SEC. ___. EXPANDED FLEXIBILITY IN SELECTING CANDIDATES FROM REFERRAL LISTS.

(a) EXPANDED FLEXIBILITY.—Subchapter I of chapter 33 of title 5, United States Code, is amended by striking sections 3317 and 3318 and inserting the following:

"§ 3317. Competitive service; certification using numerical ratings

"(a) CERTIFICATION.—

"(1) IN GENERAL.—The Director of the Office of Personnel Management, or the head of an agency to which the Director has delegated examining authority under section 1104(a)(2), shall certify a sufficient number of names from the top of the appropriate register or list of eligibles, as determined pursuant to regulations prescribed under subsection (c), and provide a certificate with such names to an appointing authority that has requested a certificate of eligibles to consider when filling a job in the competitive service.

"(2) MINIMUM NUMBER OF NAMES CERTIFIED.—Unless otherwise provided for in regulations prescribed under subsection (c), the number of names certified under paragraph (1) shall be not less than three.

"(b) DISCONTINUANCE OF CERTIFICATION.—When an appointing authority, for reasons considered sufficient by the Director or head of an agency, has three times considered and passed over a preference eligible who was certified from a register, the Director or head of any agency may discontinue certifying the preference eligible for appointment. The Director or the head of an agency shall provide to such preference eligible notice of the intent to discontinue certifying such preference eligible prior to the discontinuance of certification.

"(c) REGULATIONS.—The Director shall prescribe regulations for the administration of this section. Such regulations shall include the establishment of mechanisms for identifying the eligibles who will be considered for each vacancy. Such mechanisms may include cut-off scores.

"§ 3318. Competitive service; selections using numerical ratings

"(a) IN GENERAL.—An appointing authority shall select for appointment from the eligibles certified for appointment on a certificate furnished under section 3317(a), unless objection to one or more of the individuals certified is made to, and sustained by, the Director or the head of an agency to which the Director has delegated examining authority under section 1104(a)(2), for proper and adequate reason under regulations prescribed by the Director.

"(b) OTHER APPOINTING AUTHORITIES.—

"(1) IN GENERAL.—During the 240-day period beginning on the date of issuance of a certificate of eligibles under section 3317(a), an appointing authority other than the appointing authority requesting the certificate (in this subsection referred to as the 'other appointing authority') may select an individual from that certificate in accordance with this subsection for an appointment to a position that is—

"(A) in the same occupational series as the position for which the certification of eligibles was issued (in this subsection referred to as the 'original position'); and

"(B) at a similar grade level as the original position.

"(2) APPLICABILITY.—An appointing authority requesting a certificate of eligibles may share the certificate with another appointing authority only if the announcement of the original position provided notice that the resulting list of eligible candidates may be used by another appointing authority.

"(3) REQUIREMENTS.—The selection of an individual under paragraph (1)—

"(A) shall be made in accordance with subsection (a); and

"(B) subject to paragraph (4), may be made without any additional posting under section 3327.

"(4) INTERNAL NOTICE.—Before selecting an individual under paragraph (1), and subject to the requirements of any collective bargaining obligation of the other appointing authority, the other appointing authority shall—

"(A) provide notice of the available position to employees of the other appointing authority;

"(B) provide up to 10 business days for employees of the other appointing authority to apply for the position; and

"(C) review the qualifications of employees submitting an application.

"(5) Collective bargaining obligations.—Nothing in this subsection limits any collective bargaining obligation of an agency under chapter 71.

"(c) PASS OVER.—

"(1) IN GENERAL.—Subject to subparagraph (2), if an appointing authority proposes to pass over a preference eligible certified for appointment under subsection (a) and select an individual who is not a preference eligible, the appointing authority shall file written reasons with the Director or the head of the

agency for passing over the preference eligible. The Director or the head of the agency shall make the reasons presented by the appointing authority part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority in support of the passing over of the preference eligible. The Director or the head of the agency shall determine the sufficiency or insufficiency of the reasons submitted by the appointing authority, taking into account any response received from the preference eligible under paragraph (2). When the Director or the head of the agency has completed review of the proposed pass-over of the preference eligible, the Director or the head of the agency shall send its findings to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings.

"(2) PREFERENCE ELIGIBLE INDIVIDUALS WHO HAVE A COMPENSABLE SERVICE-CONNECTED DISABILITY.—In the case of a preference eligible described in section 2108(3)(C) who has a compensable service-connected disability of 30 percent or more, the appointing authority shall notify the Director under paragraph (1) and, at the same time, notify the preference eligible of the proposed pass-over, of the reasons for the proposed pass-over, and of the individual's right to respond to those reasons to the Director within 15 days of the date of the notification. The Director shall, before completing the review under paragraph (1), require a demonstration by the appointing authority that the notification was timely sent to the preference eligible's last known address.

"(3) FURTHER CONSIDERATION NOT REQUIRED.—When a preference eligible, for reasons considered sufficient by the Director, or in the case of a preference

eligible described in paragraph (1), by the head of an agency, has been passed over in accordance with this subsection for the same position, the appointing authority is not required to give further consideration to that preference eligible while selecting from the same list for a subsequent appointment to such position.

"(4) DELEGATION PROHIBITION.—In the case of a preference eligible described in paragraph (2), the functions of the Director under this subsection may not be delegated to an individual who is not an officer or employee of the Office of Personnel Management.

"(d) SPECIAL RULE REGARDING REEMPLOYMENT LISTS.—When the names of preference eligibles are on a reemployment list appropriate for the position to be filled, an appointing authority may appoint from a register of eligibles established after examination only an individual who qualifies as a preference eligible under subparagraph (C), (D), (E), (F) or (G) of section 2108(3).

"(e) CONSIDERATION NOT REQUIRED.—In accordance with regulations prescribed by the Director, an appointing officer is not required to consider an eligible who has been considered by the appointing officer for three separate appointments from the same or different certificates for the same position.

"(f) REGULATIONS.—The Director shall prescribe regulations for the administration of this section.".

(b) CONFORMING AMENDMENTS.—Such subchapter is further amended—

(1) in section 3319—

(A) by amending the section heading to read as follows:

"§ 3319. Competitive service; selection using category rating";

(B) in subsection (c), by amending paragraph (7) to read as follows:

"(7) PREFERENCE ELIGIBLES.—

"(A) SATISFACTION OF CERTAIN REQUIREMENTS.—Notwithstanding paragraphs (1) and (2), an appointing official may not pass over a preference eligible in the same category from which selection is made, unless the requirements of section 3317(b) and 3318(c), as applicable, are satisfied.

"(B) FURTHER CONSIDERATION NOT REQUIRED.—When a preference eligible, for reasons considered sufficient by the Director, or in the case of a preference eligible described in section 3318(c)(1), by the head of an agency, has been passed over in accordance with section 3318(c) for the same position, the appointing authority is not required to give further consideration to that preference eligible while selecting from the same list for a subsequent appointment to such position.

"(C) LIST OF ELIGIBLES ISSUED FROM A STANDING REGISTER; DISCONTINUATION OF CERTIFICATION.—In the case of lists of eligibles issued from a standing register, when an appointing authority, for reasons considered sufficient by the Director or the head of an agency has three times considered and passed over a preference eligible who was certified from a register, certification of the preference eligible for appointment may be discontinued. However, the preference eligible is entitled to advance notice of discontinuance of certification in accordance with regulations prescribed by the Director."; and

(2) in the first sentence of section 3320, by striking "sections 3308-3318" and inserting "sections 3308 through 3319".

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by striking the items relating to sections 3317, 3318, and 3319 and inserting the following:

"3317. Competitive service; certification using numerical ratings.
"3318. Competitive service; selection using numerical ratings.
"3319. Competitive service; selection using category rating.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date on which the Director issues final regulations to implement sections 3317, 3318 and 3319 of title 5, United States Code, as amended or added by this section.

Section-by-Section Analysis

Eliminate the "Rule of Three" and, by regulation, give agencies authority to define the number of candidates to be considered, using a cut-off score or similar mechanism. The revision would not change the application of veteran's preference – veterans would still be granted preference points. Agencies would also continue to be authorized to use "Category Rating" at their discretion, instead of straight numerically based scoring.

We are also codifying the concept of the "three-consideration rule" which appears to have derived from the civil service rules contained in the First Annual Report of the Civil Service Commission, revised in 1886, and perpetuated thereafter in its current form. Its existence was perpetuated following enactment of the Civil Service Reform Act through that Act's savings clause and is currently found in 5 CFR 332.405. We have modified the rule in light of the elimination of the "Rule of Three."

Budget Implications: OPM does not believe this proposal has any significant government-wide cost implications. A budget table is inapplicable and has not been provided.