

## § 332.404

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) An appointing officer is not required to consider an eligible to whose certification for the particular position he makes an objection that is sustained by OPM for any of the reasons stated in § 339.101 or § 731.201 of this chapter or for other reasons considered by OPM to be disqualifying for the particular position. OPM may also sustain an objection to certification of an otherwise qualified eligible for an overseas position on the basis of special overseas selection factors.

(b) An appointing officer may not pass over a preference eligible to select a non-preference eligible unless an objection to the preference eligible is sustained by OPM.

(c) Pending OPM action on an agency's objection to an eligible, the agency may not appoint an eligible who would be within reach only if the objection is sustained.

(d) Paragraphs (b) and (c) of this section, do not apply if the agency has more than one position to fill from the same certificate and holds a position for the individual objected to in the event OPM does not sustain the objection

(e) Agencies shall follow the procedures for objecting to an eligible pub-

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lished by OPM in its operating manuals.

[42 FR 61240, Dec. 2, 1977, as amended at 66 FR 66710, Dec. 27, 2001]

### § 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]

## PART 333—RECRUITMENT AND SELECTION FOR TEMPORARY AND TERM APPOINTMENTS OUTSIDE THE REGISTER

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AUTHORITY: 5 U.S.C. 1302, 3301, 3302, 3327, 3330; E.O. 10577, 3 CFR 1954-58 Comp., p. 218; section 333.203 also issued under 5 U.S.C. 1104.

### Subpart A—General Provisions

#### § 333.101 Standards for temporary and term appointments outside the register.

Except as OPM may otherwise specify, an agency, in making a temporary or term appointment outside the register, shall determine that the applicant meets the qualification standards issued by OPM and that he or she is not disqualified for any of the reasons listed in § 339.101 and § 731.201 of this chapter. Candidates found to be qualified

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shall be assigned either an eligible rating or a numerical score of at least 70 on a scale of 100.

[60 FR 3061, Jan. 13, 1995]

### § 333.102 Notice of job announcements to OPM.

Under 5 U.S.C. 3327, and 3330, agencies are required to report job announcements to OPM when recruiting outside the register. This requirement is implemented through § 330.707 of subpart G of this chapter.

[66 FR 63906, Dec. 11, 2001]

### § 333.103 Preference in temporary and term appointments outside the register.

In actions subject to this part, each agency shall grant veteran preference as follows:

(a) When numerical scores are used in evaluation and referral, the agency shall grant 5 additional points to preference eligibles under section 2108(3) (A) and (B) of title 5, United States Code, and 10 additional points to preference eligibles under section 2108(3) (C) through (G) of that title.

(b) When eligible candidates are referred without ranking, the agency shall note preference as “CP” for preference eligibles under section 2103(3)(C) of title 5, United States Code, and as “IP” for all other preference eligibles under that title. (At its discretion, the agency may use the notation “XP” for preference eligibles under section 2108(3) (D) through (G) of title 5, but those eligibles will not be distinguished from “IP” eligibles in the referral process.)

[53 FR 35293, Sept. 13, 1988. Redesignated at 56 FR 64469, Dec. 10, 1991]

## Subpart B—Consideration for Appointment

### § 333.201 Making appointments from an unranked list.

In making temporary and term appointments from a list of eligible candidates who have not received numerical scores, an agency shall give preference to preference eligibles as follows:

(a) For professional and scientific positions at the GS-9 level or above, or

equivalent, preference should be given to preference eligibles without regard to the type of preference.

(b) For other positions, preference shall be given first to preference eligibles with compensable service-connected disability of 10 percent or more, and second to other preference eligibles.

(c) Except as provided in paragraph (b) of § 333.202 and in § 333.203, qualified candidates not eligible for veteran preference may be selected only when no qualified veteran preference eligibles are available.

[53 FR 35294, Sept. 13, 1988, as amended at 56 FR 64470, Dec. 10, 1991]

### § 333.202 Making appointments from a numerically ranked list.

(a) *Establishing the list.* An agency shall enter the names of all applicants having an eligible numerical score on the employment list in the following order:

(1) Preference eligibles having a compensable service-connected disability of 10 percent or more in the order of their augmented ratings, unless the list will be used to fill professional positions at the GS-9 level and above, or equivalent.

(2) All other qualified candidates in the order of their augmented ratings. At each score, qualified candidates eligible for 10-point preference will be entered ahead of those eligible for 5-point preference or those not eligible for veteran preference, and those eligible for 5-point preference will be entered ahead of those not eligible for preference.

(b) *Selection.* When making an appointment from a list on which candidates have received numerical scores, the agency must make its selection from not more than the highest three names available for appointment in the order provided in paragraph (a) of this section, except that an agency is not required to—

(1) Consider an applicant who has previously been considered three times by the same appointing officer for positions at the same grade level and for the same line of work;

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(2) Consider a preference eligible whose eligibility for further consideration for the position has been discontinued as provided in § 333.203.

[53 FR 35294, Sept. 13, 1988, as amended at 56 FR 64470, Dec. 10, 1991]

**§ 333.203 Passing over a preference eligible.**

(a) *Preference eligibles with compensable service-connected disabilities of 30 percent or more.* When an agency making an appointment passes over the name of a preference eligible who is entitled to prior consideration under paragraph (b) of § 333.201 or under paragraph (a) of § 333.202 and who has a compensable service-connected disability of 30 percent or more and proposes to select a nonpreference eligible, the agency must—

(1) Submit its reasons for so doing to the OPM office with examining jurisdiction over the position;

(2) Notify the preference eligible of the proposed passover, the reasons for it, and his or her right to respond to OPM within 15 days after the date of notification; and

(3) Obtain OPM's approval for the proposed passover before selecting the nonpreference eligible.

(b) *Other preference eligibles.* When an agency making an appointment passes over the name of a preference eligible other than one described in paragraph (a) of this section who is entitled to prior consideration under paragraph (b) of § 333.201 or under paragraph (a) of § 333.202 and selects a nonpreference eligible, it must record its reasons for so doing and must furnish a copy of those reasons to the preference eligible and to his or her representative on request.

(c) *Discontinuing consideration.* An agency may discontinue consideration of a preference eligible for a position if, on three occasions, the agency has considered the candidate for the position and has either—

(1) Obtained OPM's approval to pass over his or her name and select a nonpreference eligible in accordance with paragraph (a) of this section; or

(2) Passed over his or her name and recorded its reasons for so doing as provided in paragraph (b) of this section.

[56 FR 64470, Dec. 10, 1991]

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**PART 334—TEMPORARY ASSIGNMENT OF EMPLOYEES BETWEEN FEDERAL AGENCIES AND STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS, INSTITUTIONS OF HIGHER EDUCATION, AND OTHER ELIGIBLE ORGANIZATIONS**

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AUTHORITY: 5 U.S.C. 3376; E.O. 11589, 3 CFR 557 (1971-1975).

SOURCE: 44 FR 25394, May 1, 1979, unless otherwise noted.

**§ 334.101 Purpose.**

The purpose of this part is to carry into effect the objectives of title IV of the Intergovernmental Personnel Act of 1970 and title VI of the Civil Service Reform Act which authorize the temporary assignment of employees between Federal agencies and State, local, and Indian tribal governments, institutions of higher education and other eligible organizations.

**§ 334.102 Definitions.**

In this part: *Assignment* means a period of service under chapter 33, subchapter VI of title 5, United States Code;

*Employee* means an individual serving in a Federal agency under a career or career-conditional appointment including career appointees in the Senior Executive Service, individuals under appointments of equivalent tenure in accepted service positions, and presidential management interns; or an individual employed for at least 90 days in a career position with a State, local, or Indian tribal government, institution of higher education, or other eligible organization;

*Federal agency* means an Executive agency, military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic