



## ***Direct-Hire Authority Under 5 U.S.C. § 3304: Usage and Outcomes***

February 2021

### ***In Brief***

Direct-hire authorities (DHAs) allow agencies to use streamlined procedures to appoint new employees without regard to some key merit system and public policy provisions, such as applicant rating and ranking and veterans' preference. Because DHAs are often easier and faster to use than competitive service procedures, they tend to grow in popularity quickly. In fact, all types of direct-hire appointments accounted for almost 30 percent of competitive service hires in fiscal year (FY) 2018. This research brief explores one specific type of DHA and examines the extent to which that authority is used, the outcomes achieved, and the reported advantages and disadvantages of its use.

The Homeland Security Act of 2002 granted the U.S. Office of Personnel Management (OPM) the ability to give agencies DHA for positions in which critical hiring needs or severe shortages of candidates exist. This DHA is codified under 5 U.S.C. § 3304(a)(3), and the implementing regulations are found at 5 CFR § 337, subpart B.

Although use of the DHA covered under 5 U.S.C. § 3304(a)(3) (herein referred to as §3304 DHA) has increased steadily since 2002, it has remained a relatively small proportion of all competitive appointments. It has been used largely to fill positions in professional and administrative occupations for which most would agree there is a critical need or shortage of candidates, including medical, information technology, and acquisition occupations. Human resources (HR) representatives reported a number of advantages to using §3304 DHA, including the ability to target recruitment efforts, make more timely job offers, hire faster, and improve satisfaction rates of managers and new hires. Furthermore, the resulting workforce diversity has been at least comparable to that achieved through other competitive procedures in terms of race, ethnicity, and gender.

On the other hand, some study participants expressed concerns about the fairness of the process, and data suggest that veterans were hired at lower rates for some occupational categories. Also, it appears that OPM and agencies may have different views of what role §3304 DHA should play in hiring. OPM points out that the statute limits the use of the authority to situations where there is a critical hiring need or a severe shortage of candidates and that agencies should be hiring qualified candidates *in the order they are found* to ensure objectivity in selections. Agencies, however, seem to want candidate quality to factor into hiring decisions. Looking forward, the Federal Government needs to consider what outcomes can reasonably be expected from direct-hire authorities and how they can best be used in conjunction with competitive hiring procedures.

### ***Introduction***

The Federal competitive service dates back to the Pendleton Act of 1883. The Act was a response to growing concerns over the spoils system in which Federal employees were largely appointed based on who they supported politically rather than on the skills or expertise they possessed. Under the Act, civil service positions were to be filled through competitive examinations open to all citizens, and selections were to be made based on merit from the best-qualified applicants.

The competitive service has gone through many reforms over the years, but one of the most significant was the Civil Service Reform Act of 1978, which codified the merit system principles (5 U.S.C. § 2301).<sup>1</sup> These principles serve as the basis for merit-based hiring and require the Federal Government to provide applicants with fair and open competition, recruit from all segments of society, and make employment selections on the basis of applicants' knowledge, skills, and abilities.

The Federal hiring process has long been criticized for being lengthy, not resulting in qualified candidates, and being too complex for applicants and even hiring officials to understand. Many reform efforts have centered on improving the hiring process, but criticisms continue.

To address perceived inefficiencies in Federal hiring, the Government has created a number of sanctioned alternatives to the competitive hiring process. One of these alternatives is the direct-hire authority, which streamlines some competitive hiring procedures. The intent of this research brief is to look at the overall usage of direct hire and then examine more closely a particular DHA—the authority that is covered under 5 U.S.C. § 3304(a)(3) and is approved and overseen by OPM. Specifically, we will look at the extent to which §3304 DHA is used, the outcomes achieved, and the reported advantages and disadvantages of its use.

To carry out this research, we analyzed Governmentwide workforce data; sent a questionnaire to agency Chief Human Capital Officers (CHCOs); conducted focus groups and interviews with Federal HR professionals; reviewed DHA statutes, regulations, and guidance; sent information requests to OPM; and conducted a literature review, including DHA evaluations by Federal oversight agencies. We shared a draft of the brief with OPM officials, who provided valuable comments throughout the body of the report. We have incorporated their feedback where appropriate and appreciate the insight they shared.

## ***What is Direct-Hire Authority?***

Direct-hire is not new to Government. Different types of direct-hire authorities have been around for many years. As indicated in the Government Accountability Office's (GAO) 1990 report *Making Government Jobs Attractive to Prospective Employees*, DHAs were used extensively in the late 1980s and early 1990s as a means of providing flexibility to hire for occupations with a shortage of candidates. In fact, GAO's data indicated that DHAs accounted for just under 30 percent of competitive service hiring in FY 1989. In 2002, the Homeland Security Act gave OPM the authority to grant DHA for positions in which critical hiring needs or severe shortages of candidates exist. Department of Defense (DoD) officials indicated that Congress granted the department over 20 different DHAs in the last 10 years or so, and DoD's laboratories have been using direct hire as part of their personnel demonstration projects.<sup>2</sup>

Each DHA has different rules and requirements and exempts agencies from different merit and public policy provisions. Some require public notice; some do not. Some require the application of veterans' preference; some do not. Some prescribe how agencies select among qualified applicants; some do not. Some require application of priority placement procedures for displaced Federal employees; some do not.

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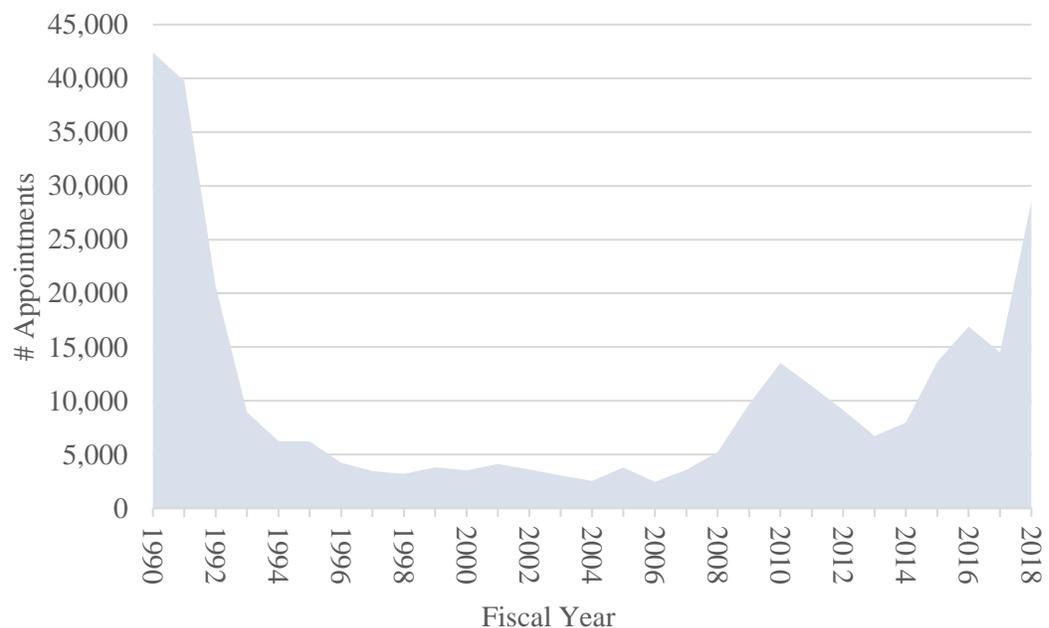
<sup>1</sup> For more information regarding the evolution of the Federal merit system, see OPM, *Biography of an Ideal: A History of the Federal Civil Service*, 2012.

<sup>2</sup> See 5 U.S.C. § 4703 for more information on demonstration projects.

The purpose of the different DHAs is to complement other types of competitive service hiring and provide needed flexibility when normal competitive service procedures do not result in an acceptable number of qualified candidates or when there is a critical need to hire quickly. However, because these authorities are often easier and faster to use than competitive examining procedures, they tend to grow in popularity quickly and pose the risk of replacing, rather than supplementing, competitive hiring.

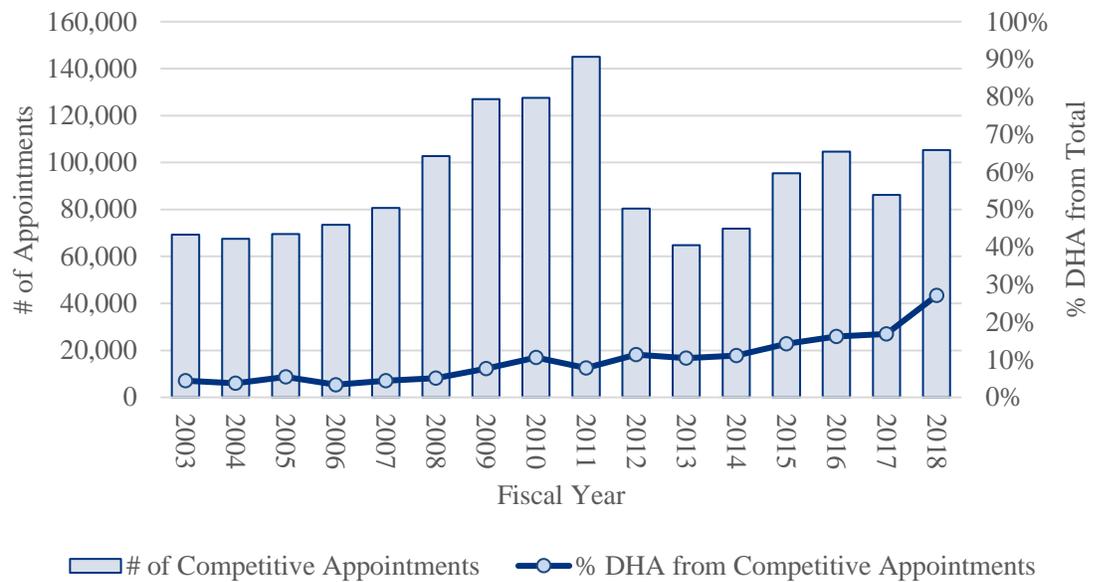
As shown in Figure 1, the use of all DHAs to appoint candidates into the competitive service has fluctuated greatly over the past 25 years. Direct hire accounted for over 40,000 new hires in FY 1990 but dropped significantly in the mid-1990s and remained under 5,000 per year through the mid-2000s. It should be noted that all competitive service hiring declined during the 1990s as the result of the economic downturn followed by downsizing efforts under the National Performance Review (NPR). Since the mid-2000s, all DHA appointments have been on the rise again, with over 28,000 appointments in FY 2018.

**Figure 1. Number of All Direct-Hire Appointments, by Fiscal Year<sup>3</sup>**



Putting these numbers in the context of overall competitive service appointments demonstrates how prevalent direct hire is becoming. As presented in Figure 2, DHAs have become an increasingly larger proportion of competitive service hires in recent years. From FY 2003 – 2008, DHA appointments averaged 4 percent of all competitive hires. From FY 2008 – 2012, they averaged about 10 percent. Since FY 2013, the proportion of DHA appointments has steadily increased and grew from 17 percent in 2017 to 27 percent of all competitive hires in 2018. This trend demonstrates why it is important to evaluate how each of these authorities is being used.

<sup>3</sup> The direct-hire data in this brief represent new appointments or conversions to full-time permanent career or career-conditional appointments in the competitive service and were obtained from OPM’s Enterprise HR Integration-Statistical Data Mart. The “all direct-hire appointments” in Figures 1 and 2 are those appointments using designated direct-hire legal authorities defined in OPM’s data standards, such as AYM, Z2U, and Z5C.

**Figure 2. Percentage of All Direct-Hire Appointments from the Total Number of Competitive Appointments, by Fiscal Year**

As shown in Figure 3, there are three groups of legal authorities that accounted for over 99 percent of all of the direct-hire appointments from FY 2014 – 2018. The §3304 DHA accounted for almost 40 percent of all Governmentwide DHA appointments. As previously mentioned, DoD has been granted numerous agency-specific authorities over the years, and the combination of those authorities constituted almost 50 percent of all Governmentwide DHA appointments. In addition, the DoD laboratory authority represented 14 percent.<sup>4</sup>

**Figure 3. Primary Types of Direct-Hire Authority Used, FY 2014 – 2018**

Type of DHA	% of all DHA
<b>§3304 DHA:</b> Under 5 U.S.C. § 3304(a)(3), OPM can grant agencies the ability to use direct hire for Governmentwide or agency-specific positions in which there is a critical hiring need or severe shortage of candidates.	39%
<b>DoD DHA:</b> <sup>5</sup> DoD-specific laws, such as National Defense Authorization Acts, have created a variety of DHAs, including expedited hiring authorities, authorities for hiring candidates with bachelor’s and advanced degrees to science and engineering positions, and other recent graduate and student positions. Some of these authorities are organization- or mission-specific.	47%
<b>DoD Laboratory Demonstration Project DHA:</b> Public Law 103-337, granted in May 1996, allows DoD labs covered under approved demonstration projects to use direct hire.	14%

Each group of direct-hire authorities was introduced through different legislation; comes with different rules, regulations, procedures, and oversight responsibilities; and likely results in different outcomes that should be studied individually to assess the effect they are having on the

<sup>4</sup> For more information on the DoD laboratory direct-hire authority and its usage, see GAO, *DOD Personnel: Further Actions Needed to Strengthen Oversight and Coordination of Defense Laboratories’ Hiring Efforts* (2018).

<sup>5</sup> These DoD direct-hire authorities are grouped under the Z5C legal authority (“DIRECT-HIRE AUTHORITY”) in OPM’s data standards.

composition of the Federal workforce. To try to analyze them as a group would create difficulties in making like comparisons and meaningful distinctions.

Because §3304 DHA has been in place for about 15 years, affords both Governmentwide and agency-specific direct hire authority to all executive branch agencies (including DoD), uses the same set of regulations and procedures for both, and is subject to OPM oversight and reporting, it is a logical focus for evaluating the effects of direct hire in today's competitive service. It gives us the ability to look across Government and make analogous comparisons. Therefore, the rest of this brief will examine the extent to which §3304 DHA is used, the outcomes achieved, and the advantages and disadvantages of its use.

### *What is the §3304 Direct-Hire Authority?*

The Homeland Security Act of 2002 (Public Law 107-296) granted OPM the ability to give agencies direct-hire authority for positions in which critical hiring needs or severe shortages of candidates exist. The purpose of the §3304 DHA is to help agencies meet these hiring needs with qualified applicants in a timely fashion.<sup>6</sup>

Under this authority, agencies can appoint applicants into the competitive service without regard to sections 3309 through 3318 of Title 5. Specifically, that means that agencies do not have to conduct formal rating and ranking of applicants or apply veterans' preference.

The law and regulations do not specifically exempt §3304 DHA from adhering to other merit system principles, such as recruiting qualified individuals from all segments of society and treating applicants fairly and equitably without regard to personal characteristics including race, ethnicity, gender, or age. It also does not explicitly exempt agencies from honoring other public policy goals, such as diversity and inclusion.

The regulations do require agencies to do the following:

- Follow public notice requirements—a procedure for ensuring fair and open competition—by posting job announcements on USAJOBS and considering applicants only during an open job opportunity announcement period;
- Ensure that applicants selected for positions are qualified in that they meet the proficiency requirements of the job by obtaining a passing score on the assessment; and
- Apply career transition assistance requirements under 5 CFR § 330 to provide displaced Federal employees selection priority in positions for which they are qualified.

OPM also indicated that agencies should assess candidates to determine who is qualified for the covered positions, but should not conduct additional assessments to determine relative degrees of qualifications. In addition, OPM stated that “agencies should assess applicants in the order in which the applications were received, and select any qualified applicant in an order that approximates order of receipt.”<sup>7</sup> This requirement helps ensure objectivity in selections and fair treatment of veterans in the absence of formal application of veterans' preference.

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<sup>6</sup> See 5 U.S.C. § 3304(a)(3) and 5 CFR § 337, subpart B, for the specific statute and regulations. The term “§3304 DHA” refers to all direct-hire authorities covered under this statute and related regulations, including Governmentwide and agency-specific authorities approved by OPM as well as those authorities delegated directly to agency heads as shown below.

<sup>7</sup> Information provided by OPM's Employee Services in a September 30, 2020 email response to a request for information from MSPB and the October 11, 2018 memorandum to agency heads titled [Announcing Government-wide Direct Hire Appointing Authorities](#).

The expectation to select in order of receipt does not seem to have been explicitly stated in the DHA law or regulations, Delegated Examining Operations Handbook, or OPM’s [DHA fact sheet](#). However, OPM officials indicated that a version of this language has been in use since 2009 and that the language is included in OPM’s DHA approval letters for agency-specific authorities. It was also included in the October 11, 2018 memorandum to agency heads announcing new authorities for scientific, technical, engineering, and mathematics (STEM) and cybersecurity positions, titled [Announcing Government-wide Direct Hire Appointing Authorities](#).

OPM officials explained that these expectations reflect the intent of DHA, which OPM authorizes for “emergency or extraordinary circumstances” in which there is a critical hiring need or when there is a severe shortage of candidates. These circumstances include when an agency has an urgent need to hire qualified candidates quickly in order to respond to an emergency situation or when qualified candidates are so rare that an agency needs to hire them as quickly as they are identified.<sup>8</sup>

### ***Obtaining §3304 DHA***

The §3304 DHA may be initiated in several ways, including the following:

1. OPM may independently determine that a severe shortage of candidates or a critical hiring need exists for Governmentwide or agency-specific positions. OPM’s [website](#) lists all of the Governmentwide DHAs available for agency use. At the time of publication, six categories of OPM-approved Governmentwide authorities existed, including select positions for the following: (1) cybersecurity; (2) STEM; (3) medical; (4) information technology (IT) management; (5) Iraqi reconstruction; and (6) veterinary medical officers.
2. Agency leadership may request an agency-specific authority by submitting a written request to OPM identifying the position(s) for which it believes a severe shortage of candidates or a critical hiring need exists, with relevant evidence to support the request. OPM has provided [guidance](#) and [templates](#) to help agencies determine what type of information should be included with the request.
3. A covered department or agency head may determine that a “shortage of highly qualified candidates exists for certain acquisition positions,” that “a severe shortage of candidates exist for any positions in the [IT] series,” or that a critical hiring need exists for any position in the IT series.<sup>9</sup>

The §3304 DHA can only be used for competitive service positions. The requesting agency must be an executive agency, as defined in 5 U.S.C. § 105. The agency must also have delegated examining authority, although §3304 DHA appointments do not need to be processed through a delegated examining unit. The §3304 DHA can be used for one or more occupations, grades (GS-15 or below), and/or geographic locations. Agencies may hire candidates into competitive service career, career-conditional, term, temporary, emergency indefinite, or overseas limited appointments. OPM is responsible for determining how long the §3304 DHA may be used for both Governmentwide and agency-specific authorities.

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<sup>8</sup> Information provided by OPM’s Employee Services in a September 30, 2020 email response to a request for information from MSPB.

<sup>9</sup> For more information and requirements, see 5 CFR § 337.204(c), 5 CFR § 337.204(d), and 5 CFR § 337.205(c), respectively.

Congress has granted additional flexibility to DoD and the Department of Veterans Affairs (VA) related to §3304 DHA. From 2004 through 2016, DoD—like other agencies—was required to submit requests to OPM to hire under this authority. However, since 2017, the Director of the Defense Civilian Personnel Advisory Service (DCPAS) has assumed the responsibility of approving these DHA requests in place of OPM officials.<sup>10</sup> DCPAS indicated they still follow OPM’s regulations (5 CFR § 337, subpart B) when deciding whether to approve the request.

In VA, a written request to use §3304 DHA may be submitted by agency leadership to OPM identifying the position(s) for which it believes “there exists a severe shortage of highly qualified candidates” (rather than just “a severe shortage of qualified candidates”), with relevant evidence to support its request (5 U.S.C. § 3304(a)(3)(B)).

### ***Required Oversight***

The §3304 DHA’s law and regulations do not require that specific agency or OPM reports be submitted to Congress. However, the regulations state that periodically, “OPM will review agency use of the authority to ensure proper administration and determine if continued use of the authority is supportable.”<sup>11</sup> OPM officials indicated that the agency does conduct regular, periodic reviews of agency hiring practices—including the use of §3304 DHA—as part of its oversight accountability and compliance responsibilities.<sup>12</sup> OPM may modify or terminate a §3304 DHA if it determines an agency has used the authority improperly. In addition, agencies are to advise OPM when there is no longer a shortage of candidates or a critical hiring need. Also, OPM may “periodically” request information from agencies regarding §3304 DHA usage.

For the Governmentwide §3304 DHA, agencies are not required to submit justifications to OPM before using them; OPM conducts the analyses when determining the Governmentwide need. However, agencies are encouraged to conduct their own internal analyses to justify use, as OPM may ask for that information as part of the oversight process.

## ***What Hiring Trends are Occurring Under §3304 DHA?***

OPM’s Enterprise HR Integration-Statistical Data Mart (EHRI-SDM, or EHRI) provides Governmentwide workforce data that can help explore trends related to §3304 DHA, such as the extent to which it is used and the resulting workforce demographics, particularly as compared to other competitive service appointments.<sup>13</sup>

**Number of §3304 DHA Appointments.** Figure 4 demonstrates that §3304 DHA hiring got off to a relatively slow start under the 2002 statute. From FY 2003 through 2007, agencies made fewer than 5,000 total §3304 DHA appointments. However, usage continued to increase over time, and there were over 5,000 appointments in FY 2012 alone. There was a significant dip in usage in FY 2013, when the number of appointments fell to under 4,000. This was likely due to discretionary

<sup>10</sup> For more information, see 5 U.S.C. § 9902(b)(2) and the June 6, 2017 Deputy Secretary of Defense memorandum, “[Implementation of Direct-Hire Authority for Shortage Category and/or Critical Need Positions.](#)”

<sup>11</sup> 5 CFR § 337.206(a).

<sup>12</sup> Information provided by OPM’s Employee Services in a September 30, 2020 email response to a request for information from MSPB.

<sup>13</sup> The “other competitive service” and “other competitive appointments” category is comprised of appointments and conversions under authorities other than a §3304 DHA. They include, for example, appointments through reinstatement, delegated examining, the Veterans Employment Opportunities Act, and agency-specific authorities and conversions of individuals initially appointed under the Pathways Programs.

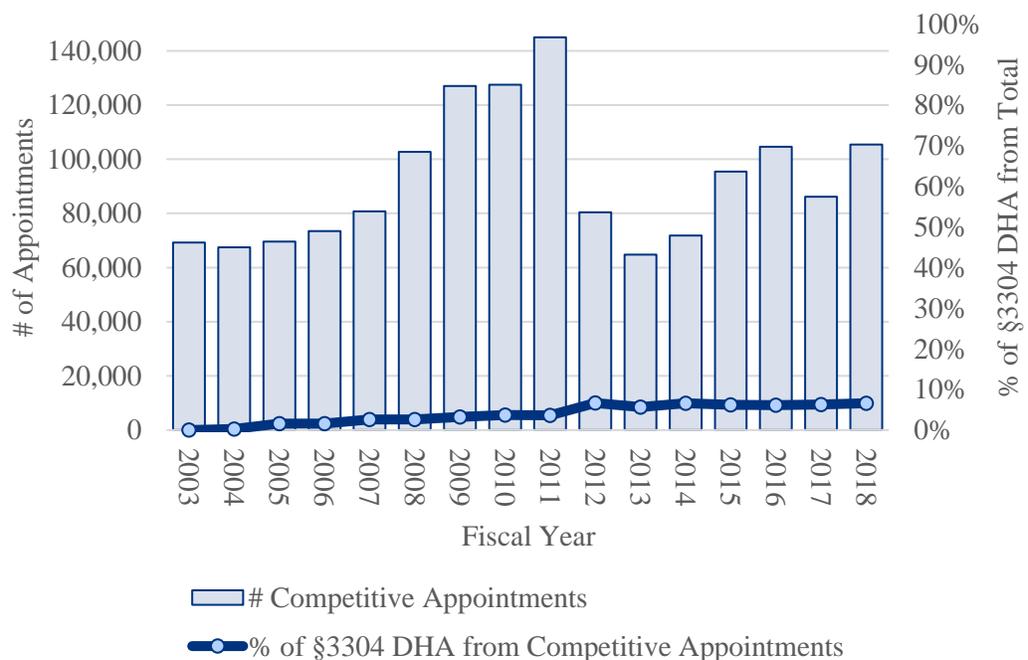
spending caps and other budget impacts caused by sequestration. Since that time, usage has mostly picked up again, peaking in FY 2018 at almost 7,000 appointments.

**Figure 4. Number of §3304 DHA Appointments, by Fiscal Year**



**Percentage of Competitive Appointments.** Even though the number of §3304 DHA appointments is increasing, they still remain a small percentage of competitive service hires. As seen in Figure 5, §3304 DHA appointments have averaged around 6 percent of all competitive service hires since FY 2012, with a high in 2012 of 6.7 percent and a low in 2013 of 5.7 percent.

**Figure 5. Percentage of §3304 DHA Appointments from the Total Number of Competitive Appointments, by Fiscal Year**



**Agencies Using §3304 DHA.** Workforce data for the period of FY 2014 – 2018 indicate that the three largest Federal agencies—DoD (and its related agencies), VA, and the Department of Homeland Security—had the highest rates of total competitive service new hires. To a degree, this trend continued with §3304 DHA appointments, as displayed in Figure 6.

**Figure 6. §3304 DHA Appointments by Agency, FY 2014 – 2018<sup>14</sup>**

Agency	Percentage of DHA Hires
1. Army	38%
2. Health and Human Services	22%
3. Homeland Security	9%
4. Navy	7%
5. Defense	4%
6. Air Force	4%
7. Veterans Affairs	3%
8. Treasury	3%
9. Agriculture	3%
10. Commerce	1%

Even though DoD has many of its own agency-specific direct-hire authorities, Defense-related agencies were still responsible for just over half of all §3304 DHA appointments made during this period.<sup>15</sup> While Homeland Security and VA were among the top 10 users, they accounted for a smaller proportion than they did in other competitive hiring procedures.

Compared to other Cabinet-level agencies, the Department of Health and Human Services (HHS) is not a particularly large agency; its size falls in the middle based on number of employees. However, HHS was the second highest user of §3304 DHA over the past 5 years. In the next section, we will see that the likely reason for that is the type of occupations for which the department hires.

**Occupations.** The Federal Government groups its occupations into six categories, often referred to as PATCOB categories:

1. Professional (P): Occupations typically requiring a certain level of education (e.g., nurse, physician, accountant, engineer).
2. Administrative (A): Administrative or management occupations requiring the exercise of skills such as analytical ability, judgment, and discretion (e.g., information technology, contracting, management analyst).
3. Technical (T): Occupations involving work that is non-routine and requires extensive practical knowledge gained through on-the-job experience or specific training (e.g., budget assistant, HR assistant, nursing assistant).
4. Clerical (C): Occupations that involve structured work that supports office, business, field, or fiscal operations (e.g., mail clerk, secretary).
5. Other (O): Miscellaneous white-collar occupations that do not fall into the above categories (e.g., border patrol enforcement, security guard, firefighter).

<sup>14</sup> We chose to highlight 5-year trends because annual numbers for §3304 DHA appointments are relatively small and therefore more readily influenced by minor fluctuations in the hiring environment, and the 10-year data might reflect priorities or patterns less prevalent in the current hiring environment.

<sup>15</sup> Because each of DoD's military services employs a large number of civilian employees and has their own HR policies, practices, and cultures, we evaluate the civilian workforce data for each service individually (i.e., Army, Air Force, and Navy), with an additional "DoD" category that combines the Department's non-military service organizations.

6. Blue Collar (B): Occupations typically comprising trades, crafts, and manual labor (e.g., custodian, maintenance mechanic, electrician).

Eighty-one percent of §3304 DHA appointments were in professional and administrative occupations, while only 52 percent of other competitive service appointments were in those categories. Therefore, the occupations targeted through §3304 DHA, as shown in Figure 7, typically required a higher level of skill, experience, and/or education than other competitive appointments.

**Figure 7. Top §3304 DHA Appointments by Occupation, FY 2014 – 2018**

<b>Occupation, Occupational Code</b>	<b>Percentage of §3304 DHA Hires</b>
<b>1. Nursing, 0610</b>	36%
<b>2. Information Technology Management, 2210</b>	18%
<b>3. Practical (Vocational) Nurse, 0620</b>	13%
<b>4. Physician, 0602</b>	8%
<b>5. Contracting, 1102</b>	5%
<b>6. Pharmacy, 0660</b>	5%
<b>7. Veterinary Medical Science, 0701</b>	3%
<b>8. Border Patrol Enforcement, 1896</b>	2%
<b>9. Diagnostic Radiologic Technologist, 0647</b>	2%
<b>10. Customs and Border Protection, 1895</b>	1%

Almost two-thirds of §3304 DHA appointments made in FY 2014 – 2018 were made using the Governmentwide medical authority. This list of occupations helps explain why HHS is one of the agencies that used §3304 DHA the most. As part of its healthcare mission, HHS hires a significant number of medical personnel. In fact, 74 percent of HHS’s direct-hire appointments were from the medical occupations listed above.

Furthermore, §3304 DHA was the preferred hiring authority for medical and veterinary positions when compared to all competitive service authorities, as shown in Figure 8.

**Figure 8. Percentage of Competitive Appointments Made Using §3304 DHA, FY 2014 – 2018**

<b>Occupation, Occupational Code</b>	<b>Percent</b>
<b>Nursing, 0610</b>	86%
<b>Practical (Vocational) Nurse, 0620</b>	91%
<b>Physician, 0602</b>	86%
<b>Pharmacy, 0660</b>	92%
<b>Veterinary Medical Science, 0701</b>	82%
<b>Diagnostic Radiologic Technologist, 0647</b>	82%

IT and contracting—two critical Federal occupations often discussed as having shortages of qualified candidates—were also among the most prevalent §3304 DHA appointments. Two Homeland Security occupations—border patrol enforcement and customs and border protection—were the only two agency-specific occupations that made the top 10 list. For these

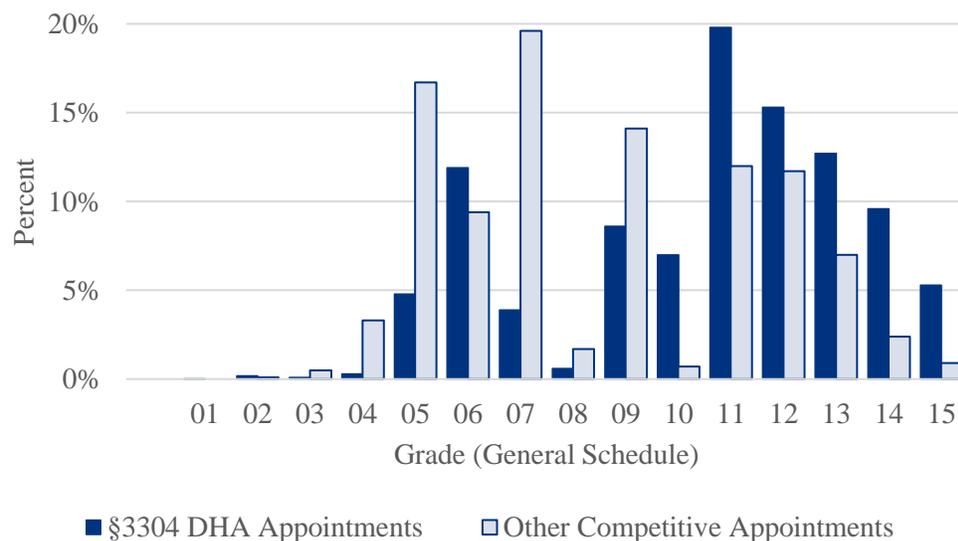
non-medical occupations, §3304 DHA was used for a much smaller proportion of competitive hires when compared to other authorities. Specifically, 6 percent of customs and border protection competitive hires were made using §3304 DHA; 11 percent of contracting; 19 percent of border patrol enforcement; and 22 percent of IT.

We also looked at what occupations were filled most often using other competitive service authorities aside from §3304 DHA. Similar to §3304 DHA appointments, three of the most prevalent occupations hired through other competitive procedures were nursing, IT, and contracting. The other most prevalent occupations hired through other competitive service procedures included general management analysis and administrative jobs (occupational codes 0301, 0303, and 0343), contact services (0962), custodians (3566), corrections officers (0007), and general inspection and investigations (1801).

**STEM Occupations.** In October 2018, [OPM announced](#) a new Governmentwide §3304 DHA for select STEM occupations. Because the data for FY 2019 were not available for this brief, we are not able to examine the use of these new authorities. Numerous stakeholders have indicated there is a need for a more flexible, streamlined approach to hiring for these positions, so hiring trends related to these occupations will warrant future examination.

**Grades.** The grades at which new appointments were made demonstrate the types of employees that agencies are targeting with their hiring; for instance, entry-level versus experienced employees. Therefore, it is valuable to compare the grade levels hired under §3304 DHA with other competitive service hires. To make valid comparisons, we looked only at those appointments covered under the General Schedule to ensure that we compare similar groups.<sup>16</sup> The results are displayed in Figure 9.

**Figure 9. General Schedule Grade by Hiring Authority, FY 2014 – 2018**



The data indicate that in comparison to other competitive hires, §3304 DHA appointments were more often made to mid-career and upper-level grades (GS-11 through 15). The other competitive service appointments tended to fill more positions at the entry- and lower mid-career grades (GS-

<sup>16</sup> The Federal Government's General Schedule (pay plan codes GS, GM, GL, GP, and GR) is the predominant pay plan for white-collar employees, while the Federal Wage System largely sets the pay for blue-collar employees. The EHRI data show that 98 percent of DHA hires are covered under the General Schedule, while 77 percent of competitive hires are General Schedule employees.

5 through 9). In fact, 14 percent of other competitive service new hires were in entry-level professional and administrative positions, versus only 4 percent of §3304 DHA appointments.

There are several likely explanations why §3304 DHA appointments tended to be at higher grade levels than other competitive hiring. Part of the reason was likely the result of the types of jobs being filled. As stated, §3304 DHA appointments were made largely to professional and administrative positions that require higher levels of skill and education or hard-to-find skills, whereas other competitive procedures included more clerical, technical, and other positions. The trend also suggests that agencies had an immediate need for highly skilled (and graded) employees to address new, emerging, or already understaffed needs. In addition, they could have been replacing expertise lost through retirements and other turnover, so they hired employees who could hit the ground running rather than those who would need to be developed.

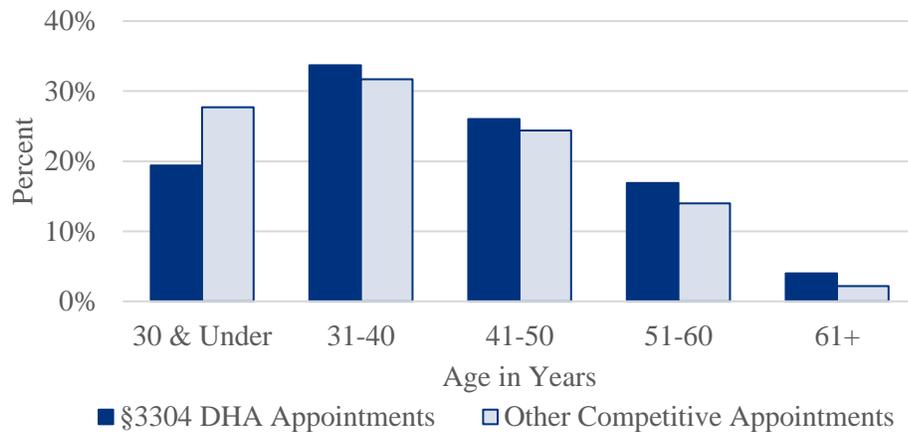
The grades to which §3304 DHA and other competitive service new hires were appointed also provide an example of how occupation influences these comparisons. There were a significant number of §3304 DHA appointments made at grades GS-06 and 10. Entry-level professional and administrative career ladders often follow a two-grade interval pattern from GS-05 to GS-11, meaning they do not use the 06, 08, and 10 grade levels. The single-interval pattern we see here is largely from the nursing profession which does use single intervals and which we saw earlier are a predominant occupation filled using §3304 DHA.

### *What Demographics Are Occurring Under §3304 DHA?*

The obvious goal of agency hiring programs is to produce a highly qualified workforce. As part of that goal, agencies strive to achieve a workforce “from all segments of society”—as stated in the first merit system principle—so that it can better serve the public. The advantages of a diverse and inclusive workforce have been widely documented, including in MSPB’s report [\*Fair and Equitable Treatment: Progress Made and Challenges Remaining\*](#).

Because §3304 DHA provides agencies the ability to hire without rating and ranking applicant qualifications and without the application of veterans’ preference, it is important to monitor the effects the hiring flexibility has on meeting other merit-based and public policy goals, such as hiring a diverse workforce in relation to age, gender, race and ethnicity, and veteran status. Here, we take a look at some of the resulting demographics from §3304 DHA appointments, compare them to those achieved through other competitive service hiring procedures, and discuss some of the difficulties in evaluating this data.

**Age.** We often hear that agencies have a difficult time recruiting and hiring recent college graduates and candidates under 30 years old. To see what effect §3304 DHA has on this demographic, we compared the age of new hires under §3304 DHA with those hired under other competitive service procedures. Initially, it appeared that the other competitive procedures actually resulted in a larger proportion of new hires 30 years and under than did §3304 DHA, as displayed in Figure 10.

**Figure 10. Age by Hiring Authority, FY 2014 – 2018**

However, we found that new hire age is highly dependent on occupation. When we compared age across the 10 occupations that resulted in the highest percentage of new hires using §3304 DHA (Figure 7), there is not a substantial difference between §3304 DHA and other competitive service procedures in the percentage of younger employees hired, as displayed in Figure 11. The §3304 DHA appointments resulted in a slightly higher percentage of new hires aged 30 and under for seven occupations, but only two (pharmacy and border patrol enforcement) had a difference of 5 or more percent.

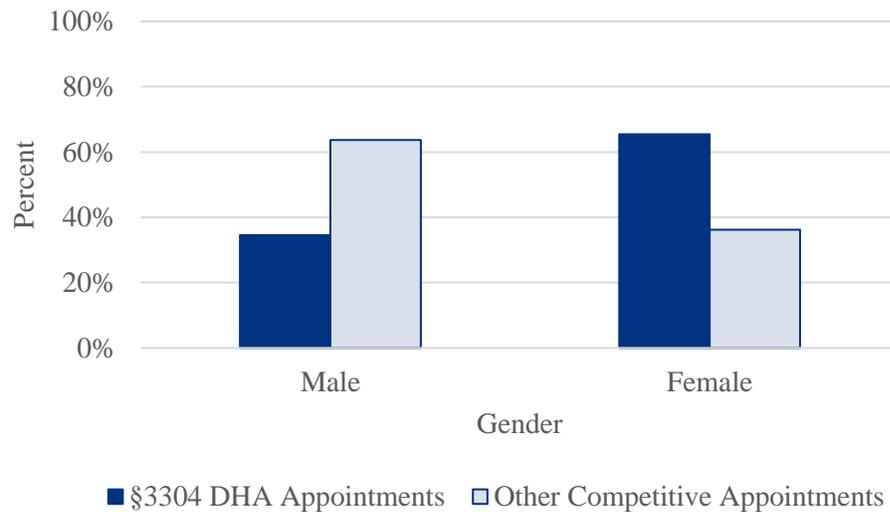
**Figure 11. Percentage of New Hires 30 Years Old and Under by Occupation and Hiring Authority, FY 2014 – 2018**

Occupation, Occupational Code	§3304 DHA Appointments	Other Competitive Appointments
1. Nursing, 0610	16%	17%
2. Information Technology Management, 2210	14%	15%
3. Practical (Vocational) Nurse, 0620	22%	18%
4. Physician, 0602	2%	0%
5. Contracting, 1102	28%	29%
6. Pharmacy, 0660	32%	27%
7. Veterinary Medical Science, 0701	26%	24%
8. Border Patrol Enforcement, 1896	74%	67%
9. Diagnostic Radiologic Technologist, 0647	15%	12%
10. Customs and Border Protection, 1895	65%	62%

The data seem to indicate that using §3304 DHA does not substantially affect the percentage of younger new hires. In our report [Attracting the Next Generation: A Look at Federal Entry-Level New Hires](#), we noted several factors that impede hiring a younger workforce, including agency recruitment and assessment practices that favor older applicants who have more experience over younger applicants who may have more potential. In addition, Federal job requirements, such as qualification requirements and individual occupational requirements for particular jobs, often favor older, more experienced applicants. This is not to suggest that agencies should favor younger applicants; only that recruitment and assessment practices impact who gets hired.

**Gender.**<sup>17</sup> An initial examination of gender data show that a much larger proportion of females were hired using §3304 DHA than other competitive procedures, as shown in Figure 12.

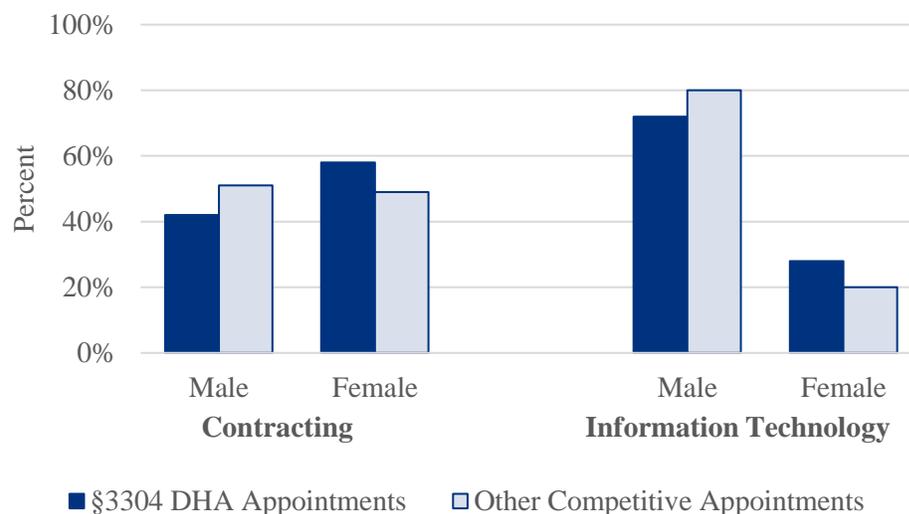
**Figure 12. Gender by Hiring Authority, FY 2014 – 2018**



However, as noted above, occupation heavily influences comparisons between §3304 DHA and other competitive hiring procedures. For instance, the nursing occupations account for a large proportion of §3304 DHA hires, at just about half. In addition, nursing is an occupation that employs a high proportion of women.<sup>18</sup> To see this effect more directly, we made comparisons across other select occupations.

Contracting and IT were two of the occupations most often filled using both §3304 DHA and other competitive procedures during FY 2014 – 2018. The comparisons are shown in Figure 13.

**Figure 13. Gender in Select Occupations by Hiring Authority, FY 2014 – 2018**



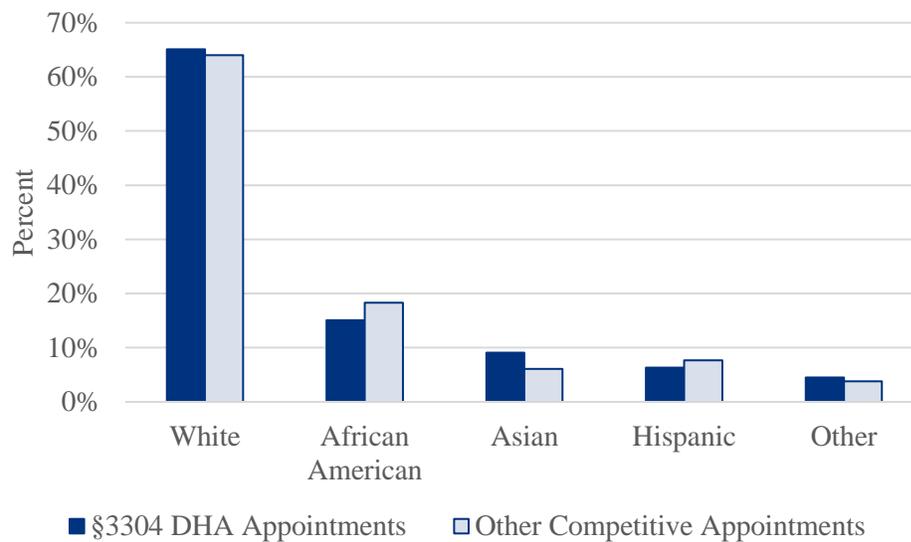
<sup>17</sup> A note about terminology: Historically, anti-discrimination laws and regulations used the term “sex” when distinguishing between males and females. The term “gender” is evolving into the more widely preferred term because it refers to an individual’s concept of themselves rather than just biological differences.

<sup>18</sup> Department of Labor, Women’s Bureau, *Employment and Earnings in Select Occupations*, “Most Common Occupations for Women in the Labor Force,” <https://www.dol.gov/agencies/wb/data/employment-earnings-occupations>.

For contracting positions, other competitive service procedures resulted in a fairly even split, with 48 percent of the new hires being female and 51 percent male. However, under §3304 DHA, agencies hired 58 percent women and 42 percent men into contracting jobs. For IT—an occupation historically dominated by men<sup>19</sup>—the percentage of women hired rose from 20 percent under other competitive procedures to 28 percent under §3304 DHA. These trends seem to indicate that using §3304 DHA has comparable, or even improved, effects on agencies’ ability to hire women as compared to other competitive processes.

**Race and Ethnicity.** When comparing the race and ethnicity of those hired through §3304 DHA and other competitive procedures, there does not appear to be a significant difference when looking at all hires, as shown in Figure 14. Almost two-thirds of new hires under §3304 DHA (65 percent) and other competitive procedures (64 percent) were White, and the differences among minority groups were between 1 and 3 percentage points.

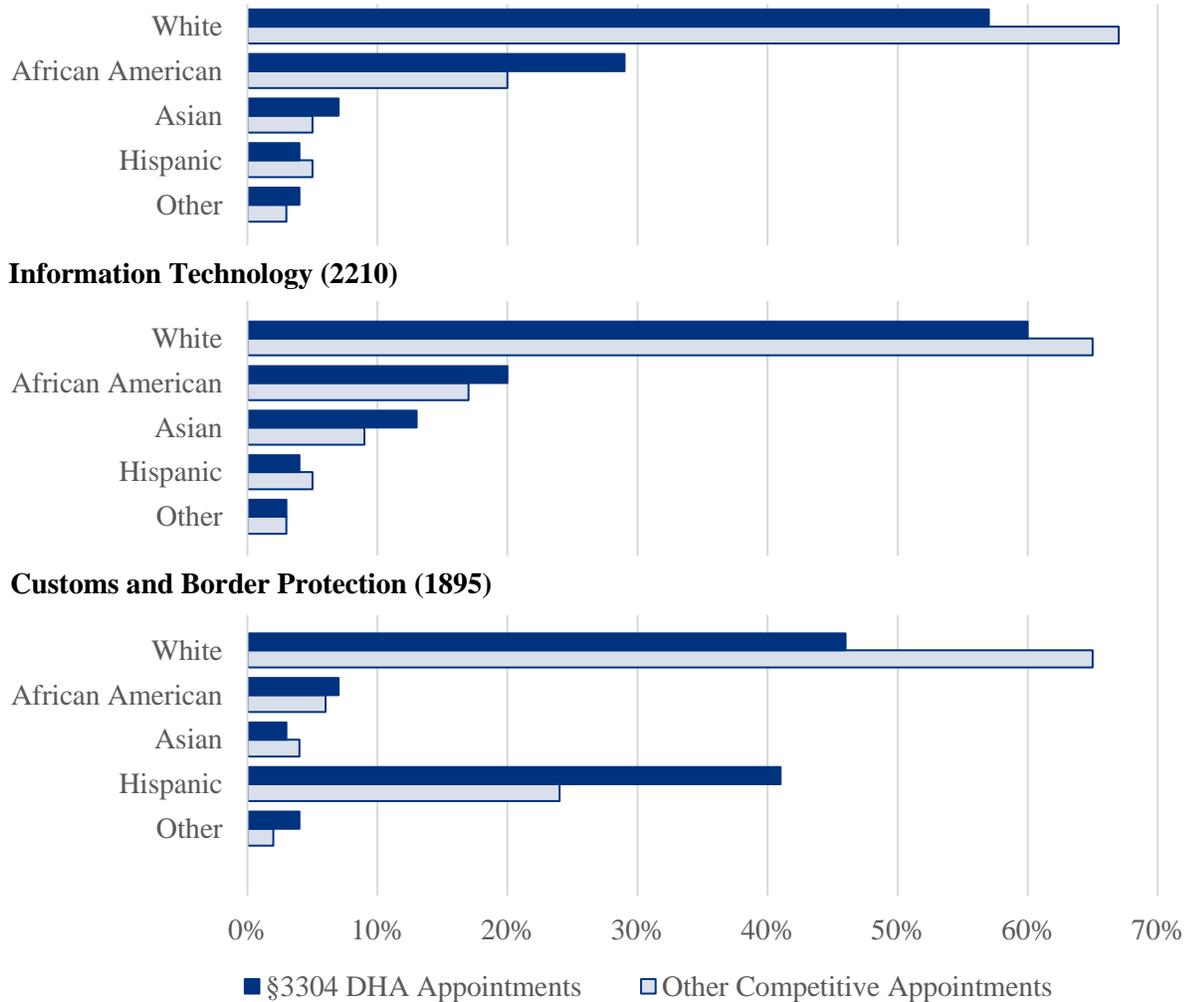
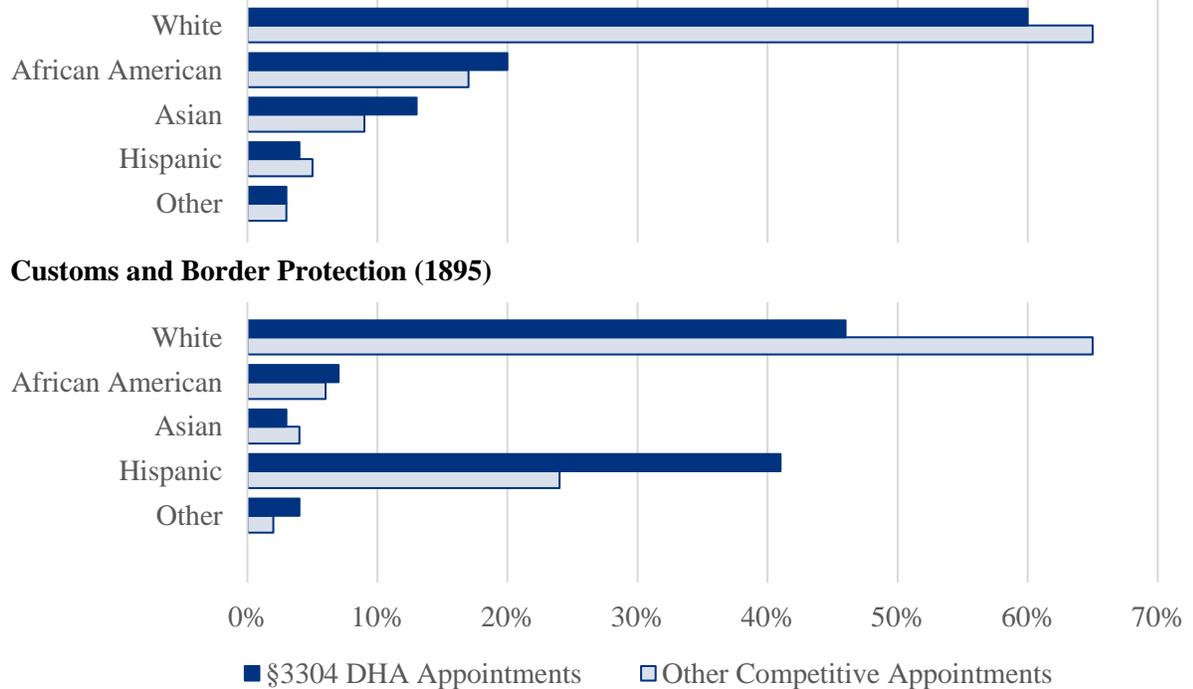
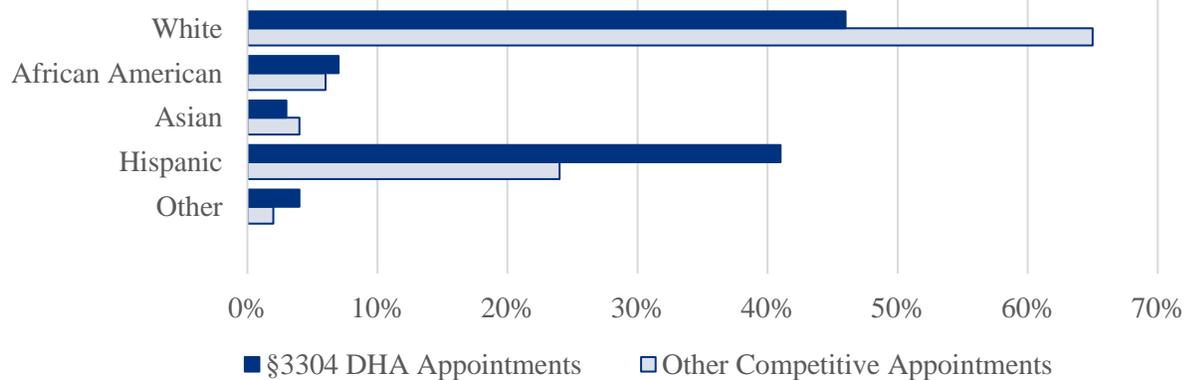
**Figure 14. Race and Ethnicity by Hiring Authority, FY 2014 – 2018**



If we examine race and ethnicity by occupation, the differences in representation are not quite as striking as we saw with gender. For instance, in the medical occupations hired most under §3304 DHA—nursing, practical nursing, physician, pharmacy, and veterinary medical science—the representation of White new hires was similar between §3304 DHA and other competitive hires. However, some racial and ethnic differences do exist when broken out by occupation, as shown in Figure 15.

In the two general administrative occupations hired most under §3304 DHA—IT and contracting—there was slightly more diversity among new hires under §3304 DHA compared to other competitive hiring. In contracting, there was substantially greater representation of African American new hires under §3304 DHA, and there was a slight increase in African American and Asian/Pacific Islander new hires in IT.

<sup>19</sup> Department of Labor, Women’s Bureau, *Employment and Earnings in Select Occupations*, “Percentage of science, technology, engineering, and math (STEM) workers who are women,” <https://www.dol.gov/agencies/wb/data/employment-earnings-occupations>.

**Figure 15. Race and Ethnicity in Select Occupations by Hiring Authority, FY 2014 – 2018****Contracting (1102)****Information Technology (2210)****Customs and Border Protection (1895)**

In the two agency-specific occupations hired most under §3304 DHA—customs and border protection and border patrol enforcement (not shown)—there was substantially higher representation of Hispanic new hires under §3304 DHA than other competitive procedures. This is likely a consequence of the fact that fluency in Spanish is an important job element for some of these positions.

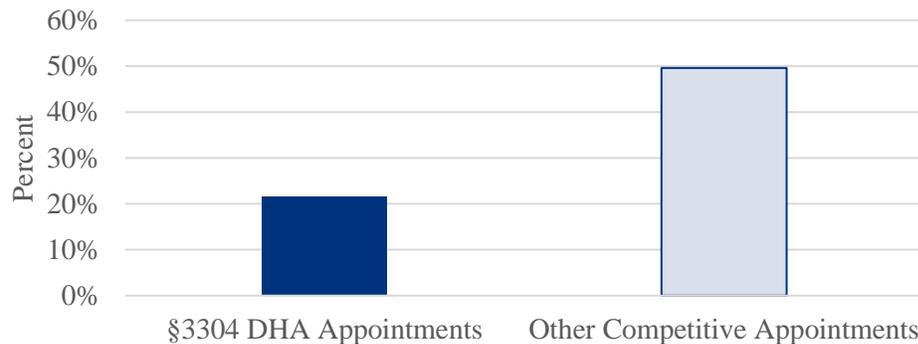
These patterns, like we saw with gender, seem to indicate that §3304 DHA has at least a comparable, but sometimes improved, effect on agencies' new hire representation. However, it is important to track and evaluate the results by occupation and other conditions that could impact the results, rather than relying solely on high-level hiring statistics.

**Veteran Status.** A key difference between §3304 DHA and other competitive service hiring procedures is that agencies do not apply veterans' preference when using §3304 DHA. Veterans' preference, as well as other veteran hiring programs, is not only a statutory entitlement, but also a longstanding public policy that recognizes the economic sacrifices and contributions veterans have made to society through their military service. Therefore, it is unlikely that Congress or OPM intended to use §3304 DHA to hire fewer veterans, but rather to simplify the process and make it faster. In fact, OPM explained that one reason for the requirement that agencies select candidates in the approximate order of application is to prevent §3304 DHA from disadvantaging

veterans. Therefore, like other workforce demographics, it is important to look at the effect §3304 DHA has on veteran hiring.

At first blush, §3304 DHA seemed to result in a significantly lower proportion of veterans than the other competitive service procedures, as presented in Figure 16. Only 22 percent of the §3304 DHA hires were veterans, compared to 50 percent of other competitive hires (as determined by a combination of active military service and/or preference eligibility).

**Figure 16. Percentage of Veterans by Hiring Authority, FY 2014 – 2018**



However, once again the impact of occupation makes the story more complex. Going back to the discussion of PATCOB categories, almost 60 percent of hires made using §3304 DHA were for professional occupations. To determine what impact that had on veteran hiring, we looked at the overall distribution of veterans in each of the major PATCOB categories, as shown in Figure 17.

**Figure 17. Percentage of Veterans Hired by PATCOB Category, FY 2014 – 2018**

	§3304 DHA Appointments	Other Competitive Appointments
<b>Professional</b>	54%	9%
<b>Administrative</b>	28%	37%
<b>Technical</b>	16%	21%
<b>Clerical</b>	0%	8%
<b>Other</b>	2%	7%
<b>Blue Collar</b>	0%	18%

The data indicate that a significantly larger portion of direct hires in the professional category were veterans than those hired through other competitive procedures. However, §3304 DHA resulted in lower levels of veteran hiring in administrative and technical occupations.

Furthermore, one-third of the veteran hires made under other competitive procedures were in occupational categories for which §3304 DHA was rarely used (clerical, blue collar, and other), thereby affecting overall veteran representation in new hires.

**Retention.** Retention is an important indicator of whether agencies are hiring employees who are qualified for the position and/or hiring employees who are a good fit for the organization. High turnover is a costly consequence of poor hiring decisions. Since §3304 DHA does not require the assessment of relative qualifications and only requires that agencies ensure applicants meet the level of proficiency needed to perform the work of the position (i.e., obtain a passing score), retention statistics can help illuminate the effect of this limited applicant assessment when hiring.

As with the other demographics, §3304 DHA appointments initially showed a higher rate of separations within 3 years of the appointment than the other competitive appointments. However, when we looked at the results broken out by individual occupations, there was no discernable pattern of differences. There were some variations in retention by year; but for the most part, the rates of separation from the Government (by resignation and termination) and transfers to other agencies were similar across like occupations.

## *What Do Agencies Tell Us About §3304 DHA?*

In addition to evaluating the EHRI workforce data, we used several methods to obtain feedback from agency HR officials and staff on how they are using §3304 direct-hire authority and their perceptions of the advantages and challenges regarding §3304 DHA usage. In the spring of 2019, we sent a questionnaire to members of the CHCO Council and received responses from 19 agencies. During the summer, we conducted focus groups and interviews with HR employees across the country to obtain feedback on a number of topics, including direct hire.

### *Knowledge of §3304 DHA*

Agencies have a significant number of hiring authorities available to them in addition to §3304 DHA. Many Government evaluators (e.g., MSPB, GAO, OPM) have pointed out that the vast number of authorities makes it difficult for HR staffs and hiring officials to keep track of what flexibilities are available, how they work, and when it is advantageous to use them. Therefore, we asked agencies about HR and hiring officials' knowledge of §3304 DHA.<sup>20</sup> This is what they said:

- About half of the CHCOs noted that they have a policy in place for §3304 DHA. A policy is not required but can help lay out procedures, expectations, training, and uses.
- All of the CHCOs said that HR is knowledgeable about the laws, rules, and regulations for §3304 DHA. Five of the 19 respondents said HR is “very” knowledgeable. Detailed knowledge of §3304 DHA is important because, as noted earlier, different types of DHA have different coverage and requirements, and §3304 DHA does not enable hiring managers to select freely among qualified applicants.
- Three-quarters of the CHCO respondents said that HR specialists receive training on §3304 DHA, including on-the-job-training, discussions at staff meetings, emails, memos, and centralized training provided to the field through seminars and webinars.
- Eleven CHCOs responded that hiring officials are knowledgeable regarding §3304 DHA, while eight said they need improvement in this area. Fourteen respondents noted that they provide hiring officials §3304 DHA training, mostly through informal methods such as periodic supervisory training that covers staffing and recruitment flexibilities, on-the-job-training, educating officials while working with them on a hiring action, and other informal training.

These responses are promising. However, we should note that MSPB's research brief [State of the Federal HR Workforce: Changes and Challenges](#) pointed out that a key challenge for the HR workforce is that HR specialists often do not have the time or resources for training. In addition,

<sup>20</sup>Although the CHCO questionnaire and focus group introductions defined direct hire as the authority granted through the Homeland Security Act of 2002 and overseen by OPM, it is possible participants answered our questions in regard to all direct-hire authorities.

only 56 percent of the agency leaders we surveyed agreed that they understood HR laws, rules, and regulations. Therefore, training and communication for both HR staffs and hiring officials should be a priority.

Furthermore, it should be noted that some of the information on §3304 DHA may not be clearly conveyed by OPM to agency HR staffs. For example, the expectation for agencies to assess and select qualified applicants in the order by which applications are received does not seem to have been communicated in guidance that HR specialists largely rely on to carry out their work—namely the statute, regulations, Delegated Examining Operations Handbook, and DHA website. Instead, it has been communicated through approval letters for agency-specific §3304 DHA and a memorandum to agency heads. To ensure that HR staff and hiring officials clearly understand the purpose and requirements of §3304 DHA, additional and more consistent communication and messaging from OPM would be beneficial.

### *Usage*

All of the CHCO questionnaire respondents said they used OPM’s Governmentwide DHA in the 2 years prior to receiving the questionnaire, and four noted usage of an agency-specific DHA.

**Recruitment.** CHCOs cited a wide variety of recruitment sources that they use for §3304 DHA announcements. Every agency used USAJOBS, which is understandable because public notice on USAJOBS is required for §3304 DHA. However, they also reported using college and career fairs, professional associations, social media, and their agency website. Another popular recruitment source was veterans’ groups, which seems to demonstrate agencies’ continued commitment to hiring veterans even without the veterans’ preference requirement. The recruitment method respondents cited as being most effective at attracting candidates was USAJOBS (15 respondents). Some agencies also mentioned career fairs and events (6) and college recruitment (4) as being effective.

One agency we interviewed warned that a challenge many agencies will face in using §3304 DHA is the need to improve their recruitment skills. They equated it to “exercising a muscle you haven’t used in a while.” As noted above, many agencies still rely on the passive practice of posting announcements to USAJOBS and waiting for applicants to apply. In fact, this practice is bolstered by the requirement to hire in the order that applications are received because by the time agencies implement their external recruitment strategies, they may have already received online applications through USAJOBS.

OPM officials indicated that it is possible for agencies to reach out to other recruitment sources simultaneously with the USAJOBS posting. That approach would allow candidates to apply around the same time from all sources. They used the example of OPM’s recruitment process for Administrative Law Judges. In that process, OPM notified bar associations of the opening of the exam at the same time it posted the job announcement on USAJOBS. Applicants still had to use USAJOBS to apply, but they could be prompted to go there from the recruitment notification.<sup>21</sup>

However, when hiring for hard-to-fill positions where a posting to USAJOBS does not result in enough qualified applicants, agencies will need to use a more proactive approach to find qualified

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<sup>21</sup> Information forwarded by OPM’s Merit System Accountability and Compliance in a December 11, 2020 email response to a request for review from MSPB.

candidates and encourage them to apply. The §3304 DHA then allows them to more easily hire the candidates that they actively recruited.

Therefore, agencies will need to employ a timely, balanced set of recruitment strategies that effectively market the organization, including using targeted recruitment to seek out qualified applicants, building closer relationships with potential recruitment sources, researching the market from which the agency is recruiting, and working closely with hiring officials and subject matter experts to identify and reach candidates with the needed skill sets, among other approaches. Establishing this type of approach will not only help improve hiring results under §3304 DHA, but also for other competitive procedures.

**Assessment.** The CHCO agencies noted using a wide variety of assessment methods for §3304 DHA positions. The most-used assessments were resume reviews (19 respondents), occupational questionnaires (13), structured interviews (17), and reference checks (15). Some agencies even used different types of testing (6) and looked at professional certifications (12) and educational level (10). The assessments cited most often as effective were resume reviews, interviews, and occupational questionnaires.

Although §3304 DHA requires agencies to ensure new hires meet the qualifications of the position by obtaining a passing score on the assessment, it does not require the rating and ranking of candidates. In fact, OPM has discouraged assessment of relative qualifications. Therefore, the number and types of assessments being used is a bit surprising. If agencies are using assessments to compare applicant qualifications, this adds time to the process and seems inconsistent with the need to hire qualified applicants as quickly as possible. This trend may demonstrate that agencies place a high value on applicant quality and do not just want to hire the first applicants who meet the qualification requirements.

OPM officials suggested that if agencies are interested in increasing the quality of the applicants reached in the hiring process, then they should consider recent OPM guidance about using better assessments and establishing valid passing scores. A well-defined passing score would help ensure that applicants are genuinely qualified for the position. They point out that an agency may not get its first candidate choice, but it should always get a good choice. MSPB has also published extensively on improving applicant assessment. These approaches would assist agencies in improving their hiring results under rating and ranking procedures as well.<sup>22</sup>

### *Advantages*

Overall, agency representatives were mostly positive about the use of §3304 DHA. In our questionnaire, a majority of CHCO representatives indicated that compared to other competitive procedures, §3304 DHA helped improve the quality of the applicant pool (11 CHCOs), the quality of the new hires (15), and the timeliness of the hiring process (14). The areas most cited by agencies as being helped by §3304 DHA were targeting applicants with the needed skills (18), hiring candidates they actively recruited (18), hiring the most qualified candidates (15), identifying the most qualified candidates (13), and keeping the agency more competitive with

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<sup>22</sup> For instance, see the November 16, 2020, memorandum to CHCOs, [Draft General Schedule Qualifications Policy - EO 13932: Modernizing and Reforming the Assessment and Hiring of Federal Job Candidates](#) and the September 13, 2019, memorandum to CHCOs, [Improving Federal Hiring Through the Use of Effective Assessment Strategies to Advance Mission Outcomes](#). MSPB also has numerous resources available to help agencies improve their assessment practices. They can be found at [www.mspb.gov/studies](http://www.mspb.gov/studies) and MSPB's research brief [Improving Federal Hiring Through Better Assessment](#) summarizes and contains links to applicable resources.

other employers (13). These responses also show that agencies are concerned not just with hiring applicants quickly but also with hiring applicants who are best qualified.

Focus group and interview participants further stated that advantages of §3304 DHA include staying more competitive with other employers by being able to offer more timely tentative job offers after applicant qualifications have been determined, higher rates of satisfaction from managers and new hires, and streamlining the hiring process by not having to apply veterans' preference. Also, they felt §3304 DHA improves the relationship with hiring officials because there is less conflict about things like certificate of eligible determinations, applicant qualifications, and stringent HR processes.

### ***Challenges***

Responses from CHCO representatives did not note many challenges to using §3304 DHA. The two biggest hindrances reported were delays processing security clearances and OPM limits on usage, with eight agencies saying each was at least a slight hindrance. Other hindrances included the need for public notice, the length of the hiring process even with §3304 DHA, documenting the need for §3304 DHA, and understanding the rules, with six CHCOs noting that each of these was at least a slight hindrance.

Regarding public notice, we received comments that the requirement proved challenging because it increases the number of applications (both qualified and unqualified) that need to be processed, reduces flexibility by limiting the receipt of applications to a specific open period, and does not complement targeted recruitment efforts. OPM stated that the public notice requirement ensures objectivity in §3304 DHA selections.

CHCOs were mostly neutral on the issues of whether §3304 DHA affected merit, opportunities to hire veterans, and diversity of the workforce. Some of the agencies specified that they would like more flexibility to use direct hire when they think it is necessary.

Focus group participants were more critical of some aspects of §3304 DHA. Some participants responded that perceptions exist that §3304 DHA is less fair than competitive procedures. For instance, a couple of participants commented that it can be used to “get around” veterans' preference so hiring officials do not need to consider veterans. We note that the §3304 DHA statute exempts agencies from applying veterans' preference, but OPM does instruct agencies that “qualified candidates with veterans' preference should be selected as they are found.”<sup>23</sup> Therefore, the authority should not be used to avoid hiring candidates with preference.

Focus group participants also perceived that because the authority focuses so much on external recruitment, hiring officials may not give equal consideration to internal candidates. Participants further expressed that anecdotally they have seen the use of §3304 DHA increase equal employment opportunity complaints and new-hire turnover.

### ***Competing Views of §3304 DHA***

As previously indicated, OPM's response to our inquiries emphasized that the §3304 DHA authorizes direct hire in only two limited instances: where there is a critical hiring need or when there is a severe shortage of candidates, as defined in the implementing regulations. As the chief

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<sup>23</sup> OPM, “General Questions,” [Direct-Hire Fact Sheet](#).

human resources agency and personnel policy manager for the Federal Government, OPM is understandably focused on the scope of the authority.

However, some of the responses we received from agency representatives suggest that while agencies are using the authority to address critical hiring needs or applicant shortages, they are also interested in hiring for high-quality candidates, not just those who are proficient enough to get a passing score on the assessment. For instance, agencies use a variety of assessment tools, some of which appear to do more than just assess whether an applicant has the basic qualifications for the job. They use multiple recruitment methods to reach applicants and cited the ability to reach recruited applicants and the increase in applicant quality as advantages to using the authority. Furthermore, their concerns about public notice seem to imply that hiring based on the order of application receipt is not a practice that supports their goals.

## **Conclusions**

### ***Findings***

As discussed in this brief, the Government's experience with the direct-hire authority under §3304 has been largely positive. Appointments made under §3304 DHA are currently only a small percentage of competitive hires and have been used largely for professional and administrative positions that most would agree are occupations in which a critical hiring need or severe shortage of candidates exists. Even though §3304 DHA is the dominant hiring authority for some medical occupations, this usage seems to complement merit-based hiring procedures where needed rather than replacing it overall.

In comparison to other competitive procedures, §3304 DHA resulted in comparable or greater racial and ethnic diversity, as well as more female hires. Otherwise, there were few demographic differences achieved through §3304 DHA versus other competitive procedures when compared by occupation. Furthermore, HR representatives reported a number of advantages to using §3304 DHA, including the ability to target recruitment efforts, hire faster, make more timely tentative job offers to keep the agency more competitive with other employers, and improve satisfaction rates of managers and new hires.

On the other hand, some focus group participants expressed concerns about the fairness of the §3304 DHA process for internal candidates and veterans, and the data do suggest that veterans were hired at lower rates for some occupational categories.

### ***Looking Forward***

Given the Government's pressing talent needs and repeated efforts to improve Federal hiring, it is good news that at least one hiring initiative seems to be having some positive effects. However, that success also raises broader questions about the purpose of §3304 DHA and other direct-hire authorities in general. Looking forward, the Federal Government needs to consider what outcomes can reasonably be expected from DHAs and how they can best be used in conjunction with competitive hiring procedures.

The §3304 DHA was created to address critical hiring needs and severe shortages of candidates that could not be resolved adequately through competitive examining. The authority was not intended to result in a *better-qualified* workforce.

The first merit system principle states that “selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills.”<sup>24</sup> However, §3304 DHA enables agencies to hire, after public notice, any qualified applicant. In fact, OPM’s cited guidance specifically states that agencies should determine which candidates meet the level of proficiency needed to perform the work and make selections in an order that approximates the receipt of applications, rather than trying to determine the relative degree of qualifications applicants have.

OPM officials pointed out that the statute allows agencies to use §3304 DHA only “when there exists a severe shortage of candidates (or, with respect to the Department of Veterans Affairs, that there exists a severe shortage of highly qualified candidates) or that there is a critical hiring need.” The guidance to make selections in the order that applications are received helps meet this requirement while also ensuring objectivity in selections and fair treatment of veterans in the absence of formal competitive procedures and the application of veterans’ preference.

Yet, as discussed in the brief, there are indications that agencies may be going beyond that intent by expanding recruitment, implementing additional assessments, and doing more to draw distinctions among applicants. Consequently, agency and managerial satisfaction with §3304 DHA appears to be at least somewhat derived from the ability to hire better-qualified candidates, more than the ability to hire a merely qualified applicant more quickly. Although such actions may not be in keeping with hiring qualified applicants in the order of receipt, they do seem consistent with the spirit of the first merit system principle.

This suggests that OPM and hiring officials may have a different understanding of the role direct hire should play in hiring decisions. In the context of §3304 DHA, these different views have not seemed to create undue friction, likely because the authority is limited to a small set of occupations that do not have a large number of applicants or that need to be staffed quickly.

However, there are indications that Federal leaders and stakeholders would like to expand the current §3304 DHA to include the quality of the candidate as a factor in selection decisions. As mentioned previously, VA sought and obtained congressional approval to use §3304 DHA for positions with a severe shortage of “*highly qualified candidates*” rather than “qualified candidates.” Two good Government groups—the Partnership for Public Service and the Volcker Alliance—have advocated jointly for changing the §3304 DHA standard from “qualified” to “highly qualified” for all users. Further, they recommended that agencies be permitted to use the authority without OPM approval, arguing that agencies know their workforce needs best—a recommendation also suggested by the National Academy of Public Administration.<sup>25</sup>

In the context of direct hire beyond that covered under §3304, these different visions raise the question about the rationale for direct hire in general: should DHAs be used only for reasons of urgency or scarcity, or should quality also be a factor? Certainly, the first merit system principle affirms through its focus on “relative ability” that quality matters.

That is an important question facing Government policymakers. As indicated earlier, there is a broader collection of DHAs *not* granted through OPM that are showing a rapid increase in usage, reaching 27 percent of all competitive hires in FY 2018. This rapid growth is a clear indicator of frustration with the results of current competitive service hiring procedures. It also suggests that

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<sup>24</sup> 5 U.S.C. § 2301 (b)(1).

<sup>25</sup> See Partnership for Public Service, Volcker Alliance, [Renewing America’s Civil Service](#), October 2018, p. 2; National Academy of Public Administration, [No Time to Wait Part 2: Building a Public Service for the 21<sup>st</sup> Century](#), September 2018, p. 45.

these DHAs may no longer be just an avenue to supplement competitive hiring for occupations in which critical hiring needs or severe shortages of candidates exist.

The time is right for thoughtful, well-planned hiring reform that balances the principles of fairness, openness, quality, and efficiency. In our 2006 report [\*Reforming Federal Hiring: Beyond Faster and Cheaper\*](#), MSPB recommended that OPM work with Congress and other stakeholders to develop a policy framework for hiring reform. That recommendation remains relevant today and should include discussions of what outcomes can reasonably be expected from DHAs and how DHA can best be used in conjunction with competitive hiring procedures. Otherwise, the Federal Government risks letting DHAs proliferate and replace merit-based hiring processes, such as competitive examining, with little forethought or planning.