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an agency to identify and rank qualified candidates may be proper subjects for formal complaints or grievances, nonselection from among a group of properly ranked and certified candidates is not an appropriate basis for a formal complaint or grievance. There is no right of appeal of OPM, but OPM may conduct investigations of substantial violations of OPM requirements.

[59 FR 67121, Dec. 29, 1994, as amended at 63 FR 34258, June 24, 1998]

§ 335.104 Eligibility for career ladder promotion.

No employee shall receive a career ladder promotion unless his or her current rating of record under part 430 of this chapter is “Fully Successful” (level 3) or higher. In addition, no employee may receive a career ladder promotion who has a rating below “Fully Successful” on a critical element that is also critical to performance at the next higher grade of the career ladder.

[51 FR 8411, Mar. 11, 1986]

§ 335.105 Notice of job announcements to OPM.

Under 5 U.S.C. 3330, agencies are required to report job announcements to OPM for vacancies for which an agency will accept applications from outside the agency’s work force. This requirement is implemented through § 330.707 of subpart G of this chapter.

[66 FR 63906, Dec. 11, 2001]

§ 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]

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PART 337—EXAMINING SYSTEM

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AUTHORITY: 5 U.S.C. 1104(a) (2), 1302, 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.

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 provided in § 930.203(a) of 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]

§ 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: 68 FR 35268, June 13, 2003, 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 for a position or group of positions if OPM deter-

mines that there is either a severe shortage of candidates or a critical hiring need for such positions.

§ 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, and parts 211 and 337, subpart A of this chapter.

(b) A *severe shortage of candidates* for a particular position or group of positions means that an agency is unable to identify candidates possessing the competencies required to perform the job requirements despite extensive recruitment, extended announcement periods, and the use, as applicable, of hiring flexibilities such as recruitment and relocation incentives.

(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 an emergency, potential threat, or unanticipated or unusual mission requirement, or to conform to the requirements of law, a Presidential directive or Administration initiative, or an unexpected event outside of an agency's control.

§ 337.203 Public notice requirements.

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

§ 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 on its own that such a shortage exists, or may make this decision in response to a written request from an agency.

(b) In a request for direct-hire authority under this section, an agency must identify the position(s) it is unable to fill and must include 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:

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- (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;
- (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 the agency's use of hiring flexibilities such as recruitment or retention allowances.

§ 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 on its own that there is such a need, or may make this decision in response to a written request from an agency.

(b) In a request for direct-hire authority under this section, an agency must:

- (1) Identify the position(s) that it must fill;
- (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.

§ 337.206 Terminations, modifications, extensions, and reporting.

(a) *Termination and modification.* On a periodic basis, for each direct-hire authority that it previously granted, OPM will review the appropriate agency's use of the authority to ensure that the agency is using the authority prop-

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erly and to determine if the agency's continued use of the authority is supportable. OPM will terminate or modify a direct-hire authority previously granted to an agency if OPM determines that there is no longer a severe shortage of candidates or a critical hiring need. OPM may also terminate an agency's authority when the agency has used its authority improperly.

(b) *Extension.* OPM may extend an agency's direct-hire authority if OPM determines that there is or will continue to be a severe shortage of candidates or a critical hiring need with respect to a particular position as of the date on which the agency's authority is due to expire.

(c) *Reporting requirement.* On a periodic basis, OPM may request information from agencies regarding their use of these direct-hire authorities.

§ 337.207 Sunset.

The authority to use direct hire authority terminates June 14, 2004.

Subpart C—Alternative Rating and Selection Procedures

SOURCE: 68 FR 35269, June 13, 2003, 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-

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related knowledge, skills, abilities, or competencies.

§ 337.303 Agency responsibilities.

To use a category rating system, 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 knowledge, skills, abilities or competencies; and

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

§ 337.304 Veterans’ preference.

In this subpart:

(a) Veterans’ preference must be applied as prescribed in section 1312(a)(2) of Public Law 107-296, the Homeland Security Act, and codified at 5 U.S.C. 3319; and

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

§ 337.305 Reporting requirements.

Any agency that uses category rating must forward to OPM a copy of the annual report that it must submit to Congress pursuant to 5 U.S.C. 3319.

§ 337.306 Sunset.

The authority to use category rating terminates June 14, 2004.

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 well as to other noncompetitive appointments, and to conversion to career or career-conditional employment.

[33 FR 12429, Sept. 4, 1968, as amended at 57 FR 10124, Mar. 24, 1992]

Subpart B [Reserved]

Subpart C—Consideration for Appointment

§ 338.301 Competitive service appointment.

Agencies must ensure that employees who are given competitive service appointments meet the requirements included in the Office of Personnel Management’s Operating Manual: Qualification Standards for General Schedule Positions. The Operating Manual is available to the public for review at agency personnel offices and Federal depository libraries, and for purchase from the Government Printing Office.

[62 FR 44535, Aug. 22, 1997]