

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.

- (c) An individual appointed under this section—
 - (1) becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure; and
 - (2) acquires competitive status upon appointment.
- (d) A former employee of a land management agency who served under a time-limited appointment and who otherwise meets the requirements of this section shall be deemed a time-limited employee of the agency from which the former employee was most recently separated for purposes of this section if—
 - (1) such employee applies for a position covered by this section within the period of 2 years after the most recent date of separation; and
 - (2) such employee's most recent separation was for reasons other than misconduct or performance.
- (e) The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this section.

(Added Pub. L. 114-47, §2(a), Aug. 7, 2015, 129 Stat. 485; amended Pub. L. 114-328, div. A, title XI, §1135, Dec. 23, 2016, 130 Stat. 2459.)

Editorial Notes

AMENDMENTS

2016—Subsec. (a). Pub. L. 114-328, §1135(1), substituted in introductory provisions “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” for “any land management agency or any other agency (as defined in section 101 of title 31) under the internal merit promotion procedures of the applicable agency”.

Subsec. (d). Pub. L. 114-328, §1135(2), inserted “of the agency from which the former employee was most recently separated” after “deemed a time-limited employee” in introductory provisions.

CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY

Sec. 9701. Establishment of human resources management system.

§ 9701. Establishment of human resources management system

(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

- (1) be flexible;
- (2) be contemporary;
- (3) not waive, modify, or otherwise affect—
 - (A) the public employment principles of merit and fitness set forth in section 2301,

including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

(B) any provision of section 2302, relating to prohibited personnel practices;

(C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9); or

(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1), (8), and (9) by—

(I) providing for equal employment opportunity through affirmative action; or

(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

(D) any other provision of this part (as described in subsection (c)); or

(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law; and

(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

(1) subparts A, B, E, G, and H of this part; and

(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

(1) to modify the pay of any employee who serves in—

(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

(3) to exempt any employee from the application of such section 5307.

(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the participation of employee representatives in the planning, development, and implementation of any human resources management system or adjustments to such system under this section, the Secretary of Homeland Secu-