Material Transmitted:

HHS Instruction 302-1, Employment in the Excepted Service, dated April 8, 2020.

Material Superseded:

HHS Instruction 302-1, Employment in the Excepted Service, dated September 6, 2018.

Background:

This Instruction has been revised to update guidance covering HHS’ Priority Reemployment List (PRL) consistent with new HHS Instruction 330-2, Priority Placement Programs.

This issuance is effective immediately and must be carried out in accordance with applicable laws, regulations, bargaining agreements, and Departmental policy.

/S/

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Chief Human Capital Officer

# SUBJECT: EMPLOYMENT IN THE EXCEPTED SERVICE

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# 302-1-00 PURPOSE

This Instruction sets forth provisions relating to employment in the excepted service and applies to excepted positions that are subject to the provisions of Title 5, United States Code (U.S.C.), or subject to a statutory requirement to follow the veterans’ preference provisions of Title 5.

When provisions of this policy differ from changes in applicable law or regulation, the changes in law or regulation apply.

# 302-1-10 REFERENCES

1. 5 U.S.C §2103, The excepted service
2. 5 U.S.C §2108, Veteran; disabled veteran; preference eligible
3. 5 U.S.C §2301, Merit system principles
4. 5 U.S.C §3320, Excepted service; government of the District of Columbia; selection
5. 5 U.S.C §7511(a)(1)(B)-(C), Employee definition for Adverse Actions
6. 5 U.S.C §8101(1), Employee definition for Compensation for Work Injuries
7. 5 CFR Part 6, Exceptions from the Competitive Service (Rule VI)
8. 5 CFR Part 211, Veteran Preference
9. 5 CFR Part 213, Excepted Service
10. 5 CFR §300.301, Details of Employees
11. 5 CFR Part 302, Employment in the Excepted Service
12. 5 CFR Part 362, Pathways Programs
13. Office of Personnel Management (OPM), Vet Guide, Veterans’ Preference in Appointments, Excepted Service Employment
14. HHS Instruction, 330-2, Priority Placement Programs

# 302-1-20 COVERAGE AND EXCLUSIONS

1. Coverage

This Instruction covers all excepted positions that are subject to the provisions of Title 5, or subject to a statutory requirement to follow the veterans’ preference provisions of Title 5, including:

* 1. Positions filled via government-wide Schedule A and B autho[rities, unless 5 CFR](https://www.law.cornell.edu/cfr/text/5/302.101)

[§302.101(c)](https://www.law.cornell.edu/cfr/text/5/302.101) exempts the specific Schedule A or B positions from 5 CFR Part 302 appointment procedures.

* 1. Positions filled via HHS-specific Schedule A and Schedule B authorities, unless OPM specifically exempts the Schedule A or B authority from 5 CFR Part 302 appointment procedures at the time of approval.
	2. Positions filled under Schedule D, Pathways Programs ([5 CFR §362.105(c)(2)](https://www.ecfr.gov/cgi-bin/text-idx?SID=c01e964270fe75164f46ba24833974f6&amp;mc=true&amp;node=se5.1.362_1105&amp;rgn=div8)).
1. Exclusions
	1. Positions or appointments that are required by the Congress to be confirmed by, or made with the advice and consent of, the Senate [(5 CFR §302.101(b)](https://www.law.cornell.edu/cfr/text/5/302.101)).
	2. Positions exempt from the 5 CFR Part 302 appointment procedures when the positions are specifically listed under [5 CFR §302.101](https://www.law.cornell.edu/cfr/text/5/302.101)(c). Operating Divisions/Staff Divisions (OpDivs/StaffDivs) must develop written hiring procedures for such positions and apply them uniformly in accordance with the requirements under [5 CFR §302.101](https://www.law.cornell.edu/cfr/text/5/302.101)(c), the merit system principles, and applicable HHS guidance. OpDivs/StaffDivs should consult their legal counsel on their internal procedures prior to implementation to ensure they are legally supportable and not in conflict with current case law, rule, law, regulation, or other legal authority.
	3. Non-title 5 excepted authorities, if the authority’s provisions specifically exempt the positions from Title 5 in part (i.e., appointment or hiring procedures), or completely (i.e., all Title 5 provisions).
2. Bargaining Unit Employees

The provisions of this Instruction pertaining to conditions of employment of bargaining unit employees (e.g., the filling of a position within the scope of the bargaining unit, promotion and reassignments, and adverse actions) are fully negotiable in accordance with [5 U.S.C. Chapter 71](https://www.law.cornell.edu/uscode/text/5/part-III/subpart-F/chapter-71). Therefore, when the provisions of this Instruction differ from the requirements contained in

applicable collective bargaining agreement(s), the collective bargaining agreement takes precedence for bargaining unit employees.

# 302-1-30 DEFINITIONS

1. **Excepted position**. A position in the excepted service.
2. **Excepted Service**. Positions not in the competitive service or the Senior Executive Service; includes all positions in the Executive Branch of the Federal Government which are specifically excepted from the requirements of the competitive service by statute, Executive Order, or by OPM regulation.
3. **Preference Eligible**. Veterans who are disabled or who served on active duty in the Armed Forces during certain specified periods or in military campaigns, or family members entitled to derived preference. Preference eligible candidates are generally entitled to preference over non-veterans for new appointments in both the competitive and excepted service and in retention during a reduction in force ([5 U.S.C §2108](https://www.law.cornell.edu/uscode/text/5/2108)).
4. **Priority Reemployment List (PRL)**. A list executive agencies must establish to give reemployment consideration and placement assistance to former HHS excepted service employees who have been furloughed or separated by RIF or compensable injury; or who appealed an adverse action to the Merit Systems Protection Board (MSPB) and was found to have been unjustifiably dismissed from the agency but is not entitled to immediate restoration under the MSPB’s decision (5 CFR §302.303).
5. **Reemployment List (RL)**. A discretionary executive agency list to give employment consideration to current and former HHS excepted service employees who are not eligible for inclusion on the HHS PRL. A RL is discretionary unde[r 5 CFR §302.303(c)](https://www.law.cornell.edu/cfr/text/5/302.303) and is not established by HHS.

# 302-1-40 RESPONSIBILITIES

1. HHS Assistant Secretary for Administration, Office of Human Resources (HHS OHR):
	1. Develops Department-wide policy and guidance regarding excepted service employment consistent with HHS and OPM policy and guidance, and all applicable federal laws and regulations;
	2. Submits requests to OPM for pass over and objections that require OPM approval;
	3. Submits requests to OPM for approval to detail an excepted service employee, covered under [5 CFR §300.301(c),](https://www.law.cornell.edu/cfr/text/5/300.301) to the competitive service; and
	4. Periodically reviews OpDiv/StaffDiv excepted service procedures, actions, qualification standards, and reports to assure conformance with HHS and OPM policy and guidance, and all applicable federal laws and regulations.
2. OpDiv/StaffDiv Human Resources Offices (OHROs):
	1. Comply with this Instruction, HHS and OPM policy and guidance, and all applicable federal laws and regulations;
	2. Establish written procedures regarding the acceptance, rating and ranking, and selection of applications, as required by [5 CFR §§302.301 and 302.302(a)](https://www.ecfr.gov/cgi-bin/text-idx?SID=b8e20888f97187ffdf4d3665a335002a&amp;mc=true&amp;node=se5.1.302_1301&amp;rgn=div8) and this Instruction, ensuring procedures are applied uniformly and excepted service positions are filled in accordance with the merit system principles and veterans’ preference laws and regulations;
	3. Ensure that applicants are notified of excepted service vacancies so that applicants have a reasonable opportunity to apply. If job opportunity announcements (JOAs) are used, include a reasonable accommodation statement ([5 CFR §302.106](https://www.law.cornell.edu/cfr/text/5/302.106));
	4. Document reasons to use ranked or unranked evaluation procedures and make such information available to an applicant upon his or her request (5 CFR §302.302(a));
	5. Ensure that pass over/objection requests that require OPM approval are submitted to HHS OHR for review/concurrence and submission to OPM;
	6. Approve or deny pass over/objection requests that do not require OPM approval, and provide to HHS OHR, upon request, a periodic report of all actions taken. This approval may not be redelegated below the OpDiv/StaffDiv Human Resources (HR) Director level;
	7. Ensure reasons are documented for non-selection of a veteran preference or priority consideration eligible;
	8. Ensure eligible former excepted service employees are entered on HHS’s PRL via HHS’ web-based system identified for this purpose; and the HHS PRL is checked for qualified candidates prior to filling excepted service positions, in accordance with this Instruction, [HHS Instruction 330-2, Priority Placement Programs](https://www.hhs.gov/about/agencies/asa/ohr/hr-library/index.html), and 5 CFR §302.304(a).
	9. Ensure that requests to detail excepted service employees to the competitive service, who are covered by [5 CFR §300.301(c),](https://www.law.cornell.edu/cfr/text/5/300.301) are forwarded to HHS OHR for review/concurrence and submission to OPM;
	10. Obtain a written statement from a non-temporary competitive service candidate acknowledging that s(he) is voluntarily leaving the competitive service to accept the position in the excepted service ([5 CFR §302.102(b)](https://www.law.cornell.edu/cfr/text/5/302.102)); and

11. Maintain documentation related to each recruitment when filling excepted service positions so recruitment actions can be reconstructed by a third party.

# 302-1-50 GENERAL

1. Excepted service positions are authorized by law or statute, by the President via Executive Order (E.O.), or by OPM regulation (i.e., Schedules A, B, C, or D). Government-wide excepted authorities/positions approved by OPM are described under 5 CFR Part 213.
2. Excepted service positions may or may not be subject to the provisions of Title 5. Unless the authority (i.e., law/statute, E.O. or OPM approval/regulations) provisions specifically exempt the positions from Title 5 appointment procedures, the excepted service hiring procedures under [5 CFR Part 302](https://www.law.cornell.edu/cfr/text/5/302.101) and this Instruction apply.
3. Regardless of hiring authority, excepted positions are not subject to the appointment rules/regulations of the competitive service.

# 302-1-60 CLASSIFICATION, QUALIFICATIONS & RECRUITMENT

1. **Classification**. Unless specifically exempted by the applicable excepted authority, excepted service positions covered under this Instruction are classified using the OPM Position Classification Standards.
2. **Qualification Standards**. Unless specifically exempted by the applicable excepted authority or the existence of valid HHS-specific qualification standards, OPM’s Qualification Standards apply. OpDiv/StaffDiv-developed qualification standards for positions covered under this Instruction must adhere to the requirements under [5 CFR §302.202](https://www.law.cornell.edu/cfr/text/5/302.202); be validated by an Industrial Organizational (I/O) Psychologist or reviewed by legal counsel to ensure they are legally supportable; and reviewed by HHS OHR for conformity to regulatory requirements prior to use. OHROs maintain a permanent record of such approved qualification standards, and provide information about such standards to an applicant upon his/her request.
3. **Recruitment Methods**. Unless required by statutory or federal regulatory authority (e.g., Pathways Programs), public notice is not required for positions covered by this Instruction; however, the merit system principles apply to excepted service recruitment. OHROs must use recruitment methods that notify applicants of excepted service vacancies within their OpDiv/StaffDiv so that interested applicants have a reasonable opportunity to apply. OHROs must document their recruitment procedures and the acceptance of excepted service applications ([5 CFR §302.301](https://www.law.cornell.edu/cfr/text/5/302.301)).
	1. Notification options, include, but are not limited to, notice on the HHS or OpDiv/StaffDiv’s website of existing or future excepted service vacancies; notices provided at job fairs; or a traditional JOA;
	2. OpDivs/StaffDivs must consider whether their method of recruitment and time allowed provides for fair and open competition, attracts a sufficient pool of qualified candidates, and ensures potential applicants will receive fair and equitable treatment;
	3. Applications are accepted from ‘Current Federal Employees,’ ‘Former Federal Employees,’ ‘Internal Employees/Agency Employees’ or ‘U.S. Citizens.’
		1. Under no circumstances should an excepted service JOA be restricted to ‘Status Candidates’ since excepted employees do not acquire competitive status unless they have previously held a non-temporary competitive service position.
		2. Applications from persons with disabilities (Schedule A[, 5 CFR §213.3102(u)](https://www.ecfr.gov/cgi-bin/text-idx?SID=a52abaeed7c8612374d69354cda3f408&amp;mc=true&amp;node=se5.1.213_13102&amp;rgn=div8)) may be accepted.
	4. OpDivs/StaffDivs may use the following options to manage application volume for positions that attract a high number of applicants. OpDiv/StaffDiv procedures for receiving applications must address the use of these options ([5 CFR §302.301](https://www.law.cornell.edu/cfr/text/5/302.301)). When one or more of the limitations are used, the limitations must be stated in the JOA, advertisement, or notice and justification included in the recruitment case file.
		1. *Limiting the number of days a JOA is open:* OHROs have the discretion to determine the length of time that a JOA is open. When doing so, organizations should give consideration to the types, grade levels, and geographic locations of the positions being filled; and ensure the time allowed provides for fair and open competition that ensures

potential applicants have reasonable opportunity to apply consistent with the merit system principles.

* + 1. *Limiting the number of applications received:* OHROs have the discretion to set “cut-offs” or limits (e.g., the first 100 applications received) on the number of applications that they will consider when filling a position. When using such limits, OHROs shall accept any application received up until 11:59 p.m. on the day the limit is reached in order to accommodate applicants in non-Eastern time zones.
1. **Veterans Preference**. OHROs must ensure veterans’ preference provisions are applied in accordance [with 5 U.S.C. §3320](https://www.law.cornell.edu/uscode/text/5/3320); [5 CFR Part 211](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp&amp;SID=135bc541e0b297681ea704964b7ef449&amp;mc=true&amp;n=pt5.1.211&amp;r=PART&amp;ty=HTML); and this Instruction when filling excepted service positions. OHROs shall request additional information from applicants when there is conflicting documentation in their application package concerning their claimed veterans’ preference. For example, in cases where the applicant submits supporting evidence that shows they are entitled to veterans’ preference, but also provides contradictory evidence that shows they are not entitled to veterans’ preference they are claiming, HR Specialists must request additional information, as necessary, to ensure veterans’ preference is adjudicated properly.

# 302-1-70 PRIORITY CONSIDERATION CANDIDATES

1. OpDivs/StaffDivs must provide reemployment consideration to former HHS excepted service employees registered on HHS’ Priority Reemployment List (PRL) when filling excepted service positions (HHS Instruction, 330-2, Priority Placement Programs), following the assessment and selection procedures described in this Instruction.
2. Qualified candidates on HHS’ PRL must be given selection priority before referring the names of other qualified candidates ([5](https://www.law.cornell.edu/cfr/text/5/302.303) CFR [302.304(a)](https://www.law.cornell.edu/cfr/text/5/302.304)).
3. OHROs may appoint a candidate who is not a PRL eligible, or a PRL eligible who has a lower standing on the PRL list, when the PRL eligible(s) qualifications will create an undue interruption to the position. The OHRO must notify each PRL eligible of the reasons for non-selection and must also notify any preference eligible(s) on the PRL list of their right to appeal to the MSPB (5 CFR 302.304(a)). This documentation must be maintained in the recruitment case file.
4. Once an OHRO fulfills these requirements, other excepted service candidates may be considered for the position.
5. OHROs must retain sufficient documentation to demonstrate PRL clearance for each excepted service vacancy.

# 302-1-80 ASSESSMENT AND SELECTION PROCEDURES

1. OpDivs/StaffDivs must follow the prov[isions of 5 CFR Parts 211](https://www.law.cornell.edu/cfr/text/5/part-211) and [302](https://www.law.cornell.edu/cfr/text/5/part-302) relating to the examination, rating, and selection of an applicant, when a qualified preference eligible, non- preference eligible, or person entitled to priority consideration applies for appointment to a position covered by this Instruction.
2. OHROs must document assessment and selection procedures, apply them uniformly, and furnish applicants information on such procedures and their ratings upon request in accordance [with 5 CFR Part 302, Subpart C](https://www.law.cornell.edu/cfr/text/5/part-302/subpart-C).
3. **Veterans’ preference** is granted as follows ([5 CFR §302.201](https://www.law.cornell.edu/cfr/text/5/302.101)):
	1. *When eligible candidates are referred without numerical ratings*, preference is noted as:
		1. ‘CP’ for preference eligibles having compensable service connected disability of 10% or more (5 U.S.C. §2108(3)(C));
		2. ‘XP’ for all other candidates eligible for 10-point veteran preference ([5 U.S.C.](https://www.law.cornell.edu/uscode/text/5/2108)

[§2108(3)(D-G)](https://www.law.cornell.edu/uscode/text/5/2108); and

* + 1. ‘TP’ for candidates eligible for 5-point veteran preference (5 U.S.C. §2108(3)(A-B)).
	1. *When numerical ratings are used*, 10 additional points are given to preference eligibles described under 1. a. and b. above, and 5 additional points are granted to preference eligibles described under 1. c. above.
1. **Assessment.** OHROs may evaluate candidates based on eligibility/ineligibility determinations, numerical scores, or a category rating-like process ([5 CFR §302.302](https://www.law.cornell.edu/cfr/text/5/302.302)).
	1. Alternate rating and selection procedures may be developed, such as procedures similar to category rating (e.g., category grouping), to fill excepted service positions, *as long as the procedures give preference and priority consideration eligibles at least as much advantage as they would receive under the* [*5 CFR Part 302*](https://www.law.cornell.edu/cfr/text/5/part-302) *hiring procedures* ([5 U.S.C](https://www.law.cornell.edu/uscode/text/5/3320)

[§3320](https://www.law.cornell.edu/uscode/text/5/3320); [5 CFR §302.105](https://www.law.cornell.edu/cfr/text/5/302.105)). Such procedures must be documented and applied uniformly across similar/same types of positions.

* 1. Reasons are documented for using a ranked or unranked referral lists ([5 CFR](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp&amp;SID=85bba9cbdcb1d5eb3f101ff4e378b70c&amp;mc=true&amp;n=pt5.1.302&amp;r=PART&amp;ty=HTML&amp;se5.1.302_1302)

[§302.302(a)](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp&amp;SID=85bba9cbdcb1d5eb3f101ff4e378b70c&amp;mc=true&amp;n=pt5.1.302&amp;r=PART&amp;ty=HTML&amp;se5.1.302_1302)) and the quality ranking factors used, if using numerical rating or category grouping.

* 1. Numerical ratings are assigned on a scale of 100, with each qualified candidate assigned a rating of 70 or more (plus any additional veteran preference points). Numerical ratings are not required when all qualified applicants will be offered immediate employment

([5 CFR §302.302(b)](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp&amp;SID=85bba9cbdcb1d5eb3f101ff4e378b70c&amp;mc=true&amp;n=pt5.1.302&amp;r=PART&amp;ty=HTML&amp;se5.1.302_1302)).

* 1. When there is a high volume of applicants, ratings are only required for a sufficient number of the highest-qualified applicants to meet the OpDiv/StaffDiv’s needs within a reasonable time; however, preference eligible candidates are still considered in the order they would have been considered if all applicants had been assigned ratings ([5 CFR](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp&amp;SID=85bba9cbdcb1d5eb3f101ff4e378b70c&amp;mc=true&amp;n=pt5.1.302&amp;r=PART&amp;ty=HTML&amp;se5.1.302_1302)

[§302.302(b)](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp&amp;SID=85bba9cbdcb1d5eb3f101ff4e378b70c&amp;mc=true&amp;n=pt5.1.302&amp;r=PART&amp;ty=HTML&amp;se5.1.302_1302)).

1. **Certificates and Order of Consideration**. Qualified candidates are placed on a certificate in the following order ([5 CFR §211.102(d)(3); 5 CFR §302.303(d)](https://www.law.cornell.edu/cfr/text/5/302.303); [5 CFR §302.304](https://www.law.cornell.edu/cfr/text/5/302.304)):
	1. Priority reemployment candidates**.** Qualified candidates on HHS’s PRL must be given selection priority *before other candidates can be referred*, in accordance with [5 CFR](https://www.law.cornell.edu/cfr/text/5/302.304)

[§302.304](https://www.law.cornell.edu/cfr/text/5/302.304)(a), and are placed on a PRL certificate in one of the orders listed in 2. below.

* 1. Other candidates are considered in one of the following orders:
		1. *When candidates are rated only for basic eligibility:*
			1. Qualified preference eligibles that have a compensable, service-connected disability of 10% or more;
			2. All other qualified candidates eligible for 10-point veteran preference;
			3. All qualified candidates eligible for 5-point veteran preference; and
			4. Qualified candidates not eligible for veteran preference.
		2. *When candidates have been assigned numerical ratings:*
			1. Qualified preference eligibles having a compensable, service-connected disability of 10% or more, in order of the augmented ratings; and
			2. All other qualified candidates in the order of their augmented ratings. At each score, qualified candidates eligible for 10-point preference are entered ahead of those eligible for 5-point preference, and those eligible for 5-point preference are entered ahead of those not eligible for preference.
			3. When candidates have the same numerical ratings, preference eligibles are listed ahead of non-preference eligibles ([5 CFR §211.102(d)(3)](https://www.law.cornell.edu/cfr/text/5/211.102)).
		3. *For professional and scientific positions at the GS-9 grade level and above:*
			1. If numerical ratings are assigned, applicants are considered in the order of their scores, augmented for veterans’ preference. When candidates have the same numerical ratings, preference eligibles are listed ahead of non-preference eligibles ([5 CFR §211.102(d)(3)](https://www.law.cornell.edu/cfr/text/5/211.102)); or
			2. If numerical scores have not been assigned, all preference eligibles are considered together regardless of the type of preference, followed by other candidates.
		4. *Order specified in the OpDiv/StaffDiv’s alternate rating and selection procedures,* in accordance [with 5 CFR §302.105,](https://www.ecfr.gov/cgi-bin/text-idx?SID=2a9003a0404ddf7408e5f9ba324cc5bb&amp;mc=true&amp;node=se5.1.302_1105&amp;rgn=div8) and the [assessment procedures](#_bookmark9) above.

# Selection.

* 1. OHROs must adhere to the selection procedures under [5 CFR §302.401(a)](https://www.law.cornell.edu/cfr/text/5/302.401), **or** follow its OpDiv/StaffDiv alternate rating and selection procedures (such as category grouping), when making selections from priority reemployment or regular certificates. The Indian Health Service must give selection priority in accordance with 25 U.S.C. §5117, prior to applying the veterans’ preference provisions under 5 CFR Part 302.
		1. *Selections unde*[*r 5 CFR §302.401(a)*](https://www.law.cornell.edu/cfr/text/5/302.401):
			1. When numerical ratings are assigned*,* selections are made from the highest three candidates listed in Order A, i.e., preference eligibles who have a compensable service-connected disability of 10 percent or more, followed by all other qualified candidates, in the order of their numerical ratings, with preference eligibles listed ahead of non-preference eligibles with the same ratings ([5 CFR §211.102(d)(3)](https://www.gpo.gov/fdsys/granule/CFR-2011-title5-vol1/CFR-2011-title5-vol1-sec211-102)).
			2. When numerical ratings are not assigned*,* selections are made from the highest preference category, as long as at least three candidates are in that group. When fewer than three candidates are in the highest preference category, consideration may be expanded to include the next highest preference category.
		2. *Selections under OpDiv/StaffDiv alternate rating and selection procedures*:
			1. OHROs must apply the documented alternate rating and selection procedures uniformly.
			2. If making selections under category rating-like (e.g., category grouping) procedures, OpDivs/StaffDivs must select from the highest quality category (i.e., any preference eligible within the highest quality category may be selected; veterans have selection preference over non-veterans; preference eligibles with a 10% or more disability are placed in the highest quality category ahead of the non-preference eligibles, except for scientific or professional positions at the GS- 9 level or higher).
	2. Selection of Competitive Service Candidate. A written statement must be obtained from a non-temporary competitive service candidate, acknowledging s(he) is voluntarily leaving the competitive service to accept the position in the excepted service ([5 CFR](https://www.law.cornell.edu/cfr/text/5/302.102)

[§302.102(b)](https://www.law.cornell.edu/cfr/text/5/302.102)). Such employees generally do not lose appeal rights, see [Section 302-1-100](#_bookmark11) of this Instruction. In addition, employees who previously held a non-temporary competitive service position retain their competitive service status and may continue to apply to competitive service positions open to ‘status’ candidates. (Employees should be advised to provide a SF-50 showing they previously held a non-temporary competitive service position when applying to jobs.) Excepted employees who have never served in a non-temporary competitive service position are eligible to apply only to competitive service announcements open to all candidates or U.S. Citizens.

# Veteran Pass Overs and Objections.

* 1. OpDiv/StaffDiv HR Directors may approve or deny pass over requests of *less than 30 percent* compensable disabled veterans for excepted service positions and document reason(s) for selecting a non-preference eligible ([5 CFR §302.401(b)](https://www.law.cornell.edu/cfr/text/5/302.401)). This approval may not be redelegated below the OpDiv/StaffDiv HR Director level.
	2. The following pass over and objection requests require OPM approval before making selections for excepted service positions covered under this Instruction:
		1. A pass over of any preference eligible with a 30 percent or more compensable service connected disability ([5 U.S.C §3318(c)(2)](https://www.law.cornell.edu/uscode/text/5/3318) and the [*OPM Vet Guide*, *Excepted Service*](https://www.opm.gov/policy-data-oversight/veterans-services/vet-guide-for-hr-professionals/#2)[*Employment*](https://www.opm.gov/policy-data-oversight/veterans-services/vet-guide-for-hr-professionals/#2)*)*;
		2. A pass over of a preference eligible based on medical qualifications ([5 CFR](https://www.law.cornell.edu/cfr/text/5/339.201)

[§§339.201](https://www.law.cornell.edu/cfr/text/5/339.201) and [339.306](https://www.law.cornell.edu/cfr/text/5/339.306)); and

* + 1. Objections based on suitability for federal employment, if the excepted service authority or position authorizes non-competitive conversion to the competitive service ([5 CFR §731.101](https://www.law.cornell.edu/cfr/text/5/731.101)).
	1. Pass over requests requiring OPM approval must be sent to the HHS OHR for review and concurrence. OHR will send the request to OPM if it concurs with the request. OHROs must submit the following documentation to HHS OHR:
		1. Completed SF-62, Agency Request to Passover a Preference Eligible or Object to an Eligible, [*www.opm.gov/Forms/pdf\_fill/SF62.pdf*](http://www.opm.gov/Forms/pdf_fill/SF62.pdf)*;*
		2. Resume/Application package to include title, series, and grade;
		3. Copy of Position Description;
		4. Copy of Vacancy Announcement;
		5. Certificate of Eligibles; and
		6. A memorandum approved by the HR Director with a description of the reason sufficient to sustain an objection/pass over.
	2. No correspondence is sent to a 30 percent or more compensable disabled applicant until HHS OHR concurrence is received. Only after OPM has approved the pass over of the preference eligible may the 30 percent or more compensable disabled veteran be passed over and another applicant selected.
	3. OpDivs/StaffD[ivs should be mindful of 5 U.S.C. §3320](https://www.law.cornell.edu/uscode/text/5/3320) and [5 CFR §332.406](https://www.law.cornell.edu/cfr/text/5/332.406) when considering reasons for passing over a preference eligible, and consult with their legal counsel, if necessary, on whether the justification is likely to meet the standard of making selections in the same manner and under the same conditions required for the competitive service, as prescribed by [5 U.S.C. §3320](https://www.law.cornell.edu/uscode/text/5/3320).

# 302-1-90 DETAILS, PROMOTIONS, REASSIGNMENTS, REAPPOINTMENTS, AND APPOINTMENT TIME LIMITS

1. **Details**. Details of employees in the excepted service are made in accordance with [5 CFR](https://www.law.cornell.edu/cfr/text/5/300.301)

[§300.301](https://www.law.cornell.edu/cfr/text/5/300.301). Requests for OPM approval to detail certain excepted service employees to positions in the competitive service are directed to HHS OHR for review and concurrence. The request must contain a memorandum from the HR Director that provides the following information:

* 1. Information on the excepted service position (appointment authority and employee’s position of record, including title, series, grade, and organization);
	2. Information on the competitive service position that will be filled (title, series, grade, and organization);
	3. Purpose of the detail or the duties to be performed during the detail; and
	4. Reason why a competitive service employee cannot serve in the detail.

# Promotions and Reassignments.

* 1. Promotions within the excepted service are not subject to the time-in-grade restrictions [outlined in 5 CFR Part 300, Subpart F](https://www.law.cornell.edu/cfr/text/5/part-300/subpart-F); however, employees must meet the qualification requirements described in [302-1-60 B. of this Instruction](#_bookmark6) for the excepted service position (series and grade). Time-in-grade restrictions outlined in 5 CFR Part 300,

Subpart F, apply to *movement to or within the competitive service*; therefore, while promotions within the excepted service **are not** subject to time-in-grade; promotions upon non-competitive conversion to the competitive service (for excepted service authorities that authorize non-competitive conversion) **are** subject to time-in-grade restrictions.

* 1. The merit system principles apply to promotions within the excepted service (i.e., competition is required for the proposed grade level(s), otherwise the promotion is a prohibited personnel practice.)
	2. The requirements such as age, height, and weight in determining qualifications for a promotion for a preference eligible are waived unless the qualification(s) is/are essential to the performance of the duties of the position ([5 CFR §302.403](https://www.law.cornell.edu/cfr/text/5/302.403)).
	3. The physical requirements of a position in cases of promotion are waived if, in the opinion of the employing OpDiv/StaffDiv, and after considering the recommendation of an accredited physician, the preference eligible is physically able to perform the duties of the position ([5 CFR §302.403](https://www.law.cornell.edu/cfr/text/5/302.403)).
1. **Reappointments**. OpDivs/StaffDivs may reappoint a current or former non-temporary federal employee who is a preference eligible to a vacant HHS position without regard to the names of qualified applicants on HHS’ PRL or a regular employment list ([5 CFR §302.402](https://www.law.cornell.edu/cfr/text/5/302.401)).
2. **Appointment Time Limits**. The time limits described under 5 CFR §213.104 for temporary, time-limited, intermittent, or seasonal excepted appointments are followed.

# 302-1-100 APPEALS

1. Excepted service employees who meet the definition of ‘employee’ under [5 U.S.C](https://www.law.cornell.edu/uscode/text/5/7511)

[§7511(a)(1)(B)-(C)](https://www.law.cornell.edu/uscode/text/5/7511) generally have appeal rights to the MSPB for adverse actions. Servicing Employee Relations staff should be consulted when dealing with unacceptable performance and/or employee misconduct to ensure actions are in compliance with law, regulations, HHS policy, and applicable collective bargaining agreement(s).

1. Individuals entitled to priority consideration who are preference eligibles, or suffered a compensable injury, have appeal rights to the MSPB if they believe their reemployment rights were violated (5 CFR §§302.304(a) and 302.501).

# 302-1-110 PERSONNEL ACTIONS

1. [*OPM’s Guide to Processing Personnel Actions*](https://www.opm.gov/policy-data-oversight/data-analysis-documentation/personnel-documentation/#url%3DProcessing-Personnel-Actions), Chapter 11, Excepted Service Appointments, is used when processing personnel actions, and the specific law/statute, Executive Order (E.O.), or Schedule (A. B, C, etc.) authority that authorizes the appointment must be cited.
2. Tenure is assigned following guidance in [*OPM’s Guide to Data Standards*](https://www.opm.gov/policy-data-oversight/data-analysis-documentation/data-policy-guidance/). Generally, time- limited or temporary appointments are Tenure Code 3; individuals serving trial periods are assigned Tenure Code 2; and employees who have completed trial periods and are on permanent appointments are Tenure Code 1.

# 302-1-120 DOCUMENTATION AND ACCOUNTABILITY

1. Records associated with hiring actions should be retained in individual recruitment case files to allow for third-party reconstruction. Records associated with personnel actions, including all documentation sufficient for third party reconstruction purposes, must be retained according to the record disposition schedule. Generally, all records created in a given year must be retained for a total of three (3) full years. Records involved in litigation and grievance processes may be destroyed only after official notification is received from OPM, Department of Justice, courts, the Office of the General Counsel, etc. that the matter has been fully litigated, or resolved, and closed.
2. HHS OHR will conduct periodic accountability reviews to analyze compliance with this Instruction, HHS and OPM policy and guidance, and all applicable federal laws and regulations.