

**§ 330.209**

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position; and

(3) Meets any special qualifying condition that OPM has approved for the position.

(4) Meets any other applicable requirement for appointment to the competitive service.

(b) An agency may make an exception to the qualification standard and adopt an alternative standard under the following conditions (this provision does not authorize waiver of the selection order required by § 330.207):

(1) The exception is applied consistently and equitably in filling a position;

(2) The individual meets any minimum educational requirement for the position; and

(3) The agency determines that the individual has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

(c) The sex of an individual may not be considered in determining qualifications for a position, except positions for which OPM has determined certification of eligibles by sex is justified.

[53 FR 45067, Nov. 8, 1988, as amended at 60 FR 3061, Jan. 13, 1995]

**§ 330.209 Appeals.**

An individual who believes that his or her reemployment priority rights under this subpart have been violated because of the employment of another person who otherwise could not have been appointed properly may appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

**Subpart C [Reserved]**

**Subpart D—Positions Restricted to Preference Eligibles**

SOURCE: 65 FR 52642, Aug. 30, 2000, unless otherwise noted.

**§ 330.401 Competitive examination.**

In each entrance examination for the positions of custodian, elevator operator, guard, and messenger (referred to

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in this subpart as *restricted positions*), OPM shall restrict competition to preference eligibles as long as preference eligibles are available.

**§ 330.402 Direct recruitment.**

In direct recruitment by an agency under delegated authority, the agency shall fill each restricted position by the appointment of a preference eligible as long as preference eligibles are available.

**§ 330.403 Noncompetitive actions.**

An agency may fill a restricted position by the appointment by noncompetitive action of a nonpreference eligible only when authorized by OPM.

**§ 330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.**

An individual agency and OPM both have additional responsibilities when the agency decides, in accordance with the Office of Management and Budget (OMB) Circular A-76, to contract out the work of a preference eligible who holds a restricted position. These additional responsibilities are applicable if a preference eligible holds a competitive service position that is:

(a) A restricted position as designated in 5 U.S.C. 3310 and § 330.401; and

(b) In retention tenure group tenure I or II, as defined in § 351.501(b) (1) and (2) of this chapter.

**§ 330.405 Agency placement assistance.**

An agency that separates a preference eligible from a restricted position by reduction in force under part 351 of this chapter because of a contracting out situation covered in § 330.404 must, consistent with § 330.602, advise the employee of the opportunity to participate in available career transition programs. The agency is also responsible for:

(a) Applying OMB's policy directives on the preference eligibles' right of first refusal for positions that are contracted out to the private sector; and

(b) Cooperating with State units as designated or created under title I of the Workforce Investment Act of 1998,