

nondiscretionary provision and is unable to give advance notice to the employee, it must provide the notice as soon as possible after the promotion is made.

(2) This paragraph applies to a career, career-conditional, status quo, indefinite, or term employee and to an employee serving under an overseas limited appointment of indefinite duration, or an overseas limited term appointment.

[33 FR 12428, Sept. 4, 1968, as amended at 35 FR 13075, Aug. 18, 1970; 45 FR 24855, Apr. 11, 1980; 57 FR 10124, Mar. 24, 1992; 58 FR 59347, Nov. 9, 1993]

**§ 335.103 Agency promotion programs.**

(a) *Merit promotion plans.* Except as otherwise specifically authorized by OPM, an agency may make promotions under § 335.102 of this part only to positions for which the agency has adopted and is administering a program designed to insure a systematic means of selection for promotion according to merit. These programs shall conform to the requirements of this section.

(b) *Merit promotion requirements.* (1) *Requirement 1.* Each agency must establish procedures for promoting employees which are based on merit and are available in writing to candidates. Agencies must list appropriate exceptions, including those required by law or regulation, as specified in paragraph (c) of this section. Actions under a promotion plan—whether identification, qualification, evaluation, or selection of candidates—shall be made without regard to political, religious, or labor organization affiliation or nonaffiliation, marital status, race, color, sex, national origin, nondisqualifying physical handicap, or age, and shall be based solely on job-related criteria.

(2) *Requirement 2.* Areas of consideration must be sufficiently broad to ensure the availability of high quality candidates, taking into account the nature and level of the positions covered. Agencies must also ensure that employees within the area of consideration who are absent for legitimate reason, e.g., on detail, on leave, at training courses, in the military service, or serving in public international organizations or on Intergovernmental

Personnel Act assignments, receive appropriate consideration for promotion.

(3) *Requirement 3.* To be eligible for promotion or placement, candidates must meet the minimum qualification standards prescribed by the Office of Personnel Management (OPM). Methods of evaluation for promotion and placement, and selection for training which leads to promotion, must be consistent with instructions in part 300, subpart A, of this chapter. Due weight shall be given to performance appraisals and incentive awards.

(4) *Requirement 4.* Selection procedures will provide for management's right to select or not select from among a group of best qualified candidates. They will also provide for management's right to select from other appropriate sources, such as re-employment priority lists, reinstatement, transfer, handicapped, or Veteran Readjustment Act eligibles or those within reach on an appropriate OPM certificate. In deciding which source or sources to use, agencies have an obligation to determine which is most likely to best meet the agency mission objectives, contribute fresh ideas and new viewpoints, and meet the agency's affirmative action goals.

(5) *Requirement 5.* Administration of the promotion system will include recordkeeping and the provision of necessary information to employees and the public, ensuring that individuals' rights to privacy are protected. Each agency must maintain a temporary record of each promotion sufficient to allow reconstruction of the promotion action, including documentation on how candidates were rated and ranked. These records may be destroyed after 2 years or after the program has been formally evaluated by OPM (whichever comes first) if the time limit for grievance has lapsed before the anniversary date.

(c) *Covered personnel actions*—(1) *Competitive actions.* Except as provided in paragraphs (c)(2) and (3) of this section, competitive procedures in agency promotion plans apply to all promotions under § 335.102 of this part and to the following actions:

(i) Time-limited promotions under § 335.102(f) of this part for more than 120 days to higher graded positions (prior

service during the preceding 12 months under noncompetitive time-limited promotions and noncompetitive details to higher graded positions counts toward the 120-day total). A temporary promotion may be made permanent without further competition provided the temporary promotion was originally made under competitive procedures and the fact that might lead to a permanent promotion was made known to all potential candidates;

(ii) Details for more than 120 days to a higher grade position or to a position with higher promotion potential (prior service during the preceding 12 months under noncompetitive details to higher graded positions and noncompetitive time-limited promotions counts toward the 120-day total);

(iii) Selection for training which is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for a promotion as specified in § 410.302 of this chapter;

(iv) Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in the competitive service (except as permitted by reduction-in-force regulations);

(v) Transfer to a position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service; and

(vi) Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service.

(2) *Noncompetitive actions.* Competitive procedures do not apply to:

(i) A promotion resulting from the upgrading of a position without significant change in the duties and responsibilities due to issuance of a new classification standard or the correction of an initial classification error; and

(ii) A position change permitted by reduction-in-force procedures in part 351 of this chapter.

(3) *Discretionary actions.* Agencies may at their discretion except the following actions from competitive procedures of this section:

(i) A promotion without current competition of an employee who was ap-

pointed in the competitive from a civil service register, by direct hire, by noncompetitive appointment or noncompetitive conversion, or under competitive promotion procedures for an assignment intended to prepare the employee for the position being filled (the intent must be made a matter of record and career ladders must be documented in the promotion plan);

(ii) A promotion resulting from an employee's position being classified at a higher grade because of additional duties and responsibilities;

(iii) A temporary promotion, or detail to a higher grade position or a position with known promotion potential, of 120 days or less;

(iv) Promotion to a grade previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement approved under § 6.7 of this chapter) from which an employee was separated or demoted for other than performance or conduct reasons;

(v) Promotion, reassignment, demotion, transfer, reinstatement, or detail to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement approved under § 6.7 of this chapter) and did not lose because of performance or conduct reasons; and

(vi) Consideration of a candidate not given proper consideration in a competitive promotion action.

(vii) Appointments of career SES appointees with competitive service reinstatement eligibility to any position for which they qualify in the competitive service at any grade or salary level, including Senior-Level positions established under 5 CFR Part 319—Employment in Senior-Level and Scientific and Professional positions.

(d) *Grievances.* Employees have the right to file a complaint relating to a promotion action. Such complaints shall be resolved under appropriate grievance procedures. The standards for adjudicating complaints are set forth in part 300, subpart A, of this chapter. While the procedures used by

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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 § 330.102 of this chapter.

[61 FR 11501, Mar. 21, 1996]

EFFECTIVE DATE NOTE: At 66 FR 63906, Dec. 11, 2001, § 335.105 was revised, effective Jan. 10, 2002. For the convenience of the user, the revised text is set forth as follows:

### **§ 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.

### **§ 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 ac-

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tive 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. CITA≤[65 FR 14432, Mar. 17, 2000]

## PART 337—EXAMINING SYSTEM

### Subpart A—General Provisions

Sec.

337.101 Rating applicants.

337.102 Evaluating qualifications for employees who are in a retained grade.

### 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,