


Approved for Release

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**DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT**

HUMAN RESOURCES (HR) BULLETIN #45, FY06 5 CFR Parts 213 and 315

SUBJECT: Changes in Excepted Service Schedule A Appointment Authority, Appointment of Persons with Disabilities and Career and Career-Conditional Employment Regulation

EFFECTIVE DATE: Upon release of this HR Bulletin

SUPERSEDES: N/A

BACKGROUND: The Office of Personnel Management (OPM) has issued final regulation, changing the Schedule A appointing authority for appointment of persons with disabilities. The change combines three separate appointment authorities for hiring persons with mental retardation, psychiatric disabilities, and severe physical disabilities into one appointing authority. The regulation also modifies the job readiness certification requirements to expand the number of entities from which proof may be accepted. The guidance clarifies the difference between proof of disability and certification of job readiness.

PURPOSE: The purpose of this HR Bulletin is to notify HR Offices of the changes in the regulation and action required as a result of the changes. HR Offices should be aware of the changes as persons with disabilities may wish to apply for job consideration more often in the absence of the more stringent certification requirements.

PROCEDURES: The changes and clarification of the regulation allow agencies to better facilitate appointment of eligible applicants under this appointing authority.

Eligibility Requirements: Eligible applicants must have mental retardation, a severe physical disability, or a psychiatric disability; have proof of the disability; certification of job readiness (if not hired on a temporary appointment in lieu of the job readiness certification); and meet all required qualifications for the position.

Appointing Authority: Schedule A 213.3102 (u) will now be used as the authority for appointing individuals with severe physical disabilities, mental retardation, and psychiatric disabilities to the excepted service. Effective immediately, authorities 213.3102 (t) and 213.3102 (gg) should no longer be used. The National Finance Center (NFC) will take action to deactivate these codes and create the new legal authority code.

bureaus may use 213.3102 (u) to make temporary, time-limited, or permanent appointments of eligible individuals to the excepted service.

Required Action: The Department's Office of Human Resources Management, Office of Policy and Programs will request and forward reports reflecting employees currently appointed under affected authorities to the bureau Principal Human Resources Manager for review and confirmation that the data forwarded is accurate. Based on the bureau responses, NFC will conduct a sweep of the database and generate a Standard Form (SF) -50, Notification of Personnel Action, reflecting the new legal authority and codes. HR Offices must review the resulting SF-50s, verify their accuracy, validate, and distribute as appropriate. Bureaus piloting e-OPF must also validate resulting electronic SF-50s. OPM will issue guidance on the correct coding procedures, including updating "The Guide to Processing Personnel Actions."

Proof of Disability: HR Offices may accept proof of a qualifying disability from a licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine); a licensed vocational rehabilitation specialist (i.e., state or private); or any Federal agency; State agency, or agency of the District of Columbia or a U.S. territory that issues or provides disability benefits. Bureaus may accept the following documents as proof of disability:

- Statements or letters on a physician's/medical professional's letterhead stationary;
- Statements, records or letters from a Federal Government agency that issues or provides disability benefits;
- Statements, records or letters from a State Vocational Rehabilitation Agency Counselor; or
- Certification from a private Vocational Rehabilitation or other Counselor that issues or provides disability benefits.

Certification of Job Readiness: HR Offices may now accept certification of job readiness (a determination that applicants with disabilities are likely to succeed in the performance of the duties of the position he or she is seeking) from:

- A licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine);
- A licensed vocational rehabilitation specialist (i.e., State or private); and
- Any Federal agency, State agency or agency of the District of Columbia or a U.S. territory that issues or provides disability benefits.

In lieu of requiring certification of job readiness from an applicant, bureaus may temporarily appoint an eligible individual under this authority to assess the applicant's readiness for continued employment. When the responsible management official determines the individual is able to perform the duties of the position or when the employee provides certification, the HR Office may then convert the employee to a time-limited or permanent appointment in the **excepted** service; or at its discretion, an HR

Office may accept service under another type of temporary appointment in the competitive or excepted service as proof of job readiness.

A positive determination that the employee is capable of performing the duties of the position will be documented by including a certification, signed and dated by the management official, along with the SF-52 requesting conversion. Recommended language for management certification is as follows:

“I certify that (Employee) has demonstrated the ability to perform the duties of a (Position Title), and in accordance with 5 CFR 213.3102(u), request conversion to (Appointment type).”

If the individual does not gain certification during the appointing authority timeframe, or does not demonstrate satisfactorily his or her ability to perform the duties of the job, the HR Office must separate the employee. (Refer to 5 CFR 213.104 for the definition and restrictions on temporary appointments in the excepted service.)

Conversion to Career and Career-Conditional Appointments: Upon successful completion of 2 years of continuous service under 5 CFR 213.3102 (u), an employee may, at the bureau’s discretion, be converted non-competitively to a career or career-conditional appointment in the competitive service. Although bureaus are not required to convert the employee to the competitive service, the intent of the executive orders authorizing appointments is that employees will gain competitive status after 2 years of successful performance.

REFERENCES: Executive Order 12125; Executive Order 13124; 71 Federal Register 42241-42246; 5 CFR 213.3102(u); 5 CFR 213.104

ATTACHMENTS: OPM Memorandum for Chief Human Capital Officers, dated July 26, 2006; OPM Excepted Service – Appointment of Persons with Disabilities and Career and Career-Conditional Employment Regulation and Questions and Answers; 71 Federal Register 42241-42246

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