

**§ 337.205**

**5 CFR Ch. I (1–1–06 Edition)**

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 of Public Law 108–136, 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]

**§ 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 grade of positions advertised under the direct-hire authority, the number of qualified applicants, the specific qualification criteria, and the number of applicants appointed under the authority.

(d) No new appointments may be made under the provisions of section

1413 of Public Law 108-136 after September 30, 2007; and

(e) Those departments and agencies, excluding the Department of Defense, that use the direct-hire authority provided in § 337.204(c) must submit to OPM a report on their implementation of section 1413 of Public Law 108-136 no later than December 31, 2006. The report must include:

(1) A description of how the agency's implementation satisfied each of the elements laid out in §§ 337.203 and 337.204(b)(1)–(8), as applicable;

(2) An assessment of the effectiveness of the authority in attracting employees with unusually high qualifications to the acquisition workforce; and

(3) Any recommendations on whether the authority should be extended.

[69 FR 33275, June 15, 2004, as amended at 70 FR 44847, Aug. 4, 2005]

### Subpart C—Alternative Rating and Selection Procedures

SOURCE: 69 FR 33276, June 15, 2004, unless otherwise noted.

#### § 337.301 Coverage and purpose.

This subpart implements the category rating and selection procedures at 5 U.S.C. 3319. This law authorizes agencies with delegated examining authority under 5 U.S.C. 1104(a)(2) to develop a category rating method as an alternative process to assess applicants for jobs filled through competitive examining.

#### § 337.302 Definitions.

In this subpart:

(a) *Category rating* is synonymous with alternative rating as described at 5 U.S.C. 3319, and is a process of evaluating qualified eligibles by quality categories rather than by assigning individual numeric scores. The agency assesses candidates against job-related criteria and then places them into two or more pre-defined categories.

(b) *Quality categories* are groupings of individuals with similar levels of job-related competencies or similar levels of knowledge, skills, and abilities.

#### § 337.303 Agency responsibilities.

To use a category rating procedure, agencies must:

(a) Establish a system for evaluating applicants that provides for two or more quality categories;

(b) Define each quality category through job analysis conducted in accordance with the “*Uniform Guidelines on Employee Selection Procedures*” at 29 CFR part 1607 and part 300 of this chapter. Each category must have a clear definition that distinguishes it from other categories;

(c) Describe each quality category in the job announcement and apply the provisions of part 330, subparts B, F, and G of this chapter;

(d) Place applicants into categories based upon their job-related competencies or their knowledge, skills, and abilities; and

(e) Establish documentation and record keeping procedures for reconstruction purposes.

#### § 337.304 Veterans' preference.

In this subpart:

(a) Veterans' preference must be applied as prescribed in 5 U.S.C. 3319(b) and (c)(2); and

(b) Veterans' preference points as prescribed in section 337.101 of this part are not applied in category rating.

#### § 337.305 Reporting requirements.

Any agency that uses category rating must forward to OPM a copy of the annual report that it must submit to Congress pursuant to 5 U.S.C. 3319(d). Agencies must send their annual reports to the Speaker of the House and the President of the Senate. The report must include the following information:

(a) The number of employees hired under the system;

(b) The impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islanders; and

(c) The way managers were trained in the administration of category rating.