

§ 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: 69 FR 33275, June 15, 2004, 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(a)(3) for a permanent or nonpermanent position or group of positions in the competitive service at GS-15 (or equivalent) and below, if OPM determines that there is either a severe shortage of candidates or a critical hiring need for such positions. It is not required that this direct-hire authority be exercised by a delegated examining unit. Requests for direct-hire authority must be submitted by the agency's Chief Human Capital Officer (or equivalent) at the agency headquarters level. OPM will determine the length of the direct-hire authority based on the justification.

§ 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; part 211 of this chapter; and subpart A of part 337 of this chapter.

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

(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 circumstances such as, but not limited to, a national emergency, threat, potential threat, environmental disaster, or unanticipated or unusual event or mission requirement, or to conform to the requirements of law, a Presidential directive or Administration initiative.

§ 337.203 Public notice requirements.

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

[69 FR 33275, June 15, 2004, as amended at 75 FR 67605, Nov. 3, 2010]

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

(b) An agency when requesting direct-hire authority under this section, or OPM when deciding independently, must identify the position or positions

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that are difficult to fill and must provide 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:

- (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 agency use of hiring flexibilities such as recruitment or retention allowances or special salary rates.

(c) A department or agency head (other than the Secretary of Defense) may determine, pursuant to section 1413(a) of Public Law 108–136, as amended by section 853 of Public Law 110–181, that a shortage of highly qualified candidates exists for certain Federal acquisition positions (covered under section 433(g)(1)(A) of title 41, United States Code). To make such a determination, the deciding agency official must use the supporting evidence prescribed in 5 CFR 337.204(b)(1)–(8) and must maintain a file of the supporting evidence for documentation and reporting purposes.

[69 FR 33275, June 15, 2004, as amended at 70 FR 44847, Aug. 4, 2005; 74 FR 61263, Nov. 24, 2009]

§ 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

independently that such a need exists or may make this decision in response to a written request from an agency.

(b) An agency when requesting direct-hire authority under this section, or OPM when deciding on its own, must:

- (1) Identify the position(s) that must be filled;
- (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, OPM will review agency use of the authority to ensure proper administration and to determine if continued use of the authority is supportable. OPM will terminate or modify a direct-hire authority if it determines that there is no longer a severe shortage of candidates or a critical hiring need. Likewise, when an agency finds there are adequate numbers of qualified candidates for positions previously filled under direct-hire authorities, based on severe shortage of candidates, the agency is required to report this change of events to OPM. OPM may also terminate an agency's authority when the agency has used an authority improperly.

(b) *Extension.* OPM may extend direct-hire authority if OPM determines, based on relevant, recent, and supportable data, that there is or will continue to be a severe shortage of candidates or a critical hiring need for particular positions as of the date the authority is due to expire. In their requests for extensions of direct-hire authorities, agencies must include an update of the supporting evidence that demonstrated the need for the original authority.

(c) *Reporting requirement.* On a periodic basis, OPM may request information from agencies regarding their use of these direct-hire authorities. The requested information may include numbers of positions, title, series, and