

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 330, 332, and 337

RIN 3206-AN46

#### Recruitment and Selection Through Competitive Examination

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is issuing an interim rule to implement the Competitive Service Act of 2015 to allow an appointing authority (*i.e.*, the head of a Federal agency or department) to share a competitive certificate with one or more appointing authorities for the purpose of making selections of qualified candidates. The intended effect of this rule is to facilitate the hiring of top talent across Federal agencies.

**DATES:** Interim rule effective February 17, 2017; comments must be received on or before March 20, 2017.

**ADDRESSES:** You may submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this proposed rulemaking.

You may also send, deliver, or fax comments to Kimberly A. Holden, Deputy Associate Director for Recruitment and Hiring, Employee Services, U.S. Office of Personnel Management, Room 6500 AI, 1900 E Street NW., Washington, DC 20415-9700; email at [employ@opm.gov](mailto:employ@opm.gov) or by fax at (202) 606-4430.

**FOR FURTHER INFORMATION CONTACT:** Roseanna Ciarlante by telephone on (267) 932-8640, by fax at (202) 606-

4430, by TTY at (202) 418-3134, or by email at [Roseanna.Ciarlante@opm.gov](mailto:Roseanna.Ciarlante@opm.gov).

**SUPPLEMENTARY INFORMATION:** On March 18, 2016, the Competitive Service Act of 2015 (the “Act”) was enacted as Public Law 114-137. The Act allows an “appointing authority” to share a competitive certificate issued under delegated examining procedures with one or more “appointing authorities” to make an appointment to a position that is in the same occupational series, grade level (or equivalent), and duty location during the 240-day period beginning on the date of issuance of the certificate of eligibles.

Under current rules, an appointing authority may share a certificate *within* the bureaus and components of his or her department or agency. The current practice allows an appointing authority to expedite hiring when multiple vacancies for the same position exist throughout his or her organization. For example, suppose that the Department of Treasury headquarters human resources (HQ HR) office recruits for a Financial Management Specialist, GS-501-12, and hires two highly qualified individuals from the certificate of eligibles. Treasury’s HQ HR office may currently share the certificate with its components, like the Bureau of the Fiscal Service and the Internal Revenue Service, that have identified Financial Management Specialist vacancies that need to be filled. This current practice allows these different components with the Department to leverage the recruitment efforts already undertaken by the Department.

While the Act does not define “appointing authority” for the purpose of shared certificates, its clear purpose is to expand current practice to allow an appointing authority to share his or her certificates with an appointing authority in *other* departments or agencies, not just within the same agency (*e.g.*, the Department of Treasury will now be able to share certificates with the Department of Energy). Consistent with this purpose, in this interim rule, OPM refers to the “original hiring agency” and the “receiving agency” with respect to shared certificates, rather than using the more generic term “appointing authority.”

Congress’s purpose in enacting the Act was to help facilitate faster hiring through the sharing of talent across the Government by permitting agencies to

share resumes and select from among candidates who have competed for similar positions at another hiring agency, were assessed, and were referred by that agency. The new process will benefit agencies who may make selections from among the top rated applicants readily available, as well as applicants who through one job application may now be considered for more public service opportunities in their desired Federal occupation.

The law specifies that an appointing official can select an applicant for appointment from the certificate of another agency provided that certain conditions are met.

- The hiring agency seeking to share the certificate may share the certificate with one or more hiring agencies only if the announcement of the original position stated that the resulting certificate may be used by one or more Federal agencies, and applicants “opt-in,” electing to have their applications shared with agencies other than the agency posting the job announcement.

- An agency seeking to use another agency’s certificate must provide advance notice of the available position to its own employees, give them up to 10 days to apply, and review their qualifications before it can make a selection from the certificate from the original hiring agency.

It is plain from the Act that only the original hiring agency may “share” a certificate with any other agency. But Congress did not define precisely what it means to “share” the certificate. One possible approach is that when the original hiring agency “shares” the certificate with other agencies they must simultaneously work the certificate in a coordinated fashion, accounting for declinations, failures to respond, selections, and so on as if they were integrated arms of the same employer. (This is how the process might work when a department shares a certificate among a number of its different components.) Another possible approach is that each of the other agencies may work the certificate independently, as if the certificates had been referred from the top of a register or inventory. Neither of these approaches is compelled by the text of the statute and as such OPM has determined that the most reasonable approach, and the one that best effectuates Congress’s apparent purpose,

is the latter of the two. A shared certificate of eligibles may be used by a receiving agency independently of other receiving agencies. Each receiving agency is responsible for establishing a unique instance of a case file to document that agency's use of the certificate. This will be helpful in the event a receiving agency must later reconstruct its hiring actions. Allowing multiple agencies to use certificates independently of one another also supports the timeliest and practical implementation of these provisions and minimizes the risk of error associated with multiple agencies simultaneously working the same certificate.

However, because of the added complexity of any "sharing" of certificates, the ability to track the distribution of certificates to receiving agencies must be a feature of these provisions. Thus, whenever the original agency shares a certificate, it must maintain a record of any agencies with whom the certificate was shared. This is important in the event any errors occur which require reconstruction of all hiring actions which flow from a certificate generated by the original agency. In this scenario, if an error occurs at the original agency, the original agency is responsible solely for notifying each succeeding receiving agency that received a shared certificate of the error. Any corrective actions or reconstructions subsequent to the original agency's would be the responsibility of each receiving agency that made a selection.

#### How It Will Work

The original hiring agency (*i.e.*, the agency sharing the certificate) must issue a certificate in accordance with competitive examining procedures for a position it is seeking to fill. This includes public notice, rating and ranking, the application of veterans' preference, etc. The 240-day window (during which other Federal agencies may use the certificate of eligibles to select an individual) begins on the date the certificate is issued by the original hiring agency. OPM notes that the Competitive Service Act includes this 240-day window in 5 U.S.C. 3318, related to rule-of-three hiring, but does not expressly repeat this requirement in 5 U.S.C. 3319, related to hiring through category rating. However, the legislative history expresses congressional intent to apply the 240-day limitation to both hiring methods. *See* H.R. Rep. No. 114-367 (Dec. 3, 2015); S. Rep. No. 114-143 (Sept. 15, 2015). Moreover, there is no logical reason to have different expiration periods for shared certificates depending on whether the original

hiring agency chooses to hire by the rule-of-three method or the category rating method, and having two different expiration periods for shared certificates could lead to confusion. For this reason we are applying the same 240-day expiration period to shared certificates under both hiring methods.

The original hiring agency can (1) make a selection and then share the certificate with one or more receiving agencies or (2) share the certificate with one or more receiving agencies after reviewing, and deciding not to hire from, its certificate of eligible applicants. OPM notes in this regard that when an agency announces a position, examines and rates applicants, and issues a certificate of eligibles, it must do so for its own hiring needs in the first instance. An agency may not generate a certificate solely for the purpose of sharing it with another agency. That would be misleading to applicants and contrary to competitive principles.

If the original hiring agency makes a selection and shares the certificate, any pass-overs of preference eligibles or objections to other eligible candidates must be resolved by that agency before the certificate may be shared with another agency. The 240-day window cannot be extended while the pass-over of a preference eligible or objection request is being resolved; the law does not permit extensions of shared certificates.

Once the above processes have been completed, the original hiring agency may share the certificate of eligibles with one or more Federal agencies. In order to share a certificate, the Delegated Examining Unit (DEU) of the original agency may transmit the certificate to a DEU of a receiving agency. The DEU of the original agency must audit the original agency's own use of the certificate in accordance with the procedures of the Delegated Examining Operations Handbook (DEOH) before the certificate is shared.

When sharing a certificate of eligibles, the original agency must include all documentation pertaining to the creation of that certificate (*e.g.*, the job analysis, a copy of job opportunity announcement, the rating schedule, job applications, etc.) and must safeguard (*i.e.*, redact) any personally identifiable information not required by the receiving agency to use the certificate for its intended purpose. The original agency shares the certificate of eligibles in its original form, with the names of those applicants who have been selected and those who have chosen not to "opt-in" redacted, in order to retain the

original ordering of the certificate subject to these appropriate deletions.

The original agency may share a certificate in one or both of two ways: (1) Simultaneous sharing with multiple agencies; and (2) serial sharing, *i.e.*, sharing with one agency at a time.

*Simultaneous Sharing.* The original agency may share the certificate with one or more agencies at the same time. Each receiving agency works the certificate independently. All selections from shared certificates must be made within 240 days of the date of the issuance of the certificate by the original agency. Each receiving agency creates its own case file for audit and reconstruction purposes, documenting its compliance with the DEOH and all applicable regulations.

*Serial Sharing.* Another option is for the original agency to share a certificate with just one agency at a time. Under this option, the original agency shares the certificate with the first receiving agency. The first receiving agency works the certificate and makes selections within 240 days of the date of issuance of the certificate by the original agency. After sharing the certificate with the first receiving agency, the original agency may share the certificate with a second receiving agency. The second receiving agency works the certificate and makes selections within 240 days of the date of issuance of the certificate by the original agency. Each receiving agency must create its own case file for audit and reconstruction purposes, documenting its compliance with the DEOH and all applicable regulations. This process may continue to additional receiving agencies as long as this procedure is followed and all selections are made within 240 days of the date of issuance of the certificate by the original agency.

As noted above, the processes are not exclusive, *i.e.*, an agency may start with simultaneous sharing and subsequently permit additional sharing through a serial sharing scenario.

In the event that the original agency determines that an error was made on the original certificate, the original agency must notify all receiving agencies of the details of the error; receiving agencies are responsible for taking appropriate action to address any erroneous actions that may have occurred due to the error by the original agency.

#### The Internal Application Process

Before using a shared certificate, a receiving agency must consider its own employees for the position under the agency's merit promotion procedures. This includes considering individuals

covered under the agency's Career Transition Assistance Program (CTAP) and the agency's reemployment priority list (RPL), where applicable, as well as other individuals for which consideration is required as part of the internal selection process. See 5 CFR part 330, subparts B and F.

The Competitive Service Act provides for notice to a receiving agency's own employees, an internal application period of no more than 10 days, and consideration of the internal applicants before a selection can be made from this shared certificate. The law does not permit an extension of this internal application period beyond 10 days.

The law also specifies that the internal application process is subject to applicable collective bargaining obligations (to the extent consistent with law). However, the Competitive Service Act does not affect the provision of the Federal Service Labor-Management Relations Statute under which management has the right to fill a position either from among properly ranked and certified candidates for promotion or from any other appropriate source, such as a competitive certificate. See 5 U.S.C. 7106(a)(2)(C); 5 CFR 330.102, 335.103(b)(4).

If a receiving agency makes a selection from among its own employees (*i.e.*, under merit promotion procedures) the process ends with respect to that agency. But if the agency wishes to make a selection from the shared certificate (after first considering its own employees), it must first provide selection priority, where applicable, to individuals eligible under the Interagency Career Transition Assistance Program (ICTAP) who applied to the original job announcement. See 5 CFR part 330, subpart G. The agency is not required to re-advertise the position for ICTAP eligibles because the original agency has already afforded an opportunity for ICTAP eligibles to apply and be considered. This allows the agency to use a ready-made certificate of eligibles while still adhering to the provisions of part 330, subpart G.

If there are no ICTAP eligibles, a receiving agency can make a selection from the shared certificate in accordance with veterans' preference rules and the provisions governing selections under competitive examining procedures. A receiving agency may not reassess the applicants for purposes of rating/ranking. A receiving agency may seek to pass over a preference eligible, and would follow the usual rules for doing so when filling positions under competitive examining procedures.

### Authorized Appointment Types

OPM is proposing to limit use of shared certificates to delegated examining for permanent and term appointments. We are excluding temporary appointments, *i.e.*, those not to exceed one year, from these provisions because of the requirement that a receiving agency must first consider individuals from within its own workforce prior to making a selection from a shared certificate. We believe it would be inefficient to undergo this process for appointments of a very short duration.

Positions may be full-time or other than full-time (*i.e.*, part-time, seasonal, on-call, and intermittent). As noted above, the original hiring agency must complete all of its actions on the certificate before it may be shared. As also was previously observed, the original hiring agency does not have to make a selection in order for the certificate to be shared. The original agency may share the certificate with one or more agencies.

### Requirement for Appointment at a "Similar Grade Level"

A receiving hiring agency may select an individual from a shared certificate only for a position of the same occupational series, grade level, and duty location as the position advertised by the original hiring agency. The Act states that the shared certificate may also be used to select for a "similar grade level" to that for which the original hiring agency issued its certificate. OPM interprets the term "similar grade level" in this context to mean a corresponding rate or level of pay under an alternative pay system for a position excluded from the General Schedule. We do not interpret the term "similar grade level" to mean a higher or lower General Schedule grade than that for which the original hiring agency issued its certificate. It would not be efficient for an agency to use a certificate for higher-graded positions to select for lower-graded positions, and it would violate competitive principles to use a certificate for lower-graded positions to select for higher-graded positions (as different applicants would have competed if they had been aware that the vacancy could be filled at a higher level than advertised). For the same reasons OPM is not permitting the use of shared certificates to fill vacancies for positions with higher full performance levels.

### Qualification Requirements

A receiving agency must verify through its job analysis that the

minimum qualification requirements (including use of any selective placement factors) and competencies—or knowledge, skills, and abilities (KSAs)—assessed for the original position are appropriate for the position to be filled. This verification is necessary to establish the job-relatedness and relevance of the assessment method used, consistent with 5 CFR part 300, subpart A.

### Time Limit for Applicant Selection

A receiving agency may make its selection from a shared certificate within the 240-day period beginning on the date the original hiring agency issued the certificate of eligibles (not on the date on which the original hiring agency provided the certificate to the receiving agency).

### Public Notice by the Original Hiring Agency

The original hiring agency must provide public notice via a job opportunity announcement posted on [www.USAJOB.S.gov](http://www.USAJOB.S.gov) for the position being filled, in accordance with public notice requirements for filling jobs under the competitive examining process. The original announcement must indicate that the resulting list of eligible candidates may be shared with one or more other hiring agencies. Therefore, we are amending 5 CFR part 330 to require that if an agency is sharing a certificate of eligibles under part 332, the original hiring agency must provide notice in the job opportunity announcement that the resulting list of eligible candidates may be used by one or more other hiring agencies. The original hiring agency must provide an opportunity for applicants to "opt-in" to have their applications and other personal information shared with one or more other hiring agencies under these provisions. This allows the applicant to furnish advance written consent for disclosure of the information under the Privacy Act. See 5 U.S.C. 552a(b).

The original hiring agency may not share a certificate containing the name and personal information of an applicant unless that applicant has chosen to "opt-in" for these purposes. If an applicant chooses not to "opt-in," his/her application materials will not be shared and the applicant will receive no further consideration when a certificate of eligibles is shared with one or more hiring agencies. His or her name will be redacted on the shared certificate.

### The Receiving Agency's Notice to Internal Applicants

Before making a selection from a shared certificate, a receiving agency

must notify its employees of the opportunity to apply and be considered before a selection can be made from the shared certificate and of a period of up to 10 days to apply consistent with the provisions of part 335. If the agency has RPL eligibles or CTAP eligibles, the notice must provide information about their priority.

#### **The Receiving Agency's Notice to Shared Certificate Applicants**

Before using a shared certificate, a receiving agency must notify the list of candidates of its receipt of their names and application materials and its intention of considering them for a position. A receiving agency must also inform these individuals of its obligation to consider applicants from within its own workforce who apply during the required internal application period and any other individuals the agency is required to consider (*e.g.*, individuals eligible for consideration under the CTAP or from the RPL). The notification must include the agency, position title, series, grade level (or equivalent), and duty location.

#### **The Receiving Agency's Selection Process**

Before using a shared certificate, a receiving agency must consider its own employees for the position that the original hiring agency advertised. The receiving agency must consider individuals covered under the agency's RPL or CTAP where applicable. At this point, a receiving agency either makes a selection from among its own employees under merit promotion procedures, or it may consider applicants from the certificate of eligibles shared by the original hiring agency.

If, after considering its own employees, a receiving agency wishes to make a selection from the shared certificate, it must first provide selection priority to any external applicants who applied to the original job announcement who are ICTAP eligible. If there are no ICTAP eligibles who met the well-qualified definition, a receiving agency can make a selection from the shared certificate in accordance with veterans' preference rules and the provisions governing selections under competitive examining procedures. Upon completion of the process, a receiving agency must audit the certificate.

#### **Objections/Pass Overs**

Objections to a non-preference eligible applicant and requests to pass over an individual entitled to veterans' preference must be adjudicated on a

case-by-case basis. Each case must be reviewed on its own merits. Therefore, adjudications by the original hiring agency (or the Office of Personnel Management in the case of a 30 percent or more disabled veteran) sustaining objections or granting requests to pass over do not extend to the receiving agency if a certificate is shared. A receiving agency may object to an applicant or request to pass over an individual entitled to veterans' preference on a shared certificate in accordance with the procedures outlined in the DEOH and the provisions of part 332.

Likewise, if using numerical rating, the consideration of an applicant by the original hiring agency does not count as a consideration of the applicant by a receiving agency for purposes of the three-consideration rule, 5 CFR 332.405. The three-consideration rule does not apply when using category rating.

#### **Documentation**

When sharing a certificate of eligibles, the original hiring agency must share all documentation pertaining to the creation of that certificate, including but not limited to the job analysis, testing and examination materials, the job opportunity announcement, and applications, as relevant. The original agency must safeguard any personally identifiable information not needed for effective use of the certificate by the receiving agency.

The original hiring agency and any receiving agency using a shared certificate must each maintain case file documentation for that agency's selection or selections sufficient for each agency that used the certificate to make a selection to reconstruct its own hiring actions later, if necessary. Each time a certificate is shared, each receiving agency is responsible for creating a new instance of a case file to document its use.

In the event that the original agency determines that an error was made on the original certificate, the original agency must notify all receiving agencies of the details of the error. The original hiring agency must make available, to any receiving agency that needs it, all relevant case file documents concerning the selection or selections made by the original agency, as necessary, to make full reconstruction possible. Each receiving agency would be responsible for taking appropriate action to address any erroneous actions that it took due to the error by the original agency.

Each agency is responsible for the proper selection, audit, recordkeeping, etc., of delegated examining activities.

All actions taken on competitive certificates must be documented in accordance with the DEOH and all applicable regulations.

#### **Request for Comments**

OPM welcomes recommendations on rule changes to improve the administration of the Competitive Service Act of 2015 and on implementation guidance.

#### **Technical Amendment**

OPM is also amending § 337.304 to reflect the Act's renumbering of 5 U.S.C. 3319.

#### **Waiver of Notice of Proposed Rulemaking**

Section 2(d) of Public Law 114–137, the Competitive Service Act of 2015, directs the rulemaking procedure to be followed for this rule. It states that “the Director of the Office of Personnel Management shall issue an interim final rule with comment to carry out the amendments made by this section.” Therefore the general notice of proposed rulemaking typically required for rulemaking under 5 U.S.C. 553(b) is statutorily waived for this rule.

#### **E.O. 13563 and E.O. 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

#### **Regulatory Flexibility Act**

I certify that this regulation would not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

#### **E.O. 13132, Federalism**

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

#### **E.O. 12988, Civil Justice Reform**

This regulation meets the applicable standard set forth in section 3(a) and (b)(2) of Executive Order 12988.

#### **Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local or tribal governments of more than \$100 million

annually. Thus, no written assessment of unfunded mandates is required.

### Congressional Review Act

This action pertains to agency management, personnel and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

### Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This final regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

### List of Subjects

#### 5 CFR Part 330

Armed forces reserves, District of Columbia, Government employees.

#### 5 CFR Part 332

Government employees.

#### 5 CFR Part 337

Government employees.

U.S. Office of Personnel Management.

**Beth F. Cobert,**

*Acting Director.*

Accordingly, OPM is amending parts 330, 332, and 337 of title 5, Code of Federal Regulations, as follows:

### PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

- 1. The authority citation for part 330 is revised to read as follows:

**Authority:** 5 U.S.C. 1104, 1302, 3301, 3302, 3304, and 3330; E.O. 10577, 3 CFR, 1954–58 Comp., p. 218; Section 330.103 also issued under 5 U.S.C. 3327; Section 330.104 also issued under sec. 2(d), Pub. L. 114–137, 130 Stat. 310; Subpart B also issued under 5 U.S.C. 3315 and 8151; Section 330.401 also issued under 5 U.S.C. 3310; Subparts F and G also issued under Presidential Memorandum on Career Transition Assistance for Federal Employees, September 12, 1995; Subpart G also issued under 5 U.S.C. 8337(h) and 8456(b).

- 2. Add § 330.104(c) to read as follows:

#### § 330.104 Requirements for vacancy announcements.

\* \* \* \* \*

(c) If an agency is sharing a certificate of eligibles under part 332 of this chapter, the original hiring agency must provide notice in the job opportunity

announcement that the resulting list of eligible candidates may be used by one or more hiring agencies, and of how the applicant may opt-in to the disclosure of his or her applicant records to other hiring agencies.

### PART 332—RECRUITMENT AND SELECTION THROUGH COMPETITIVE EXAMINATION

- 3. The authority citation for part 332 is revised to read as follows:

**Authority:** 5 U.S.C. 1103, 1104, 1302, 2108, 3301, 3302, 3304, 3312, 3317, 3318, 3319; sec. 2(d), Pub. L. 114–137, 130 Stat. 310; E.O. 10577, 19 FR 7521, 3 CFR, 1954–1958 Comp., p. 218.

- 4. Add § 332.408 to read as follows:

#### § 332.408 Shared use of a competitive certificate.

(a) *General authority.* (1) A hiring agency may share a competitive service certificate issued under its delegated examining authority with one or more hiring agencies for a position(s) to be filled on a permanent or term basis. Positions filled on a term basis are subject to the provisions of 5 CFR part 316, subpart C. Positions may be full-time or other than full-time (*i.e.*, part-time, seasonal, on-call, and intermittent).

(2) Another Federal agency may make a selection from a certificate shared with it under paragraph (b) of this section only after it has considered individuals it is required to consider when filling positions from within its own workforce and other internal applicants under paragraph (c) of this section.

(3) All actions taken on a shared certificate must be made within the 240-day period beginning on the date the original hiring agency issued the certificate of eligibles. This period cannot be extended.

(4) The original hiring agency and any receiving agency using a shared certificate must each maintain case file documentation sufficient for each agency to reconstruct its own use of the certificate in accordance with the *Delegated Examining Operations Handbook*, and must safeguard testing and examination materials, examination results, and the names of applicants from disclosure to other persons in accordance with § 300.201 of this chapter.

(5) All actions taken on competitive certificates must be done in accordance with the *Delegated Examining Operations Handbook* and all applicable regulations in this part and part 337 of this chapter.

(6) Agencies sharing certificates must keep records of the instances of sharing

certificates and/or using shared certificates.

(b) *Requirements for the original hiring agency.* (1) A hiring agency may share a competitive certificate it has issued under § 332.402 (for traditional rating and ranking) or under 5 CFR 337.303 (for category rating) with one or more hiring agencies for use in filling a position(s) if:

(i) The original hiring agency intends to use the certificate for its own hiring;

(ii) The original hiring agency has provided notice within the job opportunity announcement for the original vacancy that the resulting list of eligible candidates may be used by one or more hiring agencies;

(iii) The original hiring agency has provided an opportunity for applicants to opt-in to have their applications and other personal information shared with one or more hiring agencies;

(iv) The original hiring agency's objections to eligibles or requests to pass over preference eligibles on the certificate under § 332.406 or § 337.304 of this chapter have been resolved by that agency's Delegated Examining Unit;

(v) The original hiring agency has either made a selection from the certificate or has made no selection from the certificate, and has documented its reason for non-selection; and

(vi) The Delegated Examining Unit of the original hiring agency has closed and audited the certificate in accordance with the procedures in the *Delegated Examining Operations Handbook*.

(2) When sharing a certificate of eligibles, the original hiring agency must share all documentation pertaining to the creation of that certificate, including but not limited to the job analysis, testing and examination materials, the job opportunity announcement, and applications, as relevant, and must safeguard any personally identifiable information not needed for effective use of the certificate by the receiving agency. The original hiring agency must share the certificate of eligibles in its original form in order to retain the original ordering of the certificate; must safeguard any personally identifiable information from unauthorized access during the transmission process; and must redact the names of applicants who did not opt-in to the shared certificate, and who therefore may not be considered by the receiving agency.

(3) The original hiring agency may share a certificate of eligibles with one or more agencies.

(4) If the original hiring agency determines that it has made an error that may affect selections by a receiving

agency or agencies, it must notify each affected receiving agency.

(c) *Requirements for the receiving agency*—(1) *Vacancies that may be filled*. A receiving agency may use a shared certificate to fill a vacancy in the same occupational series, at the same grade level (or a corresponding rate or level of pay for a position excluded from the General Schedule), with the same full performance level, and in the same duty location as was listed on the original hiring agency's certificate. If the original hiring agency's certificate is for an interdisciplinary position as described in the *Delegated Examining Operations Handbook*, the receiving agency may use it to fill an interdisciplinary position. The receiving agency must verify through its job analysis that the minimum qualification requirements (including use of any selective placement factors) and the competencies, or knowledge, skills, and abilities, that were used for the original position are appropriate for the position to be filled.

(2) *Notification to individuals who applied to the original vacancy*. Before using a shared certificate, a receiving agency must notify the list of candidates of its receipt of their names and application materials and its intention of considering them for a position. The receiving agency must also inform these individuals of its requirement to consider its own employees as well as other individuals the agency is required to consider before consideration of anyone on the shared certificate. At a minimum, the notification must include the agency, position title, series, grade level or equivalent, and duty location.

(3) *Consideration of internal candidates*. Before making a selection from a shared certificate, a receiving agency must provide notice of its intent to fill the available position(s) to its own employees and other individuals the agency is required to consider, to provide these internal candidates the opportunity to apply consistent with the provisions of part 335 of this chapter, and to review the qualifications of the internal candidates.

(i) This notice and opportunity for internal candidates to apply is subject to applicable collective bargaining obligations (to the extent consistent with law). Nothing in this paragraph affects agencies' right to fill a position from any appropriate source under §§ 330.102 and 335.103 of this chapter.

(ii) Agencies are prohibited from providing an application period any longer than 10 days for internal candidates. This time limit cannot be waived or extended.

(iii) Before considering other candidates, a receiving agency must first provide for the consideration for selection required for individuals covered under its Career Transition Assistance Program and its Reemployment Priority List under part 330, subparts B and F, of this chapter.

(4) *Selection from the shared certificate*. After considering internal candidates, a receiving agency may consider candidates referred on the shared certificate.

(i) The receiving agency must consider candidates on a shared certificate independently of the actions of any other agency with which the certificate is simultaneously shared under paragraph (b)(3) of this section.

(ii) The receiving agency may not reassess the applicants for purposes of rating/ranking.

(iii) The receiving agency must provide selection priority to individuals eligible under the Interagency Career Transition Assistance Program under part 330, subpart G, of this chapter who applied to the original job announcement.

(5) *Time limit on selection from a shared certificate*. The receiving agency has 240 days from the date the certificate was issued (in the original hiring agency) to select individuals from the shared certificate.

(6) *Limit on further sharing by the receiving agency*. The receiving agency may not share or distribute the shared certificate to another Federal agency.

## PART 337—EXAMINING SYSTEM

■ 5. The authority citation for part 337 is revised to read as follows:

**Authority:** 5 U.S.C. 1104(a)(2), 1302, 2302, 3301, 3302, 3304, 3319, 5364; 116 Stat. 2290, sec. 1413, Pub. L. 108–136, 117 Stat. 1392, as amended by sec. 853 of Pub. L. 110–181, 122 Stat. 3; sec. 2(d), Pub. L. 114–137, 130 Stat. 310; E.O. 10577, 19 FR 7521, 3 CFR, 1954–1958 Comp., p. 218.

■ 6. Revise § 337.304 to read as follows:

### § 337.304 Veterans' preference.

In this subpart:

(a) Veterans' preference must be applied as prescribed in 5 U.S.C. 3319(b) and (c)(7);

(b) Veterans' preference points as prescribed in § 337.101 are not applied in category rating; and

(c) Sections 3319(b) and 3319(c)(7) of title 5 U.S.C. constitute veterans' preference requirements for purposes of 5 U.S.C. 2302(b)(11)(A) and (B).

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 339

RIN 3206–AL14

### Medical Qualification Determinations

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is issuing a final rule to revise its regulations for medical qualification determinations. The revised regulations update references and language; add and modify definitions; clarify coverage and applicability; address the need for medical documentation and medical examination and/or testing for an applicant or employee whose position may or may not have medical standards and/or physical requirements; and recommend the establishment of agency medical review boards. The final rule provides agencies guidance regarding medical evaluation procedures.

**DATES:** This rule is effective *February 17, 2017*.

**FOR FURTHER INFORMATION CONTACT:** Monica Butler, by telephone at (202) 606–4209; by email at [employ@opm.gov](mailto:employ@opm.gov); by fax at (202) 606–0864; or by TTY at (202) 418–3134.

**SUPPLEMENTARY INFORMATION:** On December 27, 2007, OPM issued a proposed rule at 72 FR 73282 to revise regulations on medical qualification determinations. The public comment period on the proposed rule ended February 25, 2008. OPM received written comments from four agencies, a union, and an individual pertinent to the proposed rule. A discussion of the comments is provided under the respective subpart below.

The final rule also replaces the verb “shall” with “must” for added clarity and readability. Any provisions in this part using the verb “must” have the same meaning and effect as previous provisions in this part using “shall.” The final rule also adds four authority citations to clarify the scope of applicability: (1) 5 U.S.C. 3312 Preference eligibles; physical qualifications; waiver; (2) 5 U.S.C. 3318 Competitive service; selection from certificates; (3) 5 U.S.C. 3320 Excepted service; government of the District of Columbia; selection; and (4) 5 U.S.C. 3504 Preference eligibles; retention; physical qualifications; waiver.