



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

November 27, 2019

Memorandum For Heads of Executive Departments and Agencies

From: Dale Cabaniss
 Director

Subject: Certifying the Use of a Merit Personnel System as Required by the
 Intergovernmental Personnel Act (IPA) of 1970

Recently, Governor Bevin of Kentucky asked the U.S. Office of Personnel Management (OPM) how the Intergovernmental Personnel Act (IPA) of 1970¹ regulates the applicable Federal standards for the administration of a Merit System of Personnel Administration.

The IPA and its implementing regulations require states to administer certain federally funded and state-administered grant-in-aid programs through a system of personnel administration consistent with merit principles.² The IPA's intent is to limit improper administration of programs. The law does not specify how a state may implement its system, nor prohibit any particular approach. The IPA and its regulations require a system of personnel administration consistent with merit-based principles without directing particular means of satisfying that requirement.

In response to Governor Bevin's inquiry, OPM published a notice in the Federal Register on April 19, 2019 (84 Fed. Reg. 16,381) clarifying the discretion of state chief executives to determine appropriate staffing methods including the use of contractors.

Purpose:

The purpose of the notice is to clarify that the IPA and its implementing regulations are satisfied if the chief executive of a state or local jurisdiction certifies that the system of personnel administration for a federally-funded, state administered, grant-in-aid program is satisfied when the government employees utilized in the administration of the program are in a personnel system that complies with the standards set forth in 5 C.F.R. Part 900. **This does not preclude the same program from utilizing contractors consistent with any applicable state law requirements.**

Jurisdiction:

The IPA, at 42 USC § 4728, Transfer of Functions, transferred to OPM the authority to prescribe personnel standards on a merit basis for the federally-funded and state-administered programs listed at subsections (a)(1) through (a)(4). These subsections clarify that the transfer of authority

¹ Intergovernmental Personnel Act (IPA) of 1970, as amended, 42 USC Section 4701

² 5 CFR 900, Subpart F – Standards for a Merit System of Personnel Administration

affects both specific programs such as Medicaid and the Supplemental Nutrition Assistance Program as well as “any other provision of law or regulation applicable to a program of grant-in-aid that specifically requires the establishment and maintenance of personnel standards on a merit basis with respect to the program.”

Affected Programs:

This notice affects the listed programs as well as other programs not listed that require personnel standards on a merit basis. These include:

Employment Security (Unemployment Insurance and Employment Services), Social Security Act (Title III), as amended; and the Wagner-Peyser Act, as amended; 42 U.S.C. § 503(a)(1) and 29 U.S.C. § 49d(b)

Federal Payments for Foster Care and Adoption Assistance, Social Security Act (Title IV-E), as amended; 42 U.S.C. § 671(a)(5)

Food Stamps, Food Stamp Act of 1977, as amended; 7 U.S.C. 2020

Grants to States for Aid to the Blind, Social Security Act (Title X), as amended; 42 U.S.C. § 1202(a)(5)(A)

Grants to States for Aid to the Permanently and Totally Disabled, Social Security Act (Title XIV), as amended; 42 U.S.C. 1352(a)(5)(A)

Grants to States for Old-Age Assistance for the Aged, Social Security Act (Title I), as amended; 42 U.S.C. § 302(a)(5)(A)

Medical Assistance (Medicaid), Social Security Act (Title XIX), as amended; 42 U.S.C. § 1396(a)(4)(A)

Occupational Safety and Health Standards, Williams-Steiger Occupational Safety and Health Act of 1970, as amended; 29 U.S.C. §§ 657, 667

Robert T. Stafford Disaster Assistance and Emergency Relief Act, as amended; 42 U.S.C. § 5196b

State and Community Programs on Aging (Older Americans), Older Americans Act of 1965 (Title III), as amended; 42 U.S.C. § 3027(a)(4)

Consistent with 42 USC § 4728, **this notice supersedes any prior OPM or relevant agency notices, regulations, or administrative guidance to state and local governments that could be construed to interpret the IPA, or OPM’s implementing regulations at 5 CFR Part 900, as prescribing the use of a particular staffing method. OPM does not interpret the IPA or its implementing regulations at 5 CFR Part 900 to require the use of a particular staffing method.** Except where other statutory provisions require, by express language, staffing by state or local employees for particular purposes, a state or local agency has the discretion to determine the most appropriate staffing method.

Restrictions:

Federal government agencies shall not define a requirement to use personnel standards on a merit basis as a requirement to use government employees.

Required Guidance Changes:

There is no change in the state certification to OPM. Agency heads shall conform existing guidance or issue new guidance to their regional offices and state chief executives, consistent with this memo, within 120 days.

Affected agencies include:

Departments of Agriculture (Food and Nutrition Service)

Department of Health and Human Services (Centers for Medicare and Medicaid Services, Administration for Children and Families, and the Administration for Community Living)

Department of Homeland Security (Federal Emergency Management Agency)

Department of Labor (Employment and Training Administration)

Social Security Administration

Affected regulations include:

Grants to State and Community Programs on Aging, 45 CFR Part 1321

Disaster Assistance, 44 CFR 302.4

Federal Employment Service / Workforce Innovation and Opportunity Act, 20 CFR 652.215

Food Stamps, 7 CFR 272.4

Medicaid, 42 CFR 431.10

Occupational Safety and Health Standards, 29 CFR 1902.3

Additional Information:

The Office of Personnel Management is available to assist agencies with questions related to this notice or other aspects of compliance with the IPA. Agencies may contact OPM at employ@opm.gov.