

meet Governmentwide qualification standards to be eligible for promotion, both competitive actions under the merit promotion program and noncompetitive actions such as career ladder promotions. Agencies also must continue to evaluate the relative qualifications of candidates to determine the best-qualified applicants under a competitive promotion action. Therefore, it is not necessary for an agency to have any additional processes or systems in place before implementing the abolishment of time in grade.

Many commenters focused on the impact of the proposal on career ladder promotions. Several thought employees in career ladders would expect rapid advancement without time in grade and that managers could be pressured into making rapid promotions. Again, we must stress that career ladder promotions require an individual to have 1 year of specialized experience equivalent in difficulty to the next lower grade level or possess equivalent education.

Furthermore, agencies have the discretion to specify requirements employees must meet for career ladder promotions, and many have done so. Such requirements include, for example, the level of performance to be met, the range of skills to be acquired, a finding that higher level duties exist, and the availability of funds. Elimination of time in grade will enable agencies to dispel the idea that promotion automatically follows a period of time in grade and instead concentrate on qualifications and the level of performance that is need for the next higher level.

One employee union suggested that OPM consider whether to limit the number of grades an employee could be promoted in a year. The current regulation has such limits only on promotions up to GS-5 because employees in grades GS-1 through GS-4 are not subject to the year in grade requirement. OPM believes grade limits are not needed because they too are arbitrary and disregard employee qualifications.

One employee union felt it would normally disrupt the work place to a great degree if a lower graded employee were promoted over higher graded employees. The union believes this should occur only when there is a specific, identifiable, business-related reason which the agency documents in writing. OPM's view is that managers must be prepared to deal with the impact of selection decisions, such as when selecting an individual from outside an immediate unit instead of an eligible employee within the unit. The

manager decide which qualified employee is best able to carry out the duties of the position and must weigh various effects of different options. Abolishment of time in grade would not alter this responsibility.

Several commenters suggested managers hire workers at the grade needed instead of, for example, hiring at the GS-5 level and later promoting the employee to a GS-9. However, there may be instances where a manager hires an employee at a lower level to save money or because the manager feels the individual is not ready for the higher level. If the funding level changes or the employee demonstrates good work, the manager might want to promote the employee is less than 1 year. In neither of these cases is there a merit system violation, and our proposal would allow these employees to advance.

Violations

Some individuals, for personal reasons, must accept jobs lower than their highest skill level and later will seek higher grade jobs. However, it would be improper for an agency to hire someone at a lower grade to avoid proper appointing procedures and then promote the individual to the desired grade. For example, it would be improper to appoint an individual to a clerical job because he or she is not "within reach" for appointment to a professional job, and then promptly promote the person to the professional job. To prevent this, 5 CFR 330.501 prohibits the promotion of an employee within 90 days of a new competitive appointment. OPM continues to enforce violations of that provision and, in the absence of a time-in-grade rule, would closely monitor agency actions for potential violations.

Other protections against potential abuse are the statutory merit principles and prohibited personnel practices (5 U.S.C. 2301 and 2302) in place since January 1979. For example, it is a prohibited personnel practice for an agency official to grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for the purpose of improving or injuring the prospects of any particular person for employment (5 U.S.C. 2302(b)(6)). These statutory provisions did not exist when the Whitten Amendment expired in 1978. Alleged violations may be pursued through the independent Office of Special Counsel, which is responsible for investigating allegations of prohibited personnel practices and initiating corrective or disciplinary action where warranted.

Training Agreements

Agencies have long had the authority to establish training agreements under which employees acquire qualifications at a faster than normal rate. This proposal will have no impact on agencies' continued use of training agreements. However, with abolishment of time in grade, agencies no longer will need to obtain OPM approval of training agreements that contain waivers of time in grade.

Training agreements are traditionally used for critical shortage occupations at the entry level. These programs provide a valuable recruitment incentive in filling positions where qualified applicants are in extremely short supply.

E. Waivers

Several commenters recommended the time-in-grade restriction be retained with authority to waive it in inequitable or hardship situations or to promote an outstanding employee. Agencies currently have waiver authority in inequitable or hardship situations. The problem with this approach is that an employee is dependent on agency management to seek a waiver when management needs it. Our proposed elimination of the restriction would free employees to seek other opportunities, in any agency, without being dependent on management's waiver action. Also, because of the restriction, managers often are not aware that lower graded employees may have higher level qualifications and thus seek job candidates from outside the agency.

F. Bargaining Unit Employees

One employee union suggested that OPM should not allow agencies to eliminate time in grade for nonbargaining unit employees while continuing to apply it to those in bargaining units. OPM's proposal is consistent with the National Partnership Council recommendations to abolish the regulatory time-in-grade rule. Inasmuch as time in grade has been a condition of employment for bargaining unit employees, the Council recommended that it should remain in effect until the bargaining unit parties (agency management and union) agree to modify it either through consensus or collective bargaining. In other words, OPM's elimination of the regulation would have no effect on bargaining unit positions unless the parties agreed to modify or eliminate time in grade.

OPM has no authority to require agencies to seek agreement with unions, through consensus or collective bargaining, over time-in-grade