

Office of Personnel Management

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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.

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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:

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

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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.

(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 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.

§ 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

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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

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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]

PART 333 [RESERVED]

PART 334—TEMPORARY ASSIGNMENTS UNDER THE INTERGOVERNMENTAL PERSONNEL ACT (IPA)

Sec.

334.101 Purpose.

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

SOURCE: 71 FR 54565, Sept. 18, 2006, unless otherwise noted.

§ 334.101 Purpose.

The purpose of this part is to implement title IV of the Intergovernmental Personnel Act (IPA) of 1970 and title VI of the Civil Service Reform Act. These statutes authorize the temporary assignment of employees between the Federal Government 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, for purposes of participation in this program, 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 excepted service positions (including, e.g., the Presidential Management Fellows Program, the Federal Career Intern Program, the Student Career Experience Program, and Veterans Recruitment Appointments (VRA)), 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 as defined in 5 U.S.C. 3371(3) 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 Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Rate Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the legislative and judicial branches as determined appropriate by the Office of Personnel Management;

Indian tribal government as defined in 5 U.S.C. 3371(2)(c) means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 668), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act;

Institution of higher education means a domestic, accredited public or private 4-year and/or graduate level college or university, or a technical or junior college;

Local government as defined in 5 U.S.C. 3371(2)(A) and (B) means: