

## § 335.106

the agency's work force. This requirement is implemented through part 330, subpart A of this chapter.

[66 FR 63906, Dec. 11, 2001, as amended at 75 FR 67605, Nov. 3, 2010]

### § 335.106 Special selection procedures for certain veterans under merit promotion.

Preference eligibles or veterans who have been separated under honorable conditions from the armed forces after completing (as determined by the agency) 3 or more years of continuous active military service may compete for vacancies under merit promotion when an agency accepts applications from individuals outside its own workforce. Those veterans selected will be given career or career conditional appointments under § 315.611 of this chapter.

[65 FR 14432, Mar. 17, 2000]

## Subpart B [Reserved]

## PART 337—EXAMINING SYSTEM

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AUTHORITY: 5 U.S.C. 1104(a), 1302, 2302, 3301, 3302, 3304, 3319, 5364; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; and 45 FR 18365, Mar. 21, 1980; 116 Stat. 2135, 2290; 117 Stat. 1392, 1665; and E.O. 13833.

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### Subpart A—General Provisions

#### § 337.101 Rating applicants.

(a) OPM shall prescribe the relative weights to be given subjects in an examination, and shall assign numerical ratings on a scale of 100. Except as otherwise provided in this chapter, each applicant who meets the minimum requirements for entrance to an examination and is rated 70 or more in the examination is eligible for appointment.

(b) OPM shall add to the earned numerical ratings of applicants who make a passing grade:

(1) Five points for applicants who are preference eligibles under section 2108(3)(A) and (B) of title 5, United States Code; and

(2) Ten points for applicants who are preference eligibles under section 2108(3)(C)–(G) of that title.

(c) When experience is a factor in determining eligibility, OPM shall credit a preference eligible with:

(1) Time spent in the military service (i) as an extension of time spent in the position in which he was employed immediately before his entrance into the military service, or (ii) on the basis of actual duties performed in the military service, or (iii) as a combination of both methods. OPM shall credit time spent in the military service according to the method that will be of most benefit to the preference eligible.

(2) All valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether pay was received therefor.

[33 FR 12423, Sept. 4, 1968, as amended at 72 FR 12954, Mar. 20, 2007]

#### § 337.102 Evaluating qualifications for employees who are in a retained grade.

(a) Employees who are in a retained grade must have the experience they gain subsequent to the downgrading action that placed them in a retained grade considered in the following manner. For placements during the period the employee is in a retained grade, agencies must consider the experience subsequent to the downgrading action to be either:

(1) At the level of the retained grade and in the series of the position which he or she occupied at the time of the downgrading; or

(2) At the grade and in the series of the position to which the employee is downgraded.

(b) Agencies must determine which experience to consider on the basis of which will most likely result in placement. For placements or promotions after the retained grade period, the experience is considered only at the grade level and in the series of the position to which the employee was downgraded.

[45 FR 18365, Mar. 21, 1980]

### Subpart B—Direct-Hire Authority

SOURCE: 69 FR 33275, June 15, 2004, unless otherwise noted.

#### § 337.201 Coverage and purpose.

OPM will permit an agency with delegated examining authority under 5 U.S.C. 1104(a)(2) to use direct-hire authority under 5 U.S.C. 3304(a)(3) for a permanent or nonpermanent position or group of positions in the competitive service at GS-15 (or equivalent) and below, if OPM determines that there is either a severe shortage of candidates or a critical hiring need for such positions. It is not required that this direct-hire authority be exercised by a delegated examining unit. Requests for direct-hire authority must be submitted by the agency's Chief Human Capital Officer (or equivalent) at the agency headquarters level. OPM will determine the length of the direct-hire authority based on the justification.

#### § 337.202 Definitions.

In this subpart:

(a) A *direct-hire authority* permits hiring without regard to the provisions of 5 U.S.C. 3309 through 3318; part 211 of this chapter; and subpart A of part 337 of this chapter.

(b) A *severe shortage of candidates* for a particular position or group of positions means that an agency is having difficulty identifying candidates possessing the competencies or the knowledge, skills, and abilities required to

perform the job requirements despite extensive recruitment, extended announcement periods, and the use, as applicable, of hiring flexibilities such as recruitment or relocation incentives or special salary rates.

(c) A *critical hiring need* for a particular position or group of positions means that an agency has a need to fill the position(s) to meet mission requirements brought about by circumstances such as, but not limited to, a national emergency, threat, potential threat, environmental disaster, or unanticipated or unusual event or mission requirement, or to conform to the requirements of law, a Presidential directive or Administration initiative.

#### § 337.203 Public notice requirements.

Agencies must comply with public notice requirements as prescribed in 5 U.S.C. 3327 and 3330, and subpart A of part 330 of this chapter with respect to any position that an agency seeks to fill using direct-hire authority.

[69 FR 33275, June 15, 2004, as amended at 75 FR 67605, Nov. 3, 2010]

#### § 337.204 Severe shortage of candidates.

(a) OPM will determine when a severe shortage of candidates exists for particular occupations, grades (or equivalent), and/or geographic locations. OPM may decide independently that such a shortage exists, or may make this decision in response to a written request from an agency.

(b) An agency when requesting direct-hire authority under this section, or OPM when deciding independently, must identify the position or positions that are difficult to fill and must provide supporting evidence that demonstrates the existence of a severe shortage of candidates with respect to the position(s). The evidence should include, as applicable, information about:

(1) The results of workforce planning and analysis;

(2) Employment trends including the local or national labor market;

(3) The existence of nationwide or geographic skills shortages;

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(4) Agency efforts, including recruitment initiatives, use of other appointing authorities (e.g., schedule A, schedule B) and flexibilities, training and development programs tailored to the position(s), and an explanation of why these recruitment and training efforts have not been sufficient;

(5) The availability and quality of candidates;

(6) The desirability of the geographic location of the position(s);

(7) The desirability of the duties and/or work environment associated with the position(s); and

(8) Other pertinent information such as selective placement factors or other special requirements of the position, as well as agency use of hiring flexibilities such as recruitment or retention allowances or special salary rates.

(c) A department or agency head (other than the Secretary of Defense) may determine, pursuant to section 1413(a) of Public Law 108–136, as amended by section 853 of Public Law 110–181, that a shortage of highly qualified candidates exists for certain Federal acquisition positions (covered under section 433(g)(1)(A) of title 41, United States Code). To make such a determination, the deciding agency official must use the supporting evidence prescribed in 5 CFR 337.204(b)(1)–(8) and must maintain a file of the supporting evidence for documentation and reporting purposes.

(d) *Information Technology (IT) positions.* (1) The head of a covered agency, as defined in paragraph (d)(2) of this section, may determine whether a severe shortage of candidates exists at that agency for any position in the information technology management series, general schedule (GS)–2210 or equivalent. In making such a determination, a covered agency must adhere to and use the supporting evidence prescribed in 5 CFR 337.204(b)(1)–(8). For purposes of paragraph (b)(5) of this section, the U.S. Department of Veterans Affairs (VA) need only determine whether a severe shortage of highly-qualified candidates exists. In addition, a covered agency must maintain a file of the supporting evidence for documentation and reporting purposes. Upon determination of such a finding, an agency head may approve a direct

hire authority for covered positions within the agency.

(2) *Covered agency.* A covered agency is an entity listed in 31 U.S.C. 901(b) (except the Department of Defense), or an independent regulatory agency defined in 44 U.S.C. 3502(5).

(3) *Notification to the U.S. Office of Personnel Management (OPM).* Once the head of a covered agency affirmatively determines the presence of a severe shortage and the direct hire authority is approved by the agency head, he or she must notify OPM within 10 business days. Such notification must include a description of the supporting evidence relied upon in making the determination.

(4) *Using this authority.* A covered agency must adhere to all provisions of subpart B of this part.

(5) *Length of appointments.* A covered agency may use this authority to appoint individuals for a period of more than 1 year, but not more than 4 years.

(i) A covered agency may extend any appointment under this authority for up to 4 additional years, if the direct hire authority remains in effect.

(ii) No individual may serve more than 8 years on an appointment made under these provisions for information technology positions.

(iii) No individual hired under these provisions may be transferred to positions that are not IT positions.

[69 FR 33275, June 15, 2004, as amended at 70 FR 44847, Aug. 4, 2005; 74 FR 61263, Nov. 24, 2009; 84 FR 12875, Apr. 3, 2019]

### § 337.205 Critical hiring needs.

(a) OPM will determine when there is a critical hiring need for particular occupations, grades (or equivalent) and/or geographic locations. OPM may decide independently that such a need exists or may make this decision in response to a written request from an agency.

(b) An agency when requesting direct-hire authority under this section, or OPM when deciding on its own, must:

(1) Identify the position(s) that must be filled;

(2) Describe the event or circumstance that has created the need to fill the position(s);

(3) Specify the duration for which the critical need is expected to exist; and

(4) Include supporting evidence that demonstrates why the use of other hiring authorities is impracticable or ineffective.

(c) *Information Technology (IT) positions.* (1) The head of a covered agency, as defined in paragraph (c)(2) of this section, may determine whether a critical hiring need exists for any position in the information technology management series, general schedule (GS)-2210 or equivalent. In making such a determination, a covered agency must adhere to and use the supporting evidence criteria prescribed in paragraphs (b)(1) through (4) of this section. In addition, a covered agency must maintain a file of the supporting evidence for documentation and reporting purposes. Upon determination of such a finding, an agency head may approve a direct hire authority for covered positions within the agency.

(2) *Covered agency.* A covered agency is an entity listed in 31 U.S.C. 901(b) (excluding the Department of Defense), or an independent regulatory agency defined in 44 U.S.C. 3502(5).

(3) *Notification to the U.S. Office of Personnel Management (OPM).* Once the head of a covered agency affirmatively determines the presence of a critical hiring need and the direct hire authority is approved by the agency head, he or she must notify OPM within 10 business days. Such notification must include a description of the supporting evidence relied upon in making the determination.

(4) *Using this authority.* A covered agency must adhere to all provisions of subpart B of this part.

(5) *Length of appointments.* A covered agency may use this authority to appoint individuals for a period of more than 1 year, but not more than 4 years, if the direct hire authority remains in effect.

(i) A covered agency may extend an appointment under this authority for up to 4 additional years.

(ii) No individual may serve more than 8 years on an appointment made under these provisions for information technology positions.

(iii) No individual hired under these provisions may be transferred to positions that are not IT positions.

[69 FR 33275, June 15, 2004, as amended at 84 FR 12875, Apr. 3, 2019]

#### § 337.206 Terminations, modifications, extensions, and reporting.

(a) *Termination and modification.* On a periodic basis, for each direct-hire authority, OPM will review agency use of the authority to ensure proper administration and to determine if continued use of the authority is supportable. OPM will terminate or modify a direct-hire authority if it determines that there is no longer a severe shortage of candidates or a critical hiring need. Likewise, when an agency finds there are adequate numbers of qualified candidates for positions previously filled under direct-hire authorities, based on severe shortage of candidates, the agency is required to report this change of events to OPM. OPM may also terminate an agency's authority when the agency has used an authority improperly.

(b) *Extension.* OPM may extend direct-hire authority if OPM determines, based on relevant, recent, and supportable data, that there is or will continue to be a severe shortage of candidates or a critical hiring need for particular positions as of the date the authority is due to expire. In their requests for extensions of direct-hire authorities, agencies must include an update of the supporting evidence that demonstrated the need for the original authority.

(c) *Reporting requirement.* On a periodic basis, OPM may request information from agencies regarding their use of these direct-hire authorities. The requested information may include numbers of positions, title, series, and grade of positions advertised under the direct-hire authority, the number of qualified applicants, the specific qualification criteria, and the number of applicants appointed under the authority.

(d) No new appointments may be made under the provisions of section 1413 of Public Law 108-136 after September 30, 2012.

[69 FR 33275, June 15, 2004, as amended at 70 FR 44847, Aug. 4, 2005; 74 FR 61263, Nov. 24, 2009]

## § 337.301

### Subpart C—Alternative Rating and Selection Procedures

SOURCE: 69 FR 33276, June 15, 2004, unless otherwise noted.

#### § 337.301 Coverage and purpose.

This subpart implements the category rating and selection procedures at 5 U.S.C. 3319. This law authorizes agencies with delegated examining authority under 5 U.S.C. 1104(a)(2) to develop a category rating method as an alternative process to assess applicants for jobs filled through competitive examining.

#### § 337.302 Definitions.

In this subpart:

(a) *Category rating* is synonymous with alternative rating as described at 5 U.S.C. 3319, and is a process of evaluating qualified eligibles by quality categories rather than by assigning individual numeric scores. The agency assesses candidates against job-related criteria and then places them into two or more pre-defined categories.

(b) *Quality categories* are groupings of individuals with similar levels of job-related competencies or similar levels of knowledge, skills, and abilities.

#### § 337.303 Agency responsibilities.

To use a category rating procedure, agencies must:

(a) Establish a system for evaluating applicants that provides for two or more quality categories;

(b) Define each quality category through job analysis conducted in accordance with the “*Uniform Guidelines on Employee Selection Procedures*” at 29 CFR part 1607 and part 300 of this chapter. Each category must have a clear definition that distinguishes it from other categories;

(c) Describe each quality category in the job announcement and apply the provisions of part 330, subparts B, F, and G of this chapter;

(d) Place applicants into categories based upon their job-related competencies or their knowledge, skills, and abilities; and

(e) Establish documentation and record keeping procedures for reconstruction purposes.

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### § 337.304 Veterans’ preference.

In this subpart:

(a) Veterans’ preference must be applied as prescribed in 5 U.S.C. 3319(b) and (c)(7);

(b) Veterans’ preference points as prescribed in § 337.101 are not applied in category rating; and

(c) Sections 3319(b) and 3319(c)(7) of title 5 U.S.C. constitute veterans’ preference requirements for purposes of 5 U.S.C. 2302(b)(11)(A) and (B).

[82 FR 5340, Jan. 18, 2017]

## PART 338—QUALIFICATION REQUIREMENTS (GENERAL)

### Subpart A—Citizenship Requirements

Sec.

338.101 Citizenship.

#### Subpart B [Reserved]

### Subpart C—Consideration for Appointment

338.301 Competitive service appointment.

#### Subparts D–E [Reserved]

### Subpart F—Age Requirements

338.601 Prohibition of maximum-age requirements.

AUTHORITY: 5 U.S.C. 3301, 3302, 3304; E.O. 10577, 3 CFR, 1954–1958 comp., p. 218.

### Subpart A—Citizenship Requirements

#### § 338.101 Citizenship.

(a) A person may be admitted to competitive examination only if he is a citizen of or owes permanent allegiance to the United States.

(b) A person may be given an appointment in the competitive service only if he or she is a citizen of or owes permanent allegiance to the United States. However, a noncitizen may be given an appointment in rare cases under § 316.601 of this chapter, unless the appointment is prohibited by statute.

(c) Paragraph (b) of this section applies to reinstatement and transfer as