

THE IMPACT OF  
RECRUITMENT STRATEGY ON  
FAIR AND OPEN COMPETITION  
FOR FEDERAL JOBS



A REPORT TO THE PRESIDENT  
AND THE CONGRESS OF THE UNITED STATES  
BY THE U.S. MERIT SYSTEMS PROTECTION BOARD

JANUARY 2015



THE CHAIRMAN



U.S. MERIT SYSTEMS PROTECTION BOARD  
1615 M Street, NW  
Washington, DC 20419-0001

The President  
President of the Senate  
Speaker of the House of Representatives

Dear Sirs:

In accordance with the requirements of 5 U.S.C. § 1204(a)(3), it is my honor to submit this U.S. Merit Systems Protection Board report, *The Impact of Recruitment Strategy on Fair and Open Competition for Federal Jobs*. The purpose of our study was to examine how external factors such as a proliferation of hiring authorities and the decentralization of the Federal hiring process affect the implementation of fair and open competition for filling jobs in the Federal Government.

Since the Pendleton Act of 1883, it has been a basic precept that entry into the federal civil service should be based on merit after fair and open competition. Congress codified this ideal as part of the first merit principle in 1978 via the Civil Service Reform Act. However, the complexities of Federal civil service laws, regulations, and practices make it difficult to define what constitutes “fair and open competition.”

While what is “fair” or “open” often depends on one’s perception, there are some factors that threaten the principle of fair and open competition. These include: a proliferation of hiring authorities that restrict the size and composition of the applicant pool; overuse of restrictive hiring authorities and practices; the possibility that some managers may deliberately misuse hiring flexibilities to select favored candidates; and some human resources’ staff placing customer service to individual supervisors over service to the agency and its obligations to protect merit and avoid prohibited personnel practices. To protect fairness and openness in the Government’s recruitment activities, agencies should create a culture that values fair and open competition and examine hiring practices to identify and eliminate barriers to fair and open competition.

Additionally, since 2000, the use of restrictive hiring authorities has increased, while traditional competitive examining has decreased. This may be a warning that there may be some difficulty with the competitive examining authority. We recommend the Office of Personnel Management closely monitor how agencies are using restrictive hiring authorities. It also may be helpful for Congress to reexamine the role of competitive examining in Federal hiring and consider changes to make it simpler, more transparent and more widely used.

Respectfully,

Susan Tsui Grundmann



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## EXECUTIVE SUMMARY

Since the Pendleton Act in 1883, it has been a basic precept that entry into the Federal civil service should be based on merit after fair and open competition. In 1978, Congress made “fair and open competition” a part of the first merit system principle, codified at 5 U.S.C. § 2301. Agencies achieve this principle through guidelines that govern how they hire and prohibitions<sup>1</sup> on what they can do. However, the complexities of the Federal civil service laws, regulations, and practices make it difficult to define what constitutes “fair and open competition.” Also opinions as to whether a particular action comports with “fair and open competition” vary.

Our findings and recommendations in this report are based upon data from surveys of Federal employees and human resources (HR) specialists along with data from the Central Personnel Data File (CPDF) and include:

- Overall, fair and open competition is healthy in Federal hiring.<sup>2</sup> However, some challenges remain. This is in part because fair and open competition is not explicitly defined—it is relative, not absolute. Existing laws and regulations do set a floor<sup>3</sup> but also give agencies much discretion in the extent to which they allow open competition for vacancies. It is important for Federal agencies to operate in a manner that is both compliant with law and promotes confidence in the integrity of the hiring process.
- The hiring authorities and flexibilities that are available to Federal agencies when filling positions in the competitive service have both benefits and risks. Such flexibility is necessary to allow agencies to efficiently and effectively recruit and assess job candidates. However, it is possible for that flexibility to be used improperly, either knowingly or unknowingly. There are several key decision points where managers should weigh the benefits and risks of how they hire an employee. For example, when determining the area of consideration (to whom the job is open) for vacancy announcements, managers may legitimately consider limiting the recruitment pool to be able to efficiently manage the hiring process.

<sup>1</sup> The prohibited personnel practices (PPPs) can be found at 5 U.S.C. § 2302(b).

<sup>2</sup> U.S. Merit Systems Protection Board, *Merit Principles Survey (MPS) 2010*, question 01b, 30 percent of respondents believe their agencies did not hold fair and open competition for job vacancies.

<sup>3</sup> The PPPs prohibit employers from: influencing a person to withdraw from competition; granting any advantage to a person to improve or injure the “prospects of any particular person for employment;” and deceiving or willfully obstructing “any person with respect to such person’s right to compete for employment.” In addition, 5 U.S.C. §§ 3327 and 3330 require public notice for competitive examining positions.

Yet, they should not overly rely on restricted applicant pools when other hiring methods have a reasonable potential to attract quality candidates. A closed system not only appears unfair but may hinder the introduction of new thoughts and ideas into the workplace. Agencies also have the obligation to ensure that their workforce remains representative of society, which may not be possible if the applicant pool is routinely limited. There also is a strong business case for fair and open competition in hiring. The more agencies practice strong, fair, and open competition, the more engaged their workforce.

- Changes in the role of HR staff may have made it more difficult for HR to assist agencies to conduct healthy, fair, and open competitions. Providing good customer service to hiring managers and helping agencies prevent the commission of PPPs should be seen as complementary, not conflicting, goals. Agencies must create cultures in which HR staff can help managers avoid committing improper personnel actions and report improprieties without fear that doing so will be viewed as a failure to provide good customer service.

# CHAPTER 1: INTRODUCTION

## Background

The principle of fair and open competition for Federal jobs is fundamental to Federal merit systems. It is intended to promote efficient and effective Government by ensuring that Federal employees are hired on the basis of their competence, rather than their connections. That principle generally has been implemented through requirements for public notice and acceptance of applications from the public, and history shows a trend toward increasing the coverage of this requirement. Nevertheless, fair and open competition is neither universal nor absolute. For example, there are continuing exemptions from open competition for certain Federal positions, and hiring preferences for certain groups are a longstanding element of Federal merit systems. Also, we now see the confluence of a near-complete decentralization of the Federal hiring process with a proliferation of hiring authorities.<sup>4</sup>

By ensuring fairness and openness in hiring, the Federal Government incurs costs that are not borne by private employers. For example, the Federal Government may require more time and effort to fill a job than a private employer, even with reforms aimed at simplifying the process and reducing time to hire. Reasons include: (1) public notice, as required by principles of fair and open competition and the goal of attaining a workforce from all segments of society; (2) an abundance of applications; (3) fair and rigorous assessment of applicants, consistent with the merit system principles of equal opportunity and selection based on relative ability; and (4) adjudication and documentation of applicant entitlements (including veterans' preference) and eligibility, to ensure that hiring processes and outcomes comply with law and public policy.

These management costs are necessary to the ultimate goal of a strong, highly qualified, stable merit-based civil service that serves the public's interest over the long term rather than at the pleasure of current political leaders. For example, effective assessment of candidates improves the overall quality of the workforce and reduces the likelihood that the Government will need to undertake the process to remove that employee later.

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<sup>4</sup> U.S. Merit Systems Protection Board, *Federal Appointing Authorities: Cutting through the Confusion*, June 2008.

### Purpose

This study examines the extent to which factors such as a proliferation of hiring authorities and exemptions to competition may threaten the ideal of fair and open competition for Federal employment. It also examines the ability of HR staff to help agencies protect merit-based hiring and avoid PPPs related to fair and open competition.

### Methodology

The U.S. Merit Systems Protection Board (MSPB) conducted a survey from June-August 2011, of all Federal HR Specialists and Assistants (over 30,000 employees) to ask their perceptions of current agency hiring practices. The response rate for this survey was approximately 30 percent (almost 10,000 responses).

In addition to the survey of HR staff, we analyzed information from the CPDF,<sup>5</sup> performed a literature review, and requested vacancy announcement information from the Office of Personnel Management (OPM). To show how the gamut of decisions made in the hiring process can affect the resultant workforce, we identified two particular agencies that made very different choices in the hiring process which resulted in pronounced differences in the composition of the resultant workforces. We also analyzed results from MSPB's 2010 Merit Principle Survey to determine if the perception of fair and open competition was related to employee engagement.

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<sup>5</sup> For this study, the CPDF data was limited to Title 5 (which covers ~1.2 million employees), permanent full-time employees only. In addition, our review did not include Schedule A Attorney positions. Title 38 employees were excluded. For more information of Title 38 employees, please see Appendix B. Our examination of new hires included employees who received the following appointments: career, career conditional, excepted and excepted not-to-exceed.

## CHAPTER 2: WHY IS FAIR AND OPEN COMPETITION IMPORTANT?

The Civil Service Reform Act of 1978 (CSRA)<sup>6</sup> codified a set of principles that constitutes the framework for Federal HR management. The first of these Merit System Principles (MSPs) states that “recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.”<sup>7</sup> However, the CSRA does not specifically define what “fair” or “open” means. Given the myriad occupations, geographic locations, and pay levels, not to mention changing external circumstances, that exist in the Federal civilian service, perhaps this was a wise omission—but an omission nonetheless. Although fair and open competition for Federal jobs is an important democratic principle, what constitutes “fair” and “open” may differ among those who do and those who do not obtain Federal jobs.

To be sure, even before the passage of the CSRA, the U.S. Civil Service Commission (CSC) and, later, OPM, issued guidelines for what fair and open competition should look like. In addition, since the rise of scientific management in the early twentieth century, organizations, including the Federal Government, have searched for ways to screen for the best candidates to fill job vacancies. But any discussion of these concepts—indeed why it is important to have this merit system principle in the first place—should be rooted in an understanding of the ways jobs have been filled throughout the history of the Federal civilian service. There was a time when a fair assessment of job seekers or an open call for applications was not considered. In addition, given that certain groups have always received preference in Federal hiring, the competition for Federal jobs has never been completely fair or open. This makes the first MSP even more difficult to interpret.

### Beginnings

Although President George Washington’s principal requirements for holders of office were character, competence, and loyalty to the Constitution, he also realized that the new nation needed as much support as possible to survive. To ensure that support, when doling out offices, he paid deference to a desirable geographic distribution of appointments and to the opinions of Senators, Congressmen, and Governors. His appointees often lived up to his

<sup>6</sup> Public Law No. 95-454, 92 Stat. 1111.

<sup>7</sup> 5 U.S.C. § 2301(b)(1).

standards, which resulted in the development of a public service for which the new nation need not apologize.<sup>8</sup>

Washington and his successor, President John Adams, did not require that office-seekers have prior political experience, but they both (especially Adams) often required them to have the proper political opinion. This requirement led to exclusiveness among those who received the offices that prepared the way for future objections. President Washington also occasionally gave preference to officers of the Revolutionary Army as long as they met his standards of character and competence.<sup>9</sup>

The Presidential campaign that ended with Andrew Jackson's election in 1828 was one of the most bitter the country had seen to that point. During this campaign, Senator William L. Marcy famously quoted that there is "nothing wrong in the rule that to the victor belong the spoils of the enemy."<sup>10</sup> Most people justified this idea based on the belief that there was a real need to democratize the civil service, as the first six Presidents had restricted most of the appointments to the educated members of well-to-do families. Now was the time to bring into the civil service people from all strata of the country.<sup>11</sup> In addition, political parties had become much more powerful and the need for patronage as both a "weapon in political warfare [and] as financial support for party treasuries"<sup>12</sup> intensified. Everyone who received his position through the party machinery was required to pay a political assessment—a certain percentage of his salary—back to the party.

By the last part of the nineteenth century, the care and feeding of the spoils system came to overwhelm the holders of the Presidency:

It has come to pass that the work of paying political debts and discharging political obligations, of rewarding personal friends and punishing personal foes, is the first to confront each President on assuming the duties of his office, and is ever present with him even to the last moment of his official term, giving him no rest and little time for the transaction of any other business, or for the study of any higher or grander problems of statesmanship. He is compelled to give daily audience to those who personally seek place, or to the army of those who back them... The Executive Mansion is besieged, if not sacked, and its corridors and chambers are crowded each day with the ever-changing, but never-ending, throng.<sup>13</sup>

<sup>8</sup> Van Riper, Paul P., *History of the United States Civil Service*, Row, Patterson and Company, Evanston, IL, 1958, pp. 18-19.

<sup>9</sup> U. S. Office of Personnel Management, *Biography of an Ideal*, Washington, DC, 1973, p. 7.

<sup>10</sup> *Id.*, pp. 16-17.

<sup>11</sup> *Id.*, pp. 14, 17.

<sup>12</sup> *Id.*, p. 14.

<sup>13</sup> Report by the Senate Committee on Civil Service and Retrenchment, to accompany Bill S. 133, May 15, 1882.

A bleak assessment, to be sure, but one that a Senate Committee arrived at only after a frustrated office-seeker shot President James A. Garfield in 1881. The assassin, Charles Guiteau, was incensed after not receiving the ambassadorial post to which he believed he was entitled, and for which he had hounded the President, Secretary of State James G. Blaine, and other officials. Secretary Blaine would later recall, “Probably if I had never seen but one office seeker I should have thought [Guiteau] was very persistent, but I had seen so many of the same kind that I was not surprised.”<sup>14</sup>

## First Reforms

A number of legislative attempts at reforming the Federal hiring process were made between 1861 and 1882. In fact, 64 civil service reform bills were proposed and failed during this period—none successfully made it through either chamber of Congress.<sup>15</sup> However, President Garfield’s assassination was an event reformers could use to galvanize public opinion against the corrupt spoils system. In January 1883, President Chester A. Arthur completed the first significant step of civil service reform by signing the Pendleton Act into law.<sup>16</sup>

The major provisions of the Pendleton Act were eloquently summarized by the Senate Committee on Civil Service and Retrenchment which stated, upon reporting the Pendleton measure:

The single, simple, fundamental, pivotal idea of the whole bill is, that whenever, hereafter, a new appointment or a promotion shall be made in the subordinate civil service in the departments or larger offices, such appointment or promotion shall be given to the man who is best fitted to discharge the duties of the position, and that such fitness should be ascertained by open, fair, honest, impartial, competitive examination. The impartiality of these examinations is to be secured by every possible safeguard. They are to be open to all who choose to present themselves.<sup>17</sup>

While affirming veterans’ preference provisions already in statute, the Pendleton Act gave the Government for the first time a democratic hiring system. It required Federal positions to be filled by competitive examinations open to the public as well as the selection of the best qualified applicants without regard to political affiliation. In other words, merit, as

<sup>14</sup> Ackerman, Kenneth D., *Dark Horse—The Surprise Election and Political Murder of James A. Garfield*, Carroll and Graf Publishers, New York, 2003, p. 298.

<sup>15</sup> Theriault, Sean M., “Patronage, The Pendleton Act and the Power of the People,” *The Journal of Politics*, Vol. 65, No. 1, February 2003, p. 55.

<sup>16</sup> *Id.*, p. 57.

<sup>17</sup> Report by the Senate Committee on Civil Service and Retrenchment, to accompany Bill S. 133, May 15, 1882.



the basis for hiring, was now required by law.<sup>18</sup> In addition, merit-based selection would serve the cause of good government and increase the prestige of the Federal civil service.<sup>19</sup>

However, the Act only covered about 10 percent of the positions in the Federal civil service—the remaining 90 percent continued to be staffed under the spoils system. Over the following years, the Act's coverage was gradually extended to an increasing number of civil service positions and parallel merit systems were created to accommodate unique government entities, such as the Tennessee Valley Authority and the Atomic Energy Commission.<sup>20</sup>

### Merit Hiring Matures

By the time of the Administration of Theodore Roosevelt, the percentage of positions subject to the merit system surpassed for the first time the percentage that remained under the spoils system.<sup>21</sup> When President Franklin D. Roosevelt signed the Ramspeck Act in 1940, the competitive service was extended to almost all of the non-policy determining positions in the executive branch. This Act swept away virtually all of the exceptions that had accumulated since the Pendleton Act and extended the merit system to unskilled laborer positions, which the Pendleton Act had expressly excepted.<sup>22</sup> By 1952, 86 percent of civil service positions were covered by competitive procedures.<sup>23</sup>

The Pendleton Act created the CSC as the central Federal agency responsible for translating into reality the ideals set forth in the Act. One of the ways that the Commission did this was by setting up local boards of examiners in post offices and customs houses to examine applicants for Federal employment.<sup>24</sup> The Commission developed standards and procedures for testing and provided the boards with the actual examinations, but employees in the various agencies accomplished the daily examining work. In 1961, the Commission ended this arrangement by transferring the functions of the now 668 agency boards of examiners to 65 newly-created interagency boards staffed by CSC employees. This marked the beginning of the gradual centralization of examining authority that was to continue until the next major legislative overhaul of the civil service system.<sup>25</sup>

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<sup>18</sup> OPM, *Biography of an Ideal*, 1973, p. 45.

<sup>19</sup> OPM, *Biography of an Ideal*, 2003, p. 207.

<sup>20</sup> OPM, *Biography of an Ideal*, 1973, p. 45.

<sup>21</sup> OPM, *Biography of an Ideal*, 2003, p. 216.

<sup>22</sup> *Id.*, p. 230.

<sup>23</sup> *Id.*, p. 243.

<sup>24</sup> *Id.*, pp. 207-208.

<sup>25</sup> *Id.*, p. 256.



The Civil Rights Act of 1964 focused the attention of both public and private sector employers on the issue of ensuring that their employee selection procedures were valid. This means that the relationship between the method used to select employees and the subsequent performance of those employees on the job could actually be proven. Of course, tests used to screen job applicants cannot be designed, intended, or used to discriminate on any prohibited ground.<sup>26</sup>

In 1972, the CSC issued guidelines on the selection procedures for Federal jobs, which included that such procedures should be: professionally developed, objective, reliable, job-related, valid, nondiscriminatory, practical, and administratively feasible.<sup>27</sup> The following year, the Commission published a document to acquaint newly-appointed agency political leaders with the requirements of fair and open competition within the competitive service that provided the following elements:

1. Adequate publicity. Job openings and requirements must be made public so that interested citizens have a reasonable opportunity to know about them.
2. Opportunity to apply. Citizens who are interested must have a chance to make their interest known and to receive consideration.
3. Realistic standards. Qualification standards must be reasonably related to the job to be filled and must be applied impartially to all who make their interest known.
4. Absence of discrimination. The standards used must contain factors which relate only to ability and fitness for employment.
5. Ranking on the basis of ability. The very essence of competition implies a ranking of candidates on the basis of a relative evaluation of their ability and fitness, and a selection process which gives effect to this ranking.
6. Knowledge of results. The public must be able to find out how the process works, and anyone who believes that the process has not been applied properly in his or her own case must have a chance for administrative review.<sup>28</sup>

After the passage of the Pendleton Act and throughout the intervening years, public policy interests occasionally mitigated the interests of merit. Special hiring authorities were created to allow exceptions to the practices of merit such as for veterans' preference, disability appointments, and student appointments. The authorities and exceptions exist for a variety of reasons: public policy (e.g., veterans, persons with disabilities), efficiency (some position-based Schedule A authorities), and the nature and role of the position (Schedule C authorities).

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<sup>26</sup> *Id.*, p. 268.

<sup>27</sup> *Id.*

<sup>28</sup> Stahl, Glenn O., *Public Personnel Administration*, Harper Row Publishers, New York, 1976 p. 42.

## CSRA of 1978 and Beyond

By the mid-1970s, the various principles that underpinned the current merit systems had yet to be made explicit. However, these principles were implicit in many executive orders, rules, and regulations that dealt with administering the Federal personnel system. The framers of the CSRA formally set down a series of principles that would guide the management of personnel under the merit systems. As we noted above, among the nine MSPs that were codified by the CSRA, the first dealt with fair and open competition for Federal jobs:

Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.<sup>29</sup>

In addition, the CSRA permitted OPM to begin to decentralize the hiring process by delegating to agencies the function of filling various positions, those not covered by the Professionals and Administrative Careers Examination (PACE).<sup>30</sup> The then newly-created OPM would maintain control and oversight of this delegation of hiring authority to guard against PPPs as well as the use of unsound practices by the agencies.<sup>31</sup> In giving individual agencies greater control over the hiring process, the aim of the CSRA was to both expedite the hiring process and make that process more responsive to managers' needs.<sup>32</sup> With this delegation of hiring authority to the agencies, the uniform approach to HR management within the Federal Government began to deteriorate.

In response to concerns that the PACE resulted in an adverse impact on certain groups, the Carter Administration entered into a consent decree that established procedures for monitoring hiring into occupations subject to PACE.<sup>33</sup> The decree also provided guidelines for creating replacement examinations. It also called for the then newly-created Outstanding Scholar and Bilingual-Bicultural hiring authorities to operate under court supervision as supplements to the examinations that would eventually replace the PACE.<sup>34</sup>

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<sup>29</sup> 5 U.S.C. § 2301(b)(1).

<sup>30</sup> Prior to the passage of the CSRA, the PACE was administered centrally by the CSC to qualify individuals for many entry-level positions. "That system was based on a core value, the merit system, but defined merit in a narrow way, as a score on a single test." Ban, Carolyn, "Hiring in the Federal Government: Political and Technological Sources of Reform", in Norma Riccucci, ed. *Public Personnel Management: Current Concerns, Future Challenges*, 4th ed. Longman, 2006.

<sup>31</sup> 5 U.S.C. § 1104.

<sup>32</sup> Ban, Carolyn, "Hiring in the Federal Government: Political and Technological Sources of Reform", p. 147.

<sup>33</sup> *Luevano v. Campbell*, 93 F.R.D. 68 (D.D.C. 1981).

<sup>34</sup> U.S. Merit Systems Protection Board, *Restoring Merit to Federal Hiring: Why Two Special Hiring Programs Should be Ended*, January 2000. Also see Ban, Carolyn, "Hiring in the Federal Government," p. 147.

Fewer centralized registers of qualified job candidates existed during this time period. Each agency announced and recruited for its own openings. Federal job seekers could learn about available jobs by telephoning agencies to inquire about current vacancies. In addition, OPM staffed Federal job information centers where the public could call to ask about a range of agency openings. Job vacancies also might be listed in local newspapers or posted in the lobbies of Federal buildings where the passing public could peruse the opportunities.

Today, agencies are able to announce vacancies to a much wider audience via the internet but preference in hiring is still granted to certain individuals.<sup>35</sup> Other individuals may be hired through noncompetitive procedures established for reasons of public policy, efficiency, or a combination of both.<sup>36</sup> In addition, positions of a confidential or policy-determining nature or those for which there is a shortage of candidates or a critical hiring need also may be exempt from competitive hiring procedures.<sup>37</sup>

Perceptions vary regarding the extent to which the Federal hiring process is fair. For example, frustrated job seekers may believe it is a closed system that relies on internal contacts for success. Federal HR professionals who are inundated with thousands of applications for job vacancies that are routinely posted on the internet may believe the system is fairer and more open than ever.

Agencies and hiring managers have as much autonomy as ever in the hiring process. This autonomy can be used well or improperly. Meanwhile, it has become more challenging for agency HR staff to provide critical support to managers and supervisors in upholding the merit principles due to downsizing, restructuring of the HR function, and increased pressure to focus on timeliness and customer service, as well as compliance with laws and regulations. Given these pressures on the Federal hiring system, what is the state of fair and open competition for Federal jobs today, and what actions can agencies take to uphold the first merit principle?

<sup>35</sup> For example, 5 C.F.R. Part 211 provides for veterans' preference in hiring.

<sup>36</sup> Hiring authorities such as Schedule A disability, specific agency hiring authorities, certain veterans' authorities, which allow for non-competitive hiring, will be discussed later in this report.

<sup>37</sup> Direct hire authority. 5 C.F.R. Part 337, Subpart B.



## CHAPTER 3: DECISIONS AFFECTING COMPETITION

Each step in the recruitment process is an opportunity to keep the recruitment action fair and open—or to close it to some degree. However, it is often ambiguous, at any step, which choice best serves the principle of fair and open competition and the broader public interest. For example, an agency operating under a tight budget may not have sufficient funds to support an additional employee, and therefore it may decide to limit consideration for jobs to internal employees. Some positions are unique to the Federal sector and are therefore unlikely to have a natural labor pool outside of Government. Others are likely to have an unmanageably large labor pool, making geographic or other restrictions necessary for effective recruitment. Some assessment methods are more valid (and thus more fair) than others, but they may not be practical for certain positions or at particular stages in the recruitment process. In this chapter we discuss different decision points in the recruitment process and identify the challenges inherent in each step to keeping that process fair and open.

### Shaping the Applicant Pool

Before recruiting for a position, agency management must perform a job analysis<sup>38</sup> to determine the core duties of a job and the knowledge, skills, and abilities (KSAs) needed by the candidate to successfully perform the duties of the position.<sup>39</sup> The job analysis should center on the competencies needed for the job. However, managers should take care not to select candidates based on a narrow skills set that may be easily trainable (for example, knowledge of a specific agency travel system).

Once a job analysis is performed, managers, in conjunction with HR, should decide the area of consideration for the position—to whom the job vacancy will be “open.” The area of consideration can be as broad as allowing all U.S. citizens to apply or as narrow as permitting only members of a specific organizational unit within an agency to apply. Once the area of consideration is determined, no one from outside that area can be selected to fill that particular vacancy. The majority of HR staff (78 percent) we surveyed did not believe they worked on recruitment actions where the area of consideration provided an unfair advantage to specific candidates. However, 22 percent were either neutral on this question or believed it *did* provide an unfair advantage in at least one instance over the past

<sup>38</sup> A job analysis will determine the relative importance of the job’s duties and identify the KSAs to perform the job. It will ultimately tell managers the “relationship between the duties and tasks...and the competencies and KSAs required to perform the tasks.” Job analysis of the position being recruited for should be fair, objective and accurate. Jobs should not be tailored to a specific individual. U.S. Merit Systems Protection Board, *Job Simulations: Trying out for Federal Jobs*, 2009, p. 26.

<sup>39</sup> U. S. Office of Personnel Management, “Delegated Examining (DE) Operations Handbook”, Chapter 2, Section B.

year. As the first step in the process, deciding what the area of consideration will be is very important—it is difficult to have “fair” competition from an unfair pool of candidates or an “open” competition from a closed pool of candidates.

### Length of the Open Window

In addition to determining the area of consideration, managers (in consultation with their HR staff) determine the length of time to keep the vacancy “open” to receiving applications. Typically, the longer the open period, the greater the number of applications received. If the job is very specialized or hard to fill, then management might want to keep the vacancy open longer. If there is a belief of an abundance of qualified applicants for a position, the open period may be shorter to make the number of applications more manageable.

In response to our survey, only 33 percent of HR staff reported that the vacancy announcements in their agencies are typically open for less than two weeks. There is no set rule for how long a vacancy must remain open, but two weeks seems to be the standard minimum amount of time.<sup>40</sup> Agencies should be cautious in opening announcements for short periods of time for at least two reasons: opportunity and appearance. Individuals within the area of consideration should be afforded a reasonable amount of time to learn of the job opportunity, and to prepare and submit their application materials. In addition, a short open period may create an impression that the position has been earmarked for someone or that the agency seeks applications only from individuals who have been expressly recruited. This may discourage qualified individuals from applying, especially if the job is highly specialized, the application requirements are complex, or the agency has not made efforts to market broadly its employment opportunities. Intentionally discouraging applicants by unduly limiting the length of time the vacancy is open would certainly be contrary to fair and open competition.

### Internal Versus External Hiring

Whether agencies recruit internally or externally (or use a mixture of both) is a critical issue in determining what their workforce will look like over time. Too much external hiring may mean a loss of institutional knowledge or a workforce that may be seeking short-term opportunities instead of building the skills and knowledge for a career. Too much internal hiring can lead to a deficiency of openness—both in making job opportunities accessible to the public, and to the new ideas and perspectives that are important for innovative and responsive government. An over-reliance on internal hiring may also lead to a lack of diversity. Neither is healthy for the civil service.

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<sup>40</sup> Some collective bargaining agreements or agency policies may set a specific minimum time period.

*External—Competitive Examining (CE)*

The broadest option for an area of consideration is to open the job opportunity via CE to all U.S. citizens. Agencies often do this through the CE authority delegated to them by OPM. This is called “external” hiring and it enables anyone qualified for appointment to be considered. CE is also the most labor intensive of the hiring authorities, because it can result in more applications than agencies can effectively manage.

When CE is used, most veterans<sup>41</sup> are—by law—given an advantage over other candidates. In competitive examining, a veteran cannot be passed over in order to select a nonveteran for the most part.<sup>42</sup> In addition, veterans with preference based on the nature of their prior military service or injuries are given an additional advantage in how they are placed in relation to others on the list of qualified candidates from which managers select to fill a vacancy. To some applicants for Federal jobs, this may seem less “fair” than placing all on an equal footing, but these preferences reflect long-standing public policy and must be fully complied with.<sup>43</sup> This is one example of competing public policy goals—providing preference to veterans in Federal hiring while ensuring equal opportunity to all—which must be balanced.<sup>44</sup> For agencies, hiring managers, and HR staff, effectively maintaining this balance is not always easy.

*Internal—Merit Promotion (MP)*

Managers also can recruit for positions via an agency MP plan. Recruitment under agency MP plans allows only applicants who have some type of “status” to apply. Individuals gain “status” through being a current or a former Federal employee with reinstatement eligibility.<sup>45</sup> When announcing a job opening via MP procedures, managers, with advice from their HR staff, can decide how large the area of consideration will be. It may be as narrow as a work unit, or as broad as the entire civil service. Merit Promotion procedures allow the inclusion of applicants from other merit systems with an interchange agreement and/or employees who left the civil service but are eligible for reinstatement.<sup>46</sup> The area of consideration also may be limited geographically to a small area (such as a single city), world-wide, or somewhere in between. Each agency has its own MP plan describing the

<sup>41</sup> For this report, “veteran” is used to describe a veteran who receives preference for hiring under Title 5. For more information, please see OPM’s Vet Guide (<http://www.opm.gov/policy-data-oversight/veterans-services/vet-guide/>).

<sup>42</sup> In order to “pass-over” a veteran (except 30 percent disabled veterans), hiring managers must submit documentation to the proper office (usually their HR office) that shows a “proper or adequate reason” for the pass-over. Agencies must request permission from OPM to “pass-over” a 30 percent disabled veteran. OPM, “DE Handbook”.

<sup>43</sup> For more on how veterans are treated under CE and perceptions of fair treatment, see our 2014 report, *Veterans’ Hiring in the Civil Service: Practices and Perceptions*, which describes various veteran hiring authorities and survey data regarding perceived denials of preference rights as well as perceived favoritism toward veterans.

<sup>44</sup> 5 U.S.C. § 2301(b)(1).

<sup>45</sup> 5 C.F.R. § 212.301.

<sup>46</sup> For example, the non-appropriated fund instrumentalities (NAFIs) in the Department of Defense (DoD) have an agreement with OPM that enables agencies to hire NAFI employees under MP. A copy of the agreement is contained in DoD Instruction 1400.25-M, December 1996, available at: [http://www.dtic.mil/whs/directives/corres/pdf/1400.25\\_SC1403.pdf](http://www.dtic.mil/whs/directives/corres/pdf/1400.25_SC1403.pdf).



scope of management's options. Collective bargaining agreements also may place limits on how narrow or broad the area of consideration may be.

Similar to CE preference, veterans are given a type of "status" under MP procedures. The Veterans Employment Opportunities Act of 1998 (VEOA)<sup>47</sup> entitles veterans<sup>48</sup> to compete for the vacancy if the area of consideration includes individuals from outside the agency. However, VEOA candidates are assessed on an equal footing with other candidates and no additional preference is applied.

## Announcing Jobs

When hiring managers are not certain if they will select internally or externally, it is common for them to issue announcements under CE procedures and under MP procedures simultaneously.<sup>49</sup> If the announcement is open to applicants outside of the agency, it must be posted to OPM's USAJobs website ([www.usajobs.gov](http://www.usajobs.gov)).<sup>50</sup> Though not required, merit promotion announcements that are open to only agency employees are also typically posted to USAJobs which has become the central portal for finding such opportunities. When agencies do not use USAJobs to announce a position, concerns may be raised about the openness of the opportunity. Declining to post a vacancy to USAJobs might be perceived among some observers that the agency might be trying to limit the applicant pool for the announcement.

As part of this study, we examined how many vacancies were posted on USAJobs in 2011 and 2012 and whether they were posted under MP or CE procedures. There were 345,823 job announcements posted on USAJobs in 2011, and 279,624 postings in 2012. Because more than one announcement can be used for a single job vacancy or one announcement can be used to advertise for several jobs, we cannot determine exactly how many positions these vacancies represented. For example, a vacant position could be advertised to all U.S. citizens and all current Federal employees via two separate, simultaneous announcements.

As shown in Figure 1, agencies announced jobs using CE and MP procedures at about the same rate. Vacancies announced during these two years that were only open to current agency employees were far less common.

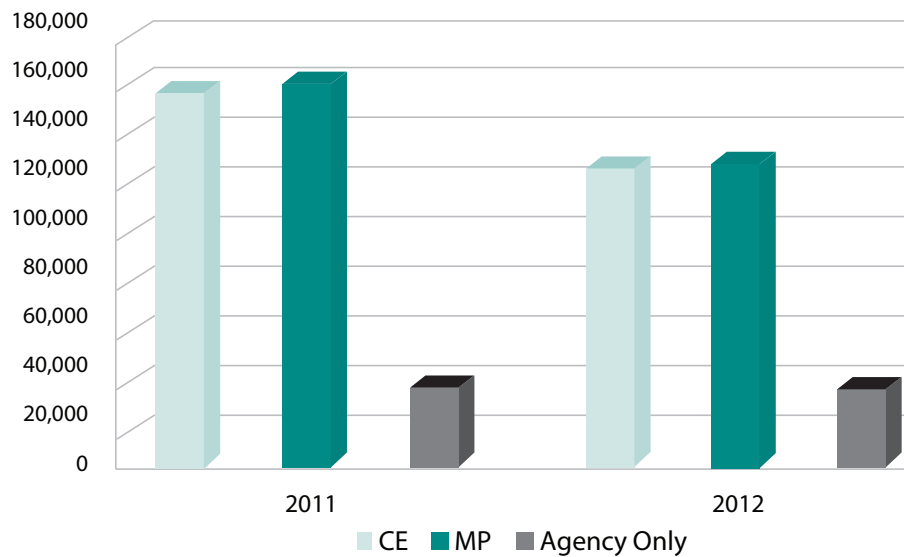
<sup>47</sup> Public Law 105-339.

<sup>48</sup> To be considered a veteran under VEOA, applicants must "be a preference eligible OR veteran separated from the armed forces after 3 or more years of continuous active service performed under honorable conditions. Veterans who were released shortly before completing a 3-year tour are considered to be eligible." OPM Vet Guide available at <http://www.opm.gov/policy-data-oversight/veterans-services/vet-guide/>.

<sup>49</sup> As discussed earlier, by law, use of MP for candidates outside of the agency mandates the inclusion of VEOA candidates.

<sup>50</sup> 5 C.F.R. § 330.103(b).



**Figure 1. Methods used to announce job vacancies in 2011 and 2012.**

In addition, our 2011 survey asked HR staff how often vacancies were announced to “all sources” (CE) and to “all federal employees” (MP). Forty-eight percent of the HR staff surveyed reported that vacancies were advertised to all sources all or most of the time, while 66 percent of HR staff reported that vacancies were advertised to all Federal employees all or most of the time.<sup>51</sup>

### To Competitively Examine Or Not?

As stated earlier, how agencies announce their vacancies affects every part of the recruitment process. There are several reasons why broad, CE for Federal jobs is important. First, broad, CE increases the diversity of the applicant pool. This is especially important when recruiting for entry-level positions which are the pipeline for MP hiring. Second, it increases the probability that exceptional candidates will apply.

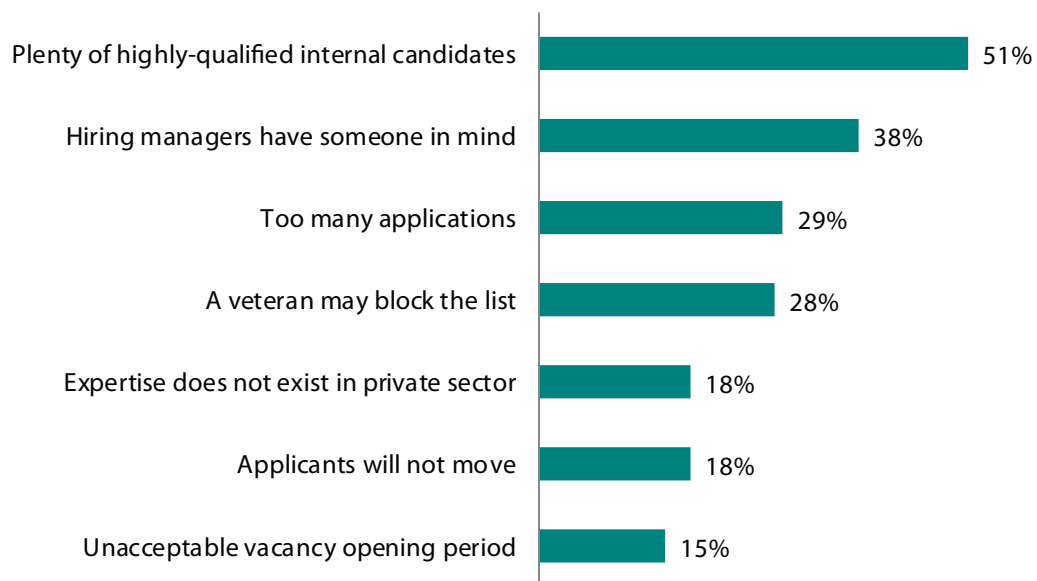
Nonetheless, there can be legitimate business reasons not to announce job vacancies as broadly as possible, such as a lack of resources to handle an avalanche of applications, the fact that many candidates will not relocate to a different geographic area (especially for low-level positions), and the likelihood that there are already many well-qualified candidates within a single agency or group of agencies within the immediate area.

In our 2011 survey of HR staff, we asked why agencies did not announce positions using CE procedures. The reason most frequently cited was that there were plenty of internal candidates. With millions of applications received each year for vacancies posted on USAJobs, agencies may be appropriately limiting the announcements when they believe

<sup>51</sup> Note: as we mentioned earlier, one vacancy can have two announcements - CE and MP.

there is a sufficient number of highly-qualified internal candidates.<sup>52</sup> Some other reasons cited for limiting the area of consideration were that the expertise required by the position does not exist in the private sector and that applicants are not willing to relocate (see Figure 2).

**Figure 2.** Reasons why vacancies are not announced using CE procedures.



Notably, the second most common reason (38 percent) given by HR staff for not using CE procedures is that the hiring managers already had someone in particular in mind to fill the vacancy. In response to a different question on our survey, 79 percent of HR staff reported a perception that at least some of the time management had someone in mind to fill the position prior to advertising the vacancy. While it is not illegal for a manager to be impressed by the quality of employees that he or she has personally observed, hiring managers need to ensure they are not tailoring the job, announcement, assessment, or any other part of the hiring process to favor a particular candidate. Valuable and job-related KSAs, and other characteristics that may be held by individuals can and should be deliberately sought—specific individuals cannot and should not be deliberately sought.<sup>53</sup>

If an agency concludes that it has an adequate pool of internal candidates, using only MP procedures may be appropriate. But, limiting the area of consideration to MP in order to favor an individual is not acceptable.<sup>54</sup> Sometimes there may be a fine line between strategically recruiting for needed skills and actually misusing hiring flexibilities and

<sup>52</sup> In 2011, there were 19,395,360 applications for jobs using USAJobs, in 2012, there were 18,526,252.

<sup>53</sup> In our 2010 MPS, 78 percent of Federal employees said an official in their work unit had not defined the scope of a recruitment to improve the chances of a particular person.

<sup>54</sup> See 5 U.S.C. § 2302(b)(6) (prohibiting officials from deliberately designing a recruitment action to favor an individual).

committing a PPP. Hiring managers and HR staff should both be well trained in the MSPs and PPPs and be committed to avoiding any improprieties.

Another problematic practice occurs when agencies attempt to circumvent the hiring of veterans by choosing not to announce vacancies via CE.<sup>55</sup> It is true that, under CE procedures, well-qualified nonveterans cannot be readily selected over minimally-qualified veterans<sup>56</sup> (a situation some refer to as the veteran “blocking” the list of eligible candidates).<sup>57</sup> Our survey of HR staff found that 28 percent said they do not announce with CE because a veteran may “block the list.” On another survey question, 24 percent of HR staff reported that veterans’ preference hampered their ability to hire the most qualified applicant. However, hiring managers and HR staff should not limit a vacancy’s area of consideration in order to circumvent this long-standing public policy goal of providing preference to veterans in Federal hiring.

### Special Hiring Authorities

While both CE and MP procedures contain requirements for competition, the law and regulations provide the ability for managers to choose to fill vacancies under a number of special hiring authorities that do not require competition. These include:

- Thirty-percent disabled veteran.<sup>58</sup> Agencies make a noncompetitive appointment leading to conversion to career or career-conditional employment of a disabled veteran who has a compensable service-connected disability of 30 percent or more.
- Schedule A.<sup>59</sup> This is an excepted service authority which enables “agencies to hire when it is not feasible or practical to use traditional competitive hiring procedures, and can streamline hiring.”<sup>60</sup>
- Veteran’s Recruitment Appointment (VRA).<sup>61</sup> Agencies can use this authority to hire any eligible veteran for positions at the GS-11 level and below without competition.

<sup>55</sup> Thirty percent disabled vets who are minimally qualified float to the top of the list for all positions in the competitive service, except professional and scientific positions at the GS-9 level and above. OPM, “DE Handbook.”

<sup>56</sup> To pass-over a veteran in order to select a nonveteran, managers must justify and obtain approval. Agency approval is sufficient for any veterans who are not 30 percent disabled. In order to pass-over a 30 percent disabled veteran, managers must obtain OPM approval. *Id.*

<sup>57</sup> U.S. Merit Systems Protection Board, *The Rule of Three in Federal Hiring: Boon or Bane*, 1995.

<sup>58</sup> 5 C.F.R. § 315.707.

<sup>59</sup> 5 C.F.R. § 213.3102.

<sup>60</sup> OPM (<http://www.opm.gov/policy-data-oversight/hiring-authorities/excepted-service/>).

<sup>61</sup> 38 U.S.C. § 4214.

- Pathways Program.<sup>62</sup> This is a relatively new authority that enables agencies to hire students and recent graduates. It replaced the Federal Career Intern Program (FCIP), the Student Career Experience Program, and the Student Temporary Employment Program.
- Direct hire.<sup>63</sup> Agencies may request from OPM the ability to hire employees without competition when a critical hiring need or severe shortage of candidates exists. There still must be public notice for these vacancies, but category rating procedures and veterans' preference requirements are not required.
- Specific agency authorities. These authorities are similar to direct hire, but are granted by Congress to specific individual agencies.<sup>64</sup>

*What authorities were used to hire new employees?*

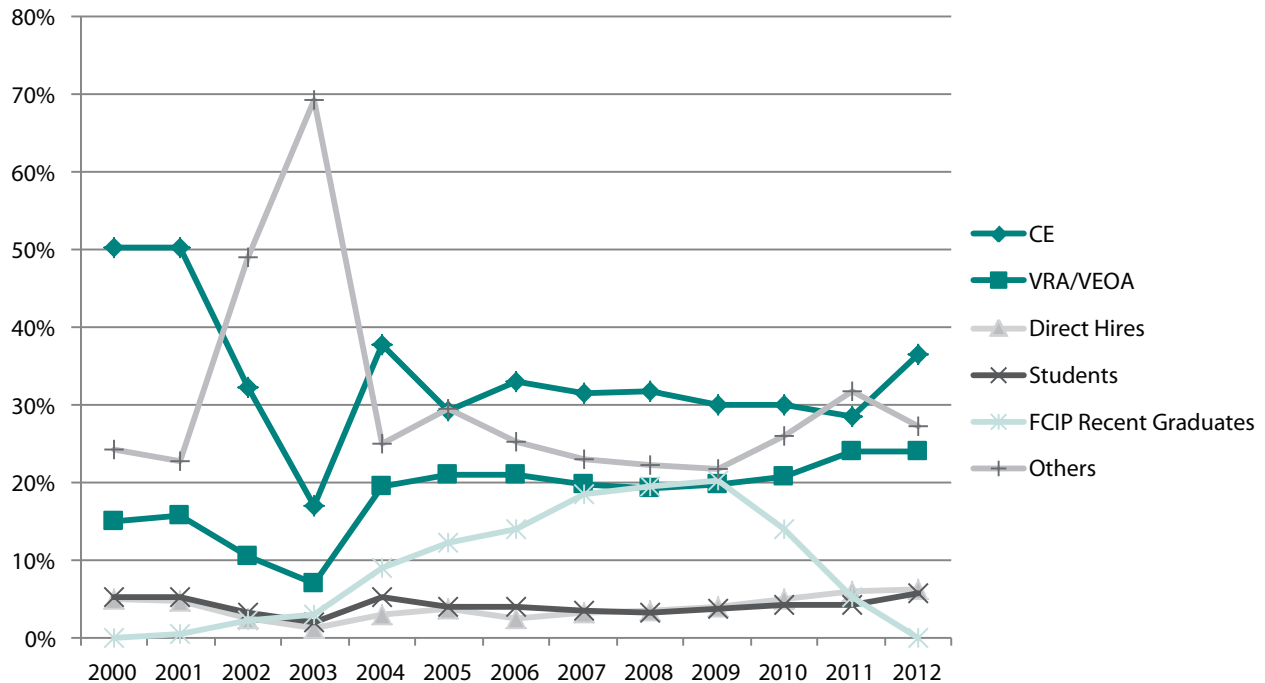
According to OPM's CPDF, in 2012, there were over 77,000 employees either newly appointed or reinstated to a Federal position. This is significantly less than 2011, in which over 103,000 employees were appointed or reinstated. The difference is more than likely due to the effects that sequestration had on Federal hiring in 2012. In 2000 and 2001, over half of the new appointments or reinstatements to Federal positions were accomplished through CE procedures. Although job vacancies are frequently announced to a wide audience, in 2012, only 37 percent of new hires were appointed via CE authorities.<sup>65</sup> As shown in Figure 3, the general trend since 2000 is toward less use of CE procedures and greater use of special appointing authorities to hire new employees.

<sup>62</sup> Executive Order 13562.

<sup>63</sup> 5 C.F.R. Part 337, Subpart B.

<sup>64</sup> An example of an agency-specific hiring authority is the now-expired NASA excepted authority, which allowed NASA to hire certain GS-15 positions for a time-limited appointment. 42 U.S.C. § 2473.

<sup>65</sup> There was an 8 percent increase in the use of CE procedures from 2011 to 2012. We cannot determine if this is a random occurrence or if the elimination of the FCIP authority contributed to this.

**Figure 3.** Authorities used to hire new employees, 2000-2012.<sup>66</sup>

The increased use of special hiring authorities may be both a warning and a problem. For CE to be disfavored is a warning that there may be some difficulty with the authority itself. That is, agencies may perceive some difficulty or inefficiency with CE, such that approximately two out of every three hiring actions avoid using it to make a selection. The decreased use of CE is a problem because CE is the only hiring authority that is open to all qualified U.S. citizens. As a result, as more restrictive authorities are used to hire Federal employees, the less fair and open the system may appear to be.

#### *Consequences of using different hiring authorities*

The choices agencies make during the hiring process may have far-reaching consequences for the future composition of its workforce. Data from the CPDF show that in 2000, 43 percent of the employees newly hired into the Federal Government were female.<sup>67</sup> By 2012, the proportion of newly-hired employees who were female had dropped to 37 percent—a six percentage point decrease in new female hires.<sup>68</sup>

Many factors affect the proportion of women in the applicant pool and, ultimately, the representation of women among new hires. As we discussed in a previous report,<sup>69</sup> there

<sup>66</sup> In 2003, The Department of Homeland Security was created. The spike of “other authorities” that year is due in part to this, specifically, hiring at the Transportation Security Administration (TSA).

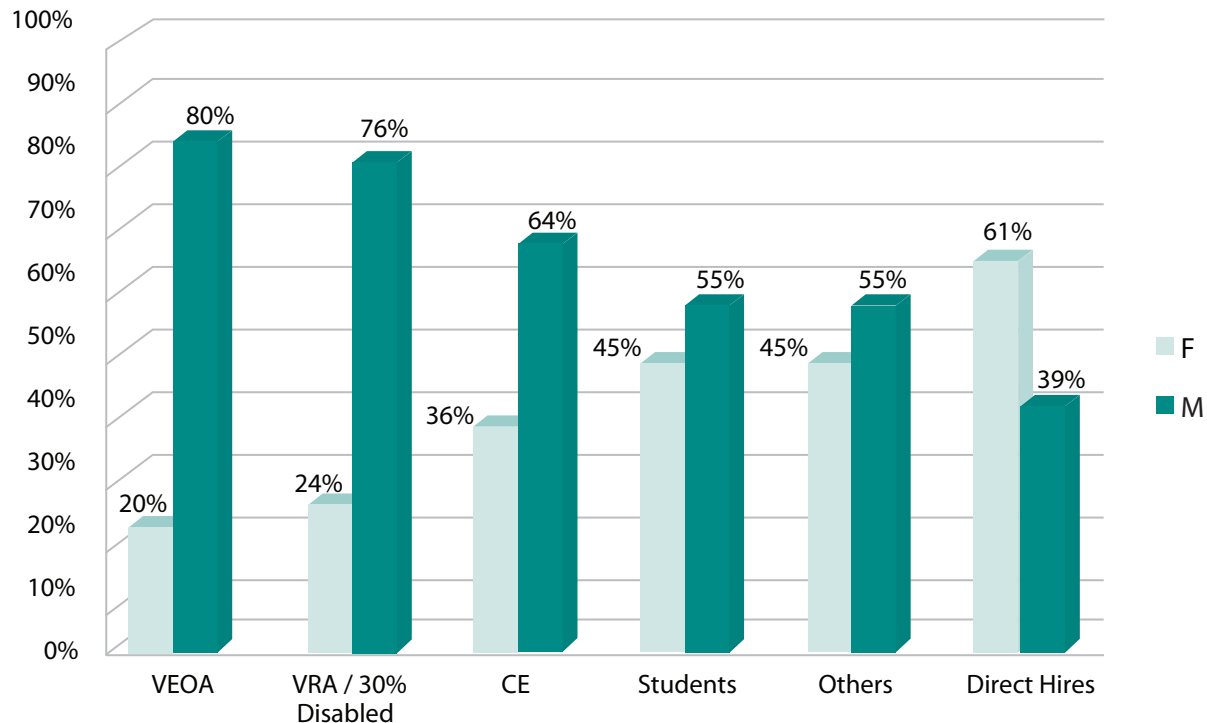
<sup>67</sup> In FY 2000, approximately 63,000 employees were newly hired into Title 5 positions.

<sup>68</sup> In FY 2012, approximately 77,000 employees were newly hired into Title 5. Also, as of FY 2012, per OPM FedScope, 43 percent of the workforce was female.

<sup>69</sup> U. S. Merit Systems Protection Board, *Women in the Federal Government: Ambitions and Achievements*, May 2011.

are many occupations in the American labor force in which men predominate. This is evident in CE and student hiring, where males represented most of the new hires into the information technology, engineering, and police officer occupations (males accounted for 80 percent, 83 percent, and 92 percent, respectively, of the new hires into these occupations).<sup>70</sup> It is also evident that in the direct hire authority, women were hired more frequently into what has been the traditionally female-dominated nursing occupations.

**Figure 4.** Gender of new hires by appointing authority in 2012.



However, occupation does not explain everything. Appointing authority matters too, as illustrated in the figure above. Most of the methods used to hire new employees in 2012 resulted in a greater proportion of males than females entering the Federal workforce. This disparity is most notable for the VEOA and VRA authorities, which is not surprising given that the active duty military is over 80 percent male.<sup>71</sup> Our research shows that as use of veterans authorities increased, the percentage of female new hires decreased. In addition, we found over 35 percent of those hired under CE were veterans.

Just as agencies should not circumvent veterans' preference requirements (as those requirements represent important public policy), neither should they over-rely on any one method of hiring—including veterans hiring authorities. Such over-reliance may result in

<sup>70</sup> CPDF Data. Permanent full-time employees. According to the Bureau of Labor Statistics (BLS) the male Relevant Civilian Labor Force had the following ranges: information technology – 60-80 percent; engineers – 83-93 percent, and law enforcement – 73-87 percent. <http://bls.gov/cps/cpsaat11.htm>.

<sup>71</sup> *Population Representation in Military Services FY 2011*, Department of Defense (DoD), p. 22.

agency workforces that are skewed toward a certain group—in this case, males. Agencies must balance the competing public policy goals of fairness and openness in hiring, granting preference to veterans, and recruiting a workforce that is representative of all segments of society within their hiring strategies.

Not surprisingly, the vast majority of employees hired under the VEOA and VRA authorities were hired into just a few agencies—87 percent of veterans were hired into DoD and the Department of Veterans Affairs. The hiring of veterans in these agencies may contribute to mission accomplishment, as well as to the faith that their customers place in these organizations. However, the nature of the challenge—to balance effectively the diverse demands of the MSPs and public policies—appears to differ across agencies. For example, within DoD, as a high percentage of hires were made using veterans authorities, the department may need to monitor its hiring strategy to ensure use of authorities that are open to nonveterans or it might take care to select a more diverse group of candidates who are veterans. In contrast, other agencies may need to improve outreach to veterans and make full use of veteran hiring authorities.

As noted, an over-reliance on too few hiring authorities may not be healthy for an organization's culture, as the resultant workforce may not be representative of society. In fact, some Chief Human Capital Officers believe “veterans’ preference clashes with diversity hiring goals, since most veterans are white males.”<sup>72</sup> As we have stated previously, agencies need to take care when hiring the majority of their employees through just one or two authorities that favor one group of people over another.<sup>73</sup> In the next chapter, we discuss in more detail the consequences of the decisions made during the hiring process. In the recommendations chapter, we discuss measures to promote a balanced use of hiring authorities.

## Assessment Methods

The methods of assessing job applicants used in the hiring process are an important component in implementing and maintaining fair and open competition. The objective of a merit-based hiring system is a qualified and representative workforce, obtained through the systematic identification of the best person(s) for the job.<sup>74</sup> The assessment process—how agencies distinguish among applicants—is key to this objective. The criteria developed to assess applicants should first and foremost be job-related, which is critical to the perceived fairness of the process.<sup>75</sup> The methods used to assess candidates should be transparent—clearly communicated in the vacancy announcement and throughout the hiring process.

<sup>72</sup> Partnership for Public Service, *Bracing for Change*, Washington, DC, August 2012, p.18.

<sup>73</sup> U.S. Merit Systems Protection Board, *Federal Appointing Authorities: Cutting through the Confusion*, 2008, p. 11.

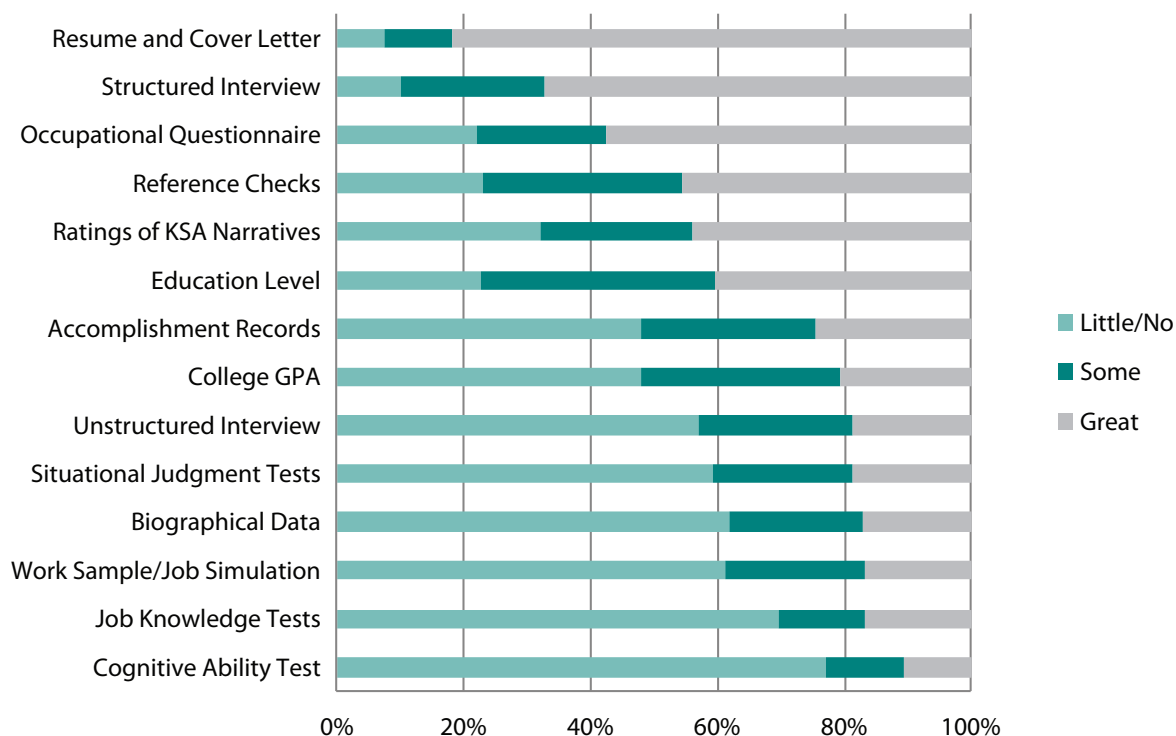
<sup>74</sup> U.S. Merit Systems Protection Board, *Reforming Federal Hiring: Beyond Faster and Cheaper*, 2006, p. 17.

<sup>75</sup> U.S. Merit Systems Protection Board, *Identifying Talent through Technology*, 2004, p. 16.

With the continued decentralization of personnel authorities, agencies have been tasked with developing and administering their own assessment tools. There are several ways of assessing applicants. Different assessments have differing abilities to predict job performance (an assessment's validity)<sup>76</sup> and may even have an adverse impact on certain groups of applicants.<sup>77</sup> Agencies, when determining which assessments to use, should be aware of such issues as well as the burden that certain assessments place on applicants.<sup>78</sup>

In our survey of HR staff, we asked what assessments agencies used to determine the best-qualified candidates. The most commonly used assessment by agencies was the resume and cover letter. Other commonly used assessments included structured interviews, occupational questionnaires, reference checks, and KSA narratives.<sup>79</sup>

**Figure 5.** Extent of use of different assessments.



<sup>76</sup> Validity: "The extent to which assessment scores are related to current or future job performance (or some other work-related outcome such as training success, productivity, absenteeism, turnover)." OPM, "Assessment Decision Guide" ([http://apps.opm.gov/adt/Content.aspx?page=5\\_Glossary#Validity](http://apps.opm.gov/adt/Content.aspx?page=5_Glossary#Validity)).

<sup>77</sup> Adverse impact: "A substantially different rate of selection in hiring which works to the disadvantage of members of any race, sex, or ethnic group." *Id.*

<sup>78</sup> MSPB has long advocated for using the multiple hurdle approach to assessing applicants. For more information on this approach, please see Appendix A.

<sup>79</sup> On May 11, 2010, President Barack Obama issued a Presidential Memorandum which eliminated the use of KSAs in the initial screening process. Presidential Memorandum – *Improving the Federal Recruitment and Hiring Process*.



Resumes are often used to assess training and experience (T&E) as opposed to assessing accomplishments and transferable skills such as the ability to adapt rapidly to change. Training and experience assessments are commonly used because they are cheaper, widely available, and more convenient to administer than more accurate assessment methods. They also put a lot of work on the applicant, saving scarce HR staff time.<sup>80</sup>

Of more concern than the emphasis placed on T&E assessments is that 78 percent of HR staff reported that education level is used at least some of the time as an assessment tool. Years of education has a low validity score (.10) in predicting job performance.<sup>81</sup> Agencies may rely on education level because for some positions, a particular level of education is needed to meet minimum qualifications at the lower grades. However, 52 percent of HR staff said that grade point average (GPA) is used at least some of the time. GPA also has a low validity score (.17).<sup>82</sup> GPA is a far easier tool for making distinctions between candidates than evaluating actual accomplishments—particularly for individuals just beginning their careers. This makes it attractive as an assessment method, although not necessarily wise given its low ability to predict future job performance.

The validity of the assessment tools and the rigor with which they are applied, can determine both the perceived and actual fairness of the process, as well as how “open” recruitment actually is. If an agency habitually uses education as a proxy for assessment of the qualifications of candidates for positions, the system becomes closed to those who lack that education. For this reason, it is important that agencies determine if there is a real connection between education and the position being filled prior to making education a permanent bar on the window of recruitment. To do otherwise creates a system that is neither fair nor open. It also can—for some positions—be contrary to the law, which states:

The Office of Personnel Management or other examining agency may not prescribe a minimum educational requirement for an examination for the competitive service except when the Office decides that the duties of a scientific, technical, or professional position cannot be performed by an individual who does not have a prescribed minimum education.<sup>83</sup>

Another assessment tool is the use of questions requiring an essay style response, or KSAs. In 2010, President Obama issued a presidential memorandum eliminating KSAs from the initial step in the application process. The intent of eliminating KSAs was to “further

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<sup>80</sup> For an in-depth analysis of T&E assessments, see our 2014 report, *Evaluating Job Applicants: The Role of Training and Experience in Hiring*, available at [www.mspb.gov/studies](http://www.mspb.gov/studies).

<sup>81</sup> U. S. Merit Systems Protection Board, *Reforming Federal Hiring: Beyond Faster and Cheaper*, 2006, p. 19.

<sup>82</sup> *Id.*

<sup>83</sup> 5 U.S.C. § 3308.

strengthen” the Federal workforce; allow Americans the ability to “apply for Federal jobs through a commonsense hiring process”; and give agencies the ability to “select high-quality candidates efficiently and quickly.”<sup>84</sup> Prior to this memorandum, agencies most often relied on applicants to answer KSAs to determine the best qualified applicants. This process was criticized by many as being too burdensome on applicants. Some well-qualified applicants may have chosen to not apply for positions rather than prepare lengthy KSA narratives.

Our survey asked HR staff for their thoughts on the elimination of KSAs. While 43 percent of HR staff believed eliminating KSAs increased the number of unqualified applicants, only 21 percent believed it helped their agency make better hires. Further, responses were nearly equally divided regarding the impact of KSAs on identifying the best candidate. Thirty-two percent of HR staff surveyed agreed that eliminating KSAs improved identification of the best candidate, while 31 percent disagreed.

These perceptions of HR staff reflect the continuing importance of several functions that KSA narratives served, if imperfectly.

- **Managing the applicant pool.** For many jobs, applicants now merely click a few buttons on a webpage to apply, rather than write lengthy responses to questions. Because the process has been made easier, applicants may apply for many more vacancies than they would have if they were required to write KSA narratives. Some applicants may “blanket the world” with their resumes and simply hope for the best, even concerning vacancies for which they clearly are not qualified. The process became easier for applicants, but not necessarily fairer, especially if agencies feel compelled to use less-effective but more resource-efficient assessment tools to winnow an overly-large applicant pool. An example of this is when HR does not verify resume content or uses no additional assessment method such as a structured interview to verify applicant qualifications.
- **Transparency.** KSA narratives also promoted a fair playing field by informing all interested individuals what it was that management sought in a candidate. Without language of a similar nature in the announcement, people who are closer to the position or to people near the position may have an unfair advantage. They may be in a better position to know what to highlight in their resumes and cover letters than others who may only know what the job entails based on broad statements in a vacancy announcement.
- **Realistic job preview.** KSAs gave important information about the job that enabled individuals to not only assess whether they were a good match for the job, but also whether the job was a good match for their own career ambitions. By asking candidates to describe their specific knowledge, skills, and abilities, the KSA announcements helped potential applicants understand what it would take

<sup>84</sup> Presidential Memorandum, May 11, 2010, Presidential Memorandum – *Improving the Federal Recruitment and Hiring Process*.

to succeed in the job—a clearer process than simply soliciting applications. This may have been a good technique for screening out those who were not qualified and even qualified people who simply would not have enjoyed the job.

- Follow the rules of competition. KSAs also encouraged applicants to follow the “rules of the competition.” They discouraged exaggeration by requiring applicants to describe their relevant experience and accomplishments, with at least the possibility of these claims being verified via interviews and reference checks.

Agencies should address the continuing need to develop and use assessments that can accomplish the goals listed above. Some agencies continue to use vacancy announcements to inform candidates of the KSAs that the agency seeks, without requiring the KSA essay as part of the initial application process. We encourage the continuation of this notification process, as it adds to the fairness and openness of the competition.

Every hiring process decision, from area of consideration to applicant assessment, is critical to the principle of fair and open competition. Agencies, hiring managers and HR staff should adhere to the spirit of the MSPs and serve the public interest. When considering recruitment, they should think about merit (selection based on competence) at both the individual (the particular recruitment action at hand) and the organizational/agency (how the agency meets the workforce needs and whether the individual hires add up to a diverse, high quality workforce) levels.



## CHAPTER 4: CASE STUDY— PRACTICES AND RESULTS

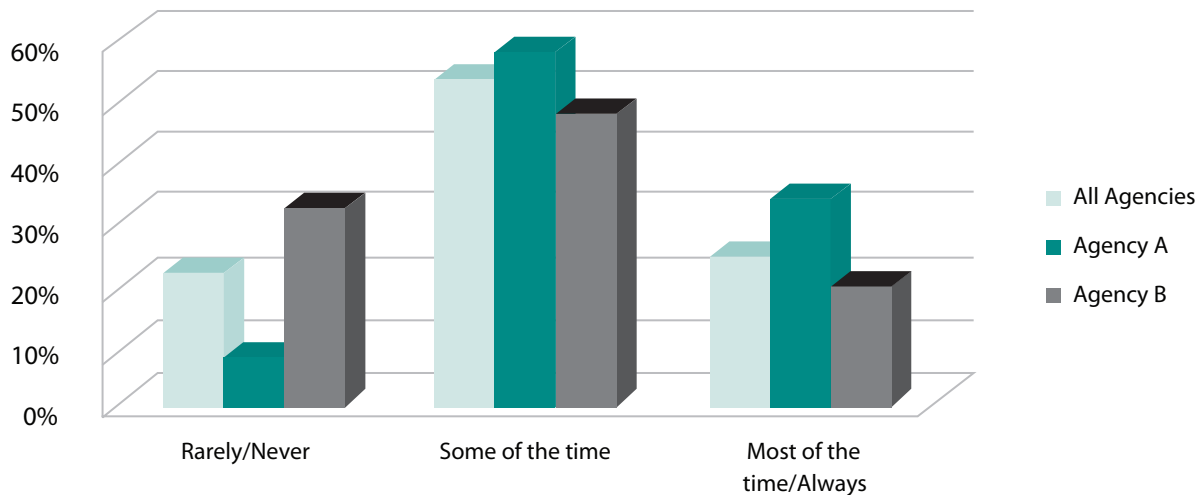
No two agencies are exactly alike. Mission affects the occupations being filled. Agency size and number of open positions affect economies of scale. The size and composition of the available labor pool varies by location. In the process of analyzing the HR staff survey data, we noted that the recruitment process decisions varied greatly by agency and we examined whether those variations coincided with any particular outcomes for the workforce composition. In this chapter, we compare two specific agencies that made very different choices in filling vacancies. We refer to the two agencies as “Agency A” and “Agency B” in order de-personalize the discussion. Our purpose is twofold: first, to illustrate the potential consequences of restrictive competition and the importance of agencies monitoring what is happening to their workforce; and second, to evaluate recruiting strategies that may have contributed to a workforce that is not reflective of the society all agencies were created to serve.<sup>85</sup>

Both agencies we selected are large executive agencies with over 100,000 employees each. The appointing authorities discussed in this chapter are ones that are used to hire employees from outside of government.

### Comparing “Pre-selection” Perceptions

Managers have a lot of discretion in choosing how and to whom they advertise vacancies. While this flexibility is valuable and often provides for more efficient and effective recruiting, it also can provide opportunities to abuse the system. While most HR staff we surveyed (84 percent), believed their work unit holds fair and open competition for Federal jobs, there are some who believe managers might be a hindrance to this goal. As shown in Figure 6, in Agency A, 92 percent of HR staff surveyed said that managers had someone in mind at least some of the time prior to announcing a vacancy, which can be perceived as pre-selection. In comparison, in Agency B, 68 percent reported perceiving a pre-selection as frequently.

<sup>85</sup> In 2012, Agency A hired over 7000 employees and Agency B hired almost 1500.

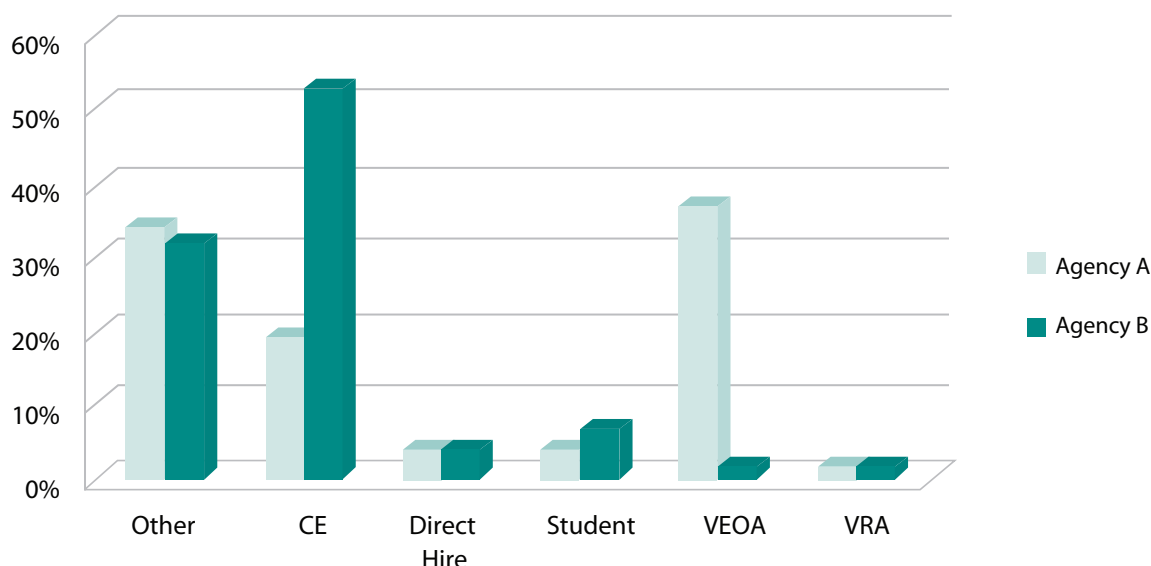
**Figure 6.** Responses to “Hiring manager has someone in mind,” among selected agencies.

As explained below, the agency with more perceptions of pre-selection also had more perceptions of restrictive hiring practices.

### Comparing Applicant Pools

We asked HR staff how often their positions are open to “all sources,” the term used by HR to describe a CE recruitment. In Agency A, only 31 percent of HR staff said that their vacancies were announced via CE procedures most of the time or always. In contrast, in Agency B, 61 percent of HR staff said vacancies were announced to all sources most of the time or always. The overall average across Government was 48 percent. This means that more than two-thirds of the time, Agency A limits its applicant pool to people with some sort of “status.” We wanted to determine if Agency A might be limiting the area of consideration of its announcements for any mission-related reason. Therefore, we examined the survey results from HR staff from a third agency, which had a similar mission as Agency A. Forty percent of HR staff in the third agency reported that their organizations announced jobs via CE procedures most of the time or always. Thus, it appears that limiting the applicant pool that frequently by Agency A may not be for mission-related reasons.

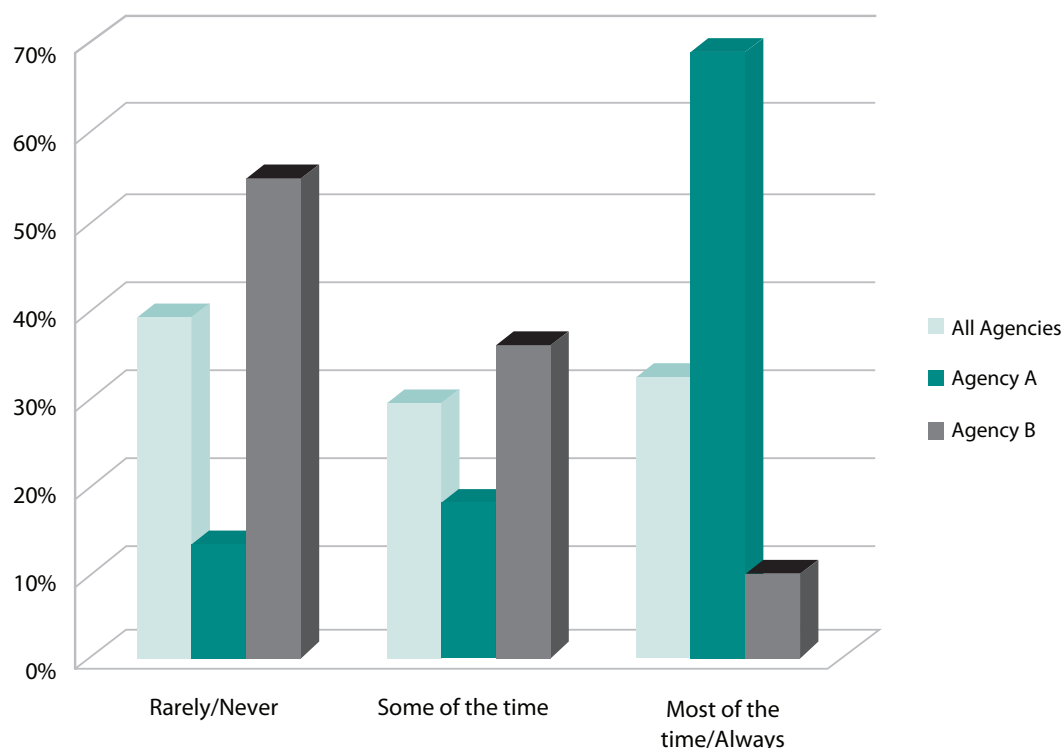
As shown in Figure 7, in Agency A, the most common hiring authority used was VEOA, a highly restrictive authority for which most U.S. citizens do not qualify. In contrast, Agency B’s most common hiring authority was CE, the authority open to all qualified U.S. citizens. However, only a very small proportion of 2012 hires were veterans in Agency B. As noted, agencies should balance their hiring strategies to accomplish the competing goals of fair and open competition, granting preference to veterans, and achieving a workforce that resembles the society agencies serve.

**Figure 7.** Agency A and Agency B method of hiring in 2012.<sup>86</sup>

### Comparing Open Periods

As shown in Figure 8, Agencies A and B also differed in how long they announced their positions. We asked HR staff how often their organizations announced positions for a period of fewer than two weeks. In Agency A, the most common response, by far, was that they used this short open period most of the time or always. In Agency B, the most common answer was that it was done rarely or never.

<sup>86</sup> In 2011, Agency A hired 43 percent of its newly-appointed employees through VEOA. In 2012, this number dropped to 37 percent. It also hired almost 50 percent fewer employees in 2012 than in 2011. We can only assume that this was due to the current fiscal climate.

**Figure 8.** How often are vacancies open for fewer than two weeks?

Given that Agency A rarely opens announcements via CE, hires a significant amount of employees through veterans authorities, and usually opens vacancies for fewer than two weeks, an outside observer may wonder if fair and open competition is suffering within the overall agency hiring strategy. Agencies should look for such patterns to determine if the competing goals of Federal hiring are being properly balanced within their overall hiring strategies.

### Comparing Workforce Compositions

In Table 1, we compare the demographics of the individuals hired by both of our sample agencies in fiscal year 2012. In the case of Agency A, higher perceptions of pre-selection, more frequent use of restrictive hiring authorities, and shorter recruitment windows coincided with a workforce that was less representative of society at large. In comparison, lower perceptions of pre-selection, more frequent use of broad hiring authorities, and longer recruitment windows coincided with a more representative workforce in Agency B.



**Table 1.** Demographics by percent of 2012 new hires.

Race and National Origin and Gender	Agency A	Agency B
Multi-Racial	1%	1%
American Indian	1%	0%
Asian	4%	11%
Black	11%	16%
Hispanic	5%	5%
White	78%	66%
Male	71%	64%
Female	29%	36%

In 2012, 71 percent of the hires in Agency A were male, compared to 64 percent for Agency B. If we review the overall population of each agency in 2012, Agency A was 28 percent female while Agency B was 61 percent female. The overall government average is 43 percent female.<sup>87</sup>

In terms of race and national origin, Agency A (78 percent white) was less diverse than Agency B (60 percent white), and for that matter the Federal government as a whole (66 percent white). Obviously, since Agency A's hiring was less diverse, its resultant population also will be less diverse.

It is important to recognize that Agency A and Agency B have different missions and employ individuals in different occupations. In recognition of these differences we looked at jobs in the administrative and professional categories common to all agencies. Table 2 compares hiring by race in Agencies A and B for these occupations. As the table shows, the hiring in these two similar workforce segments produced different racial compositions.

<sup>87</sup> OPM, Fedscope (<http://www.fedscope.opm.gov/>)

**Table 2.** Administrative and Professional Hiring by Race in Agencies A and B (Percent of New Hires)

Race and National Origin	Administrative Positions		Professional Positions	
	Agency A	Agency B	Agency A	Agency B
Multi-Racial	1%	1%	1%	2%
American Indian	1%	0%	1%	0%
Asian	3%	12%	6%	17%
Black	12%	16%	8%	7%
Hispanic	4%	5%	4%	4%
White	80%	66%	80%	70%

Apparently, more restrictive hiring may provide a less diverse workforce. As we have said before, agencies need to ensure they adhere to the first merit principle which aspires to hire a diverse segment of applicants who are representative of society. Also, as we have stated throughout this report, we believe all agencies and OPM should evaluate hiring practices and their effects on fair and open competition and workforce demographics.<sup>88</sup> Examining this data can help determine if there is a systemic problem with agency recruiting programs.

<sup>88</sup> Mandated internal reviews under 5 C.F.R. Part 250, Subpart B. The Human Capital Assessment and Accountability Framework can serve this purpose.

## CHAPTER 5: EXTERNAL PRESSURES ON HIRING SYSTEMS

As subject matter experts for hiring and promoting Federal employees, HR specialists play a critical role in ensuring that the hiring process is fair and open. However, the changing role of HR staff within agencies as well as changes in how HR services are rendered to Federal managers complicate how this role is performed.

### The Prohibited Personnel Practices

The PPPs are a list of prohibited activities, codified at 5 U.S.C. § 2302(b).<sup>89</sup> Their primary purpose is to ensure that personnel actions are not taken for improper reasons.<sup>90</sup>

As advisors to managers and being those who process personnel actions, HR staff are responsible for educating their customers on the PPPs and alerting them when their conduct approaches or crosses the line between an action permitted within managerial discretion and a PPP.

For instance, it is a PPP to deliberately seek to improve the chances of any specific individual to be selected for an employment opportunity unless that advantage is expressly authorized by a law, rule, or regulation. Such conduct would also be contrary to the merit systems principle of fair and open competition. The PPPs apply to any Federal employee who has authority to take, direct others to take, recommend, or approve any personnel action—which means the PPPs apply to HR staff, as well as leaders, managers, and supervisors.

The responsibility of HR specialists to prevent PPPs is illustrated by the case of *Special Counsel v. Lee*<sup>91</sup>. In *Lee*, the Office of Special Counsel charged that two U.S. Coast Guard HR specialists, Mr. Lee and Ms. Beatrez, had violated 5 U.S.C. § 2302(b)(6) by helping a manager to manipulate the hiring process in order to advance the candidacy of a particular person for a promotion opportunity. Following a hearing, the Board found that Mr. Lee had knowingly instructed Ms. Beatrez to cancel a referral list and re-announce a vacancy for the purpose of obtaining a referral list that included the name of a certain individual

<sup>89</sup> An employee may be suspended, reduced in grade, removed, debarred from Federal service, and/or fined for the commission of a PPP. Employing agencies cannot grant permission to commit a PPP and cannot protect employees from the penalties imposed for their having committed a PPP. For more on the PPPs and how they are enforced, please see, U.S. Merit Systems Protection Board, *Prohibited Personnel Practices: Employee Perceptions* (2011), available at [www.mspb.gov/studies](http://www.mspb.gov/studies).

<sup>90</sup> *Humberson v. U.S. Attorney's Office for District of Columbia*, 236 F.Supp.2d 28, 32 (D. D.C. 2003), *aff'd*, 2003 U.S. App. Lexis 14481 (D.C. Cir. 2003) (holding that the purpose of the PPPs is to “forbid employers from imposing” personnel actions “out of particular illicit motivations”).

<sup>91</sup> *Special Counsel vs. Lee*, 114 M.S.P.R. 57 (2010).

who had not been referred previously. Mr. Lee was held responsible for committing a PPP under section 2302(b)(6) because he knowingly helped the manager to achieve her improper goal. Ms. Beatrez was not disciplined because the administrative judge determined that Ms. Beatrez did not know that the reason for the cancellation and re-announcement was to aid a particular candidate.<sup>92</sup>

Because of the importance of HR specialists in ensuring that recruitment is fair and open, and the prohibition on designing or redesigning recruitment actions around a particular individual, we asked our HR survey respondents how often they had been asked to re-advertise a vacancy because the selecting official wanted to hire someone who was not on the referral list. Only 60 percent of our respondents said that this was rare or never happened, while 40 percent reported that this happened always, most of the time, or some of the time. When there is a law that specifically prohibits this activity, and case law that says HR specialists can be held accountable for “aiding and abetting” managers trying to manipulate the system in this way, it is concerning that over a third of HR respondents believe positions were re-advertised for this reason at least some of the time.

Generally, an employee must obey an order—even if there is reason to believe it is improper—and grieve it later unless obedience would place the employee in a clearly dangerous situation or compliance would cause the employee irreparable harm.<sup>93</sup> However, in *Special Counsel v. Lee*, the Board distinguished situations involving supervisory orders from those involving a customer with no direct supervisory authority over the HR specialist requesting a particular HR action.<sup>94</sup> When a customer requests assistance with an HR action that appears to constitute a PPP, the HR specialist is prohibited from intentionally assisting that customer to achieve the improper goal.<sup>95</sup> Instead, the specialist is expected to exercise his or her “independent judgment and challenge local management’s fairly obvious efforts to grant a preference” not authorized by law.<sup>96</sup>

We asked our HR staff survey respondents whether their supervisors would support them if they refused to help a customer commit a PPP. Only 74 percent agreed that their supervisor would support them in their refusal. HR employees ought to be able to expect that their supervisors will support them in meeting this obligation. It is a serious problem that a quarter of respondents perceive that this support may not be there for them.

<sup>92</sup> Compare *Special Counsel v. Lee*, 114 M.S.P.R. 57, ¶¶ 23, 26, 34 (2010) (holding Mr. Lee accountable) with *Beatrez v. Merit Systems Protection Board*, 413 F. App’x 298, 304-06 (Fed. Cir. 2011) (finding that because the administrative judge concluded Ms. Beatrez’s cooperation was unknowing, she could not be found liable for having committed the PPP).

<sup>93</sup> See, e.g., *Bowen v. Department of the Navy*, 112 M.S.P.R. 607, ¶ 15 (2009); *Pedeleose v. Department of Defense*, 110 M.S.P.R. 508, ¶¶ 16-18, *aff’d*, 343 F. App’x 605 (Fed. Cir. 2009); *Cooke v. U.S. Postal Service*, 67 M.S.P.R. 401, 407-08, *aff’d*, 73 F.3d 380 (Fed. Cir. 1995) (Table).

<sup>94</sup> *Lee*, 114 M.S.P.R. at ¶¶ 32-35.

<sup>95</sup> *Lee*, 114 M.S.P.R. at ¶ 34.

<sup>96</sup> *Id.*

Part of the problem may be that HR employees have been encouraged to provide better “customer service” to the managers they serve, perhaps at the expense of upholding the values of the MSPs. Permitting or aiding a situation in which agency officials commit PPPs with impunity is not in an agency’s best interest and should be considered bad customer service by the agency. We asked our HR staff survey participants whether their supervisors would consider it to be “bad customer service” on the respondent’s part if the respondent reported that one of his or her customers had committed a PPP. One in five respondents said their supervisors would consider such a report to be an act of bad customer service. This is troubling, as HR supervisors and managers should support their employees in refusing to commit a PPP.

### The Evolving Role of Human Resources in the Federal Government

In the 1990s, during the Clinton Administration, the National Performance Review (NPR), commonly referred to as “Reinventing Government,” was introduced to “improve the quality of management throughout the Federal government.”<sup>97</sup> As part of the NPR, major changes happened in the HR field that had an effect on hiring in the Federal government:

- OPM delegated “almost all” CE authority to agencies.<sup>98</sup>
- The NPR led to dramatic cuts in HR staff, which declined by 18 percent in a four-year period.<sup>99</sup>
- The NPR eliminated the Federal Personnel Manual (FPM), a guide HR staff used to implement Title 5 and the Code of Federal Regulations.<sup>100</sup>
- Managers were delegated more authority in HR functions.

Reinventing Government resulted in OPM abandoning “its traditional role of gatekeeper of the civil service system.”<sup>101</sup> As hiring authority was delegated to agencies OPM stopped maintaining a central register and conducting central exams.<sup>102</sup> With this delegation and loss of economies of scale, agencies had to develop their own assessment tools which might have led to less rigorous methods of assessment.

When the size of the HR workforce was reduced in the 1990s, the hope was that technology could offer efficiencies that would make up for the loss of employees. However, technology

<sup>97</sup> Ban, Carolyn, “*Hiring in the Federal Government: Political and Technological Sources of Reform*”, p. 148.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

cannot replace ethics or close relationships in which an HR official will feel able to inform a manager that he or she is crossing the line and harming fair and open competition.

Additionally, with the elimination of the FPM, it was more difficult for HR staff to point directly to a reference explaining why a manager could or could not do something in the hiring process. The FPM provided thousands of pages of intricate guidance on what could be done legally and not be done. Without the FPM, the focus of HR became more one of customer service as opposed to a “policing” role. HR was to give managers the best customer service, more quickly and more efficiently, as long as it was not illegal.

The strategy of improved customer service also had to compete with the goal of cost savings. In the 1990s, many agencies moved towards greater centralization of HR functions. Prior to NPR, it was common for managers to have someone on site to talk with about their hiring needs. With centralization, many HR functions moved off-site into a central location, often in a different metropolitan area than where the managers worked. In recent years, there has been an emphasis on further centralization through the use of shared service centers, in which HR providers serve multiple agencies with the expectation that an economy of scale will result in enhanced expertise and revenue savings.<sup>103</sup> However, the enhanced expertise may not have arrived for many HR staffers. Of those respondents who reported performing staffing duties (carrying out operations to fill vacant positions such as writing or reviewing vacancy announcements and determining the qualifications of candidates), 41 percent indicated they spent one-quarter or less of their time on staffing, while less than one-third spent more than half of their time performing staffing duties.

In addition to requiring HR employees to be knowledgeable and perform services in multiple HR disciplines, servicing customers from outside the agency and/or at a distance has become a common practice. More than half of the survey respondents reported that their HR office services more than one department or agency. For those who spend at least one-quarter of their time on staffing functions, 58 percent reported serving customers outside their metropolitan area and 52 percent reported serving more than one cabinet department or agency.

Managing relationships with those outside the agency or at a distance can be challenging. While communication can occur at a distance, it requires more commitment to fostering meaningful contact. Such communication can be especially delicate when a manager purportedly seeks something that may be appropriate, but appears to possibly be driven by an improper motive. Yet, candid communication with hiring managers is a critical aspect of the job of HR advisors and processors.

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<sup>103</sup> OPM, HR IT Transformation leads the HR Lines of Business initiative. <http://www.opm.gov/services-for-agencies/hr-line-of-business>.

We asked those respondents who served customers in other agencies and other locations whether they agreed that they had worked on actions where they thought the recruitment action was manipulated to provide an advantage to a candidate through:

- the period the vacancy was open;
- the area of consideration;
- the qualifications required of candidates;
- the duties of the position;
- the grade-level of the position;
- the use of selective factors;
- influencing other applicants to withdraw; or
- circumvention of veterans' preference.

While agreement ranged from three to seven percent across these eight items, for every item, the perception that recruitment actions were manipulated were higher in the population who served more than one agency or department. Similarly, agreement was higher for each item among respondents who served customers outside the metropolitan area compared to those who did not.

The size of the difference in views varied by question, but the consistency of this pattern is a source of concern. We cannot state definitively that organizational or geographical distance between HR offices and their customers reduces the fairness or openness of recruitment actions. But, the pattern of such perceptions should be a concern for agencies using these business models and is worth further investigation by those agencies to identify and address the causes for such perceptions.

### **Supervisors'/Managers' Intentions and Training**

Seventy-six percent of our survey respondents reported that supervisors and managers in their agencies have a good understanding of the PPPs. Only 50 percent believe supervisors and managers are trained on the PPPs to a great extent. Sixteen percent said managers have little or no training on the PPPs. When asked about training on the MSPs, HR staff conveyed greater doubt—46 percent believe managers are trained to a great extent; whereas 18 percent had little or no training. Knowing and understanding the MSPs and PPPs is key to being a good supervisor and manager. Agencies need to ensure that all supervisors and managers receive training on both.

As discussed throughout this report, recruitment decisions made by hiring officials can either impede or enhance fair and open competition. Thirty percent of the HR staff we surveyed believed supervisors showed favoritism in hiring decisions. Also, the biggest threat to fair and open competition, according to our survey, is managers who base their hiring on favoritism.<sup>104</sup>

As we have stated several times, the first merit principle states that “recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge and skills, after fair and open competition which assures that all receive equal opportunity”.<sup>105</sup> Hiring officials and HR staff make decisions during the recruitment process which can either comply with or violate this principle. Everyone involved in the process needs to adhere to the spirit of the first merit principle by making appropriate decisions.

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<sup>104</sup> For more information on favoritism, please see U.S. Merit Systems Protection Board, *Preserving the Integrity of the Federal Merit Systems: Understanding and Addressing Perceptions of Favoritism*, December 2013.

<sup>105</sup> 5 U.S.C. §2301-Merit system principles.



## CHAPTER 6: FINDINGS AND RECOMMENDATIONS

### Findings

Although what is “fair” or “open” often depends on one’s perception, there are some factors that threaten the principle of fair and open competition. These include:

- Proliferation of hiring authorities that restrict the size and composition of the applicant pool;
- Overuse of restrictive hiring authorities and practices that, among other problems, may lead to a workforce that is not representative of society;
- The possibility that some managers may deliberately or undeliberately misuse hiring flexibilities to select particular candidates, thereby impeding fair and open competition;
- Some HR managers and staff choosing to place customer service to individual supervisors over service to the agency and its obligations to protect merit and avoid PPPs; and
- A lack of training for supervisors and managers on the MSPs and PPPs.

### Recommendations

We recommend that agencies, HR, OPM, and Congress take action to better protect fairness and openness in the Government’s recruitment activities.

#### *Recommendations for agencies:*

1. Create a culture that values fair and open competition. Managers should be encouraged to avoid restricting the applicant pool unless there is a strong business case for the restriction, such as a need for specialized skill sets unlikely to be found in the private sector. Restrictions for entry-level positions in particular should be closely scrutinized for a business case, as such positions are the pipeline for later merit promotion hiring, which pulls from the agency’s own workforce based on a need for particular experience.
2. Examine the results of agency hiring practices in the aggregate to identify and eliminate (or reduce to the greatest extent feasible) barriers to fair and open competition. Agencies also should monitor their use of restrictive hiring practices

even if their workforce is already representative of the gender, race, disability status, and other aspects of society. This is needed to ensure that hiring practices on the whole are fair and open. Separate from the issue of discrimination against protected classes, there is a need to bring in new ideas and maintain the faith of the American people that the civil service is equally open to everyone.

3. Prevent the commission of prohibited personnel practices. Agency leadership has a statutory obligation to prevent the commission of PPPs. Human Resources can be a vital partner in this process, but only if agencies make that a part of human resources' portfolio. Human resources' staff are in a unique position to see PPPs and prevent them by warning managers who may begin to go astray, and reporting those who refuse to comply. But, this only works if human resources is empowered to perform this function and is protected from retaliation for doing their jobs. We recommend that agencies clearly define human resources' role in the prevention of PPPs and create a culture that protects human resources when performing that role.
4. Ensure that all managers, supervisors, and human resources' staff are well-trained and well-versed in the MSPs and PPPs. This training should cover what each MSP and PPP is and why each one is vital to a merit-based workforce.

*Recommendations for Human Resources:*

1. Advise managers and supervisors on recruitment matters including the ramifications of repeated use of restrictive hiring practices as well as their joint obligation to avoid the commission of prohibited personnel practices.
2. Ensure that human resources supervisors and managers support their employees in refusing to commit prohibited personnel practices.

*Recommendations for The Office of Personnel Management:*

Closely monitor how agencies use restrictive hiring authorities. We suggest, as part of OPM's oversight function, that it examine available data to ensure that agencies are not over-using certain hiring authorities. If the data indicate a potential problem, OPM should investigate further (including, if necessary, surveying agency human resources employees) to help identify what may be causing the over-use of those authorities.

*Recommendations for Congress:*

Reexamine the role of competitive examining in Federal hiring, and consider changes to make the process simpler, more transparent, and more widely used.

## APPENDIX A: MULTIPLE HURDLE APPROACH

This report contains a brief discussion of assessment tools to promote fairness in competitions. The Merit Systems Protection Board has long advocated for a multiple hurdle approach to applicant assessment, in order to facilitate good selection by using a set of “valid assessment procedures successively to manage the candidate pool and narrow the field of qualified candidates.”<sup>106</sup> We provide below a more detailed description of the findings we have previously reported in this area.

There are four key steps in the multiple hurdle approach:

- Evaluate minimum qualifications
- Evaluate relative qualifications
- Select the best-qualified candidates
- Final assessment

All assessments used in this approach should be developed and administered carefully. They should not replicate one another but should be used to complement one another. Each assessment will look for slightly different characteristics needed for the job.<sup>107</sup> Below are some examples for each “hurdle.”

### *Evaluate minimum qualifications*

Most commonly, resumes are evaluated to determine minimum qualifications. Automated systems are being heavily relied on to perform this first hurdle. In fact, 90 percent of our HR survey respondents use an automated job application process. With the elimination of KSAs, automation is being relied on even more. There still remains a need for human intervention in this step as HR staff need to check that the resumes are being sorted appropriately. As no computer system is perfect, HR still needs to verify that applicants are or are not being appropriately referred. This is a key step, because usually applicants are referred via certificates after this step. The HR staff we surveyed believe that automated systems have improved the recruitment process (74 percent); made the recruitment process more fair and open (53 percent); and improved applicant screening (58 percent). Yet only 43 percent believe it has made the selection process more fair and open.

<sup>106</sup> U. S. Merit Systems Protection Board, *Beyond Faster and Cheaper*, (2006), p. 27.

<sup>107</sup> *Id.*, p. 28.

OPM, in response to our study questions, voiced some concern about an over-reliance on automated systems to screen applicants. Some agencies are relying on occupational questionnaires to determine minimum qualifications. However, with the amount of applications that come in and the pressure of timeliness, it is no wonder HR is relying on such systems. Agencies should determine whether their HR staff have the resources they need in order to review occupational questionnaires against resumes submitted.

*Evaluate relative qualifications*

The next hurdles are typically handled via interviews and/or job tests/simulations. Two-thirds of our survey respondents said structured interviews were used to assess applicants. A structured interview uses mechanisms such as questions based on job analysis and pre-defined rating scales, which create a strong relationship between the interview and job performance.<sup>108</sup> However, some organizations are still using unstructured interviews at least some of the time.<sup>109</sup> As shown in Table 3, structured interviews can be excellent assessment tools and relatively good predictors of performance.<sup>110</sup>

**Table 3. Characteristics of Unstructured and Structured Interviews<sup>1</sup>**

Unstructured	Structured
The factors are evaluated by the interviewer and vary across candidates.	The factors evaluated are explicit, based on job analysis, and are the same for each candidate.
Questions are not necessarily job-related.	Questions are job-related.
Questions vary from interview to interview for the same job.	The same questions are asked of all candidates for the same job.
There is no system or guide for evaluating interview results.	There is a pre-developed system for evaluating interview results.
Interviewers may be untrained.	Interviewers have received the same training.

<sup>108</sup> U.S. Merit Systems Protection Board, *The Federal Selection Interview: Unrealized Potential*, 2003, p. 5.

<sup>109</sup> Forty-three percent of HR staff surveyed said their organizations use unstructured interviews at least some of the time.

<sup>110</sup> U.S. Merit Systems Protection Board, *Beyond Faster and Cheaper*, 2006, p. 22.

Structured interviews, when implemented correctly, treat candidates fairly with little to no adverse impact. They can guard against judgment errors. We continue to recommend that organizations utilize structured interviews to obtain/maintain a fair and open hiring process.

### *Select the best qualified candidate*

Less than half of our survey respondents (46 percent) said reference checks were used to a great extent as an assessment with 24 percent reporting they used them little if at all. As we have stated in previous reports, reference checking is a key part of the assessment process and can improve the quality of new hires. It is important for hiring managers to verify what is in the applicant's resume. While it is not cost-effective to conduct reference checks on all candidates, hiring managers should conduct them on the top candidates to assist with better hiring decisions and to demonstrate fairness and equal treatment of all applicants.<sup>111</sup>

### *Final assessment*

The final hurdle occurs after the employee is hired—the probationary period. However, our research has shown that Federal managers do not typically use the probationary period as an additional assessment. Less than two percent of competitive service employees are removed in their first year of service.<sup>112</sup> If this is to be an effective assessment tool, supervisors need to be willing to separate employees during their probationary periods if they are not successfully performing the duties of their jobs.

<sup>111</sup> U.S. Merit Systems Protection Board, *Reference Checking in the Federal Government: Making the Call*, 2005.

<sup>112</sup> U.S. Merit Systems Protection Board, *The Probationary Period: A Critical Assessment Opportunity*, 2005, p. ii.



## APPENDIX B: TITLE 38

As noted in our report, *Veterans' Hiring in the Civil Service: Practices and Perceptions*, “it is useful to remember that the federal government is not the ‘single employer’ it is widely reputed to be.”<sup>113</sup> One example of this is the Veterans Health Administration (VHA) within the Department of Veterans Affairs. VHA hires many of its medical staff under Title 38, while the majority of the civil service is hired under Title 5.<sup>114</sup>

Following World War II, there was a perception that the Civil Service Commission, operating under the rules set forth in Title 5, could not adequately recruit the doctors, nurses, and dentists needed to care for the Nation’s recovering veterans. Congress authorized an exception to the rules for such positions, codified in Title 38. Over the years, the categories of positions covered have been repeatedly expanded. As recently as 1991 there were 12 occupations covered by Title 38.<sup>115</sup> Today there are approximately 40 occupations listed in the statute, in addition to the “catch all” category of “other classes of health care occupations [that] the Secretary considers necessary for the recruitment and retention needs of the Department[.]”<sup>116</sup>

The civil service requirements in Title 5 “do not govern the process for appointing physicians and other health-care professionals” under Title 38.<sup>117</sup> The U.S. Court of Appeals for the Federal Circuit has specifically addressed the question of veterans preference in VHA’s hiring of medical staff and held that VHA is not required to apply traditional veterans’

<sup>113</sup> U.S. Merit Systems Protection Board, *Veterans' Hiring in the Civil Service: Practices and Perceptions* 2014, at 21, available at [www.mpsb.gov/studies](http://www.mpsb.gov/studies) (quoting the Government Accountability Office (GAO) (then called the General Accounting Office), *The Excepted Service: A Research Profile*, GGD-97-72 (May 1, 1997), at 1).

<sup>114</sup> There are other agencies that hire large portions of their workforce under a different Title. For example, the Department of State hires its Foreign Service employees under Title 22.

<sup>115</sup> U.S. Merit Systems Protection Board, *Title 38 Personnel System in the Department of Veterans Affairs: An Alternate Approach*, 1991, at 1, 5, available at [www.mpsb.gov/studies](http://www.mpsb.gov/studies).

<sup>116</sup> Positions within VHA covered by Title 38 – and therefore not by Title 5 – include: (1) “physicians, dentists, podiatrists, chiropractors, optometrists, registered nurses, physician assistants, and expanded-function dental auxiliaries; (2) scientific and professional personnel, such as microbiologists, chemists, and biostatisticians; and (3) audiologists, speech pathologists, and audiologist-speech pathologists, biomedical engineers, certified or registered respiratory therapists, dietitians, licensed physical therapists, licensed practical or vocational nurses, nurse assistants, medical instrument technicians, medical records administrators or specialists, medical records technicians, medical technologists, dental hygienists, dental assistants, nuclear medicine technologists, occupational therapists, occupational therapy assistants, kinesiotherapists, orthotist-prosthetists, pharmacists, pharmacy technicians, physical therapy assistants, prosthetic representatives, psychologists, diagnostic radiologic technologists, therapeutic radiologic technologists, social workers, marriage and family therapists, licensed professional mental health counselors, blind rehabilitation specialists, blind rehabilitation outpatient specialists, and such other classes of health care occupations as the Secretary considers necessary for the recruitment and retention needs of the Department[.]” 38 U.S.C. § 7401 (1)-(3).

<sup>117</sup> *Scarnati v. Department of Veterans Affairs*, 344 F.3d 1246, 1248 (Fed. Cir. 2003) (internal quotations omitted).

preference when it uses Title 38.<sup>118</sup> The court has also made it clear that, “competitive examination is the touchstone of the competitive service” and that because medical staff appointed to VHA under Title 38 “are appointed without a competitive examination [, they] are excluded from the competitive service.”<sup>119</sup>

For these reasons, the data and discussion in the body of this report have excluded hires made under Title 38. However, these positions account for nearly 95,000 employees hired in the period of FY 2002 – FY 2012 and OPM has informed us that they include these positions when reporting on the Government’s progress towards its diversity goals. Accordingly, we have added this appendix briefly discussing Title 38 hiring to help readers understand the effect of Title 38 hiring on the composition of the overall Federal workforce.

The nature of the positions covered by Title 38 affects the composition of that workforce. For example, according to the Bureau of Labor Statistics, which includes both public and private employers in its data, the following occupational groups (covered by Title 38) are predominantly filled by women:

- Medical transcriptionists (98 percent)
- Medical assistants (94 percent)
- Licensed practical and licensed vocational nurses (92 percent)
- Medical records and health information technicians (92 percent)
- Registered nurses (90 percent)
- Occupational therapy assistants and aides (89 percent)
- Phlebotomists (82 percent)
- Health practitioner support technologists and technicians (81 percent)<sup>120</sup>

<sup>118</sup> *Id.* at 1249. VHA uses veterans’ preference as a tie breaker, but unlike Title 5 hiring, a veteran who is less qualified than a nonveteran is not able to “block” the selection of a nonveteran. For more on how blocking works in Title 5, see U.S. Merit Systems Protection Board, *Veterans’ Hiring in the Civil Service: Practices and Perceptions*, 2014.

<sup>119</sup> *Khan v. United States*, 201 F.3d 1375, 1380 (Fed. Cir. 2000) (internal quotations omitted).

<sup>120</sup> Bureau of Labor Statistics, “*Labor Force Statistics from the Current Population Survey* (2013)” available at <http://www.bls.gov/cps/cpsaat11.htm>.



One medical occupational category in which men still dramatically outnumber women is “physicians and surgeons,” where only 36 percent of the workforce is comprised of women.<sup>121</sup>

Occupation also can play a role in the race of the labor pool from which the Government makes its selections. For example, 36 percent of all occupational therapy assistants and aides are African-American, as are 25 percent of all licensed practical and vocational nurses and 22 percent of all medical records and health information technicians. Asians make up 22 percent of the “physicians and surgeons” category as well as 22 percent of pharmacists.<sup>122</sup>

Government-wide data contains far more occupations than are represented when looking strictly at medical positions. As a result, the Title 38 data is more heavily influenced by differences in the occupations that various demographic groups pursue.

The Title 38 workforce is also quite educated, which makes sense given the positions involved. Research has shown that women are more likely than men to attend college and more likely to graduate with higher grades and academic honors.<sup>123</sup> Additionally, according to the Bureau of Labor Statistics, young white adults are more than twice as likely to have a bachelor’s degree as their African-American or Hispanic counterparts.<sup>124</sup> Because of the feeder pool from which qualified candidates may be drawn for Title 38 positions, and Title 38’s exceptions from the rules of competitive examining (including veterans’ preference), the Title 38 employee population has a somewhat different demographic composition than the rest of Government.

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<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> Mark Hugo Lopez and Ana Gonzalez-Barrera, “Women’s College Enrollment Gains Leave Men Behind,” Pew Research Center, Mar. 6, 2014, available at <http://www.pewresearch.org/fact-tank/2014/03/06/womens-college-enrollment-gains-leave-men-behind/>; Tamar Lewin, “At Colleges, Women Are Leaving Men in the Dust,” New York Times, Jul. 9, 2006, available at [http://www.nytimes.com/2006/07/09/education/09college.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2006/07/09/education/09college.html?pagewanted=all&_r=0).

<sup>124</sup> Bureau of Labor Statistics, “America’s Young Adults at 27: Labor Market Activity, Education, and Household Composition: Results From a Longitudinal Survey Summary,” Mar. 26, 2014, available at <http://www.bls.gov/news.release/nlsyth.nr0.htm>.

Table 4 compares the gender and race for Title 38 employees and for those employees we discussed in the body of this report (FY 2002 – FY 2012).

**Table 4.** Gender and Race of New Hires: Title 38 vs. Title 5

Gender	Title 38 New Hires	Title 5 New Hires
Male	31%	62%
Female	69%	38%
Race and National Origin	Title 38 New Hires	Title 5 New Hires
American Indian or Alaskan Native	0.8%	0.6%
Asian or Pacific Islander	8.5%	5.2%
Black	16.3%	16.5%
Hispanic	5.0%	8.1%
White	67.7%	67.0%

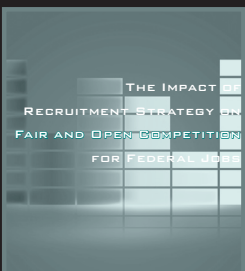


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## THE IMPACT OF RECRUITMENT STRATEGY ON FAIR AND OPEN COMPETITION FOR FEDERAL JOBS