



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

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Memorandum for Human Resources Directors

From: Veronica E. Hinton
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Subject: Issuance of Revised Regulations on Time Limited Promotions

The U.S. Office of Personnel Management (OPM) is pleased to announce the issuance of its final revised regulation on [Time Limited Promotions](#). The regulation is effective on August 26, 2024.

This final revised regulation clarifies that employees, who are detailed or temporarily promoted to higher-graded duties of a higher-graded position, should be paid accordingly for the entire time performing these duties of a higher-graded position, as ordered by an appropriate third-party authority. Questions and answers are attached to assist agencies in implementing the regulation changes.

Agency headquarters-level human resources offices may contact OPM at AWR@opm.gov. Component human resources staff should contact their agency headquarters-level human resources policy office. Employees should contact their agency human resources offices for assistance.

cc: Chief Human Capital Officers (CHCOs) and Deputy CHCOs

Attachment: Questions and Answers on 5 CFR 335.103

U.S. Office of Personnel Management

Questions and Answers on 5 CFR 335.103 Time Limited Promotions

1. Why is OPM issuing a revised regulation regarding details or temporary promotions to higher-graded duties of a higher-graded position?

Although non-competitive temporary promotions continue to be limited to no more than 120 days under OPM regulations, OPM is aware that employees are occasionally non-competitively detailed or temporarily promoted for a period exceeding 120 days. Without this change, employees have been unable to obtain relief from adjudicators in the form of documented temporary promotions and/or back pay. Therefore, OPM is adding clarifying language to 5 CFR 335.103(c)(2)(iii) to provide the possibility of remedial relief to employees for the entire time spent performing the duties of a higher-graded position as found pursuant to a final order by an appropriate authority when the employee has non-competitively been detailed or temporarily promoted for a period exceeding 120 days.

For bargaining unit employees, the regulatory requirement in 5 CFR 335.103(c)(2)(iii) reinforces the commitment an agency has already made as part of the collective bargaining process under 5 U.S.C. Chapter 71 regarding details or temporary promotions to higher-grade duties. For example, some collective bargaining agreements have provisions which require a temporary promotion for details to, or the performance of duties of, a higher-grade position after a specified period. An arbitrator may rule that a bargaining unit employee should have been temporarily promoted for the entire time the employee has performed these higher-graded duties even though the employee was assigned these duties for a period exceeding 120 days without the use of competitive procedures.

It also provides all employees, whether bargaining unit or non-bargaining unit, an opportunity to be made whole if an agency does not properly follow agency policies related to details and temporary promotions and the employee pursues a grievance or complaint in applicable processes that may be available to employees (e.g., negotiated grievance, administrative grievance, EEOC complaint).

2. Will employees always receive a temporary promotion with this regulatory change?

No. The amended language only provides a retroactive temporary promotion to a higher-graded position pursuant to a final order by an appropriate authority as defined in 5 CFR 550.803. In other words, an appropriate authority would need to make a finding that there was a violation of a collective bargaining agreement, law, or agency policy and that a temporary promotion exceeding 120 days is appropriate.

3. Can an agency temporarily promote an employee to higher-graded duties of a higher-graded position if the employee does not meet the qualifications for the higher-graded position?

No. To be eligible for a time limited promotion to higher-graded duties of a higher-graded position, an employee must meet the minimum qualification standards and time-in-grade requirements prescribed by the OPM. This regulatory provision does not change or impact these requirements.

4. Is OPM saying that agencies cannot detail employees to higher-graded duties unless they receive a temporary promotion?

No. In accordance with 5 U.S.C. 3341, an agency may detail an employee in the competitive service to a position in either the competitive or excepted service. In other words, OPM regulations do not always require time-limited promotions for details to higher-graded duties. There may be other requirements, such as collective bargaining agreements, that obligate the agency to temporarily promote the employee.

5. What should an agency do when it knows a temporary promotion is expected to exceed the 120-day timeframe?

Under OPM regulations, a non-competitive temporary promotion is limited to 120 days. This requirement has existed for decades. The new amended language in 5 CFR 335.103(c)(2)(iii) does not change any other existing requirements under 5 CFR part 335. OPM's interpretation of 5 CFR 335.103 continues to be those agencies covered by this regulation must apply competitive procedures for the purpose of implementing temporary promotions more than 120 days.

If an agency believes it will take longer than 120 days to permanently fill a position or expects to assign higher graded duties to an employee longer than 120 days, the agency can temporarily promote employees to the position for longer than 120 days if the

agency uses competitive procedures to do so. This should provide the agency the necessary time to permanently fill the position.

As it relates to bargaining unit employees, agencies should review collective bargaining agreements (CBAs) for any language about details and temporary promotions to higher-graded positions and keep these requirements in mind when it elects to detail or temporarily promote a bargaining unit employee to higher-grade duties.

6. What is considered an appropriate authority under 5 CFR 550.803 to order a temporary promotion?

An appropriate authority means an entity having authority in the case at hand to correct or direct the correction of an unjustified or unwarranted personnel action, including:

- a. a court,
- b. the Comptroller General of the United States,
- c. the Office of Personnel Management,
- d. the Merit Systems Protection Board,
- e. the Equal Employment Opportunity Commission,
- f. the Federal Labor Relations Authority and its General Counsel,
- g. the Foreign Service Labor Relations Board,
- h. the Foreign Service Grievance Board,
- i. an arbitrator in a binding arbitration, or
- j. the head of the employing agency or another official of the employing agency to whom such authority is delegated.

This regulatory amendment only applies when an appropriate authority has made a finding that the employee is entitled to receive a retroactive temporary promotion.

7. Does [5 CFR part 335](#) affect positions in the Excepted Service?

No. 5 CFR part 335 and its requirement to use competitive procedures in certain circumstances do not apply to positions in the Excepted Service. However, agencies

with employees in the Excepted Service are subject to Merit System Principles and should be mindful of these principles when assigning Excepted Service employees the duties of a higher-graded position. These agencies often have bargaining unit employees who may be covered by collective bargaining agreement provisions outlining when an employee should receive a time-limited promotion.