

### III. Current Actions

The Department of Labor seeks approval for the extension of this currently approved information collection in order to determine if a rehabilitation plan should be approved and payment of any related expenses authorized.

*Type of Review:* Extension.

*Agency:* Office of Workers'

Compensation Programs.

*Title:* Rehabilitation Plan and Award.

*OMB Number:* 1240-0045.

*Agency Number:* OWCP-16.

*Affected Public:* Individual or households; Businesses or other for-profit.

*Total Respondents:* 5,500.

*Total Responses:* 5,500.

*Time per Response:* 30 minutes.

*Estimated Total Burden Hours:* 2,750.

*Total Burden Cost (capital/startup):* \$0.

*Total Burden Cost (operating/maintenance):* \$2,585.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 7, 2011.

**Vincent Alvarez,**

*Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.*

[FR Doc. 2011-631 Filed 1-12-11; 8:45 am]

**BILLING CODE 4510-CR-P**

### MERIT SYSTEMS PROTECTION BOARD

**Merit Systems Protection Board (MSPB) Provides Notice of Opportunity To File Amicus Briefs in the Matter of Jeffrey Denton v. Department of Agriculture, MSPB Docket Number DC-3330-09-0696-I-1**

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Notice.

**SUMMARY:** Pursuant to 5 U.S.C. 1204(e)(1)(A), the MSPB has requested an advisory opinion from the Director of the Office of Personnel Management (OPM) concerning an appeal currently pending before the Board, *Jeffrey Denton v. Department of Agriculture*, MSPB Docket Number DC-3330-09-0696-I-1. The MSPB is also providing an opportunity to other interested parties to file amicus briefs concerning the appeal. The legal questions set forth in the *Denton* appeal, which were posed in the request for an advisory opinion to the Director of OPM, are set forth below.

The agency employs the appellant in the position of Animal Health Program Assistant, GS-5. The agency announced the position of Veterinary Program Assistant ("VPA"), GS-0303-5/6/7, under both case exam (announcement 24VS-2009-0130) and merit promotion (announcement 6VS-2009-0132) procedures. The appellant applied under both vacancy announcements and submitted his DD-214, showing his eligibility for veterans' preference. The appellant made the certificate at the GS-7 level on the case exam announcement. The maximum score an applicant could receive was 100, except when veterans' preference points were added. The appellant had 10 points added to his score of 99.68 to reflect his veterans' preference, and he was thus listed on the top of the certificate of 6 candidates with a score of 109.68 as "CPS," which is a 30% or more disabled veteran. The appellant also made the GS-6 level on the merit promotion certificate, and he was referred to the selecting official. The agency made no selection from either the case exam or merit promotion certificate. Rather, the agency cancelled both vacancy announcements and filled the VPA position through an alternative hiring authority, the Student Career Experience Program (SCEP).

The appellant filed a complaint with the Department of Labor (DOL) alleging that his rights to veterans' preference as a 30% disabled veteran were violated because the agency filled the position through SCEP instead of filling the position from either the merit promotion or case exam certificate. The DOL informed the appellant that it had completed its investigation into the appellant's claim and had determined that the evidence did not support a finding that the appellant's veterans' preference rights were violated. The DOL provided the appellant with notice of appeal rights to the MSPB.

After exhausting his remedy with DOL, the appellant timely filed an appeal with the MSPB pursuant to the Veterans Employment Opportunities Act (VEOA) alleging that his veterans' preference rights were violated when the agency used SCEP to fill the VPA position and did not select him for that position. The appellant essentially argued that the agency had engaged in a sham. The assigned administrative judge determined that the MSPB has VEOA jurisdiction over the appeal, but issued an initial decision on the merits finding that the appellant did not establish a VEOA violation.

The appellant filed a petition for review with the MSPB challenging the initial decision of the administrative judge. This appeal raises significant

issues regarding whether the agency's use of SCEP improperly circumvented the competitive examination process, allowing the agency to avoid its obligations regarding veterans' preference and a veteran's right to compete for positions. The material issues are similar in many respects to the issues raised regarding the Federal Career Intern Program (FCIP) in the MSPB's recent decisions in the appeals of *Dean v. Office of Personnel Management*, AT-3330-10-0534-I-1 and *Evans v. Department of Veterans Affairs*, AT-3330-09-0953-I-1, 2010 MSPB 213 (November 2, 2010). The Board determined that appellants Dean and Evans had established the FCIP program as conducted violated their veterans' preference rights because FCIP was inconsistent with 5 U.S.C. 3302(1) by: (1) Allowing agencies to invoke an appointing authority reserved for positions for which it is not practicable to hold a competitive examination after holding a competitive examination yielding highly-qualified preference-eligible candidates; and (2) not requiring agencies to justify placement of positions in the excepted service.

The SCEP program is covered by OPM's regulations at 5 CFR 213.3202(b) and is authorized by Executive Order 12015 (as amended by Executive Order 13024). The FCIP positions are also Schedule B, excepted-service positions but are addressed at 5 CFR 213.3202(o) and Executive Order 13162. The SCEP allows agencies to hire students currently enrolled in specified educational programs in Schedule B, excepted-service positions, and noncompetitively convert them to term, career or career-conditional appointments upon satisfactory completion of the educational program and accumulation of 640 hours of agency work experience.

*Questions to be resolved:*

1. Does the SCEP program violate veterans' preference rights because it allows agencies to invoke an appointing authority reserved for positions for which it is not practicable to hold a competitive examination after holding a competitive examination yielding highly-qualified preference-eligible candidates?

2. Does the SCEP program violate veterans' preference rights because it does not require agencies to justify placement of positions in Schedule B of the excepted service?

3. What impact, if any, does the Executive Order dated December 27, 2010, entitled "Recruiting and Hiring Students and Recent Graduates," have on the appellant's appeal or any other appeals based on the SCEP hiring

occurring before Executive Order 12015 is revoked?

**DATES:** All briefs submitted in response to this notice shall be filed with the Clerk of the Board on or before February 7, 2011.

**ADDRESSES:** All briefs shall be captioned “Jeffrey Denton v. Department of Agriculture,” and entitled “Amicus Brief.” Only one copy of the brief need be submitted. Briefs must be filed with the Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

**FOR FURTHER INFORMATION CONTACT:** Matthew Shannon, Merit Systems Protection Board, Office of the Clerk of the Board, 1615 M Street, NW., Washington, DC 20419; (202) 653-7200; [mspb@mspb.gov](mailto:mspb@mspb.gov).

**William D. Spencer,**  
Clerk of the Board.

[FR Doc. 2011-633 Filed 1-12-11; 8:45 am]

**BILLING CODE 7400-01-P**

## MILLENNIUM CHALLENGE CORPORATION

[MCC FR 11-01]

### Report on the Selection of Eligible Countries for Fiscal Year 2011

**AGENCY:** Millennium Challenge Corporation.

**ACTION:** Notice.

**SUMMARY:** This report is provided in accordance with section 608(d)(1) of the Millennium Challenge Act of 2003, Public Law 108-199, Division D, (the “Act”), 22 U.S.C. 7708(d)(1).

### Report on the Selection of Eligible Countries for Fiscal Year 2011

#### Summary

This report is provided in accordance with section 608(d)(1) of the Millennium Challenge Act of 2003, Public Law 108-199, Division D, (the “Act”) (22 U.S.C. 7707(d)(1)).

The Act authorizes the provision of Millennium Challenge Account (“MCA”) assistance under section 605 of the Act (22 U.S.C. 7704) to countries that enter into compacts with the United States to support policies and programs that advance the progress of such countries in achieving lasting economic growth and poverty reduction, and are in furtherance of the Act. The Act requires the Millennium Challenge Corporation (“MCC”) to determine the countries that will be eligible to receive MCA assistance during the fiscal year, based on their demonstrated commitment to just and democratic governance,

economic freedom, and investing in their people, as well as on the opportunity to reduce poverty and generate economic growth in the country. The Act also requires the submission of reports to appropriate congressional committees and the publication of notices in the **Federal Register** that identify, among other things:

1. The countries that are “candidate countries” for MCA assistance during fiscal year 2011 (“FY11”) based on their per-capita income levels and their eligibility to receive assistance under U.S. law, and countries that would be candidate countries but for specified legal prohibitions on assistance (section 608(a) of the Act (22 U.S.C. 7707(a)));

2. The criteria and methodology that the Board of Directors of MCC (the “Board”) will use to measure and evaluate the policy performance of the “candidate countries” consistent with the requirements of section 607 of the Act in order to select “MCA eligible countries” from among the “candidate countries” (section 608(b) of the Act (22 U.S.C. 7707(b))); and

3. The list of countries determined by the Board to be “MCA eligible countries” for FY11, with justification for eligibility determination and selection for compact negotiation, including with which of the MCA eligible countries the Board will seek to enter into MCA compacts (section 608(d) of the Act (22 U.S.C. 7707(d))).

This is the third of the above-described reports by MCC for FY11. It identifies countries determined by the Board to be eligible under section 607 of the Act (22 U.S.C. 7706) for FY11 and countries with which the Board will seek to enter into compacts under section 609 of the Act (22 U.S.C. 7708), as well as the justification for such decisions.

#### Eligible Countries

The Board met on January 5, 2011, to select countries that will be eligible for MCA compact assistance under section 607 of the Act (22 U.S.C. 7706) for FY11. The Board selected the following countries as eligible for such assistance for FY11: Cape Verde, Georgia, Ghana, Indonesia, Malawi, and Zambia.

In accordance with the Act and with the “Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2011” formally submitted to the Congress on September 30, 2010, selection was based primarily on a country’s overall performance in three broad policy categories: *Ruling Justly*, *Encouraging Economic Freedom*,

and *Investing in People*. As a basis for determining which countries would be eligible for MCA compact assistance, the Board relied, to the maximum extent possible, upon 17 transparent and independent indicators to assess countries’ policy performance and demonstrated commitment in these three broad policy areas. The Board compared countries’ performance on the indicators relative to their income-level peers, evaluating them in comparison to either the group of low income countries (“LIC”) or the group of lower-middle income countries (“LMIC”). In particular, the Board considered if a country performed above the median in relation to its peers on at least three indicators in each of the *Ruling Justly*, *Investing in People*, and *Encouraging Economic Freedom* policy categories, and above the median on the *Control of Corruption* indicator. Scorecards reflecting each country’s performance on the indicators are available on MCC’s Web site at <http://www.mcc.gov>.

The Board also considered whether any adjustments should be made for data gaps, data lags, or recent events since the indicators were published, as well as strengths or weaknesses in particular indicators. Where appropriate, the Board took into account additional quantitative and qualitative information, such as evidence of a country’s commitment to fighting corruption and promoting democratic governance, and its effective protection of human rights. For countries that graduated from the LIC group to the LMIC group within the last two years, due to an increase in their per capita gross national income, the Board also took into account supplemental information that showed how the new LMIC countries would have performed in comparison to the LIC group. This is consistent with a 2009 congressional decision to allow MCC to fund as LICs a set of countries that had recently transitioned to the LMIC category. Finally, the Board considered the opportunity to reduce poverty and promote economic growth in a country, in light of the overall context of the information available, as well as the availability of appropriated funds.

This was the second year the Board considered the eligibility of countries for subsequent compacts, as permitted under section 609(k) of the Act (22 U.S.C. 7708(k)). In determining subsequent compact eligibility, the Board considered—in addition to the criteria outlined above—the country’s performance implementing its first compact, including the nature of the country partnership with MCC, the degree to which the country has