

HUMAN RESOURCE MANUAL

HHS Instruction 332-1, Objections to Eligibles and Passover of Veterans

Issuance Date: October 21, 2011

Background:

This instruction provides guidance to human resources centers and Operating Divisions/Staff Divisions on the procedures for objecting to preference eligibles for positions in the competitive and excepted services under the authority of the Code of Federal Regulations.

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

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INSTRUCTION 332-1

**HHS PERSONNEL INSTRUCTION 332-1
Objections to Eligibles and Passover of Veterans**

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332-00 Purpose

The purpose of this Instruction is to publish policy and establish procedures for objecting to eligibles/passing over veterans for all competitive and excepted service positions. The delegation agreement between the Office of Personnel Management (OPM) and the Department of Health and Human Services (HHS) requires the Department to establish proper procedures for objections that are in compliance with applicable statutes/regulations. Title 5 CFR section 332.406 provides general guidance on objecting to both preference and non-preference eligibles.

332-10 Background/Authority

Veterans' Preference derives from the Veterans' Preference Act of 1944. The Veterans' Preference Act of 1944 defines to whom and under what circumstances preference is granted. It provides that preference be given in competitive examinations, in appointments to positions in the Federal service, in reinstatement to positions, in reemployment, and in retention during reductions-in-force. Preference applies to civilian positions - permanent or temporary - in all departments, agencies, bureaus, administrations, establishments, and projects of the Federal Government, and in the civil service of the District of Columbia in both the competitive and excepted services.

Within HHS, the authority to approve an objection to an eligible and the passover of a veteran is delegated to the Appointing Officer (Human Resources Center Director). Exceptions to this, where OPM has retained final approval authority, are described in Section 332-40 of this Instruction.

Objections may be based on general qualifications and/or fitness or on specific requirements for the job being filled. If, at the time before and after the certificate is issued, all of the specific requirements for the job and all pertinent information about the eligibles are known to the certifying office, the delegated examining (DE) certificates issued are valid. However, since information is received from a variety of sources throughout the recruiting process, it is possible

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that facts which could support an objection or passover could emerge at any point in the recruitment process, including after certification or selection.

References

- 5 CFR 332 - Recruitment and Selection through Competitive Examination
- 5 CFR 339 - Medical Qualification Determinations
- 5 CFR 731 - Suitability
- 5 CFR 320 - Employment in the Excepted Service
- U.S.C. 3318 - Competitive Service; Selection From Certificates
- Office of Personnel Management, Delegated Examining Operations Handbook: A Guide for Federal Agency Examining Offices, dated May 2007
- Office of Personnel Management's Memorandum for Chief Human Capital Officers: Subject: Procedures for Passover of Compensably-Disabled Preference Eligibles in the Excepted Service, dated February 9, 2009
- OPM's VetGuide

332-30 Designated Veterans' Preference Codes and Definitions

The following codes designate veterans' and non-veterans' preference with definitions:

- CPS - 10-Point 30 Percent Compensable Disability Preference is based on a service connected disability of 30% or more;
- CP - 10-Point Compensable Disability Preference is based on a service-connected disability of 10% , but less than 30%;
- XP - 10-Point Disability Preference is based on non-compensable service-connected disability (less than 10%) or receipt of a Purple Heart;
- XP - 10-Point Derived Preference is granted to widow/widower or mother of a deceased veteran;
- TP - 5-Point preference; if active duty service meets any of the following:
 1. 180 or more consecutive days, any part of which occurred during the period beginning September 11, 2001 and ending on a future date prescribed by Presidential proclamation or law as the last date of Operation Iraqi Freedom; or
 2. Between August 2, 1990 and January 2, 1992; or
 3. 180 or more consecutive days, any part of which occurred after January 31, 1955 and before October 15, 1976; and
 4. In a war, campaign or expedition for which a campaign badge has been authorized or between April 28, 1952 and July 1, 1955.
- NV - A non-veteran.

332-40 Grounds for Objections

- a. Objections based on suitability considerations (5 CFR Part 731) and ineligibility determinations based on medical considerations (5 CFR Part 339) affecting preference eligibles **will be referred to OPM for adjudication**. In addition, objections based on the qualifications of 30 percent or more compensable preference eligibles will be referred to the appropriate OPM Service Center for final determination.
- b. The following paragraphs list specific kinds of objections that can be made and provide guidelines to follow when objecting to an eligible. All grounds on which objections may be made are not covered in these paragraphs, nor are the decisions suggested by the guidelines necessarily binding under all circumstances. These guidelines express principles to follow, but, unless specifically indicated to the contrary, each case must be decided on its own merits. When circumstances of a particular case justify a decision that does not fit these guidelines precisely, such a decision may, nevertheless, be proper. Decisions should recognize both the needs of the service and the basic principle that eligibles must receive fair consideration. In all cases, the written record used to support such decisions must be completed and maintained in the delegated examining (DE) case files for future reviews/audits.
 1. Availability: The OPDIV/STAFFDIV must determine the eligible's availability for a specific position, at a certain salary and at a definite place of duty. Objections will not be sustained on the basis of a presumption that an eligible is unavailable.
 - Objections on the basis of unavailability due to military service will be sustained only if evidence is documented that the selecting official was unable to communicate with the eligible about his or her availability for duty within a reasonable time or the eligible was unable to obtain a discharge from active military duty within a reasonable time.
 - Objections based on unavailability for positions with specialized or unusual requirements must show that the requirements were made known to all applicants through the vacancy announcement. Such requirements include, but are not limited to frequent travel, geographic and functional mobility, and drug testing, etc.
 2. Education: When education is not an absolute minimum requirement for the position to be filled, lack of education is not a valid basis for an objection.
 3. Experience: Objections based on a lack of experience (minimum qualifying experience as defined by OPM's Qualifications Standards Handbook, either general or specialized, or selective factors) may be sustained only when that experience is part of the minimum requirements for the position.
 4. Fraud or false statements: A selecting official may object to an eligible on the basis of material, intentional false statement, or deception or fraud in examination or appointment. In accordance with 5 CFR 332.406(a)(3), any objection or passover request based on these reasons must be referred to OPM for suitability action where warranted.

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5. Habitual Use of Alcohol: A selecting official may object to an eligible on the basis of alcohol abuse, without evidence of substantial rehabilitation, of a nature and duration that suggests that the applicant or appointee would be prevented from performing the duties of the position in question, or would constitute a direct threat to the property or safety of the applicant or appointee or others.
6. Illegal Use of Narcotics: A selecting official may object to an eligible on the basis of illegal use of narcotics, drugs, or other controlled substances, without evidence of substantial rehabilitation.
7. Medical: A selecting official may consider an eligible medically disqualified, in accordance with the provisions and procedures outlined in 5 CFR, Part 332.406, when he or she has a physical or medical (including mental health) condition that will prevent him or her from performing the full range of essential duties and responsibilities of the position safely and efficiently. Medical documentation must be provided as part of the passover request.
8. Interviews: It is the responsibility of the selecting official to provide reasonable arrangements for selection interviews when these interviews are considered necessary or desirable. Objections to an eligible based upon the failure to appear for a selection interview will be sustained only if adequate advance notice is given and **travel outside of the commuting area (i.e., 50 miles or more) of the eligible's residence is not involved, unless paid for by the agency.** This does not mean that all other requests are unreasonable. Other cases will be decided on their individual merits, taking into consideration matters such as the relative importance of the interview to the vacancy, the amount of travel involved, the amount of notice given, or the facilities available for holding the interview. Objections will be sustained only if the notice to the eligible clearly indicates that the failure to appear for the interview or make alternative arrangements for interview will constitute unavailability for consideration for appointment to the particular position. Objections based on the inability of the appointing officer to provide reasonable arrangements will **not** be sustained.
9. Personal Characteristics: A selecting official may object to an eligible certified by the Delegated Examining (DE) Unit on the grounds the eligible did not demonstrate during the selection interview possession of those personality traits that are necessary to successfully perform in the position. In support of objections based on personality traits, e.g., mature judgment, tact, objectivity, flexibility, temperament, lack of initiative, unreliability, etc., selecting officials must submit a full report of the interview. If a panel conducted the interview, the comments of each of the panel members **must** be submitted. **The selecting official must also demonstrate that the applicant's traits in question would adversely impact the applicant's job performance and could not be sufficiently remedied with training, education, or mentoring.**

The appointing official or his or her designee will decide each case on its own merits, approving only those that have been supported by specific examples of the candidate's behavior during the interview. The behaviors must demonstrate a lack of desirable traits or the presence of undesirable traits, and the appointing official agrees that the traits in question would impact successful job performance. Conversely, objections

based on conclusions not supported by adequate illustrations of occurrences shall **not** be sustained. Note: These characteristics are typically discovered during the interview process or during a reference check.

10. Previous Service: Objections based on negligence or misconduct in previous service in the same or another agency may be sustained when it can be established that the application would not have been accepted had complete information been available at the time. In addition, objections to an eligible based on previous unsatisfactory service may be sustained regardless of the general acceptability of the application when the service was for a length of time sufficient for a full and fair trial. Also, the character of the service was such that the eligible candidate reasonably could not be expected to complete a satisfactory probation in the new position. Generally, serious allegations about an employee's performance would be reflected in performance appraisals of record. Therefore, when such allegations are made, these records will be provided to the appointing officer or his or her designee, who will determine whether the allegations are supported by facts. This is especially important in cases involving Operating Division's own employees.
11. Lack of Proof of Veterans' Preference: Objections to eligibles granted tentative preference (TP) will be sustained on the basis of failure to submit the required proof within a reasonable time or because of the insufficiency of the preference claim. The evidence required from applicants to adjudicate a claim for preference is contained in OPM's Vet Guide referenced above.
12. Security Clearance: If the OPDIV/STAFFDIV cannot grant a security clearance to an eligible, for whatever reason, the objection to that eligible will be sustained. Since the legal responsibility for granting the security clearance is with the agency, it is not necessary for the selecting official to provide the reason the eligible does not meet the agency's security requirements. If inquiries are received concerning the reason the eligible was not eligible, the servicing HR specialist will inform the eligible that he or she was not given a security clearance and refer them to the responsible security office for additional information.

332-50 Documentation

- a. A passover of a preference eligible is treated as an objection. The reason given must be of the kind described in section 332-40 of this Instruction or OPM's Delegated Examining Operations Handbook, and must be sufficient to sustain an objection. The Selecting Official's reason must be specifically directed to the qualifications or suitability of the preference eligible. **A justification based on a conclusion that a tentatively selected non-preference eligible is superior in qualifications to the preference eligible or has served in temporary positions in the component, regardless of the quality of the performance, will not be sufficient to support a passover request.** Passovers of preference eligibles for medical reasons and objections based on qualifications, which would result in the passover of a compensable preference eligible with a disability of 30% or more, **must be** adjudicated by OPM.

- b. When acting on objections based on general qualifications, performance, previous service, and other appropriate considerations, the Appointing Officer or his or her designee will consider the source of the information submitted by the Selecting Official. The individual providing the information must have had ample opportunity to observe the eligible in situations relating to the basis for the objection. A preferable reference is someone who supervised the eligible. If the source of the information is someone other than the eligible's present or former supervisor, the component must obtain verification from the supervisor or document why such substantiation cannot be obtained.
- c. A signed statement from the person who provided the information must accompany objections based on oral interviews.

332-60 Roles and Responsibilities

An eligible that is objected to by a Selecting Official may be removed from consideration on a certificate only after the objection has been sustained. The Appointing Officer will be completely objective when acting on objections to eligibility. The Appointing Officer's decisions will be based on the requirements of the job to be filled, including any valid selective placement or quality ranking factors and on the qualifications of the eligible.

a. Selecting Official:

Qualifications objection to a 10-point compensable veteran with less than 30% service connected disability and veterans with 5-point preference:

The Selecting Official must submit his or her reason(s) for objecting to the individual to the examining office that issued the certificate. Any documentation that supports the objection should be included in the packet.

If the request is not sustained, the Selecting Official has three options:

- Challenge the decision by submitting additional information to support a favorable decision; or
- Consider/select the eligible for the position; or
- Return the certificate unused.

Qualifications objection to a compensable disabled veteran with a 30 percent or more service connected disability:

The Selecting Official must submit his or her reason(s) for objecting to the individual to the examining office that issued the certificate. The request should be well documented as to the reason(s) for the objection with all applicable documentation.

If the Appointing Officer concurs, the Selecting Official must notify the CPS veteran (via the examining office) of a proposed passover. (The memorandum must be coordinated with the servicing HR Center) The CPS veteran notification must include:

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- Notice of proposed passover, including the agency, title/series/grade of the job, duty location, and certificate number;
- A detailed explanation of the reason for the proposed passover;
- Notice of the right to respond to those reasons to OPM within 15 calendar days of the notice; and
- The appropriate OPM office and address.

If the request is not sustained, the Selecting Officer has three options:

- Challenge the decision by submitting additional information to support a favorable decision to the examining office;
- Consider/select the eligible for the position; or
- Return the certificate unused.

Objection request based on medical conditions and suitability:

The Selecting Official must submit his or her reason(s) with all material documentation for why the preference eligible:

1. Is deemed medically disqualified when his/her physical or mental conditions will prevent him/her from performing the full range of essential duties and responsibilities of the position; or
2. Did not demonstrate during the selection interview possession of those personality traits which are necessary to successfully perform in the position.

If the request is not sustained, the Selecting Official has three options:

- Challenge the decision by submitting additional information to support a favorable decision to the examining office;
- Consider/select the eligible for the position; or
- Return the certificate unused.

b. Examining Office

Qualification objection to a 10-point compensable veteran with less than 30% service connected disability and veterans with 5-point preference:

The Appointing Officer determines if the request meets the criteria including the recognition of the needs of the service and the basic principle that an eligible must receive fair consideration.

If the request is not valid, the Appointing Officer will respond in writing to the Selecting Official with a detailed response explaining why his/her request does not meet the regulatory/statutory requirement(s) to sustain the objection.

If the request is valid, the Appointing Official will sustain the objection request. A detailed memorandum will be developed as to the reason why the objection meets the

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regulatory/statutory requirements. The memorandum will be forwarded to the Selecting Official and the eligible. A copy of the memorandum will be filed in the DE case file. The certificate will be amended to remove the eligible's name along with the annotation of the appropriate action codes in the electronic HR system and re-issued to the Selecting Official. Records (paper and electronic) will be documented to reflect the change and why.

Qualification objection to a compensable disabled veteran with a 30 percent or more service connected disability:

If the request is not valid, the Appointing Officer will respond in writing to the Selecting Official with a detailed response explaining why his/her request does not meet the regulatory/statutory requirement(s) to sustain the objection.

If the request is valid, the Appointing Official will endorse the request, indicating why the request meets regulatory/statutory requirements and forward the request to the Department with all the required documentation to include a copy of the notification to the CPS veteran. The veteran notification will be forward to the veteran after the request has been forwarded to OPM. The notification will address the reason for the passover request and his/her recourse. A copy of all the correspondence will be maintained in the DE case file.

c. HHS

If the request is not valid, the Department will respond in writing to the Appointing Officer with a detailed response explaining why the request does not meet the regulatory/statutory requirement(s) to sustain the objection.

If the request is valid, the Department will forward the request to OPM with its endorsement.

The Department will notify the Appointing Officer of OPM's determination.

d. OPM

OPM will make medical and suitability determinations pertaining to preference eligibles; grant or deny an agency's passover request of a preference eligible with a compensable service-connected disability of 30% or more; and notify HHS of its determination.

332-70 Submitting an Objection Request to the HR Specialist

The following documents must be submitted to the servicing DEU for a passover request:

- (1) Completed SF-62, Agency Request to Passover a Preference Eligible or Object to an Eligible, <https://www.opm.gov/forms/pdfimage/sf62.pdf>.
- (2) Resume/Application package to include title, series, and grade.
- (3) Copy of Position Description.
- (4) Copy of Vacancy Announcement.

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- (5) For suitability objections only, OPM form NVI 60 (formally OFI 86A), Request for Determination or Advisory, https://www.opm.gov/forms/pdf_fill/INV60.pdf. If it is known, indicate the position sensitivity in block 11.
- (6) Copy of the letter regarding advance notice of proposed passover (applies to 30 percent or more disabled veterans only; see “Notification of Proposed Passover”).
- (7) OPM Form, OF 306, Declaration for Federal Employment, http://www.opm.gov/forms/pdf_fill/of0306.pdf, if submitted by applicant; if it is not submitted, annotate this on the NVI 60.
- (8) All other supporting documentation as described in the section above entitled, “Documentation.”

332-80 OPM Determinations

- a. If the objection is sustained by OPM, the certificate with the appropriate action code will be properly annotated. The applicant is notified in writing of the determination by the servicing HR Specialist. A copy of the official correspondence to the applicant must be maintained in the DE case file.
- b. If the objection is not sustained by OPM, the certificate must be used in accordance with all other OPM requirements.