

(ii) ensure that all hiring activities conducted pursuant to the regulations are conducted in a manner consistent with relevant Federal civil rights laws.

(Added Pub. L. 116-92, div. A, title XI, § 1122(a), Dec. 20, 2019, 133 Stat. 1606.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(B)(i), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title VII of the Act is classified generally to subchapter VI (§ 2000e et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Pub. L. 116-92, div. A, title XI, subtitle B, § 1122(b)(2), Dec. 20, 2019, 133 Stat. 1608, provided that: “Section 9202 of title 5, United States Code (as added by this subtitle), shall take effect on the date that is 2 years after the date of enactment of this subtitle [Dec. 20, 2019].”

#### § 9203. Agency policies; complaint procedures

The Director of the Office of Personnel Management shall—

- (1) develop, implement, and publish a policy to assist employees of agencies in complying with section 9202 and the regulations issued pursuant to such section; and
- (2) establish and publish procedures under which an applicant for an appointment to a position in the civil service may submit a complaint, or any other information, relating to compliance by an employee of an agency with section 9202.

(Added Pub. L. 116-92, div. A, title XI, § 1122(a), Dec. 20, 2019, 133 Stat. 1606.)

#### § 9204. Adverse action

(a) **FIRST VIOLATION.**—If the Director of the Office of Personnel Management determines, after notice and an opportunity for a hearing on the record, that an employee of an agency has violated section 9202, the Director shall—

- (1) issue to the employee a written warning that includes a description of the violation and the additional penalties that may apply for subsequent violations; and
- (2) file such warning in the employee’s official personnel record file.

(b) **SUBSEQUENT VIOLATIONS.**—If the Director of the Office of Personnel Management determines, after notice and an opportunity for a hearing on the record, that an employee that was subject to subsection (a) has committed a subsequent violation of section 9202, the Director may take the following action:

- (1) For a second violation, suspension of the employee for a period of not more than 7 days.
- (2) For a third violation, suspension of the employee for a period of more than 7 days.
- (3) For a fourth violation—
  - (A) suspension of the employee for a period of more than 7 days; and
  - (B) a civil penalty against the employee in an amount that is not more than \$250.

(4) For a fifth violation—

- (A) suspension of the employee for a period of more than 7 days; and
- (B) a civil penalty against the employee in an amount that is not more than \$500.

(5) For any subsequent violation—

- (A) suspension of the employee for a period of more than 7 days; and
- (B) a civil penalty against the employee in an amount that is not more than \$1,000.

(Added Pub. L. 116-92, div. A, title XI, § 1122(a), Dec. 20, 2019, 133 Stat. 1606.)

#### § 9205. Procedures

(a) **APPEALS.**—The Director of the Office of Personnel Management shall by rule establish procedures providing for an appeal from any adverse action taken under section 9204 by not later than 30 days after the date of the action.

(b) **APPLICABILITY OF OTHER LAWS.**—An adverse action taken under section 9204 (including a determination in an appeal from such an action under subsection (a) of this section) shall not be subject to—

- (1) the procedures under chapter 75; or
- (2) except as provided in subsection (a) of this section, appeal or judicial review.

(Added Pub. L. 116-92, div. A, title XI, § 1122(a), Dec. 20, 2019, 133 Stat. 1607.)

#### § 9206. Rules of construction

Nothing in this chapter may be construed to—

- (1) authorize any officer or employee of an agency to request the disclosure of information described under subparagraphs (B) and (C) of section 9201(4); or
- (2) create a private right of action for any person.

(Added Pub. L. 116-92, div. A, title XI, § 1122(a), Dec. 20, 2019, 133 Stat. 1607.)

### Subpart I—Miscellaneous

#### CHAPTER 95—PERSONNEL FLEXIBILITIES RELATING TO THE INTERNAL REVENUE SERVICE

Sec.	
9501.	Internal Revenue Service personnel flexibilities.
9502.	Pay authority for critical positions.
9503.	Streamlined critical pay authority.
9504.	Recruitment, retention, relocation incentives, and relocation expenses.
9505.	Performance awards for senior executives.
9506.	Limited appointments to career reserved Senior Executive Service positions.
9507.	Streamlined demonstration project authority.
9508.	General workforce performance management system.
9509.	General workforce classification and pay.
9510.	General workforce staffing.

#### § 9501. Internal Revenue Service personnel flexibilities

(a) Any flexibilities provided by sections 9502 through 9510 of this chapter shall be exercised in a manner consistent with—

- (1) chapter 23 (relating to merit system principles and prohibited personnel practices);

(2) provisions relating to preference eligibles;

(3) except as otherwise specifically provided, section 5307 (relating to the aggregate limitation on pay);

(4) except as otherwise specifically provided, chapter 71 (relating to labor-management relations); and

(5) subject to subsections (b) and (c) of section 1104, as though such authorities were delegated to the Secretary of the Treasury under section 1104(a)(2).

(b) The Secretary of the Treasury shall provide the Office of Personnel Management with any information that Office requires in carrying out its responsibilities under this section.

(c) Employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to any flexibility provided by sections 9507 through 9510 of this chapter unless the exclusive representative and the Internal Revenue Service have entered into a written agreement which specifically provides for the exercise of that flexibility. Such written agreement may be imposed by the Federal Services Impasses Panel under section 7119.

(Added Pub. L. 105-206, title I, § 1201(a), July 22, 1998, 112 Stat. 712.)

#### § 9502. Pay authority for critical positions

(a) When the Secretary of the Treasury seeks a grant of authority under section 5377 for critical pay for 1 or more positions at the Internal Revenue Service, the Office of Personnel Management may fix the rate of basic pay, notwithstanding sections 5377(d)(2) and 5307, at any rate up to the salary set in accordance with section 104 of title 3.

(b) Notwithstanding section 5307, no allowance, differential, bonus, award, or similar cash payment may be paid to any employee receiving critical pay at a rate fixed under subsection (a), in any calendar year if, or to the extent that, the employee's total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

(Added Pub. L. 105-206, title I, § 1201(a), July 22, 1998, 112 Stat. 712; amended Pub. L. 110-161, div. D, title I, § 107, Dec. 26, 2007, 121 Stat. 1977.)

#### Editorial Notes

##### AMENDMENTS

2007—Subsec. (a). Pub. L. 110-161 substituted “Office of Personnel Management” for “Office of Management and Budget”.

#### § 9503. Streamlined critical pay authority

(a) Notwithstanding section 9502, and without regard to the provisions of this title governing appointments in the competitive service or the Senior Executive Service and chapters 51 and 53 (relating to classification and pay rates), the Secretary of the Treasury may, Before<sup>1</sup> September 30, 2013, establish, fix the compensation

of, and appoint individuals to, designated critical administrative, technical, and professional positions needed to carry out the functions of the Internal Revenue Service, if—

(1) the positions—

(A) require expertise of an extremely high level in an administrative, technical, or professional field; and

(B) are critical to the Internal Revenue Service's successful accomplishment of an important mission;

(2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position;

(3) the number of such positions does not exceed 40 at any one time;

(4) designation of such positions are approved by the Secretary of the Treasury;

(5) the terms of such appointments are limited to no more than 4 years;

(6) appointees to such positions were not Internal Revenue Service employees prior to June 1, 1998;

(7) total annual compensation for any appointee to such positions does not exceed the highest total annual compensation payable at the rate determined under section 104 of title 3; and

(8) all such positions are excluded from the collective bargaining unit.

(b) Individuals appointed under this section shall not be considered to be employees for purposes of subchapter II of chapter 75.

(Added Pub. L. 105-206, title I, § 1201(a), July 22, 1998, 112 Stat. 712; amended Pub. L. 110-161, div. D, title I, § 105, Dec. 26, 2007, 121 Stat. 1977; Pub. L. 113-6, div. F, title III, § 1309, Mar. 26, 2013, 127 Stat. 418.)

#### Editorial Notes

##### REFERENCES IN TEXT

The provisions of this title governing appointments in the competitive service, referred to in subsec. (a), are classified generally to section 3301 et seq. of this title.

##### AMENDMENTS

2013—Subsec. (a). Pub. L. 113-6, which directed substitution of “Before September 30, 2013” for “Before July 23, 2013” wherever appearing, was executed by making the substitution for “before July 23, 2013” in introductory provisions to reflect the probable intent of Congress.

2007—Subsec. (a). Pub. L. 110-161 substituted “before July 23, 2013” for “for a period of 10 years after the date of enactment of this section” in introductory provisions.

#### § 9504. Recruitment, retention, relocation incentives, and relocation expenses

(a) Before September 30, 2013 and subject to approval by the Office of Personnel Management, the Secretary of the Treasury may provide for variations from sections 5753 and 5754 governing payment of recruitment, relocation, and retention incentives.

(b) Before September 30, 2013, the Secretary of the Treasury may pay from appropriations made to the Internal Revenue Service allowable relocation expenses under section 5724a for employ-

<sup>1</sup> So in original. Probably should not be capitalized.

ees transferred or reemployed and allowable travel and transportation expenses under section 5723 for new appointees, for any new appointee appointed to a position for which pay is fixed under section 9502 or 9503 after June 1, 1998.

(Added Pub. L. 105-206, title I, § 1201(a), July 22, 1998, 112 Stat. 713; amended Pub. L. 110-161, div. D, title I, § 106, Dec. 26, 2007, 121 Stat. 1977; Pub. L. 113-6, div. F, title III, § 1309, Mar. 26, 2013, 127 Stat. 418.)

#### Editorial Notes

##### AMENDMENTS

2013—Subsecs. (a), (b). Pub. L. 113-6 substituted “Before September 30, 2013” for “Before July 23, 2013”.

2007—Subsecs. (a), (b). Pub. L. 110-161 substituted “Before July 23, 2013” for “For a period of 10 years after the date of enactment of this section”.

#### § 9505. Performance awards for senior executives

(a) Before September 30, 2013, Internal Revenue Service senior executives who have program management responsibility over significant functions of the Internal Revenue Service may be paid a performance bonus without regard to the limitation in section 5384(b)(2) if the Secretary of the Treasury finds such award warranted based on the executive's performance.

(b) In evaluating an executive's performance for purposes of an award under this section, the Secretary of the Treasury shall take into account the executive's contributions toward the successful accomplishment of goals and objectives established under the Government Performance and Results Act of 1993, subtitle III of title 40, Revenue Procedure 64-22 (as in effect on July 30, 1997), taxpayer service surveys, and other performance metrics or plans established in consultation with the Internal Revenue Service Oversight Board.

(c) Any award in excess of 20 percent of an executive's rate of basic pay shall be approved by the Secretary of the Treasury.

(d) Notwithstanding section 5384(b)(3), the Secretary of the Treasury shall determine the aggregate amount of performance awards available to be paid during any fiscal year under this section and section 5384 to career senior executives in the Internal Revenue Service. Such amount may not exceed the maximum amount which would be allowable under paragraph (3) of section 5384(b) if such paragraph were applied by substituting “the Internal Revenue Service” for “an agency”. The Internal Revenue Service shall not be included in the determination under section 5384(b)(3) of the aggregate amount of performance awards payable to career senior executives in the Department of the Treasury other than the Internal Revenue Service.

(e) Notwithstanding section 5307, a performance bonus award may not be paid to an executive in a calendar year if, or to the extent that, the executive's total annual compensation will exceed the maximum amount of total annual compensation payable at the rate determined under section 104 of title 3.

(Added Pub. L. 105-206, title I, § 1201(a), July 22, 1998, 112 Stat. 713; amended Pub. L. 107-217, § 3(a)(2), Aug. 21, 2002, 116 Stat. 1295; Pub. L.

108-7, div. J, title VI, § 645(a), Feb. 20, 2003, 117 Stat. 474; Pub. L. 110-161, div. D, title I, § 106, Dec. 26, 2007, 121 Stat. 1977; Pub. L. 113-6, div. F, title III, § 1309, Mar. 26, 2013, 127 Stat. 418.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Government Performance and Results Act of 1993, referred to in subsec. (b), is Pub. L. 103-62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of this title, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

##### AMENDMENTS

2013—Subsec. (a). Pub. L. 113-6 substituted “Before September 30, 2013” for “Before July 23, 2013”.

2007—Subsec. (a). Pub. L. 110-161 substituted “Before July 23, 2013” for “For a period of 10 years after the date of enactment of this section”.

2003—Subsec. (d). Pub. L. 108-7 substituted “Such amount may not exceed the maximum amount which would be allowable under paragraph (3) of section 5384(b) if such paragraph were applied by substituting ‘the Internal Revenue Service’ for ‘an agency’.” for “Such amount may not exceed an amount equal to 5 percent of the aggregate amount of basic pay paid to career senior executives in the Internal Revenue Service during the preceding fiscal year.”

2002—Subsec. (b). Pub. L. 107-217 substituted “subtitle III of title 40” for “division E of the Clinger-Cohen Act of 1996 (Public Law 104-106; 110 Stat. 679)”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-7, div. J, title VI, § 645(b), Feb. 20, 2003, 117 Stat. 474, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to fiscal years beginning after September 30, 2002.”

#### § 9506. Limited appointments to career reserved Senior Executive Service positions

(a) In the application of section 3132, a “career reserved position” in the Internal Revenue Service means a position designated under section 3132(b) which may be filled only by—

- (1) a career appointee; or
- (2) a limited emergency appointee or a limited term appointee—

(A) who, immediately upon entering the career reserved position, was serving under a career or career-conditional appointment outside the Senior Executive Service; or

(B) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management.

(b)(1) The number of positions described under subsection (a) which are filled by an appointee as described under paragraph (2) of such subsection may not exceed 10 percent of the total number of Senior Executive Service positions in the Internal Revenue Service.

(2) Notwithstanding section 3132—

(A) the term of an appointee described under subsection (a)(2) may be for any period not to exceed 3 years; and

(B) such an appointee may serve—

- (i) two such terms; or
- (ii) two such terms in addition to any unexpired term applicable at the time of appointment.

(Added Pub. L. 105-206, title I, § 1201(a), July 22, 1998, 112 Stat. 714.)

#### **§ 9507. Streamlined demonstration project authority**

(a) The exercise of any of the flexibilities under sections 9502 through 9510 shall not affect the authority of the Secretary of the Treasury to implement for the Internal Revenue Service a demonstration project subject to chapter 47, as provided in subsection (b).

(b) In applying section 4703 to a demonstration project described in section 4701(a)(4) which involves the Internal Revenue Service—

(1) section 4703(b)(1) shall be deemed to read as follows:

“(1) develop a plan for such project which describes its purpose, the employees to be covered, the project itself, its anticipated outcomes, and the method of evaluating the project;”;

(2) section 4703(b)(3) shall not apply;

(3) the 180-day notification period in section 4703(b)(4) shall be deemed to be a notification period of 30 days;

(4) section 4703(b)(6) shall be deemed to read as follows:

“(6) provides each House of Congress with the final version of the plan.”;

(5) section 4703(c)(1) shall be deemed to read as follows:

“(1) subchapter V of chapter 63 or subpart G of part III of this title;”;

(6) the requirements of paragraphs (1)(A) and (2) of section 4703(d) shall not apply; and

(7) notwithstanding section 4703(d)(1)(B), based on an evaluation as provided in section 4703(h), the Office of Personnel Management and the Secretary of the Treasury, except as otherwise provided by this subsection, may waive the termination date of a demonstration project under section 4703(d).

(c) At least 90 days before waiving the termination date under subsection (b)(7), the Office of Personnel Management shall publish in the Federal Register a notice of its intention to waive the termination date and shall inform in writing both Houses of Congress of its intention.

(Added Pub. L. 105-206, title I, § 1201(a), July 22, 1998, 112 Stat. 715.)

#### **§ 9508. General workforce performance management system**

(a) In lieu of a performance appraisal system established under section 4302, the Secretary of the Treasury shall, within 1 year after the date of enactment of this section, establish for the Internal Revenue Service a performance management system that—

(1) maintains individual accountability by—

(A) establishing one or more retention standards for each employee related to the work of the employee and expressed in terms of individual performance, and communicating such retention standards to employees;

(B) making periodic determinations of whether each employee meets or does not meet the employee's established retention standards; and

(C) taking actions, in accordance with applicable laws and regulations, with respect to any employee whose performance does not meet established retention standards, including denying any increases in basic pay, promotions, and credit for performance under section 3502, and taking one or more of the following actions:

(i) Reassignment.

(ii) An action under chapter 43 or chapter 75 of this title.

(iii) Any other appropriate action to resolve the performance problem; and

(2) except as provided under section 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998, strengthens the system's effectiveness by—

(A) establishing goals or objectives for individual, group, or organizational performance (or any combination thereof), consistent with the Internal Revenue Service's performance planning procedures, including those established under the Government Performance and Results Act of 1993, subtitle III of title 40, Revenue Procedure 64-22 (as in effect on July 30, 1997), and taxpayer service surveys, and communicating such goals or objectives to employees;

(B) using such goals and objectives to make performance distinctions among employees or groups of employees; and

(C) using performance assessments as a basis for granting employee awards, adjusting an employee's rate of basic pay, and other appropriate personnel actions, in accordance with applicable laws and regulations.

(b)(1) For purposes of subsection (a)(2), the term “performance assessment” means a determination of whether or not retention standards established under subsection (a)(1)(A) are met, and any additional performance determination made on the basis of performance goals and objectives established under subsection (a)(2)(A).

(2) For purposes of this title, the term “unacceptable performance” with respect to an employee of the Internal Revenue Service covered by a performance management system established under this section means performance of the employee which fails to meet a retention standard established under this section.

(c)(1) The Secretary of the Treasury may establish an awards program designed to provide incentives for and recognition of organizational, group, and individual achievements by providing for granting awards to employees who, as individuals or members of a group, contribute to meeting the performance goals and objectives established under this chapter by such means as a superior individual or group accomplishment, a documented productivity gain, or sustained superior performance.

(2) A cash award under subchapter I of chapter 45 may be granted to an employee of the Internal Revenue Service without the need for any approval under section 4502(b).

(d)(1) In applying sections 4303(b)(1)(A) and 7513(b)(1) to employees of the Internal Revenue Service, “30 days” may be deemed to be “15 days”.

(2) Notwithstanding the second sentence of section 5335(c), an employee of the Internal Revenue Service shall not have a right to appeal the denial of a periodic step increase under section 5335 to the Merit Systems Protection Board.

(Added Pub. L. 105–206, title I, § 1201(a), July 22, 1998, 112 Stat. 715; amended Pub. L. 107–217, § 3(a)(3), Aug. 21, 2002, 116 Stat. 1295.)

#### Editorial Notes

##### REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a), is the date of enactment of Pub. L. 105–206, which was approved July 22, 1998.

Section 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998, referred to in subsec. (a)(2), is section 1204 of Pub. L. 105–206, which is set out as a note under section 7804 of Title 26, Internal Revenue Code.

The Government Performance and Results Act of 1993, referred to in subsec. (a)(2)(A), is Pub. L. 103–62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of this title, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

##### AMENDMENTS

2002—Subsec. (a)(2)(A). Pub. L. 107–217 substituted “subtitle III of title 40” for “division E of the Clinger-Cohen Act of 1996 (Public Law 104–106; 110 Stat. 679)”.

#### § 9509. General workforce classification and pay

(a) For purposes of this section, the term “broad-banded system” means a system for grouping positions for pay, job evaluation, and other purposes that is different from the system established under chapter 51 and subchapter III of chapter 53 as a result of combining grades and related ranges of rates of pay in one or more occupational series.

(b)(1)(A) The Secretary of the Treasury may, subject to criteria to be prescribed by the Office of Personnel Management, establish one or more broad-banded systems covering all or any portion of the Internal Revenue Service workforce.

(B) With the approval of the Office of Personnel Management, a broad-banded system established under this section may either include or consist of positions that otherwise would be subject to subchapter IV of chapter 53 or section 5376.

(2) The Office of Personnel Management may require the Secretary of the Treasury to submit information relating to broad-banded systems at the Internal Revenue Service.

(3) Except as otherwise provided under this section, employees under a broad-banded system shall continue to be subject to the laws and regulations covering employees under the pay system that otherwise would apply to such employees.

(4) The criteria to be prescribed by the Office of Personnel Management shall, at a minimum—

(A) ensure that the structure of any broad-banded system maintains the principle of equal pay for substantially equal work;

(B) establish the minimum and maximum number of grades that may be combined into pay bands;

(C) establish requirements for setting minimum and maximum rates of pay in a pay band;

(D) establish requirements for adjusting the pay of an employee within a pay band;

(E) establish requirements for setting the pay of a supervisory employee whose position is in a pay band or who supervises employees whose positions are in pay bands; and

(F) establish requirements and methodologies for setting the pay of an employee upon conversion to a broad-banded system, initial appointment, change of position or type of appointment (including promotion, demotion, transfer, reassignment, reinstatement, placement in another pay band, or movement to a different geographic location), and movement between a broad-banded system and another pay system.

(c) With the approval of the Office of Personnel Management and in accordance with a plan for implementation submitted by the Secretary of the Treasury, the Secretary may, with respect to Internal Revenue Service employees who are covered by a broad-banded system established under this section, provide for variations from the provisions of subchapter VI of chapter 53.

(Added Pub. L. 105–206, title I, § 1201(a), July 22, 1998, 112 Stat. 716.)

#### § 9510. General workforce staffing

(a)(1) Except as otherwise provided by this section, an employee of the Internal Revenue Service may be selected for a permanent appointment in the competitive service in the Internal Revenue Service through internal competitive promotion procedures if—

(A) the employee has completed, in the competitive service, 2 years of current continuous service under a term appointment or any combination of term appointments;

(B) such term appointment or appointments were made under competitive procedures prescribed for permanent appointments;

(C) the employee’s performance under such term appointment or appointments met established retention standards, or, if not covered by a performance management system established under section 9508, was rated at the fully successful level or higher (or equivalent thereof); and

(D) the vacancy announcement for the term appointment from which the conversion is made stated that there was a potential for subsequent conversion to a permanent appointment.

(2) An appointment under this section may be made only to a position in the same line of work as a position to which the employee received a term appointment under competitive procedures.

(b)(1) Notwithstanding subchapter I of chapter 33, the Secretary of the Treasury may establish category rating systems for evaluating applicants for Internal Revenue Service positions in

the competitive service under which qualified candidates are divided into two or more quality categories on the basis of relative degrees of merit, rather than assigned individual numerical ratings.

(2) Each applicant who meets the minimum qualification requirements for the position to be filled shall be assigned to an appropriate category based on an evaluation of the applicant's knowledge, skills, and abilities relative to those needed for successful performance in the position to be filled.

(3) Within each quality category established under paragraph (1), preference eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at or higher than GS-9 (or equivalent), preference eligibles who have a compensable service-connected disability of 10 percent or more, and who meet the minimum qualification standards, shall be listed in the highest quality category.

(4) An appointing authority may select any applicant from the highest quality category or, if fewer than three candidates have been assigned to the highest quality category, from a merged category consisting of the highest and second highest quality categories.

(5) Notwithstanding paragraph (4), the appointing authority may not pass over a preference eligible in the same or higher category from which selection is made unless the requirements of section 3317(b) or 3318(c), as applicable, are satisfied.

(c) The Secretary of the Treasury may detail employees among the offices of the Internal Revenue Service without regard to the 120-day limitation in section 3341(b).

(d) Notwithstanding any other provision of law, the Secretary of the Treasury may establish a probationary period under section 3321 of up to 3 years for Internal Revenue Service positions if the Secretary of the Treasury determines that the nature of the work is such that a shorter period is insufficient to demonstrate complete proficiency in the position.

(e) Nothing in this section exempts the Secretary of the Treasury from—

(1) any employment priority established under direction of the President for the placement of surplus or displaced employees; or

(2) any obligation under a court order or decree relating to the employment practices of the Internal Revenue Service or the Department of the Treasury.

(Added Pub. L. 105-206, title I, § 1201(a), July 22, 1998, 112 Stat. 717; amended Pub. L. 114-137, § 2(c), Mar. 18, 2016, 130 Stat. 312.)

#### Editorial Notes

#### REFERENCES IN TEXT

GS-9, referred to in subsec. (b)(3), is contained in the General Schedule which is set out under section 5332 of this title.

#### AMENDMENTS

2016—Subsec. (b)(5). Pub. L. 114-137 substituted “3318(c)” for “3318(b)”.

## CHAPTER 96—PERSONNEL FLEXIBILITIES RELATING TO LAND MANAGEMENT AGENCIES

Sec.

9601. Definitions.

9602. Competitive service; time-limited appointments.

### § 9601. Definitions

For purposes of this chapter—

(1) the term “land management agency” means—

(A) the Forest Service of the Department of Agriculture;

(B) the Bureau of Land Management of the Department of the Interior;

(C) the National Park Service of the Department of the Interior;

(D) the Fish and Wildlife Service of the Department of the Interior;

(E) the Bureau of Indian Affairs of the Department of the Interior; and

(F) the Bureau of Reclamation of the Department of the Interior; and

(2) the term “time-limited appointment” includes a temporary appointment and a term appointment, as defined by the Office of Personnel Management.

(Added Pub. L. 114-47, § 2(a), Aug. 7, 2015, 129 Stat. 485.)

### § 9602. Competitive service; time-limited appointments

(a) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, an employee of a land management agency serving under a time-limited appointment in the competitive service is eligible to compete for a permanent appointment in the competitive service at such land management agency when such agency is accepting applications from individuals within the agency's workforce under merit promotion procedures, or any agency, including a land management agency, when the agency is accepting applications from individuals outside its own workforce under the merit promotion procedures of the applicable agency if—

(1) the employee was appointed initially under open, competitive examination under subchapter I of chapter 33 to the time-limited appointment;

(2) the employee has served under 1 or more time-limited appointments by a land management agency for a period or periods totaling more than 24 months without a break of 2 or more years; and

(3) the employee's performance has been at an acceptable level of performance throughout the period or periods (as the case may be) referred to in paragraph (2).

(b) In determining the eligibility of a time-limited employee under this section to be examined for or appointed in the competitive service, the Office of Personnel Management or other examining agency shall waive requirements as to age, unless the requirement is essential to the performance of the duties of the position.