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 new sections:

"§ 3317. Competitive service; certification using numerical ratings

"(a)(1) The Director of the Office of Personnel Management 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 (b), 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) Unless otherwise provided for in regulations prescribed under subsection (b), the number of names certified under paragraph (1) shall be not less than 3.

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

"(c) The Director shall prescribe regulations to carry out the provisions 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) An appointing authority shall select for appointment from the eligibles available 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 for proper and adequate reason under regulations prescribed by the Director.

"(b)(1) 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) 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) 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) 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) Nothing in this subsection limits any collective bargaining obligation of an agency under chapter 71.

"(c)(1) If an appointing authority proposes to pass over a preference eligible on a certificate to select an individual who is not a preference eligible, the appointing authority shall file written reasons with the Director for passing over the preference eligible. The Director 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 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 has completed review of the proposed pass over, the Director shall send the findings of the Director to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings.

"(2) 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, at the same time it notifies the Director under paragraph (1), notify the preference eligible of the proposed pass over, of the reasons therefore, 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) A preference eligible not described in paragraph (2), or his or her representative, shall be entitled, on request, to a copy of—

"(A) the reasons submitted by the appointing authority in support of the proposed pass over; and

"(B) the findings of the Director.

"(4) In the case of a preference eligible described in paragraph (2), the functions of the Director under this subsection may not be delegated in accordance with section 1104.

"(d) 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 section 2108(3)(C)-(G).".

(b) CONFORMING AMENDMENTS.—Subchapter I of chapter 33 of such title is amended—

(1) in section 3319, by amending the heading to read as follows:

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

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

(c) TABLE OF SECTIONS AMENDMENTS.—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 new items:

"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 carry out such amendments.

[PLEASE NOTE: THE "CHANGES TO EXISTING LAW" SECTION BELOW SETS OUT IN RED-LINE FORMAT HOW THE LEGISLATIVE TEXT ABOVE WOULD AMEND EXISTING LAW.]

Section-by-Section Analysis

Eliminate the "Rule of Three" and 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 veteran's preference – veterans would still be granted preference points and would continue to be entitled to selection preference over a non-veteran candidate with the same or lower score. Agencies would also continue to be authorized to use "Category Rating" at their discretion, instead of straight numerically-based scoring.

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

Changes to Existing Law: This proposal would strike sections 3317 and 3318 of title 5, United States Code, and insert new sections 3317 and 3318, the full text of which is contained in the legislative language above. In addition, the proposal would make the following changes to title 5, United States Code.

~~**§ 3317. Competitive service; certification from registers**~~

~~(a) The Office of Personnel Management shall certify enough names from the top of the appropriate register to permit a nominating or appointing authority who has requested a certificate of eligibles to consider at least three names for appointment to each vacancy in the competitive service.~~

~~(b) When an appointing authority, for reasons considered sufficient by the Office, 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.~~

~~§ 3318. Competitive service; selection from certificates~~

~~(a) The nominating or appointing authority shall select for appointment to each vacancy from the highest three eligibles available for appointment on the certificate furnished under section 3317(a) of this title, unless objection to one or more of the individuals certified is made to, and sustained by, the Office of Personnel Management for proper and adequate reason under regulations prescribed by the Office.~~

~~(b)(1) If an appointing authority proposes to pass over a preference eligible on a certificate in order to select an individual who is not a preference eligible, such authority shall file written reasons with the Office for passing over the preference eligible. The Office 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 Office 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) of this subsection. When the Office has completed its review of the proposed passover, it shall send its findings to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings of the Office.~~

~~(2) In the case of a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more, the appointing authority shall at the same time it notifies the Office under paragraph (1) of this subsection, notify the preference eligible of the proposed passover, of the reasons therefor, and of his right to respond to such reasons to the Office within 15 days of the date of such notification. The Office shall, before completing its review under paragraph (1) of this subsection, require a demonstration by the appointing authority that the passover notification was timely sent to the preference eligible's last known address.~~

~~(3) A preference eligible not described in paragraph (2) of this subsection, or his representative, shall be entitled, on request, to a copy of-~~

~~(A) the reasons submitted by the appointing authority in support of the proposed passover, and~~

~~(B) the findings of the Office.~~

~~(4) In the case of a preference eligible described in paragraph (2) of this subsection, the functions of the Office under this subsection may not be delegated.~~

~~(c) When three or more names of preference eligibles are on a reemployment list appropriate for the position to be filled, a nominating or appointing authority may appoint from a register of eligibles established after examination only an individual who qualifies as a preference eligible under section 2108(3)(C)–(G) of this title.~~

§ 3319. ~~Alternative ranking and selection procedures~~ Competitive service; selection using category rating

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§ 3320. Excepted service; government of the District of Columbia; selection

The nominating or appointing authority shall select for appointment to each vacancy in the excepted service in the executive branch and in the government of the District of Columbia from the qualified applicants in the same manner and under the same conditions required for the competitive service by sections ~~3308–3318~~ 3308–3319 of this title. This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.