

**§ 330.711 OPM's role in ICTAP.**

OPM has oversight of ICTAP and may conduct reviews of agency compliance and require corrective action at any time.

**Subparts H–I [Reserved]****Subpart J—Prohibited Practices****§ 330.1001 Withdrawal from competition.**

An applicant for competitive examination, an eligible on a register, and an officer or employee in the executive branch of the Government may not persuade, induce, or coerce, or attempt to persuade, induce, or coerce, directly or indirectly, a prospective applicant to withhold filing application, or an applicant or eligible to withdraw from competition or eligibility, for a position in the competitive service, for the purpose of improving or injuring the prospects of an applicant or eligible for appointment. OPM will cancel the application or eligibility of an applicant or eligible who violates this section, and will impose such other penalty as it considers appropriate.

**Subparts K–L [Reserved]****Subpart M—Timing of Background Investigations**

SOURCE: 81 FR 86561, Dec. 1, 2016, unless otherwise noted.

**§ 330.1300 Timing of suitability inquiries in competitive hiring.**

A hiring agency may not make specific inquiries concerning an applicant's criminal or credit background of the sort asked on the OF-306 or other forms used to conduct suitability investigations for Federal employment (*i.e.*, inquiries into an applicant's criminal or adverse credit history) unless the hiring agency has made a conditional offer of employment to the applicant. Agencies may make inquiries into an applicant's Selective Service registration, military service, citizenship status, or previous work history, prior to making a conditional offer of employment to an applicant.

However, in certain situations, agencies may have a business need to obtain information about the background of applicants earlier in the hiring process to determine if they meet the qualifications requirements or are suitable for the position being filled. If so, agencies must request an exception from the Office of Personnel Management in order to determine an applicant's ability to meet qualifications or suitability for Federal employment prior to making a conditional offer of employment to the applicant(s). OPM will grant exceptions only when the agency demonstrates specific job-related reasons why the agency needs to evaluate an applicant's criminal or adverse credit history earlier in the process or consider the disqualification of candidates with criminal backgrounds or other conduct issues from particular types of positions. OPM will consider such factors as, but not limited to, the nature of the position being filled and whether a clean criminal history record would be essential to the ability to perform one of the duties of the position effectively. OPM may also consider positions for which the expense of completing the examination makes it appropriate to adjudicate suitability at the outset of the process (*e.g.*, a position that requires that an applicant complete a rigorous training regimen and pass an examination based upon the training before his or her selection can be finalized). A hiring agency must request and receive an OPM-approved exception prior to issuing public notice for a position for which the agency will collect background information prior to completion of the assessment process and the making of a conditional offer of employment.

**PART 332—RECRUITMENT AND SELECTION THROUGH COMPETITIVE EXAMINATION****Subpart A—General Provisions**

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AUTHORITY: 5 U.S.C. 1103, 1104, 1302, 2108, 3301, 3302, 3304, 3312, 3317, 3318, 3319; sec. 2(d), Pub. L. 114-137, 130 Stat. 310; E.O. 10577, 19 FR 7521, 3 CFR, 1954-1958 Comp., p. 218.

SOURCE: 33 FR 12426, Sept. 4, 1968, unless otherwise noted.

### Subpart A—General Provisions

#### § 332.101 General policy of competition.

(a) Examinations for entrance into the competitive service shall be open competitive, except that OPM may authorize noncompetitive examinations when sufficient competent persons do not compete.

(b) An examination for promotion, demotion, reassignment, transfer, or reinstatement may be a noncompetitive examination.

#### § 332.102 Definitions.

In this part:

## 5 CFR Ch. I (1-1-23 Edition)

*Active military duty* has the meaning given that term in 5 CFR 211.102(f).

*Certificate* means a list of eligibles from which an appointing officer selects one or more applicants for appointment.

*Objection* means an agency's request to remove a candidate from consideration on a particular certificate.

*Pass over request* means an objection filed against a preference eligible that results in the selection of a non-preference eligible.

[74 FR 30461, June 26, 2009]

### Subpart B [Reserved]

### Subpart C—Period of Competition and Eligibility

#### GENERAL

#### § 332.301 Termination of eligibility.

(a) Except as provided in paragraph (b) of this section, a person's eligibility on a register is terminated when:

(1) He accepts a career or career-conditional appointment from the register; or

(2) OPM terminates the eligibility of all persons on the register.

(b) OPM may determine that in particular types of cases eligibility may not be terminated in less than 1 year. OPM shall publish the conditions under which eligibility may not be terminated in less than 1 year.

[33 FR 12426, Sept. 4, 1968, as amended at 66 FR 66710, Dec. 27, 2001]

#### ACCEPTANCE OF APPLICATIONS AFTER CLOSING DATE OF EXAMINATIONS

#### § 332.311 Quarterly examinations.

(a) A 10-point preference eligible is entitled to file an application at any time for an examination for any position for which OPM maintains a register, for which a register is about to be established, or for which a non-temporary appointment was made in the preceding three years. For the purposes of this paragraph OPM shall hold an examination not later than the quarterly period succeeding that in which the application is filed.

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(b) When there is no appropriate existing register, OPM may establish special registers containing the names of eligibles from the quarterly examinations authorized by paragraph (a) of this section, together with the names of eligibles described in § 332.322, and use these registers for certification to fill appropriate vacancies.

[35 FR 414, Jan. 13, 1970, as amended at 41 FR 22549, June 4, 1976]

### **§ 332.312 Applicants in military or overseas service.**

Subject to the time limits and other conditions published by OPM in its operating manuals, the following persons are entitled to file applications for open competitive examinations after the closing date for receipt of applications when there is an existing register or a register about to be established:

(a) A person who could not file an application during the filing period, or appear for an assembled examination, because of military service, or hospitalization continuing for 1 year or less following discharge from military service;

(b) An employee of the Federal Government who, as a member of a reserve unit of the military service, could not file an application during the filing period, or appear for an assembled examination, because of active duty beyond 15 days with the military service even though the duty is designated for training purposes; and

(c) A United States citizen who could not file an application during the filing period, or appear for an assembled examination, because of overseas service with a Federal agency or with an international organization in which the United States Government participates.

[33 FR 12426, Sept. 4, 1968, as amended at 66 FR 66710, Dec. 27, 2001]

### **§ 332.313 Preference eligibles separated from competitive positions.**

The following persons are entitled to have their names entered on an appropriate existing register in the order prescribed by § 332.401 if they were last employed under career or career-conditional appointments:

(a) A preference eligible who is declared eligible therefor after appeal from furlough or discharge; and

(b) A preference eligible who has been furloughed or separated without delinquency or misconduct and who applies within 90 days after furlough or separation.

### **§ 332.314 [Reserved]**

#### RESTORATION OF ELIGIBILITY

### **§ 332.321 Preference eligibles who resigned from competitive positions.**

A qualified preference eligible who resigned without delinquency or misconduct from career or career-conditional employment is entitled to have his name reentered on each register on which his name formerly appeared (or on a successor register) if he applies within 90 days after separation.

### **§ 332.322 Persons who lost eligibility because of military service.**

(a) A person who lost a period of eligibility on a register because he has served on active military duty since June 30, 1950, is entitled to have his name restored to that register or a successor register when he meets the following conditions:

(1) He has not served more than four years following the date of his entrance on active military duty, exclusive of any additional service imposed pursuant to law. The date of entrance on duty means the first date between June 30, 1950, and July 1, 1971, on which he began a new period of active military duty, whether it was by original entry, reentry or extension.

(2) He is honorably separated from active military duty.

(3) He applies for restoration of eligibility within 90 days after discharge from active military duty or from hospitalization continuing for 1 year or less following separation from active military duty.

(4) He is still qualified to perform the duties of the position for which the register is used.

(b) When a person is entitled to have his name restored to a register under paragraph (a) of this section, OPM shall enter his name at the top of the appropriate group on the register if another eligible standing lower on the

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register on which his name formerly appeared was given a career or career-conditional appointment from that register. For professional and scientific positions in GS-9 and above and in comparable pay levels under other pay-fixing authorities, all eligibles are in one group. For all other positions, preference eligibles with a compensable service-connected disability of 10 percent or more are in one group and all other eligibles in another.

(c) When there is no appropriate existing register, OPM may establish special registers containing the names of persons entitled to priority of certification under paragraph (b) of this section, together with the names of eligibles described in § 332.311, and use these registers for certification to fill appropriate vacancies.

[33 FR 12426, Sept. 4, 1968, as amended at 35 FR 414, Jan. 13, 1970]

### **§ 332.323 Employees separated during probation.**

An employee who is separated (voluntarily or involuntarily) without delinquency or misconduct during his probationary period is entitled to have his name restored to the register of eligibles from which he was appointed, if he applies for restoration while the register is still in use.

## **Subpart D—Consideration for Appointment**

### **§ 332.401 Order on registers.**

Subject to apportionment, residence, and other requirements of law and this chapter, OPM shall enter the names of eligibles on the appropriate register in accordance with their numerical ratings, except that the names of:

(a) Preference eligibles shall be entered in accordance with their augmented ratings and ahead of others having the same rating; and

(b) Preference eligibles who have a compensable service-connected disability of 10 percent or more shall be entered at the top of the register in the order of their ratings unless the register is for professional or scientific positions in GS-9 and above and in comparable pay levels under other pay-fixing authorities.

### **5 CFR Ch. I (1–1–23 Edition)**

### **§ 332.402 Referring candidates for appointment.**

OPM or a Delegated Examining Unit (DEU) will refer candidates for consideration by simultaneously listing a candidate on all certificates for which the candidate is interested, eligible, and within reach, except that, when it is deemed in the interest of good administration and candidates have been so notified, OPM or a DEU may choose to refer candidates for only one vacancy at a time. Selecting officials will receive sufficient names, when available, to allow them to consider at least 3 candidates for each vacancy.

[67 FR 7056, Feb. 15, 2002]

### **§ 332.403 Selective certification.**

When there is no register appropriate as a whole for the certification of eligibles for a particular position, OPM may prepare a certificate from the most nearly appropriate existing register by the selective certification of eligibles qualified for the particular position in the order of their ranking on the register. Special overseas selection factors may also be used as a basis for selective certification from a register used for filling overseas positions. When appropriate, OPM may rerate the eligibles on the register on the basis of the particular requirements of the position.

### **§ 332.404 Order of selection from certificates.**

An appointing officer, with sole regard to merit and fitness, shall select an eligible for:

(a) The first vacancy from the highest three eligibles on the certificate who are available for appointment; and

(b) The second and each succeeding vacancy from the highest three eligibles on the certificate who are unselected and available for appointment.

### **§ 332.405 Three considerations for appointment.**

An appointing officer is not required to consider an eligible who has been considered by him for three separate appointments from the same or different certificates for the same position.

**§ 332.406 Objections to eligibles.**

(a) *Delegated authority.* Except as specified in paragraphs (a)(1) and (a)(2) of this section, OPM has delegated to agencies the authority to adjudicate objections to eligibles, including pass over requests.

(1) OPM retains exclusive authority to approve the sufficiency of an agency's request to pass over preference eligibles who are thirty percent (30%) or more compensably disabled. Such persons have the right, in accordance with 5 U.S.C. 3318, to respond to the pass over request before OPM makes a final decision.

(2) OPM also retains the exclusive authority to approve the sufficiency of an agency's reasons to medically disqualify or medically pass over a preference eligible or disabled veteran in certain circumstances, in accordance with part 339 of this chapter.

(3) An agency must refer any objection (including a pass over request) that is based on material, intentional false statement or deception or fraud in examination or appointment to OPM for a suitability action where warranted, under part 731 of this chapter.

(b) *Standard for objections.* An agency is not required to consider an individual for a position when an objection to (including a request to pass over) the particular individual is sustained or granted. An objection, including a pass over request, may be sustained only if it is based on a proper and adequate reason. The reasons set forth for disqualification by OPM in part 339 of this chapter constitute proper and adequate reasons to sustain an objection. Similarly, the criteria for making suitability determinations in part 731 of this chapter constitute proper and adequate reasons to sustain an objection. In addition, reasons published by OPM in the Delegated Examining Operations Handbook constitute proper and adequate reasons to sustain an objection.

(c) *Sufficiency of the reasons for a pass over.* Subject to the exception set forth in paragraph (e) of this section, an agency may not pass over a preference eligible to select a non-preference eligible unless OPM or an agency with delegated authority also makes a determination that the sufficiency of the

reasons is supported by the evidence submitted for the pass over request.

(d) *Agency's obligation while request for objection is pending.* Subject to the exception set forth in paragraph (e) of this section, if an agency makes an objection against an applicant for a position (including seeking to pass over the applicant), and the individual that the agency wishes to select would be within reach of selection only if the objection is sustained, or the pass over granted, that agency may not make a selection for the position until a final ruling is made.

(e) *Applicability of paragraphs (c) and (d).* Paragraphs (c) and (d) of this section do not apply if the agency has more than one position to fill from the same certificate and holds open (in the event the objection is not sustained or the pass over request is denied) a position that could be filled by the individual against whom an objection or a pass over request has been filed.

(f) *Procedures for objections and pass overs.* Agencies must follow the procedures for objecting to or requesting to pass over an eligible that are published by OPM in the *Delegated Examining Operations Handbook*.

(g) *No appeal rights to Merit Systems Protection Board (MSPB).* An individual may not appeal to the MSPB a decision by OPM or an agency with delegated authority to sustain an objection pursuant to this part, including a decision to grant a pass over request, irrespective of the reason for the decision.

[74 FR 30461, June 26, 2009]

**§ 332.407 Restriction of consideration to one sex.**

An appointing officer may not restrict his consideration of eligibles or employees for competitive appointment or appointment by noncompetitive action to a position in the competitive service to one sex, except in unusual circumstances when OPM finds the action justified.

[34 FR 5367, Mar. 19, 1969. Redesignated at 42 FR 61240, Dec. 2, 1977]

**§ 332.408 Shared use of a competitive certificate.**

(a) *General authority.* (1) A hiring agency may share a competitive service certificate issued under its delegated examining authority with one or more hiring agencies for a position(s) to be filled on a permanent or term basis. Positions filled on a term basis are subject to the provisions of 5 CFR part 316, subpart C. Positions may be full-time or other than full-time (*i.e.*, part-time, seasonal, on-call, and intermittent).

(2) Another Federal agency may make a selection from a certificate shared with it under paragraph (b) of this section only after it has considered individuals it is required to consider when filling positions from within its own workforce and other internal applicants under paragraph (c) of this section.

(3) All actions taken on a shared certificate must be made within the 240-day period beginning on the date the original hiring agency issued the certificate of eligibles. This period cannot be extended.

(4) The original hiring agency and any receiving agency using a shared certificate must each maintain case file documentation sufficient for each agency to reconstruct its own use of the certificate in accordance with the *Delegated Examining Operations Handbook*, and must safeguard testing and examination materials, examination results, and the names of applicants from disclosure to other persons in accordance with § 300.201 of this chapter.

(5) All actions taken on competitive certificates must be done in accordance with the *Delegated Examining Operations Handbook* and all applicable regulations in this part and part 337 of this chapter.

(6) Agencies sharing certificates must keep records of the instances of sharing certificates and/or using shared certificates.

(b) *Requirements for the original hiring agency.* (1) A hiring agency may share a competitive certificate it has issued under § 332.402 (for traditional rating and ranking) or under 5 CFR 337.303 (for category rating) with one or more hiring agencies for use in filling a position(s) if:

(i) The original hiring agency intends to use the certificate for its own hiring;

(ii) The original hiring agency has provided notice within the job opportunity announcement for the original vacancy that the resulting list of eligible candidates may be used by one or more hiring agencies;

(iii) The original hiring agency has provided an opportunity for applicants to opt-in to have their applications and other personal information shared with one or more hiring agencies;

(iv) The original hiring agency's objections to eligibles or requests to pass over preference eligibles on the certificate under § 332.406 or § 337.304 of this chapter have been resolved by that agency's Delegated Examining Unit;

(v) The original hiring agency has either made a selection from the certificate or has made no selection from the certificate, and has documented its reason for non-selection; and

(vi) The Delegated Examining Unit of the original hiring agency has closed and audited the certificate in accordance with the procedures in the *Delegated Examining Operations Handbook*.

(2) When sharing a certificate of eligibles, the original hiring agency must share all documentation pertaining to the creation of that certificate, including but not limited to the job analysis, testing and examination materials, the job opportunity announcement, and applications, as relevant, and must safeguard any personally identifiable information not needed for effective use of the certificate by the receiving agency. The original hiring agency must share the certificate of eligibles in its original form in order to retain the original ordering of the certificate; must safeguard any personally identifiable information from unauthorized access during the transmission process; and must redact the names of applicants who did not opt-in to the shared certificate, and who therefore may not be considered by the receiving agency.

(3) The original hiring agency may share a certificate of eligibles with one or more agencies.

(4) If the original hiring agency determines that it has made an error

that may affect selections by a receiving agency or agencies, it must notify each affected receiving agency.

(c) *Requirements for the receiving agency*—(1) *Vacancies that may be filled.* A receiving agency may use a shared certificate to fill a vacancy in the same occupational series, at the same grade level (or a corresponding rate or level of pay for a position excluded from the General Schedule), with the same full performance level, and in the same duty location as was listed on the original hiring agency's certificate. If the original hiring agency's certificate is for an interdisciplinary position as described in the *Delegated Examining Operations Handbook*, the receiving agency may use it to fill an interdisciplinary position. The receiving agency must verify through its job analysis that the minimum qualification requirements (including use of any selective placement factors) and the competencies, or knowledge, skills, and abilities, that were used for the original position are appropriate for the position to be filled.

(2) *Notification to individuals who applied to the original vacancy.* Before using a shared certificate, a receiving agency must notify the list of candidates of its receipt of their names and application materials and its intention of considering them for a position. The receiving agency must also inform these individuals of its requirement to consider its own employees as well as other individuals the agency is required to consider before consideration of anyone on the shared certificate. At a minimum, the notification must include the agency, position title, series, grade level or equivalent, and duty location.

(3) *Consideration of internal candidates.* Before making a selection from a shared certificate, a receiving agency must provide notice of its intent to fill the available position(s) to its own employees and other individuals the agency is required to consider, to provide these internal candidates the opportunity to apply consistent with the provisions of part 335 of this chapter, and to review the qualifications of the internal candidates.

(i) This notice and opportunity for internal candidates to apply is subject

to applicable collective bargaining obligations (to the extent consistent with law). Nothing in this paragraph affects agencies' right to fill a position from any appropriate source under §§ 330.102 and 335.103 of this chapter.

(ii) Agencies are prohibited from providing an application period any longer than 10 days for internal candidates. This time limit cannot be waived or extended.

(iii) Before considering other candidates, a receiving agency must first provide for the consideration for selection required for individuals covered under its Career Transition Assistance Program and its Reemployment Priority List under part 330, subparts B and F, of this chapter.

(4) *Selection from the shared certificate.* After considering internal candidates, a receiving agency may consider candidates referred on the shared certificate.

(i) The receiving agency must consider candidates on a shared certificate independently of the actions of any other agency with which the certificate is simultaneously shared under paragraph (b)(3) of this section.

(ii) The receiving agency may not reassess the applicants for purposes of rating/ranking.

(iii) The receiving agency must provide selection priority to individuals eligible under the Interagency Career Transition Assistance Program under part 330, subpart G, of this chapter who applied to the original job announcement.

(5) *Time limit on selection from a shared certificate.* The receiving agency has 240 days from the date the certificate was issued (in the original hiring agency) to select individuals from the shared certificate.

(6) *Limit on further sharing by the receiving agency.* The receiving agency may not share or distribute the shared certificate to another Federal agency.

[82 FR 5339, Jan. 18, 2017]

## PART 333 [RESERVED]