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Date: 2020.04.23 14:44:35 -04'00'

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**DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT**

HUMAN RESOURCES (HR) BULLETIN #245, FY20

SUBJECT: Process for Requests to Pass Over All Preference Eligibles for Competitive Service Positions and Excepted Service Positions Covered Under Title 5, United States Code (U.S.C.)

EFFECTIVE DATE: Upon release of this HR Bulletin

EXPIRATION DATE: Effective until canceled or superseded

SUPERSEDES: HR Bulletin #157, FY14, "Process for Requests to Pass Over All Preference Eligibles for Competitive Service Positions and Excepted Service Positions Covered Under Title 5, United States Code (U.S.C.)"

REVISION: This bulletin updates the delegation of authority for Principal Human Resources Managers (PHRMs) to pass over CP, TP, and XP preference eligibles.

BACKGROUND: "Veterans' preference" was established in the Veterans' Preference Act of 1944, when Congress enacted laws to prevent veterans seeking Federal employment from being penalized for their time in military service. Veterans' preference recognizes the economic loss suffered by citizens who have served their country in uniform, restores veterans to a favorable competitive position for Government employment, and acknowledges the larger obligation owed to disabled veterans.

PURPOSE: This HR Bulletin establishes procedures for requesting a pass over of any preference eligible, for competitive service positions and excepted service positions covered under Title 5, U.S.C.

In accordance with the President's strong commitment to veterans' preference hiring, the Department of Commerce (Department) is aggressively enforcing the personnel practice of never bypassing preference eligibles for job opportunities unless there is a "proper and adequate reason."

DELEGATION OF AUTHORITY: The PHRMs are delegated the authority to pass over CP, TP, and XP preference eligibles for proper and adequate reasons, with the exception of instances where the Office of Personnel Management (OPM) retains exclusive authority. The authority of the PHRMs cannot be redelegated.

COVERAGE: This HR Bulletin applies to requests to pass over preference eligibles for competitive service and excepted service positions covered under Title 5, U.S.C.

POLICY: A preference eligible may be removed from employment consideration for proper and adequate reasons. Proper and adequate reasons include:

1. Medical disqualifications under Title 5, Code of Federal Regulations (CFR), Part 339;
2. The criteria for making suitability determinations under Title 5, CFR, Part 731; and
3. The reasons cited in OPM's "Delegated Examining Operations Handbook" (DEOH) to be disqualifying.

DEFINITIONS:

5-Point Preference (TP) – A veteran who served:

- During a war; **or**
- During the period April 28, 1952, through July 1, 1955; **or**
- For more than 180 consecutive days, other than for training, any part of which occurred after January 31, 1955, and before October 15, 1976; **or**
- During the Gulf War from August 2, 1990, through January 2, 1992; **or**
- For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last day of Operation Iraqi Freedom; **or**
- In a campaign or expedition for which a campaign medal has been authorized. Any Armed Forces Expeditionary medal or campaign badge, including El Salvador, Lebanon, Grenada, Panama, Southwest Asia, Somalia, and Haiti, qualifies for preference.

A campaign medal holder or Gulf War veteran who originally enlisted after September 7, 1980, (or began active duty on or after October 14, 1982, and has not previously completed 24 months of continuous active duty) must have served continuously for 24 months or the full period called or ordered to active duty. The 24-month service requirement does not apply to 10-point preference eligibles separated for disability incurred or aggravated in the line of duty, or to veterans separated for hardship or other reasons under Title 10, U.S.C., Part 1171 or 1173.

10-Point Compensable Disability Preference (CP) – A veteran who served at any time **and** has a compensable service-connected disability rating of at least 10 percent but less than 30 percent.

10-Point 30 Percent Compensable Disability Preference (CPS) – A veteran who served at any time **and** who has a compensable service-connected disability rating of 30 percent or more.

10-Point Disability Preference (XP) – A veteran who:

- Served at any time and has a present service-connected disability or is receiving compensation, disability retirement benefits, or pension from the military or the Department of Veterans Affairs but does not qualify as a CP or CPS; **or**
- Received a Purple Heart.

10-Point Derived Preference (XP) – Spouses, widows, widowers, or parents of veterans who meet the definition described in OPM’s “VetGuide,” or OPM’s “FedsHireVets” website. This type of preference is usually referred to as “derived preference” because it is based on the service of a veteran who is not able to use it. Both a parent and a spouse (including widow or widower) may be entitled to preference on the basis of the same veteran’s service if they both meet the requirements. However, neither may receive preference if the veteran is living **and** is qualified for Federal employment.

Sole Survivorship Discharge – The separation of a member from the Armed Forces, at the request of the member, pursuant to Department of Defense policy permitting the early separation of a member who is the only surviving child in a family in which the father or mother or one or more siblings (1) served in the Armed Forces, and (2) was killed, died as a result of wounds, accident, or disease, is in a captured or missing-in-action status, or is permanently 100 percent disabled or hospitalized on a continuing basis (and is not gainfully employed because of the disability or hospitalization) where (3) the death, status, or disability did not result from the intentional misconduct or willful neglect of the parent or sibling and was not incurred during a period of unauthorized absence.

Note: Military retirees at the rank of major, lieutenant commander, or higher are not eligible for preference in appointment unless they are disabled veterans. (This does not apply to Reservists who will not begin drawing military retired pay until age 60.) More detailed information about the various types of veterans’ preference can be found in OPM’s “VetGuide.”

Proper and Adequate Reasons – Medical disqualifications under Title 5, CFR, Part 339; the criteria for making suitability determinations under Title 5, CFR, Part 731; and the reasons cited in the OPM’s DEOH to be disqualifying, including qualifications.

APPROVAL PROCESS: Once a preference eligible is referred on a competitive examining certificate, the approval process below must be followed before passing over the preference eligible for any position in the competitive service or excepted service covered under Title 5, U.S.C. The SHROs may not extend an offer of employment to a non-preference eligible until written approval of the pass over is received, unless there are multiple vacant positions available. When there is more than one vacant position available, a non-preference eligible may receive an offer of employment as long as a vacant position is maintained for the preference eligible during the pass over adjudication process.

Process for Requesting a Pass Over

CP, TP, and XP Preference Eligibles: In accordance with Title 5, CFR §§ 332.406(a) and 332.406(b), the Department has authority to adjudicate pass over requests for the reasons listed

under Title 5, CFR, Part 731, and in OPM's DEOH. Requests must be submitted to the appropriate PHRM, and receive approval, before removing the individual from a certificate of eligibles. If the pass over request is approved, the preference eligible is entitled to a copy, upon his/her request, of the reason(s) submitted in support of the pass over and the decision of the PHRM (Title 5, U.S.C. § 3318 (b)(3)(A) and (B)). However, that individual does not have appeal rights to the Merit Systems Protection Board (MSPB).

10-Point 30 Percent Compensable Disability Preference (CPS): OPM retains exclusive authority to adjudicate requests to pass over a 30 percent or more compensably disabled veteran (Title 5, CFR § 332.406(a)(1)). All requests must be forwarded to the Director of the Office of Human Resources Management (OHRM Director) for preliminary approval before being submitted to OPM.

Upon the OHRM Director's preliminary approval, OHRM will send the request to OPM for final adjudication. Once OPM has provided final approval, the 30 percent or more preference eligible can be passed over and removed from the certificate of eligibles. If the OHRM Director, or OPM, disapproves the pass over request, the SHRO will be notified in writing of the decision and the reason(s) for the disapproval. The SHRO will have an opportunity to resubmit the request with additional documentation if appropriate.

A CPS preference eligible is entitled to advance notice of a proposed pass over. However, the SHRO should notify the preference eligible only after being informed that the OHRM Director has preliminarily approved the pass over request, and it has been submitted to OPM. On the same day the SHRO has been notified that the request has been submitted to OPM, the SHRO must notify the preference eligible, in writing, of the proposed pass over – which must include the reason(s) for the pass over determination and inform them of their right to respond to OPM within 15 days of the OHRM Director's request to OPM. The written notification must be sent to the preference eligible's last known physical address (Title 5, U.S.C. § 3318(b)(2)).

Proper and Adequate Reasons based on Suitability Criteria: When a pass over request for a preference eligible under Title 5, CFR § 332.406 is based on criteria in Title 5, CFR § 731.202, the action does not constitute a formal suitability action, and the procedures set forth in Title 5, CFR, Part 731 do not apply. As previously noted, a SHRO may use the criteria (from Title 5, CFR § 731.202) as a guideline to pass over a preference eligible, but the pass over is not part of the formal suitability process.

Individuals may not appeal a pass over decision to the MSPB, even when the decision is based on guidelines set forth in Title 5, CFR, Part 731.

Note: When a pass over request is approved based on a material, intentional false statement or deception or fraud in examination or appointment; or refusal to furnish testimony as required by Title 5, CFR § 5.4., due to the significance of these factors and to ensure uniformity throughout the Federal Government, the candidate's application **must** also be referred to OPM for any suitability action that may be warranted.

Documentation Required

All pass over requests must include the following information/documentation:

- Agency Request to Pass Over a Preference Eligible (SF-62)
- A copy of the job announcement
- A copy of the position description
- Crediting plan
- Preference eligible's application
- Ranking sheet
- Justification for pass over
- Any additional information and documentation pertinent to the case

Subsequent Pass Over Requests

The PHRMs have authority to pass over a CP, TP, or XP preference eligible, without all of the information/documentation required in an original request, when the PHRM has previously approved a pass over request, in writing, for the same preference eligible for either reasons listed or not listed under Title 5, CFR § 731.103, in limited situations.

Subsequent pass overs may only be for the same or similar position (i.e., same grade or band level, same full performance level, same series, same or similar duties) in the bureau for which the original pass over was approved, and there is a nexus between the reason for the original pass over and the current position. Subsequent pass overs are limited to a period of 1 year from the original pass over approval date.

The PHRMs are required to provide a signed statement for the recruitment case file, stating the reason(s) for the pass over, and the nexus to the current position. The original pass over approval memo from the PHRM must also be maintained in the recruitment case file. The SHRO must provide a copy, upon request from the preference eligible, of the reason(s) submitted in support of the pass over and the decision.

OPM Retains Exclusive Authority

10-Point 30 Percent Compensable Disability Preference (CPS) – In accordance with Title 5, CFR § 332.406(a)(1), OPM retains the authority to adjudicate pass over requests of all CPS eligibles.

Medical Determinations – In accordance with Title 5, CFR § 332.406(a)(2), OPM retains the authority to adjudicate pass over requests of all preference eligibles (CP, TP, XP, and CPS) when the request involves medical reasons.

Suitability Determinations – In accordance with Title 5, CFR § 332.406(a)(3), and Title 5, CFR 731.103(g), OPM retains authority to make suitability determinations and take actions in all suitability cases where there is evidence that there has been a material, intentional false statement or deception or fraud in examination or appointment; or refusal to furnish testimony as required by Title 5, CFR § 5.4. When a pass over request under Title 5, CFR § 332.406 is based on either of these reasons, the candidate's application **must** also be referred to OPM for any suitability

action that may be warranted, due to the significance of these factors and to ensure uniformity throughout the Federal Government.

Note: Prior to being submitted to OPM, all of the above requests must be forwarded to the OHRM Director for preliminary approval. Upon the OHRM Director's preliminary approval, OHRM will submit the request to OPM for final adjudication. Only after OPM has provided final approval may the preference eligible be removed from the certificate of eligibles, or a suitability action taken. As previously stated, advance notice to a CPS preference eligible of the proposed pass over still applies.

Debarment of a CPS Preference Eligible or any Preference Eligible

OPM retains exclusive authority to make pass over decisions regarding CPS preference eligibles, or for any eligible that is based on medical reasons, or intentional false statement or deception or fraud in examination or appointment; or refusal to furnish testimony as required by Title 5, CFR § 5.4; therefore, only OPM can debar an eligible based on these situations.

The Department has the authority to debar an applicant or appointee when it finds the individual to be unsuitable based on the reasons listed in Title 5, CFR § 731.202; however, the action has to be taken under suitability action procedures, not a pass over request (Title 5, CFR § 731.203(b)), and under such action, the applicant is entitled to the appropriate notification and appeal rights to the MSPB.

REFERENCES: Title 5, U.S.C. § 3318; Title 5, CFR §§ 332.406 and 339.306; Title 5, CFR, Part 731; OPM's "VetGuide"; OPM's "Delegated Examining Operations Handbook 2019"; *Federal Register*, Vol. 74, No. 122, June 26, 2009; FedHireVets.gov

OFFICE OF POLICY AND BENEFITS: OPBservices@doc.gov