

The word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1).

The words “in the competitive service, an Executive agency, or the government of the District of Columbia” are substituted for “in the civil service, Federal, or District of Columbia, or in any establishment, agency, bureau, administration, project, or department, temporary or permanent” on authority of former section 869.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 3317. Competitive service; certification from registers

(a) The Office of Personnel Management shall certify enough names from the top of the appropriate register to permit a nominating or appointing authority who has requested a certificate of eligibles to consider at least three names for appointment to each vacancy in the competitive service.

(b) When an appointing authority, for reasons considered sufficient by the Office, has three times considered and passed over a preference eligible who was certified from a register, certification of the preference eligible for appointment may be discontinued. However, the preference eligible is entitled to advance notice of discontinuance of certification.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 421; Pub. L. 95-454, title IX, §906(a)(3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-54, §2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382.)

REPEAL AND REENACTMENT OF SECTION

Pub. L. 115-232, div. A, title XI, §1107(a), (d), Aug. 13, 2018, 132 Stat. 2002, 2005, provided that, effective on the date on which the Director of the Office of Personnel Management issues final regulations for implementation, with such regulations due not later than one year after Aug. 13, 2018, this section is repealed and a new section 3317 is enacted to read as follows:

§ 3317. Competitive service; certification using numerical ratings

(a) CERTIFICATION.—

(1) **IN GENERAL.—**The Director of the Office of Personnel Management, or the head of an agency to which the Director has delegated examining authority under section 1104(a)(2), shall certify a sufficient number of names from the top of the appropriate register or list of eligibles, as determined pursuant to regulations prescribed under subsection (c), and provide a certificate with such names to an appointing authority that has requested a certificate of eligibles to consider when filling a job in the competitive service.

(2) **MINIMUM NUMBER OF NAMES CERTIFIED.—**Unless otherwise provided for in regulations prescribed under subsection (c), the number of names certified under paragraph (1) shall be not less than three.

(b) **DISCONTINUANCE OF CERTIFICATION.—**When an appointing authority, for reasons considered sufficient by the Director or head of an agency, has three times considered and passed over a preference eligible who was certified from a register, the Director or head of any agency may

discontinue certifying the preference eligible for appointment. The Director or the head of an agency shall provide to such preference eligible notice of the intent to discontinue certifying such preference eligible prior to the discontinuance of certification.

(c) **REGULATIONS.—**The Director shall prescribe regulations for the administration of this section. Such regulations shall include the establishment of mechanisms for identifying the eligibles who will be considered for each vacancy. Such mechanisms may include cut-off scores.

(d) **DEFINITION.—**In this section, the term “Director” means the Director of the Office of Personnel Management.

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 857 (1st sentence and 2d proviso).	June 27, 1944, ch. 287, §8 (1st sentence and 2d proviso), 58 Stat. 389.

In subsection (a), the word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1). The words “in the competitive service” have been added for clarity. Application of the section to the excepted service in the executive branch and to the government of the District of Columbia, as provided in former section 858, is carried into section 3320.

In subsection (b), the word “thereafter” is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Editorial Notes

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-54, §2(a)(14), substituted “Office of Personnel Management” for “Civil Service Commission”.

Subsec. (b). Pub. L. 96-54, §2(a)(15), amended subsec. (b) in same manner as amendment by Pub. L. 95-454. See 1978 Amendment note set out below.

1978—Subsec. (b). Pub. L. 95-454 which purported to amend section 3317b of this title by substituting “Office” for “Commission” was executed to subsec. (b) of this section as the probable intent of Congress.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115-232, div. A, title XI, §1107(d), Aug. 13, 2018, 132 Stat. 2005, provided that:

“(1) **IN GENERAL.—**The amendments made by this section [enacting this section and section 3318 of this title, amending sections 3319 and 3320 of this title, and repealing this section and section 3318 of this title] shall take effect on the date on which the Director of the Office of Personnel Management issues final regulations to implement sections 3317, 3318, and 3319 of title 5, United States Code, as amended or added by this section.

“(2) **REGULATIONS REQUIRED.—**The Director shall issue regulations under paragraph (1) not later than one year after the date of enactment of this section [Aug. 13, 2018].”

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 3318. Competitive service; selection from certificates

(a) The nominating or appointing authority shall select for appointment to each vacancy from the highest three eligibles available for appointment on the certificate furnished under section 3317(a) of this title, unless objection to one or more of the individuals certified is made to, and sustained by, the Office of Personnel Management for proper and adequate reason under regulations prescribed by the Office.

(b) OTHER APPOINTING AUTHORITIES.—

(1) IN GENERAL.—During the 240-day period beginning on the date of issuance of a certificate of eligibles under section 3317(a), an appointing authority other than the appointing authority requesting the certificate (in this subsection referred to as the “other appointing authority”) may select an individual from that certificate in accordance with this subsection for an appointment to a position that is—

(A) in the same occupational series as the position for which the certification of eligibles was issued (in this subsection referred to as the “original position”); and

(B) at a similar grade level as the original position.

(2) APPLICABILITY.—An appointing authority requesting a certificate of eligibles may share the certificate with another appointing authority only if the announcement of the original position provided notice that the resulting list of eligible candidates may be used by another appointing authority.

(3) REQUIREMENTS.—The selection of an individual under paragraph (1)—

(A) shall be made in accordance with subsection (a); and

(B) subject to paragraph (4), may be made without any additional posting under section 3327.

(4) INTERNAL NOTICE.—Before selecting an individual under paragraph (1), and subject to the requirements of any collective bargaining obligation of the other appointing authority, the other appointing authority shall—

(A) provide notice of the available position to employees of the other appointing authority;

(B) provide up to 10 business days for employees of the other appointing authority to apply for the position; and

(C) review the qualifications of employees submitting an application.

(5) COLLECTIVE BARGAINING OBLIGATIONS.—Nothing in this subsection limits any collective bargaining obligation of an agency under chapter 71.

(c)(1) If an appointing authority proposes to pass over a preference eligible on a certificate in order to select an individual who is not a preference eligible, such authority shall file written reasons with the Office for passing over the pref-

erence eligible. The Office shall make the reasons presented by the appointing authority part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority in support of the passing over of the preference eligible. The Office shall determine the sufficiency or insufficiency of the reasons submitted by the appointing authority, taking into account any response received from the preference eligible under paragraph (2) of this subsection. When the Office has completed its review of the proposed passover, it shall send its findings to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings of the Office.

(2) In the case of a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more, the appointing authority shall at the same time it notifies the Office under paragraph (1) of this subsection, notify the preference eligible of the proposed passover, of the reasons therefor, and of his right to respond to such reasons to the Office within 15 days of the date of such notification. The Office shall, before completing its review under paragraph (1) of this subsection, require a demonstration by the appointing authority that the passover notification was timely sent to the preference eligible's last known address.

(3) A preference eligible not described in paragraph (2) of this subsection, or his representative, shall be entitled, on request, to a copy of—

(A) the reasons submitted by the appointing authority in support of the proposed passover, and

(B) the findings of the Office.

(4) In the case of a preference eligible described in paragraph (2) of this subsection, the functions of the Office under this subsection may not be delegated.

(d) When three or more names of preference eligibles are on a reemployment list appropriate for the position to be filled, a nominating or appointing authority may appoint from a register of eligibles established after examination only an individual who qualifies as a preference eligible under section 2108(3)(C)-(G) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 421; Pub. L. 90-83, §1(8), Sept. 11, 1967, 81 Stat. 197; Pub. L. 95-454, title III, §307(d), title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1148, 1224; Pub. L. 114-137, §2(a), Mar. 18, 2016, 130 Stat. 310.)

REPEAL AND REENACTMENT OF SECTION

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§3318. Competitive service; selections using numerical ratings

(a) IN GENERAL.—An appointing authority shall select for appointment from the eligibles certified for appointment on a certificate furnished under section 3317(a), unless objection to