

## STAFFING

- 1. REASON FOR ISSUE:** To revise Department of Veterans Affairs (VA) procedures regarding appointment to positions restricted to preference eligibles.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook contains mandatory VA procedures on staffing. Significant changes include removing the preference eligible restriction for hiring Housekeeping Aids at the Department of Veterans Affairs. The pages in this handbook replace the corresponding page numbers in VA Handbook 5005, Staffing, Part II, Chapter 2, Section B, paragraph 5, Appointment to Positions Restricted to Preference Eligibles, Page II-29 – 29b. Revised text is contained in [brackets]. These changes will be incorporated into the electronic version of VA Handbook 5005, Staffing, that is maintained on the [Office of the Chief Human Capital Officer website](#) and [VA Publications website](#).
- 3. RESPONSIBLE OFFICE:** Office of the Chief Human Capital Officer (OCHCO) (05), Recruitment and Placement Policy Service (059).
- 4. RELATED HANDBOOK/DIRECTIVE:** VA Directive 5005, Staffing.
- 5. RESCISSION:** None.

**CERTIFIED BY:**

**BY DIRECTION OF THE SECRETARY OF  
VETERANS AFFAIRS:**

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ST position would follow the same procedure to establish an ST position as is used to establish a Senior Executive Service (SES) position. (See VA Handbook 5027, Senior Executive Service.)

**5. APPOINTMENT TO POSITIONS RESTRICTED TO PREFERENCE ELIGIBLES.**

[5 U.S.C. § 3310](#) and [5 C.F.R. § 330.401](#) prohibit competitive examination and the placement of a non-preference eligible into a restricted position when a preference eligible is available. Covered occupations include guards, elevator operators, messengers and custodians. [Effective August 10, 2022, Section 905 of the Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxics (PACT) Act of 2022, Expansion of Opportunities for Housekeeping Aids, amended 5 U.S.C § 3310 to exempt Housekeeping Aids, 3566 occupational series, positions in VA from the preference eligible recruitment restriction. This also exempts Housekeeping Aids, 3566 series, positions from the provisions and requirements of 5 C.F.R. § 330.401 and this paragraph. The exception is specific only to Housekeeping Aids in VA and the restriction remains in effect for the recruitment of other covered occupations.]

a. **Recruitment Methods.** VA Human Resources (HR) offices may use any of the following methods to announce and fill restricted positions with preference and nonpreference eligibles consistent with the governing rules for each process.

(1) **Delegated Examining Procedures.** The recommended and primary recruitment method which yields the widest candidate pool and greatest potential for placing a preference eligible is delegated examining. The restriction on competing and filling a covered occupation with a non-preference eligible applies under this process. When using this method, the delegated examining unit must certify that the supply of preference eligible applicants has been exhausted prior to filling a restricted position with a non-preference eligible. If this [criterion] is met, Office of Personnel Management (OPM) approval is not required. If there are additional vacancies in restricted positions, the servicing HR office may request to extend the associated referral certificate in accordance with the procedures outlined in VA Handbook 5005, Part I, Appendix B, Delegated Examining (DE).

(2) **Position Change Procedures (Internal to the Organizational Entity).**

Title [5 C.F.R. § 330.402\(a\)\(2\)](#) outlines an exception that permits the reassignment, promotion or demotion (i.e., change to lower grade) of a current permanent non-preference eligible employee from [one] restricted position [ ] to another [ ] position within the organizational entity [ ] without prior OPM approval. [An organizational entity in this context is a VA service or business line (or its equivalent) that employs individuals in restricted positions, but it is not limited to a specific facility or work location.] This exception permits movement within the organizational entity of individuals

who were properly appointed to their current restricted position, but do not have preference. Essentially, when a nonpreference eligible's initial appointment meets regulatory requirements facilitating [their] proper placement in a restricted position, no further approval is required for subsequent movement to other restricted positions within the organizational entity. However, if a non-preference eligible moves outside of the organizational entity into a non-restricted position, the HR office must ensure any subsequent hiring actions are excepted by [law,] regulation or approved by OPM (subparagraph a(3) of this paragraph).

**NOTE:** Internal movements must follow the guidance in VA Handbook 5005, Part III, Internal Placement and Merit Promotion.

**(3) Recruiting Candidates External to the Organizational Entity and VA.**

- (a) Consistent with 5 C.F.R. § 330.402(b), VA HR offices are prohibited from noncompetitively filling a restricted position with a non-preference eligible without obtaining approval from the Director, Recruitment and Placement Policy Service (RPPS) (059) and OPM prior to appointment (see subparagraph b of this paragraph). This applies to any hiring or selection action of a nonpreference candidate outside of the organizational entity or an action that yields a new competitive service appointment, e.g., conversion of a current employee, reinstatement, transfer, interchange agreement, appointments under 5 C.F.R. § 315 authorities of a nonpreference eligible into a restricted position.
- (b) Under certain circumstances, OPM approval is not required when filling restricted positions with a former nonpreference eligible employee by reemployment, reinstatement or reappointment of certain temporary employees as outlined in 5 C.F.R. § 330.402(a)(3)-(5).

- b. **Requests for OPM Approval to Fill a Restricted Position with a Nonpreference Eligible Applicant under 5 C.F.R. § 330.402(b).** In general, competitive examination and merit promotion (internal to the organizational entity) recruitment efforts produce a sufficient pool of preference and nonpreference eligible applicants. When recruitment efforts do not produce a sufficient number of applicants, it may be necessary to solicit applications from other candidates external to the organizational entity and/or VA, including those described in a(3) of this part. When this occurs, servicing HR offices must send requests for OPM approval to the Director, RPPS (059), for review. The request must include a justification memorandum outlining the need to fill the position with a nonpreference eligible, a copy of the job opportunity announcement(s), a corresponding referral certificate(s), and additional documentation validating the unavailability of preference eligible applicants,

through competitive examination and merit promotion procedures as described in subparagraphs a(1) and a(2), respectively.

**Documenting the Standard Form 50 (SF-50), Notification of Personnel Action.** It is imperative that VA properly document and track the appointments of nonpreference eligibles into restricted positions. When a servicing HR office places a nonpreference eligible in a position that is restricted to a preference eligible, the HR office must annotate the SF-50 with a second VA-specific legal authority code and an appropriate remarks code. The legal authority code is 601, which prints on the SF 50-B as “5 C.F.R. § 330.402.” In addition, a remark code on the SF-50 must state that the nonpreference eligible was appropriately selected and identify the exception from 5 C.F.R. § 330.402(a) or (b). If the appointment was based on an exception other than those listed in 5 C.F.R. §330.402(a) that required OPM approval prior to appointment, the date of the OPM approval letter must also be included.