

# Proposed Rules

Federal Register

Vol. 73, No. 25

Wednesday, February 6, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 300

RIN 3206-AL18

#### Time-in-Grade Rule Eliminated

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) proposes eliminating the time-in-grade restriction on advancement to competitive service positions in the General Schedule. Currently, employees in competitive service General Schedule positions at grades 5 and above must serve 52 weeks in grade before becoming eligible for promotion to the next grade level. Abolishing the restriction would eliminate the 52-week service requirement. If the requirement is eliminated, an employee must continue to meet occupational qualification standard requirements, and any additional job-related qualification requirements, established for the position.

**DATES:** Comments must be received on or before April 7, 2008.

**ADDRESSES:** You may submit comments, identified by RIN number "3206-AL18," using any of the following methods:

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

*E-mail:* [employ@opm.gov](mailto:employ@opm.gov). Include "RIN 3206-AL18, Time in Grade" in the subject line of the message.

*Fax:* (202) 606-2329.

*Mail:* Mark Doboga, Deputy Associate Director, Center for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415-9700.

*Hand Delivery/Courier:* Mark Doboga, Deputy Associate Director, Center for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551,

1900 E Street, NW., Washington, DC 20415-9700.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christina Gonzales Vay by telephone (202) 606-0960; by fax (202) 606-2329; by TTY (202) 418-3134; or by e-mail [christina.vay@opm.gov](mailto:christina.vay@opm.gov).

**SUPPLEMENTARY INFORMATION:** Federal employees in General Schedule (GS) competitive service positions at grades 5 and above qualify for promotions to higher grades if they meet two criteria: (1) Have at least one year of specialized experience equivalent in difficulty to the next lower grade level or (in some cases) the equivalent education; and (2) have service of at least 52 weeks at their current grade (known as "time in grade"). We are proposing eliminating the time-in-grade restriction as a prerequisite for promotion.

The time-in-grade restriction originated in a statute called the *Whitten Amendment*. The *Whitten Amendment* was passed by Congress in 1952 during the Korean conflict. The statute was created to prevent the permanent buildup of the civil service with expanded grade levels during the Korean conflict, as had happened during World War II.

The *Whitten Amendment* consisted of a series of personnel controls. The controls included a requirement to make all promotions and appointments on a temporary basis to simplify adjusting personnel actions downward at the end of the conflict; to conduct an annual survey of positions to assure each was properly graded; and to implement the time-in-grade restrictions to prevent excessively rapid promotions of Federal employees in GS competitive and excepted service positions.

Before the *Whitten Amendment* expired, Congress sought a review by the predecessor of OPM, the Civil Service Commission (Commission), to determine whether to retain any of the provisions in the amendment. The Commission reported that the time-in-grade restriction for competitive service GS positions had been placed in regulation and would continue even if the *Whitten Amendment* expired. The law expired September 14, 1978, and time in grade continues in regulation for competitive service GS positions.

On June 14, 1995 (59 **Federal Register** (FR) 30717) and January 10, 1996 (60 FR 2546), we published proposals to eliminate time in grade. Because almost

12 years have passed since publication of the first proposal, we are providing interested individuals another opportunity to comment.

#### Reasons for Proposed Elimination

We propose eliminating time in grade for the following reasons:

##### —*Grade Control No Longer Needed.*

When the *Whitten Amendment* was first enacted, no effective means existed to prevent employees from advancing quickly through the grades. Today, Governmentwide qualification standards, established by OPM, are in place for competitive service GS positions. (The OPM Operating Manual *Qualification Standards for General Schedule Positions* is available on the OPM Web site (<http://www.opm.gov>)).

Eliminating the time-in-grade restriction will not have an impact on how agencies now use qualification standards to evaluate candidates. Currently, candidates may demonstrate possession of either experience of at least one year (acquired through any paid or unpaid work or non-work setting or situation in which the experience enabled the individual to acquire the required competencies/knowledge, skills, or abilities) and/or the appropriate level of education as outlined in the OPM Operating Manual. Agencies must continue to ensure that candidates for promotion possess the required level of experience at the appropriate grade level (as defined in the classification standards) and/or meet the education requirements.

In addition to using OPM qualification standards and/or education levels, agencies also have the discretion to establish additional requirements beyond the OPM qualification standards that employees must meet for promotions. Many have done so. Examples of requirements include the specific level of performance to meet, possession of specific job-related competencies/knowledge, skills, and abilities, evidence that higher level duties exist, and/or availability of funds.

Eliminating the time-in-grade requirement will not eliminate the agency's determination on whether a candidate is qualified to perform the essential higher level duties. Rather, elimination of the 52-week time in grade waiting period reinforces the principle

that promotions are based on an individual's ability to perform the requirements of the position (i.e., merit) not longevity.

—*Performance Management*

*Accountability Continues.* Managers are responsible for ensuring there are sound performance management criteria based on job-related factors at the appropriate levels of proficiency when considering promotions of employees to higher graded duties. Eliminating the time-in-grade requirement will help dispel the myth that promotion automatically follows a set period of time spent in a particular grade, and instead emphasizes the importance of the qualification requirements, as well as the quality and level of performance needed to succeed at the next higher grade level.

—*Safeguards Are Now in Place.* When time in grade expired in the *Whitten Amendment*, the merit systems principles (title 5, United States Code (U.S.C.), section 2301) and prohibited personnel practices (5 U.S.C 2302) had not been enacted as statutory provisions or codified in the United States Code. Alleged violations may be pursued and investigated and corrective or disciplinary actions may be warranted.

—*Inconsistencies Exist Among Federal Employees.* Time in grade applies to competitive service GS employees, but does not apply to competitive service employees under other pay plans, including employees in Wage Grade positions. Time in grade does not apply to those competitive service GS employees who apply for other competitive service positions through a competitive examination. The time-in-grade restriction does not apply to excepted service GS employees, although individual agencies can, at its discretion, require time in grade for their excepted service employees. This disparate treatment of employees under varying appointments and pay plans highlights the inequities of retaining time in grade.

Eliminating time in grade enables any Federal competitive service GS employee (regardless of current occupation or grade), who meets the qualification standards for a particular position, to become eligible for promotion to a competitive service GS position. This can be done through a competitive examination or under an agency's internal merit promotion procedures, as applicable. Elimination

also gives agencies the flexibility to continue requiring employees to meet a specified amount of time in their current grade, regardless of their qualifications.

We do not believe time-in-grade elimination will lead to a large number of excessively rapid promotions Governmentwide. Over the years, many demonstration projects have waived the use of time in grade, especially when pay banding was incorporated. In these cases, agencies imposed their own internal policies regarding promotions which were similar to time in grade. In the China Lake demonstration project, for example, OPM data indicate workers progressed through the bands at a slower rate, at least initially, than people in the GS pay scale. (To illustrate, an employee in a competitive service GS position can sometimes receive a pay raise, a within-grade increase, and a promotion in the same year and do so again in consecutive years, whereas a more disciplined pay system makes movement through the band less automatic and rapid.) Moreover, we are not aware of any widespread abuses concerning those positions that do not have a time-in-grade requirement.

—*Labor Market Challenges Exist.*

Competitive pressures in the labor market challenge the Federal Government's ability to recruit, select, and retain highly qualified employees. These pressures did not exist during the time of the *Whitten Amendment*. Applying time in grade sometimes results in eliminating from consideration candidates who are in fact able to successfully perform the essential duties of the position. The merit system requires determining the qualifications of individuals; identifying appropriate recruitment sources; ensuring there is representation of all segments of society in the workforce; determining that selection and advancement are based solely on relative competencies/knowledge, skills, and ability; and ensuring that all receive equal opportunity through fair and open competition. Agencies already must meet these requirements; time in grade does not enhance agency ability to recruit, select, and retain the broadest pool possible of qualified Federal employees. In fact, time in grade can limit the pool of possible qualified candidates. The proposal to eliminate time in grade is consistent with upholding merit principles, and

has the added benefit of helping agencies recruit and hire in tight labor market conditions.

—*Agencies Gain Flexibility.* Eliminating the time-in-grade requirement will simplify OPM and agency operations. It will remove administrative burdens because agencies will no longer need OPM approval of training agreements that provide for consecutive accelerated promotions. Also, agencies will be able to implement flexibilities, such as pay banding or new ideas proposed in demonstration projects, without being required to obtain approval from OPM to waive time in grade.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

### E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

### List of Subjects in 5 CFR Part 300

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

U.S. Office of Personnel Management.

**Linda M. Springer,**  
Director.

Accordingly, OPM proposes to amend 5 CFR part 300 as follows:

### PART 300—EMPLOYMENT (GENERAL)

1. Revise the authority citation for part 300 to read as follows:

**Authority:** 5 U.S.C. 552, 3301, 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, 7701; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803.

Sec. 300.301 also issued under 5 U.S.C. 1104 and 3341.

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).

### Subpart F—[Removed and Reserved]

2. Remove and reserve subpart F, consisting of §§ 300.601 through 300.606.

[FR Doc. E8–2122 Filed 2–5–08; 8:45 am]

BILLING CODE 6325–38–P