * * * *

17. In § 362.305 add paragraph (c) to read as follows:

§ 362.305 Conversion to the Competitive Service.

(a)* * *

(b) * * *

(c) A Recent Graduate may be converted to a permanent or term position at a different agency when the following conditions are met:

(i) The employing (or losing) agency documents that the agency is unable to convert the Recent Graduate to a term or permanent position in the competitive service in the current organizational unit of the employing agency or another component within the same Department or agency. The documentation of this must address the reason(s) why conversion did not occur in the agency. These reasons may include unforeseen budgetary constraints; reorganizations; abolishment of positions; or other appropriate reasons. Such a conversion to another agency may not be due to issues related to misconduct, poor performance, or suitability.

(ii) conversion must occur on or before the end of the agency prescribed Program period, plus any agency-approved extension; and

(iii) the position at the new agency must have a full performance level that is equivalent or less than the position at the prior agency.

Subpart D – Presidential Management Fellows Program

18. Amend § 362.401 by revising the definition of Agency PMF Coordinator to read as follows:

§ 362.401 Definitions.

Agency Presidential Management Fellows (PMF) Program Coordinator has the same meaning as described in § 362.104(a)(8) of this section; is an individual, at the appropriate agency component level, who coordinates the placement, development, and other Program-related

activities of PMFs appointed in his or her agency. The agency Pathways Programs Officer may also serve as the PMF Coordinator.

19. Amend § 362.404 by revising paragraph (a)(1) and adding paragraph (e).

The addition to read as follows:

§ 362.404 Appointment and extension

(a) *Appointments.*

(1) An agency may make 2-year appointments to the PMF Program, pursuant to a Pathways Policy executed with the OPM, under Schedule D of the excepted service in accordance with part 302 of this chapter.

* * *

(e) *Work schedules.* A Fellow will generally have a full-time work schedule. An agency may authorize a part-time work schedule for a limited period of up to 6 months during the PMF Program if the agency and Fellow have determined that it would not negatively impact the Fellow's ability to meet all program requirements by the expiration of the Fellow's appointment. An agency's Pathways Policy must outline the conditions under which a part-time work schedule may be authorized. The Fellow's Pathways Participant agreement should be updated with the new work schedule information when a part-time work schedule is approved.

20. Revise § 362.405(a), (b)(1), (4) and (5), (d)(2) and add (d)(4)(iii) to read as follows:

§ 362.405 Development, evaluation, promotion, and certification.

(a) *Individual Development Plans.* An agency must approve, within 90 days, an Individual Development Plan (IDP) for each of its Fellows that sets forth the specific developmental activities that are mutually agreed upon by each Fellow and his or her supervisor.

The IDP must be developed in consultation with the Agency PMF Coordinator and/or the mentor assigned to the Fellow under paragraph (b)(3) of this section.

(b) Required developmental activities.

(1) OPM will provide leadership development activities and general program resources for each class or cohort of Fellows and will provide information on available training opportunities known to it. Agencies must provide appropriate agency specific onboarding and employee orientation activities.

* * *

(4) The agency must provide each Fellow with at least one rotational or developmental assignment with full-time management and/or technical responsibilities consistent with the Fellow's IDP. With respect to this requirement:

(i) Each Fellow must receive at least one developmental assignment of 4 to 6 months in duration, with management and/or technical responsibilities consistent with the Fellow's IDP.

(ii) The developmental assignment may be within the Fellow's organization, in another component of the agency, or in another Federal agency as permitted by the employing agency.

(iii) Examples of appropriate developmental assignments may include projects implementing a new Executive Order or, major piece of legislation, agency reorganization, or cross-agency collaboration on a major administration initiative.

(5) The Fellow may receive other short-term rotational assignments of 1 to 6 months in duration, at the agency's discretion. A short-term rotational assignment may take place within the Fellow's organization, in another component of the agency, or in another Federal agency as permitted by the employing agency.

* * * * *

(d) Certification of completion.

(1) * * *

(2) (i) The ERB must notify the Fellow of its decision regarding certification of successful completion.

(ii) A Fellow who receives successful certification is eligible for conversion in accordance with 362.409 of this part

* * *

(4) * * *

(iii) A Fellow who is not approved for certification and whose appeal to OPM is denied is not eligible for conversion in accordance with 362.409 of this part.

21. Amend § 362.409 to revise paragraph b and add paragraph (c) to read as follows:

§ 362.409 Conversion to the competitive service.

(a) * * *

(b) An agency may convert, without a break in service, an ERB-certified Fellow to a competitive service term or permanent appointment in any position for which they are qualified.

(c) A Fellow who is being converted to a permanent or term position at a different agency is subject to the following conditions:

(i) The employing (or losing) agency documents that the agency is unable to convert the Fellow to a term or permanent position in the competitive service in the employing agency. The documentation must address the reason(s) why conversion did not occur in the agency. These reasons may include unforeseen funding or budgetary constraints or limitations, reorganizations, abolishment of positions, or other appropriate reasons. Such a conversion to another agency may

not be due to issues related to failure to obtain certification from the agency's Executive Resources Board, misconduct, poor performance, or suitability.

(ii) Conversion must occur on or before the end of the agency prescribed Program period, plus any agency-approved extension; and

(iii) The position at the new agency must have a full performance level that is equivalent or less than the position at the losing agency.

5 CFR 410—TRAINING

22. Revise 5 CFR 410.306(c) to read as follows:

§ 410.306 Selecting and assigning employees to training.

* * * * *

(c) Subject to the prohibitions of § 410.308(a) of this part, an agency may pay all or part of the training expenses of students hired under the Pathways Internship Program (see 5 CFR 362 Subpart B).