



Better government. Stronger democracy.

As the President and CEO of the Partnership for Public Service, a nonprofit, nonpartisan organization committed to building a better government and a stronger democracy through the promotion of and support for public service, I am submitting comments to the Office of Personnel Management's (OPM's) recent proposed rule, "Recruitment and Selection Through Competitive Examination, and Employment in the Excepted Service (Rule of Many)" (RIN: 3206-AN80). The Partnership appreciates OPM's attention to efforts to improve the federal hiring process and believes this rule change could offer a valuable option to federal agencies in hiring qualified talent when paired with high-quality technical assessments. Used appropriately, it can empower agencies to make finer distinctions between candidates when needed, as mentioned in the rule's introduction. As OPM works to finalize the rule, I encourage you to consider additional technical changes and clarifications.

Overall, the Partnership urges OPM to use this rulemaking as an opportunity to promote skills-based hiring, assessments and efficient processes. The federal government will reap the most benefit from the Rule of Many when agencies have access to and use high-quality technical assessments to differentiate the best-qualified candidates and match them effectively to the core skills needed for open positions. This is especially critical for positions at the GS-13 level and above or those in more technical fields. In our view, granular distinctions between candidates will not make sense without assessments of the core skills required to fulfill the key job duties of a position.

To this end, the Partnership recommends that OPM use this opportunity to remind agencies to tailor minimum qualifications based on position needs determined via a thorough job analysis and more strongly signal that regardless of the rating procedure used, agencies should focus on expanding adoption of technical assessments. More accurate minimum qualifications as an initial step before an assessment allow applicants to better understand the requirements of a position and assist hiring specialists and hiring managers in identifying which applications, out of hundreds received, meet that minimum needed to be considered for the next steps in the hiring process. In addition, high-quality technical assessments encourage skills-based hiring and meaningful, relevant differentiation between job applicants. In cases where agencies use technical assessments, particularly with multiple hurdles, OPM should use this opportunity to clearly remind agencies that they may remove from consideration all candidates not meeting qualifications, including veterans, pre-certification.

Throughout the proposed rule, there are several places where clarification, additional consideration and adjustments are needed to ensure the tool is flexible and achieves the intended outcome of allowing agencies to identify and select from qualified applicants.

- **Rule of Three interaction with 2010 Hiring Memo.** OPM should address how this proposed rule would interact with President Obama's 2010 Presidential Memo entitled "Improving the Federal Recruitment and Hiring Process."<sup>1</sup> This memo directed agencies to stop using the rule of 3 rating procedure and instead use category rating. It is unclear whether the 2010 memo needs to be revised or rescinded before agencies may make use of the proposed Rule of Many rating procedure and select the method that works best for a particular hiring action. If multiple rating procedures are available, OPM should provide scenario descriptions and examples to agencies

---

<sup>1</sup> <https://obamawhitehouse.archives.gov/the-press-office/presidential-memorandum-improving-federal-recruitment-and-hiring-process>

regarding ideal use cases for the Rule of Many or other rating procedures to ensure clarity on best practices.

- **Sample language setting limits for numbers of candidates on a certificate.** The Partnership commends OPM for explicitly stating that agencies may share certificates under the Competitive Service Act, allowing for more positions to be filled through a single hiring action. However, OPM should adjust language in the rule to ensure it does not send a conflicting message. Specifically, OPM's sample direction to agencies to consider setting a limit to the number of candidates placed on a hiring certificate such as the top 10 people or 10% seems unnecessarily limiting. While this is just one possible approach to implementing the Rule of Many described in the proposal, if an agency is going to commit to the effort and expense of deploying rigorous assessments and multiple hurdles, especially with subject matter experts, it makes the most sense to allow for more qualified candidates to be considered on the hiring certificate so that agencies can fill multiple spots off one hiring action. To encourage the use of assessments and involving subject matter experts in the hiring process, OPM should either expand the number of candidates that can be placed on a certificate under this rating procedure or should provide broad guidelines and let agencies choose how to determine a limit – as long as that limit is set ahead of the proposed hiring action.
- **Supplemental certificates.** If an agency has noted up front that it will be sharing the final certificate, but ends up without a large enough number of candidates even as multiple agencies want to make selections, would it be possible to allow the hosting agency to issue both the initial certificate and a supplemental certificate at the same time to receiving agencies as long as the initial hiring action is closed and audited and receiving agencies continue to consider candidates in the appropriate order? This would allow receiving agencies to see how many eligible candidates are available as early as possible and keep the hosting agencies from having to issue supplemental certificates at different times. Another possibility is to allow hosting agencies, as a matter of course, to share supplemental certificates with other agencies along with original certificates when there are three or fewer candidates remaining on the original certificate.
- **Application of veterans' preference, the three consideration rule and pass over requests.** The implication of this rule on veterans' preference merits in-depth discussion. Preference is given to eligible veterans to ensure that they can continue their service in the civilian workforce. While this is an important goal and many qualified veterans have been hired into federal service, it has also been the case that veterans who may be technically unqualified for a position, along with unqualified non-veterans, are placed on a certificate of eligibles because agencies use self-assessments or do not employ subject matter experts or other high-quality assessments to identify technical skills. Hiring managers are often confronted with having to either select from among unqualified candidates or to cancel the hiring action. This is not helpful to ensuring agencies can quickly and effectively bring on talent, nor is it fair to the veteran and non-veteran applicants who go through the effort to apply for a federal position.

Even as OPM encourages agencies to engage subject matter experts in hiring, perform thorough job analysis to determine the skills needed for a position and use effective assessments to identify talent, this is not yet standard practice across agencies. This rule should account for instances when applicants who are not fully technically qualified for a position make it onto a certificate of



Better government. Stronger democracy.

eligibles. When that happens, agencies are within their right to consider and pass over non-veterans and veterans (if following applicable rules around providing sufficient reason when doing so for the veterans).

If an agency is filling multiple positions for multiple hiring managers at one time, then it may not make sense to ask each hiring manager to consider each veteran individually. OPM could consider multiple ways to handle this instance. First, a hiring manager, in consultation with HR, could consider the first 3-5 (or another appropriate number) preference-eligible candidates on the list at the same time. In the examples provided, it is noted that the list does not have to be worked in order. Allowing three considerations to be given to multiple candidates at the same time would allow for fair consideration of all candidates on the list. Another way to address this would be to allow candidates who have been passed over by a hiring manager to remain on certificates without retaining preference for the next several hiring managers to consider (whether from the hosting or other agency).

It is unclear what is driving the need to add the interview requirement to the three consideration rule. It seems overly burdensome when agencies are filling multiple positions at the same time from one certificate. Can OPM better clarify how this rule would be applied when a certificate is shared across agencies and a preference eligible has been given three considerations by the hosting agency? For example, would the preference eligible candidate be removed from the certificate before it is shared in this scenario? If multiple hiring managers across components of an agency are making selections off the certificate and a preference eligible has been given three considerations or multiple hiring managers have submitted pass over requests for multiple preference eligibles on the list, can an agency remove more than one at a time?

The original three consideration rule and pass over rules assumed that each hiring action filled one position by one hiring manager working the certificate. However, as this proposed rule suggests, certificates may be shared within and across agencies. Adding the interview requirement for every hiring manager in the three consideration scenario without addressing how it would work in the context of shared certificates would likely make this change overly restrictive.

Lastly, OPM should remove language directing veterans with compensable service-connected disabilities to float to the top of the list regardless of their score on assessments. While it is imperative to honor our disabled veterans, there are many ways for agencies to recruit and hire veterans. There are also other rating procedures such as category rating that an agency can choose to use. Given the goal of this new Rule of Many procedure in identifying granular distinction between candidates, presumably based on their skills qualification for the position, it seems that floating a certain category of applicant, instead of adding points to their score (e.g. 10 points) and allowing them to be fairly considered based on their skills, negates the reason an agency would use this method to identify qualified candidates.

The Partnership appreciates the opportunity to comment on this proposal and looks forward to working with you further toward our shared goal of recruiting and retaining a top-notch workforce for the American government.