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§ 332.406 Objections to eligibles.

(a) *Delegated authority.* Except as specified in paragraphs (a)(1) and (a)(2) of this section, OPM has delegated to agencies the authority to adjudicate objections to eligibles, including pass over requests.

(1) OPM retains exclusive authority to approve the sufficiency of an agency's request to pass over preference eligibles who are thirty percent (30%) or more compensably disabled. Such persons have the right, in accordance with 5 U.S.C. 3318, to respond to the pass over request before OPM makes a final decision.

(2) OPM also retains the exclusive authority to approve the sufficiency of an agency's reasons to medically disqualify or medically pass over a preference eligible or disabled veteran in certain circumstances, in accordance with part 339 of this chapter.

(3) An agency must refer any objection (including a pass over request) that is based on material, intentional false statement or deception or fraud in examination or appointment to OPM for a suitability action where warranted, under part 731 of this chapter.

(b) *Standard for objections.* An agency is not required to consider an individual for a position when an objection to (including a request to pass over) the particular individual is sustained or granted. An objection, including a pass over request, may be sustained only if it is based on a proper and adequate reason. The reasons set forth for disqualification by OPM in part 339 of this chapter constitute proper and adequate reasons to sustain an objection. Similarly, the criteria for making suitability determinations in part 731 of this chapter constitute proper and adequate reasons to sustain an objection. In addition, reasons published by OPM in the Delegated Examining Operations Handbook constitute proper and adequate reasons to sustain an objection.

(c) *Sufficiency of the reasons for a pass over.* Subject to the exception set forth in paragraph (e) of this section, an agency may not pass over a preference eligible to select a non-preference eligible unless OPM or an agency with delegated authority also makes a determination that the sufficiency of the reasons is supported by the evidence submitted for the pass over request.

(d) *Agency's obligation while request for objection is pending.* Subject to the exception set forth in paragraph (e) of this section, if an agency makes an objection against an applicant for a position (including seeking to pass over the applicant), and the individual that the agency wishes to select would be within reach of selection only if the objection is sustained, or the pass over granted, that agency may not make a selection for the position until a final ruling is made.

(e) *Applicability of paragraphs (c) and (d).* Paragraphs (c) and (d) of this section do not apply if the agency has more than one position to fill from the same certificate and holds open (in the event the objection is not sustained or the pass over request is denied) a position that could be filled by the individual against whom an objection or a pass over request has been filed.

(f) *Procedures for objections and pass overs.* Agencies must follow the procedures for objecting to or requesting to pass over an eligible that are published by OPM in the *Delegated Examining Operations Handbook.*

(g) *No appeal rights to Merit Systems Protection Board (MSPB).* An individual may not appeal to the MSPB a decision by OPM or an agency with delegated authority to sustain an objection pursuant to this part, including a decision to grant a pass over request, irrespective of the reason for the decision.

[74 FR 30461, June 26, 2009]

§ 332.407 Restriction of consideration to one sex.

An appointing officer may not restrict his consideration of eligibles or employees for competitive appointment or appointment by noncompetitive action to a position in the competitive service to one sex, except in unusual circumstances when OPM finds the action justified.

[34 FR 5367, Mar. 19, 1969. Redesignated at 42 FR 61240, Dec. 2, 1977]