

Title V Federal Regulations

Introduction

Abridged

(Draft)

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Part I: The Agencies

Organization

Executive Agencies & Departments

State Dept, Treasury, Defense, Justice, Interior, Agriculture, Commerce, Labor, HHS, HUD, Transportation, Energy, Education, VA, Homeland Security

Military Departments

Army, Navy (Marines), Air Force

Government corporations vs. Independent Establishments

- 'Government Corporations' are owned or controlled by the U.S., but which operate as independent business entities (NPR, USPS, Freddie Mac, etc.)
- 'Government Sponsored Corporations' represent corporations, which are not owned but rather sponsored or subsidized by the U.S. Government (i.e. Sallie Mae Student loan company).
- 'Government Establishments' other than Government Corporations, which operate independently of the government (i.e. Government Accountability Office).

Federal Agency Powers

Departmental Regulations (5 U.S. Code § 301)

The Head of an Executive or Military department may promulgate rules and regulations governing the function of the agency and policies for employees. However, this section does not provide authority to prevent the public from accessing records retained by the agency.

Delegation of Authority & Powers to Authorize Behavior (5 U.S. Code § 302)

The Agency is provided with the authority to confer authority upon subordinate employees, make final employment decisions within the boundaries of the law, determine how to best administer the agency, and authorize the promulgation of proposals, notices, and other public announcements.

Oaths to Witnesses (5 U.S. Code § 303)

The Agency may designate Executive department employees to investigate misconduct or fraud and administer oaths in order to collect witness depositions or testimony.

Department of Defense Employees may also be authorized to conduct such investigations and administer oaths.

Subpoena (5 U.S. Code § 304)

The Agency or Military Department Head may request that a Judge or Clerk issue a subpoena and request a court appearance for cross-examination for witnesses involved with a claim against the U.S. The witness's refusal to cooperate with a subpoena shall be subject to the same disciplinary actions as their local court.

Systematic Review of Agency Plans (5 U.S. Code § 305)

The Agencies are responsible for (1) systematically reviewing their efficiency, (2) identify high performing units, and (3) identify high performing staff. However, 5 U.S. Code § 305 does not apply to the following: CIA, NSA, DoD, Atomic Energy Commission, Panama Canal Commission, Virgin Islands Corporation, Tennessee Valley Authority, or Government controlled corporations.

Strategic Planning

The Agencies must publish a publicly available Strategic Plan no later than the first Monday in February of any year in which the President has begun a new term. This must include:

- Mission Statement
- General Objectives
- How these objectives contribute to the Federal Government's priority goals as outlined in 31 U.S. Code § 1120
- Federal Priority Goals (31 U.S. Code § 1120, Section A | Subsection B)
 - Financial Management
 - Human Capital Management
 - Information Technology Management
 - Procurement and Acquisition Management
 - Real Property Management
 - To be updated every 4-years or within 1-year of a new Presidential term.
 - Agency Priority Goals (31 U.S. Code § 1120, Section B) (Continued below)

The Strategic Plan's Agency Priority Goals

- Must reflect the highest priorities of the agency as determined by the head of the agency and informed by the Federal Government Goals.
- Ambitious targets that may be achieved within 2-years.
- Clearly identified agency official (ie. "Goal Leader") who is responsible for each of the agency's priority goals.
- Have interim quarterly targets for performance if this could be of significant value to the Government, Congress, or a program partner.

- Have clearly defined quarterly milestones.

Note: (2) Classified priority goals shall be made available in the classified appendix as detailed by section 1115 (e)

Note: (2 c) The Federal Government and Agency priority goals shall be performed only by Federal Employees.

The Analysis of Regulatory Function (5 USC § 601)

Selected Terms:

Small Business: Section 3 of the Small Business Act governs the classification of small businesses. However, Agencies may consult with the Office of Advocacy of the Small Business Administration and establish a new definition of the term within the Federal Register after a period of public comment and demonstration of Agency need.

Small Organization: This term refers to Non-Profit organizations, which are not regarded as dominant in their field. However, Agencies may establish alternative rules governing this classification after a period of public comment when the Agency is able to demonstrate a need for such re-classification. The revisions must be documented in the Federal Register.

Small Governmental Jurisdiction: The City, County, Town, Township, Village, School District, or locations with a population of less than 50,000 are regarded as 'small government jurisdictions'. However, Agencies may propose reclassifications following a period of public comment when factors of small population, limited revenue, and Agency need are verified. These revisions must be published in the Federal Register.

Small Entity: This refers to “Small Businesses”, “Small Organizations”, an “Small Governmental Jurisdictions”.

Federal Agency's Regulatory Agenda (5 USC § 602)

Agencies are required to publish a flexible regulatory agenda in the Federal Register during October – April of each year. This agenda must include:

- A brief description of the subject matter on the way in which a new rule may produce an economic impact on 'small entities'.
- The nature of the rule, its objectives, and proposed schedules for implementation.
- The name and telephone number for agency officials who have information related to the proposed rule(s)

Actions Required

- The Flexibility Agenda must be shared with the Chief Counsel for Advocacy of the Small Business Administration for comment.
- The Agencies must work to provide notice to small business entities or their representatives and provide an opportunity for these entities to comment. This may be achieved through announcements in publications that these entities are likely to review or direct notice.

Initial Flexibility Analysis

The Agencies are required to produce an Initial Flexibility Analysis in accord with the following.

- Description of why the Agency is considering a particular action.
- Statement of objectives and legal rationale for the rule.
- Description of the number of small entities to which the rule may apply.
- Description of the reporting and record keeping requirements of the rule and an estimate of the number of small entity classes, which may be subject to these requirements.
- Listing of all Federal rules, which may duplicate, overlap, or conflict with the new rule.
- The flexibility analysis must list representatives of small entities in collaboration with the Chief Counsel for Advocacy of the Small Business Administration.
- The Agency must collect suggestions from representatives of small entities.
- Description for potential alternatives to the proposed rule and the reasons why they are not suitable when compared with the promulgation of an agency rule. This section must also describe how to minimize the economic impact on small entities. The following alternatives must be reviewed:
 - Multiple potential time-tables for small entity reporting compliance requirements.
 - The clarification and consolidation of reporting requirements.
 - Performance standards are preferred over design standards.
 - Methods for securing exception from the rule.
 - Projected increase in the cost of credit to small entities.
 - Significant alternatives, which could minimize the burden to small entities.
 - Recommendations for representatives with regard to strategies for reducing the burden to small entities when complying with these requirements.

Final Flexibility Analysis

The Agencies are required to publish a final flexibility analysis, which includes the following:

- Statement of the need for and objectives of the rule.
- Response to the significant matters raised during the public comment period in response to the initial flexibility analysis and changes made in response to those comments.
- The Agency's response to comments must be filed by the Chief Counsel for Advocacy of the Small Business Administration with a detailed explanation of any changes made to the rule in response to comments.
- The estimated number of small entities to which the rule will apply or an explanation of why such an estimate is not available.
- Description of reporting and record-keeping requirements and the professional skills required for preparing the report.
- Description of the steps the Agency has taken in order to reduce the economic impact upon these small entities as consistent with relevant statutes. This must include a legal and policy-related rationale for the rule as well as a detailed explanation as to why any alternatives to the rule were rejected.
- Description of the steps the Agency has taken to minimize cost of credit for small entities.
- The Final Flexibility Analysis must be published in the Federal Register and made available to the public.

Avoidance of Duplicative or Unnecessary Analysis

Federal Agencies may avoid duplicate analysis through referring to reports on closely related rules.

Effect on Law (USC § 606)

The requirements of section 603 and 604 do not alter any other standards legislated as applicable to agency actions.

Preparation of Analyses (USC § 607)

Agencies may prepare quantitative representations on the effects of proposed rules or descriptive statements if numerical data is not practicable.

Procedure for Waivers or Delay of Completion

- The Agency Head may waive or delay the completion of Section 603's requirements so long as they publish an explanation of the reason for a rule's promulgation in response to emergencies or when compliance with Section 603 would not be practical. This statement must be published in the Federal

Register.

- The delay in the completion of these requirements may not persist for more than 180 days. Failure to publish a final regulatory analysis within this time-frame shall result in a lapse of the rule until a final analysis is completed.

Periodic Review of Rules (USC § 610)

Rules must be reviewed periodically in accord with their Agency plan for periodic review, which were listed in the Federal Register following the enactment of this section. These periodic reviews must address:

- Whether a particular rule is still required, the nature of the public's complaints or comments regarding the rule, and the rule's complexity.
- The degree to which the rule duplicates or conflicts with other Federal, State, or Local rules.
- The degree to which technological, economic, or other conditions may have changed and therefore impacted the nature and function of the rule.

Congressional Review of Agency Rule-making

- The Chief Counsel for Advocacy of the Small Business Administration is required to monitor compliance with Title V Chapter VI and produce an annual report to the President as well as the Judiciary and Small Business Committees of the Senate and House of Representatives.
- The Chief Counsel for Advocacy may appear as a voluntary advisor regarding the state of an Agency's compliance with Title V Chapter VI for any actions brought in a U.S. Court to review a particular rule.
- The Judiciary must permit the Chief Counsel to appear if the Chief Counsel so chooses.

Part II:

Civil Service Functions & Responsibilities

Office of Personnel Management

The Office of Personnel Management (OPM) represents an independent Agency of the Executive Branch.

Director, Deputy Director, and Associate Directors (Title V USC § 1102)

- The Director of the Office of Personnel Management is appointed by the President with the consent of the Senate – Not to exceed 4-years.
- The Office of the Deputy Director is also appointed by the President with the advice and consent of the Senate. This role may perform the equivalent functions of the Director and serve as Acting Director in his or her absence or in the event of a vacant Director position.
- Those serving in the capacity of Director or Deputy Director may not serve in any other position in government unless so directed by Law or the President. They also may not make recommendations regarding appointment to any position other than Deputy Director for positions, which require the consent of the Senate.
- The Office of Personnel Management may not appoint more than 5 Associate Directors.

Functions of the Director (Title V USC § 1103)

The Director of the Office of Personnel Management is responsible for the following:

- The accurate, uniform, and just functions of the Office.
- The appointment of staff.
- Supervision, distribution of responsibilities, and organization of the Office.
- Preparing requests for appropriations and outlining the expenditures of the Office.
- Execution, Administration, and Enforcement of:
 - Civil service rules and regulations as determined by Congress and the President.
 - Retirement and classification duties.
- Reviewing operations in accord with Title V Chapter 87.
- Providing aid to the President upon request. This may include preparing the President's proposed Civil Service rules, advising the President on the administration of civil service functions and application of a merit system functions as related to recruitment, transfers, compensation, terms of service, tenure, and termination.

- Providing for the study, research, design, and implementation of best practices in performance management. This must be completed in order to achieve Agency objectives, enhance skills, ensure continuity of leadership through recruitment and succession plans, developing a high performance work force, and holding human resource officers accountable for monitoring and implementing these policies.
- Managing expenses as related to official reception and representation as subject to the limitations of the law.
- The publication of rule change proposals in the Federal Register, which do not apply exclusively to the Office (Further regulations apply, which are not listed in this abridged review).

Exceptions: The Director is not responsible for the functions of the Merit Systems Protection Board or Special Counsel.

Delegation of Authority for Personnel Management (Title V USC § 1104)

The President may delegate authority to the Director for the purposes personnel management, which includes competitive examinations, standards for the Office, compliance oversight programs, merit systems, and providing assistance to other Agencies with implementing OPM's designated policy requirements.

Merit Systems Protection Board, Office of Special Counsel, and Employee Right of Action

Appointment of Board

- The President shall appoint 3 Members to the Merit Systems Protection Board with the advice and consent of the Senate – No more than 2 may be a member of the President's personal political party.
- These members must be possessed of the appropriate professional background and capabilities.
- The Board shall hold a principal office within the (1) District of Columbia and (2) other field offices.
- These members of the Board may not hold any other positions within the U.S. Government except as provided at the direction of the President.

Term of Office

- The maximum duration of a Board Member is 7 years.
- Those who are appointed prior to the end of a prior Board member's term is eligible to serve for the remainder of that individual's original term.
- Those appointed for a 7-year term may not be reappointed for any subsequent terms. However, they may serve beyond the 7-year term if a successor has not been appointed – This, for a maximum of 1-year beyond their term's limit.
- The President may remove any member of the board due to lack of performance.

Chairman & Vice Chairman

- The President may appoint a Chairman of the Board who shall serve as the Board's chief executive.
- The President may also designate a Vice Chairman who shall fulfill the duties of the Chairman in his or her absence.
- The absence of both the Chairman and Vice Chairman shall result in the third remaining Board member's assumption of this responsibility.

Powers and Functions:

- To hear and adjudicate all matters within the Board's jurisdiction subject to Chapter 43 of Title 38 or any other applicable legislation or rules.
- To require any Agency or employee to comply with the Board's decisions.
- To conduct report to the President and Congress as to whether an Agency's Civil Service is free from or encumbered with prohibited personnel practices.
- To review the rules and regulations of the Office of Personnel Management.
- To issue subpoenas, take oaths, depositions, examine witnesses, or review evidence related to investigations.
- Those subject to a subpoena or a Witness shall be compensated in the same manner as those subpoenaed in a U.S. Court, but the Board may withhold this for the period of time in which one has refused to cooperate with such a subpoena. Such witness holdings shall be certified to the Comptroller General of the United States.
- Failure to comply with a Board's subpoena may be subject to a U.S. District court's contempt of court punishments.
- The Board shall have access to personnel records as related to an investigation.
- The Board may determine if Agency Rules are invalid or would require an employee to violate section 2302(b).
- The Board may also require an Agency to cease compliance with or modify a Rule, which it determines to be invalid.
- The Chairman of the Board may appoint staff to its Office, and the Board may delegate any of its administrative functions to a Board employee.
- Must provide a budget to the President and Congress while simultaneously submitting any legislative recommendations regarding its function.

Transmission of Information to Congress: (Title V USC § 1205)

- The Board or its employees may transmit information to Congress if so requested by a subcommittee for testimony, a report, or other information. The Board may also transmit information without prior review or authorization of other administrative authorities.

Annual Report (Title V USC § 1206)

- The Board must submit an annual report on its activities to the President and Congress, which includes actions taken by the Office of Personnel Management. This must include an analysis of OPM's actions in accord with the merit system principles and prohibited personnel practices.

Individual Right of Action for Reprisal Cases

Individual Right of Action

- Current, former, and prospective employees who are eligible to do so may request that the Merit Systems Protection Board order a 'stay' of any corrective action in progress. The 'stay' must be granted within 10 business days if such action is determined to be appropriate, and the stay will remain in effect for the Board's chosen duration. The Board may also dissolve the stay at any time if deemed appropriate.
- The Board must issue a subpoena for testimony if a current, former, or prospective employee requests such action, which the Board determines to be reasonably necessary for the purposes of discovery of evidence.
- The Board may issue corrective action pursuant to [Sec 2302\(b\)\(8\)](#) or [2302\(b\)\(9\)\(A\)\(i\), \(B\), \(C\), or \(D\)](#).
- The Board may determine that an employee committed a prohibited personnel practice, which requires a referral to the Special Counsel for investigation.

Chief Human Capital Officers

The role 'Chief Human Capital Officer' must complete the following objectives:

- Assisting and advising the Agency Head and other Officials on how to select, train, and manage a high quality workforce in accord with the merit system.
- This role is also responsible for reviewing the rules of the President, OPM, and Congress in order to govern the Agency's workforce.
- The Chief Human Capital Officers may fulfill these duties through reviewing the Agency's policies, monitoring performance benchmarks, retaining access to all records, audits, and other content, which the Agency utilizes in order to monitor the Agency's performance with regard to Merit System principles.

Political Activity of Certain State and Local Employees

Influencing Elections or Taking Part in Political Campaigns

State or local officers or employees of the government may not use their official authority for the purpose of influencing an election or advise and coerce other officers or employees to contribute to a political activity or fund.

Nonpartisan Candidacies Permitted

State or local officers and employees may vote, express their perspectives on political processes, and run for office, Federal Employees may not be candidates for a partisan elective office. The Hatch Act provides that these individuals may run for non-partisan elective offices (elections in which there is no political party affiliation) or as an 'independent'.

Investigations & Notice of Hearing

Federal Officials who are in violation of these provisions may be reported to the Special Counsel, which may determine whether the allegations merit an investigation. The findings must be reported to the Merit Systems Protection Board. The MSPB may schedule a time and place to hold hearings and notify the officer or employee as well as their state or local agency of the allegations and hearing. The hearing must be scheduled for a minimum of 10 days from the date of mailing this notice.

Hearings, Adjudications, and Notice of Determinations

The state or local officer / employee may appear with legal counsel at the hearing, and the MSPB will issue a determination via certified mail as to whether a violation was found to have occurred or whether the violation merits termination of employment.

Orders, Withholding Loans or Grants, and Limitations

The MSPB may find that the State or local officer / employee was not removed from their position within 30-days after notice of their determination.

The MSPB may also find that the individual was removed and reappointed to an office in the same state, which does not receive loans or grants from a Federal agency. During these cases, the Board may issue a determination to the relevant Federal Agency that loans or grants will be withheld equal to 2-years of the employee's rate of pay. However, the Board may *not* require these withholding to be applied to loans or grants if doing so would risk the repayment of principal or interest on those bonds. Notice must be provided via registered or certified mail to the agency employing this individual, and the ruling will be finalized after 30-days of mailing the notice of determination.

Subpoenas & Depositions

The MSPB may require subpoenas, for attendance of hearing, witness testimony, and other evidence or request the assistance of a U.S. Court if subpoenaed individuals do not cooperate with the investigation. Those who are subject to a subpoena are required to respond, even if their participation may be incriminating.

Judicial Review

Parties who are subject to MSPB determinations may petition a U.S. District Court for review of their case. The MSPB's orders may be 'stayed' through a Court Order or if the individual is suspended from their office / employment while proceedings are pending, and the Court may review all material or new evidence related to the case in order to either uphold, amend, or overturn the ruling. The appeal of rulings may progress through the standard process of judicial review.

Part III: Employees

Merit System Principles

Title V provides that Federal employees must be treated appropriately with respect to all Equal Employment Opportunity requirements and requires equal pay for equivalent work. The Merit System Principles provide that employees must maintain high standards of integrity, professional conduct, and act in the public interest. The work force must be used efficiently, and positive performance should result in continued employment, whereas insufficient performance may result in corrective action and termination if unable or unwilling to enhanced productivity or conduct. The Merit System Principles also provide that employees must be provided with the appropriate degree of training and education required to meet performance standards. Furthermore, employees must not be subject to arbitrary personnel actions, favoritism, or political coercion. Protection from reprisal against disclosing information that demonstrates violation of law or regulations, mismanagement, waste, fraud, abuse, or the endangerment of public health and safety.

Prohibited Personnel Practices

- Those with authority to direct others to take personnel action, advise others to do so, or personally authorize personnel actions are prohibited from engaging in discriminatory behavior with regard to EEOC regulations. Those with such authority may only solicit recommendations for or advise on work performance, general qualifications, or character.
- Officials or supervisors are prohibited from the deliberate obstruction of any individual to compete for employment or influencing any individual to withdraw from competing for a particular position. These individuals are also prohibited from appointing, employing, advancing, or advocating on behalf of a relative over which he or she would retain authority or control.
- Officials or supervisors are also prohibited from failure to take a personnel action when substantial evidence has been provided, which demonstrates the violation of laws or regulations, reveals mismanagement, waste, fraud, abuse, or dangers to the public. Exceptions are provided for only in consideration of the need for National Security or if specifically exempt by legislation – Such cases must be referred to the Office of Special Counsel or Inspector General.
- Officials or supervisors are prohibited from taking retaliatory actions against employees who have exercised their right to appeal, file a complaint, or submit a grievance in response to the aforementioned prohibited personnel practices.
- Officials and supervisors are also prohibited from taking personnel actions, which would directly or indirectly violate veterans preference.

- Non-disclosures, Policies, Forms, or Agreements are required to contain the following provision:
 - “These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.” Note: The Government Accountability Office may conduct audits as needed in order to ensure compliance with these requirements.

Office of Personnel Management Hiring Process

Step 1: Verify Staffing Need (Maximum of 1 Day)

Federal Agency must verify that a current need exists, which may be addressed through staffing and recruiting plans (Requires 1 day, est.)

Step 2: Request for Personnel Action (RPA) (SF-52) (Maximum of 1 Day)

The Manager must complete an RPA SF-52 and secure authorization to fill a position (Requires 2 days, est.)

Step 3: Position Description (Maximum of 1 Day)

The Manager and HR must review the position description for accuracy of duties, level of risk, and sensitivity / clearance required (Requires 3 days, est.).

Step 4: Position Analysis and Assessment Strategy (Maximum of 5 Days)

The Manager and HR must review the position requirements, formulate an assessment tool, and determine a system for ranking applicants. (Requires 8 days, est) This must address:

- Critical duties and functions.
- Required Knowledge Skills and Abilities (KSA).
- Grade level for position
- Assessment(s): Structured Interviews, Written Tests, Assessment Centers, Work Samples, etc.
- Anticipated number of applicants.
- Time to develop.
- Assessment validity.

Step 5: Create and Post a Job Opportunity Announcement & Identifying Career Patterns (Maximum of 2 Days)

The HRO must complete this process, which may require 2 days and must include the (1) Job Announcement, (2) Optional Items, (3) Security Requirements, (4) Preferred Career Patterns, (5), Duration of selection process. OPM's guidance provides that the 'Career Patterns' element includes the following:

- “Agency name;
- Announcement number;
- Title of the position;
- Series;
- Grade(s) or equivalent and entrance pay;
- Open and closing dates, including cut-off dates, if any;
- Duty location;
- Number of vacancies;
- Description of duties;
- Qualification requirements, including KSAs/competencies;
- Basis for rating;
- How to apply;
- What documents to file;
- Agency's definition of "well qualified" (Career Transition Assistance Program (CTAP), Interagency Career Transition Assistance Program (ICTAP) and Reemployment Priority List (RPL));
- Information on how to claim Veterans' Preference;
- EEO Statement; and
- Reasonable Accommodation Statement.”

The HRO's 'Optional Items' may include the following:

- “Recruitment/Relocation incentive opportunities;
- Alternative work schedules;
- Part-time employment and job sharing opportunities;
- Telework options;
- Employee benefits;
- Work/Life programs;
- Transit subsidies;
- Employee assistance programs;
- Incentive award opportunities; and
- Development and training opportunities.”

Step 6: Receipt of Applications and Notice to Applicants (Maximum of 10 Days)

The HRO shall implement a recruiting system, which utilizes an EEOC and ADA compliant automated hiring system, provides a method for accepting applications from individuals without internet access, only allows supporting documentation during the job open period, and notifies receipt of the application in accord with the 'Pledge to Applicants'.

Step 7: Close the Job Opportunity Announcements

The HRO must close the job opportunity announcement, but USAJOBS will also automatically remove the position on the listed closing date.

Step 8: Applicant Evaluation Process (15 Days)

The HRO must conduct a preliminary applicant review during a 15 day period, rank applicants according to preference, and notify candidates of the results.

This requires a review of the following:

- Minimum qualifications
- Selective placement factors
- Quality ranking factors.
- Legal Requirements: Veteran's preference, Citizenship, Age.
- Suitability screening and whether the position requires an OF-306 at the time of application (i.e. Security clearance requirements).
- Rank applicants.
- Determine which applicants have applied as CTAP, ICTAP, or RPL eligible.

Re-employment Priority List (RPL)

Current or former Competitive Service Federal Employees separated from employment through an official Reduction In Workforce Notice (RIF).

Career Transition Assistance Program / Intra-Agency . . . (CTAP & ICTAP)

- Federal Employees who are separated due to a covered injury or illness, which caused position displacement OR retired due to disabilities and the disability annuity has been or will be terminated.
- Former Military Reserve or National Guard Technician in receipt of special disability retirement annuities from OPM.
- Required Documentation: SF-50 Notification of Personnel Action or other Official Documentation, RIF notice, and relevant OPM and National Guard Bureau or Military notices.

Note: Applicants must include documentation of a Fully Successful or equivalent performance rating (Minimum). This is not required if ICTAP eligibility is due to a covered injury or disability program.

Step 9: Provided Certificate and Notify Eligibles (Maximum of 1 Day)

The HRO must issue a Certificate of Eligibles to the hiring manager, and the HRO must notify the applicants as to whether the Agency selected them to advance or declined.

Step 10: Review Applicants, Conduct Interviews, Check References, Selection & Return Certificate (15 Days)

The Manager will review applicants for HRO's selected group of candidates and determine whether applicants are to be interviewed through a Selecting Official or Panel. The Manager must also train individuals who participate in a structured interview, check references, select a candidate, and return a signed certificate to the HRO.

Step 11: HRO's Tentative Job Offer (Maximum of 3 Days)

The HRO and Security Office will issue a Tentative Job Offer, which requires three days. The HRO will next verify information related to DD-214, academic records, OF-306, and Declaration for Federal Employment if not otherwise present. Derogatory information will be sent to the Security Office for review.

Step 12: Initial Investigation (Maximum of 10 Days)

The Security Office will require up to 10 days to initiate a review of the candidate's suitability and begin the clearance process for the position's appropriate level of sensitivity.

Step 13: Official Offer (Maximum of 2 Days)

The HRO may issue an Official Offer provided that the Security Office has determined that this process may proceed.

Step 14: Enter on Duty (Maximum of 14 Days)

The candidate must return any forms provided by the HRO in order to proceed with entry for duty.

Step 15: Orientation Process Begins

The Orientation Process is outlined in OPM's 'Orientation Roadmap'.

Part III

(Continued)

Federal Hiring Authorities

Federal Hiring Authorities

The Federal Government is required to follow Title V of the United States Code while conducting human capital staffing campaigns. The Title V Hiring Authorities govern the manner in which the Competitive Service, Excepted Service, and Senior Executive Service is staffed.

Publication of Authorities & Agency Rules

- The Schedule A, B, C, and D hiring authorities must be published in the Federal Register and the Code of Federal Regulations.
- The changes to such regulations must be published monthly in the 'Notices' section of the Federal Register.
- Schedule A, B, and C authorities must be published annually in the Federal Register no later than June 30 of each year.

Competitive Service

The Competitive Service includes the 'Civil Service' positions within each of the executive branch's agencies. The President may propose rule changes for the manner in which the hiring process occurs. Typically, the competitive evaluation process includes the review of prior academic studies, employment, and potentially standardized assessments. *This requires Public Notice, Probationary Periods, OPM Qualification Standards, and Reduction in Force Requirement.*

Veteran Hiring Authorities

*30% Disabled Veteran Appointment Authority

*30% Disabled Veterans may be Appointed to the Competitive Service (To 'Time Limited' Up to 1 year or 'Term Limited 1 - 4 years'. Minimum must be at least 60-days). At any point during the Appointment, the Agency may convert this into a Permanent Position. (No rating or ranking required - Veterans compete amongst each other)

***Veteran's Recruitment Appointment (VRA Authority)**

- 2 Year Appointment (Non-Competitive Conversion)
- Maximum of GS 11 Initial Appointment

***Veteran's Employment Opportunities Act (VEOA)**

- Veterans may apply under Merit Promotion Procedures (No Veteran's Preference Applied)
- Simply provides them with access to these positions, which would be otherwise closed. Before VEOA was established, one was required to have 'Competitive Status'. This enabled conversion of Military experience into Merit Promotion Procedures (Only applies when Agencies recruit from outside of workforce).

Presidential Rule-making

The U.S.C. 3302 provides that the President may issue rules governing the competitive service as relevant to the following:

- “Necessary exceptions from positions from the competitive service.”
- “Necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7202, and 7203 of title 5, U.S. Code.

Excepted Service

The Excepted Service includes individuals who are appointed to positions within the federal government. These positions are exempt from competitive service requirements and governed by Presidential memoranda, statute, or the Office of Personnel Management rule-making. *These positions may not require Public Notice.

Schedule A: Positions, which are not confidential or policy-determining, but for which suitable assessments do not exist:

- Presidential appointments, which do not require confirmation by the Senate.
- Attorneys.
- Physicians, Surgeons, Dentists (Part-time, Fee basis).
- Scientific professionals from an accredited college or university (Not to exceed 130 working days per year).
- Law clerk trainees (Graduates of recognized law schools or equivalent experience not to exceed 14-months pending admission to the bar).
- Temporary or part time positions for which examination is not practical (Requires less than 1,040 work hours per year). These appointments may be extended in 1-year increments without limit.
- Critical hiring needs for short-term or long-term positions (May not exceed 30-days. However, a 30-day extension may be granted if this is determined to be critical for the agency’s operations. Maximum of 60-days in a single year.).
- Positions filled by former employees such as National Guard Technicians according to 32 U.S.C. 709(a) who are entitled to placement under §353.110, those who are removed from service due to a qualifying disability, or those who are receiving annuities pursuant to 5 U.S.C. 8337(h) or 8456).
- Executive branch employees or who retain the right to placement in accord with §353.110 but not eligible for reinstatement or noncompetitive appointment under the provisions of part 315.
- Those participating in agency exchange programs.
- Student filled positions with compensation mandated under 5 U.S.C. 5351–5356 not to exceed 4-years.
- Appointment of those with mental or physical disabilities (See regulations for further limitations on

these appointments).

- Temporary organizations (Not to exceed 3-years. However, temporary organizations may extend appointments for 2 additional years if conditions are directly related to the completion of research or other projects).

Schedule B: The U.S.C. 3302 provides that the President may delegate authority to the Office of Personnel Management (OPM) pursuant to Civil Service Rule VI to establish exceptions from the competitive service. To meet the criteria for Schedule B exceptions, the OPM must determine that:

- Appointments through competitive examinations are not practical.
- Recruiting from students or recent graduates from qualifying institutions and programs may serve as a more effective means by which to determine suitability for a role.
- The OPM must temporarily or indefinitely exempt such positions as defined by 302.101(c) as needed. These positions may be appointed on a permanent or temporary basis as full-time, seasonal, on-call, or intermittent. The OPM must determine the standards of eligibility for appointment as defined by Schedule A, B, or D exceptions *prior to appointment*.

Defining ‘Temporary, Time-Limited, Intermittent, or Seasonal Appointments’

Temporary Appointments: These shall be construed as those which are made for no more than 1 year unless specified within a Schedule A, B, C, or D exception.

Limitations:

- Successor positions represent extensions of the original appointment.
- Extension limitations are applicable for no more than 1 additional year.
- Re-appointment to a similar position within the same geographical area is regarded as subject to the original time-limits.
- Temporary positions may not be re-filled within a 3 year period for an aggregate of more than 2-years. However, this requirement does not apply for position exchanges between agencies and organizations.

Exceptions to Limitations:

- Intermittent or seasonal work of less than 6-months (1,040 hours) in duration or for training of up to 120 days shall be exempt from the above mentioned limitations.
- Required academic or other training to further one’s education shall be exempt from the above limitations (i.e. internship, fellowships residency, student status, etc).
- The OPM may authorize an extension of specific temporary appointments beyond the 2-year limit due to significant re-organization.

Intermittent Positions: These shall be construed as those which occur at irregular intervals such that scheduling in advance of the administrative work week is not practical.

Seasonal Positions: Those positions, which recur for less than 12-months.

Schedule B: Positions, which are not confidential or policy-determining, but for which suitable assessments do not exist:

- Executive development positions constructed in relation with an OPM authorized Senior Executive Service Candidate Program.

Position Requirements:

- The position is filled through veteran preference and under honorable discharge after 3 years or more of continuous active duty service.
- Those participating in an SES career development at the GS-15 level and above.
- Those who have completed the SES probationary period.
- Those who have been removed from the SES due to less than fully successful performance.
- Those SES members who have failed to re-certify.
- Those SES members who are entitled to placement in another civil service position pursuant to 5 U.S.C. 3594(b)
- SES is reassigned, promoted, or demoted within the same agency.
- Those who have been impacted by a workforce reduction.

Schedule C: Positions of a confidential or policy-determining nature.

- The OPM may appoint staff when those positions are responsible for determining policy or those who require a close and confidential relationship with the head of an agency or other key appointees.
- Requests for Schedule C exemptions must include a request to OPM verifying that the position was not created specifically to place the individual at the White House.
- The exception shall be revoked once the position has become vacant—The agency must notify OPM within 3–days.

Schedule C (Temporary Transitional):

- The agency may establish a temporary Schedule C position during a 1-year period immediately following the change in Presidential administration. Positions may only be created when a critical transition need exists.
- The total number of Temporary Transitional positions shall be limited to 50% of the highest number of permanent Schedule C positions filled by the agency within the past 5-years or 3 positions, whichever is higher. The OPM may increase the agency’s quota in order to meet critical needs.

- These appointments may be made for 120-days with an additional 120-day maximum extension. These may be regarded as ‘Provisional Appointments’ if they meet the standards pursuant to parts 351, 831, 842, 870, and 890 and meet the criteria of §§316.401 and 316.403 of this chapter.
- The agency must notify the OPM within 5 days after a temporary Schedule C position has been filled and within 3 working days that it has been vacated. The agency must submit a statement to OPM certifying that the position was not created specifically for placing the individual at the White House.

Schedule D: Positions characterized by a lack of sufficient candidates attending qualifying academic institutions or recently completed a degree.

- Subject to basic qualifications standards as determined by OPM.
- Interns at any level (Must be compliant with Subpart B of part 362).
- Participants in the Recent Graduates Program (Appointments at any level not to exceed GS-09. However, appointments may be made to the GS-11 level provided that the individual holds a Ph.D. or Masters level degree directly related to an agency’s STEM or other relevant position. Professional and research position appointments at the GS-12 level may also be made to individuals who hold a Ph.D.).
- Participants in the Presidential Management Fellows Program (Not to exceed 2-years except as provided in sub part D of part 362 of this chapter). Agencies may make appointments of Fellows to the GS-9, GS-11, and GS-12 or equivalent level depending upon the position requirements and candidate qualifications.

Senior Executive Service

The Senior Executive Service is defined as any SES position, appointee, limited emergency appointee, or those with an equivalent position with a pay rate above the GS-15 or Executive Level IV or V. The minimum number of government-wide positions within the Senior Executive Service is 3,571. The OPM may establish a minimum number of career reserved positions for individual agencies in order to meet or exceed the minimum requirement.

Agency Authority to Make Determinations

- Agencies are responsible for determining which positions shall be assigned to the SES in collaboration with the OPM.

Reporting Requirements

- Agencies must report all relevant information as requested by the OPM in relation to the SES positions and employees.

Interchange Agreements

- The OPM and Agency must enter into an agreement between the transfer of those who operate within the SES so as to determine the standards and requirements for each position.
- The interchange agreement may be terminated by either party pursuant to the conditions of the agreement.

Exclusions

- “If not excluded from the Senior Executive Service by section 3132(a) (1) or (2) of title 5, United States Code, an agency, or unit thereof, may be excluded only under the provisions of section 3132 (C) through (f) of title 5.”

Types of Positions

A) General positions (Career, non-career, limited emergency, or limited term appointees).

B) Career reserved (May only be filled by a career appointee).

Career Reserved

- The position was listed within the Executive Schedule or rate of pay was determined by reference to the Executive Schedule on October 12, 1978.
- “The position was required under section 2102 of Title V USC or otherwise required by law to be in the competitive service; and”
- Was listed within or rate of pay was governed by the Executive Schedule on October 12, 1978.
- Was required under section 2102 of Title V or required by law to be in the senior executive service.
- Included responsibility for the management of a particular government program.

OR

- Scientific or other highly technical positions, which must be filled by a career appointee in order to ensure that the U.S. Government conducts itself in an impartial manner.
- Other positions, which require impartial leadership.
- The OPM may review and determine which positions are suitable for this classification.

Compensation

Executive Schedule

These individuals represent the highest ranking appointed positions in the Federal Government – The President makes appointments with the advice and consent of the Senate.

Level V	\$153,800
Level IV	\$164,200
Level III	\$174,500
Level II	\$189,600
Level I	\$210,700

Senior Executive Service

The Senior Executive Service is seated immediately beneath the Presidential Appointees in the Executive Schedule.

Agencies with a Certified SES Performance Appraisal System

- Minimum: \$126,148
- Maximum: \$189,600

Agencies without a Certified SES Performance Appraisal System

- Minimum: \$126,148
- Maximum: \$174,500

Senior Level Professional or Scientific Positions

Agencies with a Certified SL/ST Performance Appraisal System

- Minimum: \$126,148
- Maximum: \$189,600

Agencies without a Certified SL/ST Performance Appraisal System

- Minimum: \$126,148
- Maximum: \$174,500

General Schedule

Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10	WGI
1	18785	19414	20039	20660	21285	21650	22267	22891	22915	23502	VARIES
2	21121	21624	22323	22915	23175	23857	24539	25221	25903	26585	VARIES
3	23045	23813	24581	25349	26117	26885	27653	28421	29189	29957	768
4	25871	26733	27595	28457	29319	30181	31043	31905	32767	33629	862
5	28945	29910	30875	31840	32805	33770	34735	35700	36665	37630	965
6	32264	33339	34414	35489	36564	37639	38714	39789	40864	41939	1075
7	35854	37049	38244	39439	40634	41829	43024	44219	45414	46609	1195
8	39707	41031	42355	43679	45003	46327	47651	48975	50299	51623	1324
9	43857	45319	46781	48243	49705	51167	52629	54091	55553	57015	1462
10	48297	49907	51517	53127	54737	56347	57957	59567	61177	62787	1610
11	53062	54831	56600	58369	60138	61907	63676	65445	67214	68983	1769
12	63600	65720	67840	69960	72080	74200	76320	78440	80560	82680	2120
13	75628	78149	80670	83191	85712	88233	90754	93275	95796	98317	2521
14	89370	92349	95328	98307	101286	104265	107244	110223	113202	116181	2979
15	105123	108627	112131	115635	119139	122643	126147	129651	133155	136659	3504

Source: OPM 2018

Training

Title V provides that the Agency Head is responsible for developing the workforce's capability to achieve agency mission and performance goals. Therefore, the Agency Head is responsible for establishing a budget in order to develop and implement training programs, which enhance employee capabilities and performance. These training programs must complete the following objectives:

1. Determine priorities for training employees and allocate resources as needed.
2. Determine the mission-critical occupations and their core competencies.
3. Review the nature of any competency gaps within the workforce.
4. Develop strategies for filling those gaps.
5. Complete a minimum of 1 annual assessment on the agency's talent management program.

The Agencies are provided with broad discretion to provide training, which may include enrollment in accredited academic programs, classroom, on-the-job, virtual, and satellite training. Training may also include coaching, mentorship programs, rotational assignments, cross-training, retreats, and conferences.

Training & Equity

Training must comply with EEOC regulations in order to prevent discrimination against employees and ensure accessibility to those with disabilities for both intra-agency training and contracted training facilities. The Agency Head is also responsible for maintaining records related to the nature of the training, its provider, location, cost, duration, and justification for why the training is needed. Those individuals who complete trainings, which increase their eligibility for a promotion must participate in the standard competitive application process. Meanwhile, Agency Heads must request authorization from the OPM in order to enroll in their own training programs in order to reduce conflict of interest. Agencies may also participate in interagency training in order to access resources available through other departments within the Executive branch.

Premium Pay, Temporary Duty Assignments, and Awards

Premium pay is generally prohibited unless an exception is applicable (i.e. Premium pay is already scheduled when training is in effect, training at night, on holidays, Sunday, or due to the cost of training exceeding standard pay, availability pay for criminal investigators, firefighter overtime pay, or according to agency exemptions, boarder patrol provisions, and travel time provisions) (See §410.402). Agencies may reimburse employee travel expenses or provide a per diem under specific circumstances as outlined in §410.403.

Training cash or in-kind awards from training organizations may be permitted if the Agency Head authorizes this in writing. This is only permitted if Title V Section 4111 is met and the payment would not influence the employee's objectivity or the integrity of the government Agency with relation to the training entity. The Agency must document and store records of any such awards.

FORMS

SF-52 - Request for Personnel Action

DD-214 - Military Discharge Documentation (Log in to Mil Connect or 'EBenefits' (VA/DoD) in order to request Discharge Papers)

DD-215 - Correct the Military Discharge Papers

OF-306 - Declaration for Federal Employment

OF-612 - Optional Application for Federal Employment (Typically used for Students or those with limited work experience)

SF-15 Application for 10-Point Veteran's Preference

SF 50 - Notification of Personnel Action

SF 75 - Request for Preliminary Employment Data

SF 144 - Statement of Prior Federal Service

SF-61 - Appointment Affidavit

SF-181 - Ethnicity and Race Identification

SF 256 - Self-Identification of Disability

Form M-274 - Department of Homeland Security Verification of Employment Eligibility

SF-1152 - Designation of Beneficiary, Unpaid Compensation of Deceased Civilian Employee