

neither considered whether the court's decision in *Bracey v. Office of Personnel Management*, 236 F.3d 1356 (Fed. Cir. 2001), applied to this case. The Board thus found that further proceedings to address this are necessary.

In *Bracey*, the Board's reviewing court considered whether an employee's assignment to the light-duty shop, where he retained the grade and pay of his Electronics Worker position of record but performed the lower-graded duties of Material Examiner and Identifier, constituted an accommodation precluding his disability retirement under the Civil Service Retirement System. The court held that an accommodation precludes disability retirement only if it: (1) Adjusts the employee's job or work environment, enabling him to perform the critical or essential duties of his current position of record, or (2) reassigns the employee to an established, vacant position at the same grade and pay. 236 F.3d at 1358–59, 1361.

The court explained that an agency's offer of a light duty position that is not officially classified and graded and consists of unclassified, ad hoc duties devised to fit an employee's particular medical restrictions does not qualify as a "vacant position," as that term is used in 5 U.S.C. 8337(a) and 5 CFR 831.1202, and therefore does not preclude disability retirement. *Id.* at 1359–60. The court in *Bracey* acknowledged that an employing agency may offer suitable work, under the Federal Employees' Compensation Act (FECA), which the employee must accept to continue receiving FECA benefits. 236 F.3d at 1362. The court stated, however, that "the employee is free to refuse the offer of such work and to take disability retirement instead of the FECA benefits" and that "there is nothing anomalous about the fact that an employee may be eligible for one set of benefits while being ineligible for the other." *Id.* The court thus concluded that Bracey's assignment to the light-duty shop did not constitute an accommodation within his position of record since he did not perform the critical and essential duties of the position but performed lower-graded duties instead. *Id.* at 1360–61. The court further concluded that the assignment did not constitute a reassignment to a vacant position since the light duty position consisted of "a set of duties selected on an ad hoc basis to fit the needs of a particular disabled employee" and was not a definite, preexisting position that is classified and graded according to its duties, responsibilities, and qualification requirements. *Id.* at 1359–60. In *Marino*

v. Office of Personnel Management, 243 F.3d 1375, 1377 (Fed. Cir. 2001), the court held that this holding in *Bracey* applies equally to disability retirement applications under FERS, such as is involved here.

In finding that a "vacant position," as that term is used in the retirement statute and regulations, must be "an officially established position that is graded and classified," 236 F.3d at 1359, the court relied on 5 U.S.C. 5101(2), which requires that positions in agencies covered by 5 U.S.C. 5102 be "grouped and identified by classes and grades * * *". *Id.* at 1359–60. In *Bracey*, the appellant's employing agency, the Department of the Navy, was an executive agency and therefore covered by 5 U.S.C. 5101. *See* 5 U.S.C. 5102. In this case, however, the appellant was employed by the Postal Service, which is not an agency covered by section 5101. *See Robinson v. U.S. Postal Service*, 63 M.S.P.R. 307, 320 (1994) (acknowledging that the Postal Service is not covered by section 5101 but concluding, that, for RIF purposes, that agency was required to follow general classification principles, such as assigning grade levels to positions rather than to employees). In her dissenting opinion in *Bracey v. Office of Personnel Management*, 83 M.S.P.R. 400, 421 n.5 (1999), then-Vice Chair Slavet questioned whether the factors pertinent to the accommodation issue in that case might be inapplicable to disability retirement appeals involving the Postal Service. She noted that the Postal Service is exempt from "[m]any aspects of the executive branch personnel system," such as Title 5 classification rules, and is governed by a collective bargaining agreement that may bind the agency in accommodating disabled employees. *Id.* She found it unnecessary to resolve this question since *Bracey* did not involve the Postal Service, nor did the court address this issue. However, this issue is squarely presented in this case, which involves a former Postal Service employee who was covered by a collective bargaining agreement. The appellant was covered by the agreement between the Postal Service and the National Association of Letter Carriers, AFL-CIO.

Therefore, because the Board has not heretofore considered whether *Bracey* applies in the context of the Postal Service, the Board requests amicus briefs from the USPS, its bargaining agents, and all other interested individuals or organizations on this issue.

DATES: All briefs in response to this notice shall be filed with the Board's

Western Regional Office on or before December 31, 2002.

ADDRESSES: All briefs should include the case name and docket number noted above (*Visitacion Ancheta v. Office of Personnel Management*, Docket No. SF-844E-01-0309-B-1) and be entitled "Amicus Brief." Briefs should be filed with the Western Regional Office, Merit Systems Protection Board, 250 Montgomery Street, Suite 400, San Francisco, CA 94104.

FOR FURTHER INFORMATION CONTACT: Shannon McCarthy, Deputy Clerk of the Board, or Matthew Shannon, Counsel to the Clerk, (202) 653-7200.

Dated: November 1, 2001.

Bentley M. Roberts, Jr.,

Clerk of the Board.

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NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Submission for OMB Review; Comment Request

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval as required by the provisions of the Paperwork Reduction Act of 1995 (Pub.L. 104-13, 44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling Ms. Susan G. Daisey, Director, Office of Grant Management, at the National Endowment for the Humanities, (202-606-8494) or may be requested by e-mail to sdaisey@neh.gov. Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Humanities, Office of Management and Budget, Room 10235, Washington, DC 20503 (202-395-7316), within 30 days from the date of this publication in the **Federal Register**. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed above as soon as possible.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond.

Agency: National Endowment for the Humanities.

Title of Proposal: My History is America's History Web site.

OMB Number: 3136-0136.

Frequency of Collection: Continual.

Affected Public: General Public.

Number of Respondents:

Approximately 400,000 per year.

Estimated Time per Respondent: Approximately one quarter hour per response.

Estimated Total Burden Hours: 100,000.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This submission requests approval from OMB within sixty days for a three-year extension of this currently approved collection of information.

FOR FURTHER INFORMATION CONTACT: Ms. Susan G. Daisey, Director, Office of Grant Management, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 311, Washington, DC 20506, or by e-mail to: sdaisey@neh.gov. Telephone: 202-606-8494.

Lynne Munson,

Deputy Chairman.

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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

[*Extension:* Rule 12a-5 and Form 26, SEC File No. 270-85, OMB Control No. 3235-0079; Rule 15c1-7, SEC File No. 270-146, OMB Control No. 3235-0134; Rule 15Aj-1, SEC File No. 270-25, OMB Control No. 3235-0044.]

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

- **Rule 12a-5—Temporary Exemption Substituted or Additional Securities**

Rule 12a-5 of the Securities Exchange Act of 1934 (the "Act") generally makes it unlawful for any security to be traded on a national securities exchange unless such security is registered on the exchange in accordance with the provisions of the Act and the rules and regulations thereunder.

Rule 12a-5 and Form 26 were adopted by the Commission in 1936 and 1955 pursuant to sections 3(a)(12), 10(b), and 23(a) of the Act. Subject to certain conditions, Rule 12a-5 affords a temporary exemption (generally for up to 120 days) from the registration requirements of section 12(a) of the Act for a new security when the holders of a security admitted to trading on a national securities exchange obtain the right (by operation of law or otherwise) to acquire all or any part of a class of another or substitute security of the same or another issuer, or an additional amount of the original security. The purpose of the exemption is to avoid an interruption of exchange trading to afford time for the issuer of the new security to list and register it, or for the exchange to apply for unlisted trading privileges.

Under paragraph (d) of Rule 12a-5, after an exchange has taken action to admit any security to trading pursuant to the provisions of the rule, the exchange is required to file with the Commission a notification on Form 26. Form 26 provides the Commission with certain information regarding a security admitted to trading on an exchange pursuant to Rule 12a-5, including: (1) The name of the exchange, (2) the name of the issuer, (3) a description of the security, (4) the date(s) on which the security was or will be admitted to when-issued and/or regular trading, and (5) a brief description of the transaction pursuant to which the security was or will be issued.

The Commission generally oversees the national securities exchanges. This mission requires that, under section 12(a) of the Act specifically, the Commission receive notification of any securities that are permitted to trade on an exchange pursuant to the temporary exemption under Rule 12a-5. Without

Rule 12a-5 and Form 26 the Commission would be unable to fully implement these statutory responsibilities.

There are currently eight national securities exchanges subject to Rule 12a-5. While approximately 40 Form 26 notifications are filed annually, the reporting burdens are not typically spread evenly among the exchanges.¹ For purposes of this analysis of burden, however, the staff has assumed that each exchange files an equal number (five) of Form 26 notifications. Each notification requires approximately 20 minutes to complete. Each respondent's compliance burden, then, in a given year would be approximately 100 minutes (20 minutes/report × 5 reports = 100 minutes), which translates to just over 13 hours in the aggregate for all respondents (8 respondents × 100 minutes/respondent = 800 minutes, or 13⅓ hours).

Based on the most recent available information, the Commission staff estimates that the cost to respondents of completing a notification on Form 26 is, on average, \$14.35 per response. The staff estimates that the total annual related reporting cost per respondent is \$71.75 (5 responses/respondent × \$14.35 cost/response), for a total annual related cost to all respondents of \$574 (\$71.75 cost/respondent × 8 respondents).

- **Rule 15c1-7—Discretionary Accounts**

Rule 15c1-7 provides that any act of a broker-dealer designed to effect securities transactions with or for a customer account over which the broker-dealer (directly or through an agent or employee) has discretion will be considered a fraudulent, manipulative, or deceptive practice under the federal securities laws, unless a record is made of the transaction immediately by the broker-dealer. The record must include (a) The name of the customer, (b) the name, amount, and price of the security, and (c) the date and time when such transaction took place.

The information required by the rule is necessary for the execution of the Commission's mandate under the Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers. This is used by the Commission and the various self-regulatory organizations in compliance examinations to determine whether such trades have occurred.

¹ In fact, some exchanges do not file any notifications on Form 26 with the Commission in a given year.