

Federal Appointment Authorities

Cutting through the Confusion

Department of Veterans Affairs Research & Development Office

A Report to the President and the Congress
of the United States by the U.S. Merit Systems Protection Board



THE CHAIRMAN



U.S. MERIT SYSTEMS PROTECTION BOARD

1615 M Street, NW
Washington, DC 20419-0001

June 2008

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

Dear Sirs and Madam:

In accordance with the requirements of 5 U.S.C. 1204(a)(3), it is my honor to submit this Merit Systems Protection Board (MSPB) report, *Federal Appointment Authorities: Cutting through the Confusion*. The purpose of this report is to describe how prevalent exceptions to competitive examining have become and the need for supervisors to understand the implication of their use of the alternative hiring authorities.

As Federal employees in the "baby boomer" generation retire, we expect there will be a large number of new hires brought into the Federal Government in a wide range of occupations and grades. These employees will comprise a large part of the next generation of Federal employees and will influence the operations of the Government for decades. Given this context, it is important to assess how well the Government is using fair and open practices to recruit a workforce from all segments of society in keeping with the merit principles codified at 5 U.S.C. § 2301.

The Central Personnel Data File (CPDF) indicates that for white-collar jobs, the use of the competitive examining authority that is open to all qualified applicants is generally declining, while the use of exceptions to fully open competition is proportionally increasing. In FY 2005, more white-collar employees were hired under authorities that permit excluding some qualified applicants than were hired under the traditional competitive examining authority. Our survey results also indicate that many supervisors may not be aware of the implications of their use of these alternative hiring authorities and the specific training and assessment responsibilities that accompany their use.

I believe that you will find this report useful as you consider issues affecting the Federal Government's ability to recruit a highly qualified, diverse workforce that represents the society it serves.

Respectfully,

Neil A. G. McPhie

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

U.S. Merit Systems Protection Board

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Attracting and Hiring New Employees in the Federal Government: A Series

This report is part of a three-study series that explores how the Federal Government attracts and hires new employees. The purpose of the series is to identify potential improvements to recruiting and selecting applicants from all segments of society based on relative ability after fair and open competition, as prescribed by the merit system principles. Specifically, the series addresses the following topics:

Agencies' use of hiring authorities. As more hiring authorities become available to agencies, the use of competitive examining through the U.S. Office of Personnel Management or a Delegated Examining Unit is decreasing. In response to this trend, this study examines the extent to which certain hiring authorities are being used, how they are used, and how well supervisors understand the responsibilities and consequences that come with their decision to use a particular authority.

Attracting entry level employees. Many fear that the Federal Government is facing a “brain drain” as the result of an aging workforce and high retirement eligibility rates. Using input from new entry level employees about why they chose to work for the Federal Government and what obstacles they faced in the job search, this study assesses how agencies can better attract and select qualified applicants for entry level opportunities to build a sufficient pipeline for journey-level positions.

Attracting upper-level employees. Employees at the upper-level grades in Government are critical to the efficient and effective operation of Government programs. They are the senior level specialists, analysts, and managers who develop, implement and carry out Government- or agency-wide policies and programs. This study explores how agencies hire highly skilled or experienced workers from outside the Government and how agencies can improve these hiring practices.

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Executive Summary

The upcoming wave of expected retirements may be a tsunami (as some predict) or it may have the erosive effect of a constant crashing of smaller waves upon the beach. In either case, most experts agree that the Government will need to replace at least a half million Federal employees in the near future. These new employees will serve as the backbone of the Federal civil service for a generation, with many rising through the ranks and becoming leaders in future years. This report studies how new employees are brought into the civil service under the four largest Government-wide hiring authorities and the potential implications those processes may have for the future composition of the civil service.

Background

When the hiring process for new employees is discussed in the strategic sense, the issues often identified include the challenge of finding a pool of qualified people, getting those qualified people interested enough to apply and providing a package to the individuals that will tempt them into accepting a job offer. However, there is one aspect that is discussed mostly on the periphery—yet it directs everything else in the recruitment process: the legal appointment authority.

The legal appointment authority (also called the hiring authority) is important because it defines who can actually be brought into the Federal civil service. To enter the civil service, the Government must apply a hiring authority that was either created by statute, or was created by someone whom a statute has authorized to create hiring authorities, such as the President of the United States. Without a legal appointment authority, there can be no hire.

Each hiring authority has rules that must be followed throughout the hiring process, from how a vacancy is announced to how a person is selected. If an agency recruits based upon a particular authority, and follows the rules for that authority, it can not hire using a different authority whose rules were not used from the beginning. Thus, the outcome of a recruitment action is in many ways defined by the authority—and therefore the rules—an agency decides to use at the outset.

The actual number of appointment authorities varies depending on how one chooses to group together authorities that are so similar as to make no functional difference. If the legal authorities are not grouped, but are counted individually, there are more than 200 authority codes, comprising 16 pages of the Office of Personnel Management's (OPM's) Guide to the Central Personnel Data File (CPDF).

This report focuses on the four most commonly used Government-wide legal appointment authorities: Competitive Examining (CE), the Veterans Employment Opportunity Act (VEOA), the Veterans Reemployment Act (VRA) and the Federal Career Intern Program (FCIP).¹ Competitive Examining in this report only encompasses certificates issued by OPM or by a Delegated Examining Unit (DEU) authorized by OPM to conduct competitive examinations and issue certificates.

As a part of this study, we surveyed the supervisors of new hires from the four most used authorities to assess how and why the authorities were being used. We also examined data from the CPDF.

Findings

Many hiring authorities receive a significant level of use, and while no single authority accounts for a majority of new hires, it is significant that fewer than one-third of new hires in FY 2005 came from Competitive Examining—the traditional hiring authority open to all U.S. Citizens. The four most used authorities combined accounted for two-thirds of new hires with the remaining third coming from a combination of all other new hire appointment authorities.

With so many authorities that have different rules—including post-hire obligations—supervisors' ability to use the authorities effectively can be hampered by any confusion about them.

Our findings show that significant confusion about these authorities does exist:

- Thirty-six percent of supervisors involved in the hiring process did not recognize that they had accepted applications under the authority that was used to hire their employee, with the percent who were unaware varying based upon the authority used.
- The authority that was used to hire an individual appeared to often be a product of convenience or coincidence rather than the result of a thoughtful and deliberate choice to effectively use the most appropriate hiring authority.
- Confusion about the different authorities caused misunderstandings regarding the length of an individual hire's probationary or trial period, potentially hampering the ability of the supervisors to use that period to effectively evaluate that person.
- Forty-three percent of supervisors involved in the hiring process reported that no one discussed with them the training or assessment responsibilities associated with the hiring authorities they considered using. It may be difficult for supervisors to meet their training and assessment obligations if they are unaware that the obligations exist.

¹ Except for Competitive Examining, the abbreviation for each of these authorities is standard and is more often used than the spelled out version. Generally, Competitive Examining tends to be spelled out. However, because of how frequently it is mentioned in this report, it is abbreviated throughout as CE.

We also found that involvement in the hiring process made a difference in supervisors' satisfaction with the person selected. Supervisors who were involved in hiring decisions reported being more satisfied with the individual hired than those supervisors who were not involved. However, 44 percent of supervisors responding to our survey indicated they were not involved in the process of hiring the employee about whom we asked.

Our findings also confirmed the importance of making strategic decisions about recruitment for agency workforces—decisions that look beyond any single selection. It is important for agencies to understand that different hiring authorities bring in different proportions of demographic groups.

Recommendations

Agencies should do much more to ensure that for each hiring authority that is considered or used, supervisors are educated on the terms of those authorities, so that supervisors will fully understand their responsibilities and be able to make strategic choices about what authority best serves their particular needs.

Agencies and supervisors should have well-rounded recruitment strategies to ensure that all segments of society are represented in the Federal workforce. Extensive use of any authority that results in a disproportionate workforce should be balanced with other authorities to ensure that a pattern does not develop of hiring from only select groups.

Supervisors should be more involved with recruitment decision-making activities. Supervisors who were involved reported a greater level of overall satisfaction with their employees and a greater awareness of their responsibilities to assess a newly hired individual during the probationary or trial period.

Supervisors who are involved in the hiring decision should make a deliberate, well-informed choice to use a particular authority and meet their obligations under the hiring authority they use. Meeting their obligations not only means that supervisors should provide any required training to the new hire, but also means that supervisors should seriously assess the candidate during the trial or probationary period to ensure the individual is successful in the position before the appointment is finalized.

When supervisors are not involved in the hiring process, they should still be informed and educated about what hiring authority was used, and the obligations they have as supervisors as a result of the use of that authority.

Introduction

The Federal hiring process begins before the applicant is selected, and does not end until the probationary or trial period has been successfully completed, at which point the appointment is finalized. There are several large steps, and a multitude of small steps, that comprise the process. These include identifying the organization's needs; deciding duties (which help determine pay); publicizing the vacancy; choosing the methods required for interested parties to apply; selecting the tools to use to assess candidates; narrowing the list of best candidates; selecting the candidate with the best potential; assessing the individual during the probationary or trial period; and finalizing the appointment at the end of the probationary or trial period. In addition, while each decision in this long and often laborious process can affect the result of the hiring process, there is one decision that particularly affects the other pieces: the legal appointment authority.

Purpose

The legal appointment authority (also called the hiring authority) is important because it defines who can legally be hired, how the hiring occurs and what responsibilities result for the agency, the supervisor and the new hire. An agency is supposed to only use a particular authority if all of the rules associated with that authority have been followed. An agency is not supposed to use an authority if some of the steps required by that authority have been bypassed. Therefore, understanding all of the rules associated with each authority is crucial.

The steps required can differ by authority. For example, some authorities require public announcement of the opportunity to apply for the vacancy, while others do not. Some authorities require the use of particular assessment processes, which in turn determine what the applicants will be required to submit in their applications. Other authorities are more flexible, permitting the agency to shape the assessment tools to a greater extent. Some authorities require an active commitment to train the person selected before finalizing the appointment, while others require only the same degree of training that a typical employee already in the civil service would need to be productive and successful. Some authorities are open to all U.S. citizens, while others are more restrictive. Thus, the final outcome of a recruitment action is in many ways defined by the authority—and therefore the rules and procedures—an agency decides to use at the outset of the hiring process.

This report examines:

- Which legal hiring authorities are being used the most to bring new employees into the civil service;
- How much each authority is used in comparison with the others;
- How calculated the decision to use them is; and
- How well supervisors understand the responsibilities and consequences that come with their decision to use a particular hiring authority.

Methodology

The legal authority used to bring a person into the Federal Government for the first time can also be used to reassign, promote or transfer an employee already in the Government. To study “new” hires, it was necessary to first separate those who were truly new to the Federal civil service from those individuals who were already employed and had moved to a new position under one of these legal authorities.

To identify new hires, we filtered the data from OPM’s CPDF to rule out anyone with more than 1 year of civilian service as a Federal employee. We calculated the length of civilian service by taking each individual’s service computation date and subtracting all creditable military service. What remains should be an approximate estimate of civilian service. Anyone with less than one year of civilian service was considered a new hire. Our CPDF and survey data examines only full-time, permanent employees engaged in work that is categorized as “professional,” “administrative,” “technical,” “clerical” or “other” work. Blue-collar work was excluded.

For our survey we identified 4,800 such individuals who were:

- Non-seasonal;
- In a professional, administrative, technical, clerical or other white-collar occupation;
- Hired on or after March 1, 2005 under one of the four hiring authorities under study; and
- Had no record of having a prior civilian Federal service personnel action.

Surveys were then sent to the supervisors of these new hires through their personnel offices. We were unable to locate approximately 500 of these supervisors. Of the 4,289 surveys that were deliverable, 2,404 (56 percent) were filled out and returned to us. Our highest response rate was 61 percent for Veterans Recruitment Appointment, followed by 58 percent for Competitive Examining, 56 percent for the Federal Career Intern Program and 50 percent for the Veterans Employment Opportunity Act. Each authority was represented by more than 500 respondents. Responses were then weighted to reflect the prevalence of each authority in the population of newly hired Federal employees in FY 2005.

The surveys were distributed to personnel offices in February 2006 and responses were accepted until August 2006.

Legal Appointment Authorities for the Federal Government

With a wave of retirements expected in the near future, the question has frequently been posed, how will the Government find the best possible replacements for these valuable employees? People interested in effective public administration have commented on many of the challenges involved. Agencies will have to locate pools of talented individuals from which to recruit. Agencies will have to find a way to persuade these talented persons to apply for employment in the civil service. Agencies will have to assess the many candidates that apply to determine who has the greatest potential to contribute, in both the short and long term. In addition, there is a recruitment step that is often overlooked in discussions but that controls the outcome of the hiring process more than any other step. Agencies must select a legally authorized method to appoint any new employees into the Federal civil service.

The legal appointment authority is often overlooked in the melee of discussions regarding the human capital challenge of replacing the soon-to-be-retired population. There are so many appointment authorities, it seems that it should not be hard for a recruiter to find one that fits a given situation. However, therein lies the problem. There are so very many appointment authorities and they do not all carry the same pre-selection or post-hire rules or obligations. Because of these differences, there is a great deal of information about each one that supervisors must understand before they can effectively use the most appropriate authority for their particular needs.

For example, of the four legal authorities most commonly used in the Federal Civil Service to bring into the Government white-collar individuals with no prior civilian service, only one requires that all qualified U.S. citizens be considered—Competitive Examining. Those four most common authorities are:

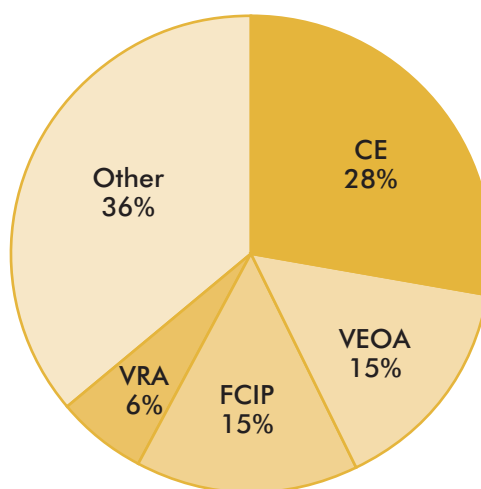
- Competitive Examining
- Veterans Employment Opportunity Act
- Federal Career Intern Program
- Veterans Recruitment Appointment

The following segments briefly describe each authority, and some of the characteristics supervisors and agencies should consider when deciding to use a particular authority.

Competitive Examining (CE)

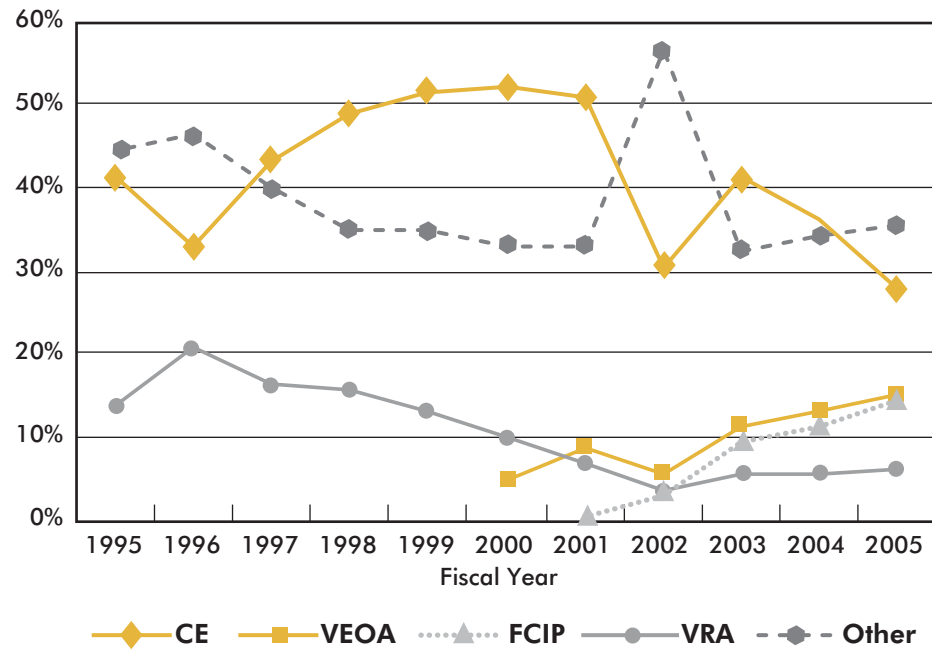
Competitive examining was intended to serve as the primary method to bring new hires into the Government.² It remains the largest single appointment authority, but with only 28 percent of new hires in FY 2005 entering through this method, an overwhelming majority of new hires entered through an alternate means, as shown in **Figure 1**. Within the past decade, even at the height of its use, CE was never used for more than half of all new hires, as shown in **Figure 2**.

Figure 1: Percent of New Federal Hires Entering Service Under Each Legal Authority in FY 2005*



* Data from CPDF. "Other" includes authorities that are not available Government-wide but rather are restricted to particular agencies. Some of these authorities may involve competition amongst candidates. It also includes the direct hire authority.

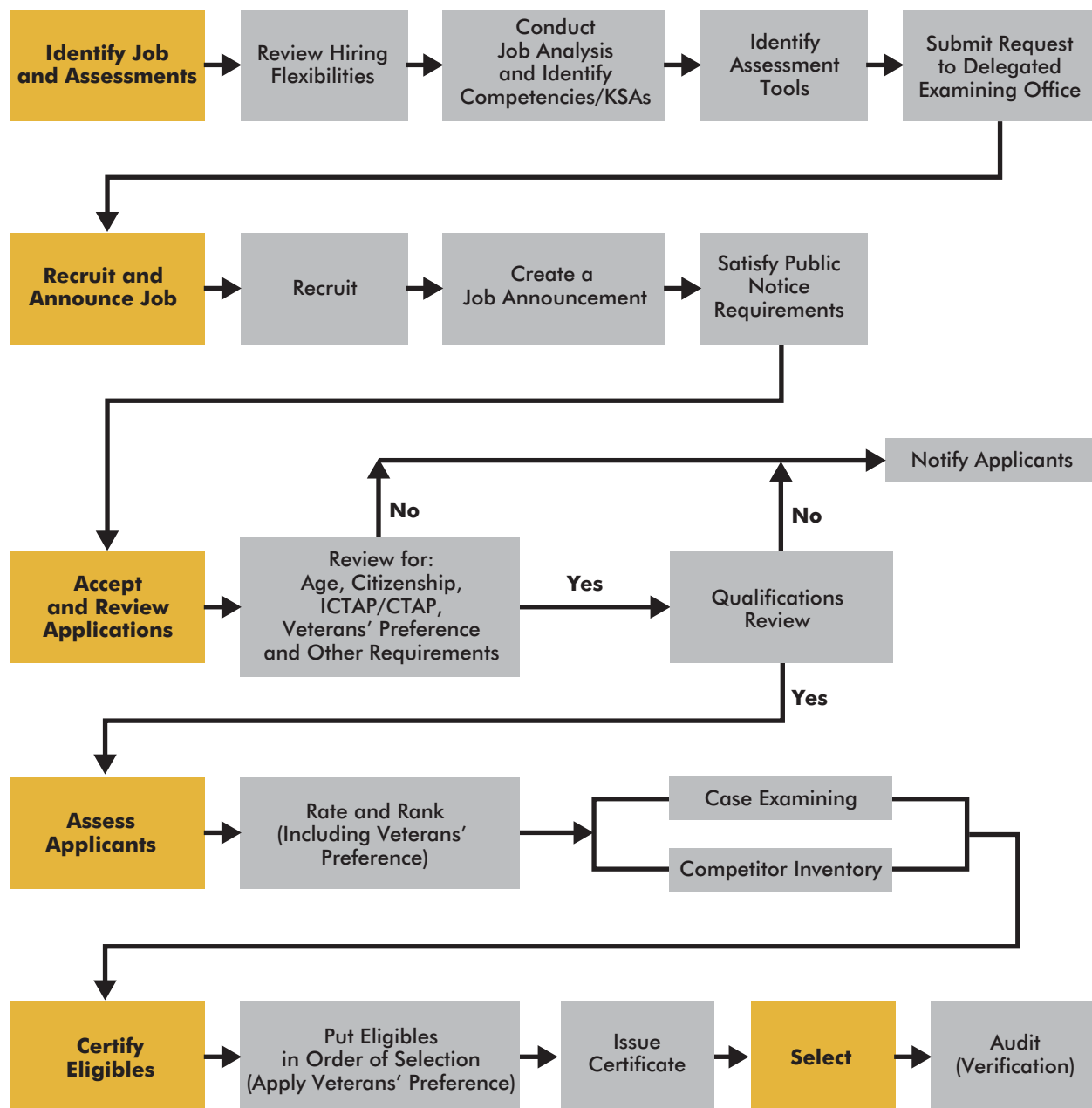
² "Congress intended appointment to the civil service through competitive examination to be the norm, and that placement of positions in the excepted service is, as the name itself indicates, an exception to that norm, to be undertaken only upon a finding of necessity." *NTEU v. Horner*, 654 F. Supp 1159, 1161 (D.D.C., 1987), *aff'd*, 854 F.2d 490, 494 (D.C. Cir. 1988).

Figure 2: Trends in the Use of the Four Hiring Authorities by Fiscal Year*

* Data from CPDF. The abrupt drop in CE in FY 2002 can be mostly accounted for by the use of the new Aviation and Transportation Security Act (TSA) hiring authority, which accounted for over 25 percent of all new hires in that year. In each year after 2002, TSA hiring has accounted for 1 to 6 percent of new hires. FCIP and VEOA data begin later because the authorities were only recently created, in 1998 and 2000 respectively.

CE can take one of two forms. The first is an examination conducted by OPM using a process it has established to create a civil service certificate from which a candidate may be selected. The second is an examination by an examining unit delegated the authority to use the methods set forth by OPM to create the civil service certificate. The same rules are applied regardless of whether OPM or the Delegated Examining Unit (DEU) creates the certificate, which serves as a referral list.

The CE process is not quick or easy, as can be seen from the flowchart in **Figure 3**, below, from OPM's Delegated Examining Operations Handbook. However, CE offers distinct advantages, and a few disadvantages, as will be discussed later in this section.

Figure 3: OPM's Flowchart for Competitive Examinations*

* U.S. Office of Personnel Management, *Delegated Examining Operations Handbook: A Guide for Federal Agency Examining Offices, "Introduction,"* http://www.opm.gov/deu/Handbook_2007/DEO_Handbook.pdf. Items in gold are major steps in the competitive examining process.

As a part of the rating and ranking process for CE, individuals who fail to meet a minimum level of qualifications are eliminated from the process. What happens after that depends upon whether an agency uses the “rule of three” or “category rating.” Under the rule of three, all CE candidates who meet minimum qualifications are given numerical scores based upon their qualifications, with points added for veterans’ preference. A referral list is then generated. Any veteran who successfully meets minimum qualifications and has at least a 30-percent

compensable injury will “float” to the top of the list. The selecting official may then select only from the top three candidates, and cannot bypass a veteran for a non-veteran.³

Following passage of the Homeland Security Act, agencies were permitted to use category rating in place of the rule of three. Under category rating, minimum qualifications are assessed, and then candidates are placed in categories, such as Best Qualified, Well Qualified and Acceptably Qualified. The agency determines how many categories there will be and how each category is defined, but there cannot be a “not qualified” category because all candidates must first pass a minimum qualifications assessment. A 30-percent compensable veteran who is minimally qualified will “float” to the top category regardless of where the individual might have otherwise been placed. All other veterans are placed in a category based upon an assessment of their qualifications, but are not moved to another category based on a preference for military service. Once the members of the top category have been identified, a selecting official may choose any name in that group—not just the top three—provided there are no veterans in that group. If there are veterans in the top group, their names will be placed at the top of that group, and they cannot be passed over for a non-veteran. Thus, veterans are granted a preference under both the rule of three and category rating, although it takes a slightly different form under each.⁴

Using CE has number of advantages, and a few drawbacks. The most notable advantage of CE is CE’s compliance with public policy and the merit principles. The first merit principle states:

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.⁵

Because CE is open to all qualified U.S. citizens, individuals have an opportunity to be considered without regard to their sex, national origin, race, handicap, or other non-merit factor. By being open to all U.S. citizens, CE has the best chance to create a labor force that is representative of all qualified U.S. citizens.

CE supports the merit principles by permitting everyone to be considered, so that the candidates can earn the position through their knowledge, skills or abilities.

³ U.S. Office of Personnel Management, *Delegated Examining Operations Handbook: A Guide for Federal Agency Examining Offices*, Ch. 5, § B, “Rating the Applicants,” May 2007, http://www.opm.gov/deu/Handbook_2007/DEO_Handbook.pdf.

⁴ U.S. Office of Personnel Management, Category Rating Fact Sheet, http://www.opm.gov/employ/category_rating/faq.asp, and U.S. Office of Personnel Management, *Delegated Examining Operations Handbook: A Guide for Federal Agency Examining Offices*, Ch. 5, § B, “Rating the Applicants,” May 2007, http://www.opm.gov/deu/Handbook_2007/DEO_Handbook.pdf.

⁵ 5 U.S.C. § 2301 (b)(1).

The public policy interest in supporting our veterans is also served, through the addition of preference for veterans, with greater preference granted to those veterans who made particularly great sacrifices (e.g. through service in a war zone or by having sustained a compensable service-connected disability).

In addition, by requiring a job analysis and the identification of the necessary knowledge, skills and abilities (KSA's) to perform the job, CE creates a good potential to identify the best candidate to fill the needs of the particular job. It is more likely to result in a successful choice than an uninformed selection based on a selecting official's "good feeling" about a particular applicant. CE also comes with a mandatory 1-year probationary period, during which the candidate is assessed on the job. During this period, an agency has the responsibility to separate a probationer who is not a good fit.⁶

For many entry-level positions, CE requires the use of a written test known as ACWA (Administrative Careers With America).⁷ ACWA may be better at predicting future performance than many other tools currently being used to assess candidates for other positions because it attempts to measure the applicant's cognitive reasoning abilities. However, because copies of the test and the scoring information for answers must be carefully guarded to ensure honest use in the future, the process of having people take the test—and having personnelists authorized to score it—is cumbersome. As a result, another version of ACWA, known as the Form C, is more popular. However, the scoring for the Form C also must be controlled, and it does not contain the cognitive portion of the written ACWA test. Instead, Form C contains a series of multiple choice questions about the applicant's life-experiences (bio-data). (Previously the test used 156 multiple choice items but it has recently been streamlined, with the number of questions now varying based upon the occupation.)⁸ Unfortunately, the Form C version of ACWA may not predict future job performance nearly as well as the other test.

The instructions in OPM's Delegated Examining Operations Handbook regarding Form C state:

[Y]ou may modify the specialized qualification questions in Questions 1 through 5, but you may not change the rating questions. Since it is a court-approved rating schedule the following restrictions apply:

- You must use the instruments intact[;]
- You **MAY NOT** modify the contents of the instruments or values used in the scoring process;

⁶ 5 CFR §§ 315.801, 315.802. For more on the importance of the probationary period see: U.S. Merit Systems Protection Board, *The Probationary Period: A Critical Assessment Opportunity*, Washington, D.C., 2005, available at www.mspb.gov.

⁷ For more on why this test is required see: U.S. Merit Systems Protection Board, *Restoring Merit to Federal Hiring: Why Two Special Hiring Programs Should Be Ended*, Washington, D.C., 2000, available at www.mspb.gov.

⁸ U.S. Office of Personnel Management, Assessment Delivery System Memo, Mar. 29, 2007, http://www.chcoc.gov/transmittal_detail.cfm?ID=828.

- You **MAY NOT** edit, delete, renumber, or change the responses or values of the scoring keys;
- You **MAY NOT** edit, delete, renumber, or otherwise change Questions 6 through 156; and
- You must limit access to computerized examining records through the use of secure passwords by employees of the examining office.⁹
[Emphasis in original.]

Beyond the resources necessary to use ACWA for entry level positions, CE requires significant resources when filling other positions. When there is no standardized test, the agency must identify what tasks are most critical to the particular job and how to recognize in a person the right KSA's to perform those tasks. Furthermore, because the results of the analysis of KSA's will determine who can be reached for selection, it is important for agencies to get it "right" when drafting KSA's. It is also important for agencies to remember that KSA's are different from selective factors. A selective factor is a knowledge, skill or ability that is so crucial that a person would not be considered qualified to do the job without it. Where a KSA is used to weigh the quality of a candidate, a selective factor is used to determine if a candidate should be disqualified. Because selective factors screen out candidates (both veterans and non-veterans) from further consideration, they should be used with caution.¹⁰

After an agency has decided upon the KSA's, the agency must assess how well the candidates' responses on their applications meet those KSA's. By opening a vacancy to all U.S. citizens, an agency is inviting what can be a monumental number of applications. Some (perhaps many) candidates will not be even minimally qualified, but all must be looked at to determine if they are qualified, and if so, then assessed to determine if those applicants are among the best candidates. If a position is particularly desirable (either due to the nature of the work or the opportunity for advancement) it is not uncommon for the announcement to generate hundreds of applicants, even though only a few may be referred to the selecting official, and often only one person will be selected. (When an agency is hiring tens—if not hundreds—of individuals for the same or very similar positions, an agency can exercise economies of scale. It may be possible to perform the job analysis just once for all of the positions. Still, assessing what may be thousands of people for hundreds of positions takes a lot of time.)

⁹ U.S. Office of Personnel Management, *Delegated Examining Operations Handbook: A Guide for Federal Agency Examining Offices*, Ch. 2, § A, "Administrative Careers With America (ACWA), Alternative Assessments, and Other Hiring Programs," May 2007, http://www.opm.gov/deu/Handbook_2007/DEO_Handbook.pdf. (The handbook does not yet reflect the reduced number of questions when indicating that questions 6 through 156 cannot be altered.)

¹⁰ U.S. Office of Personnel Management, *Delegated Examining Operations Handbook: A Guide for Federal Agency Examining Offices*, Ch. 5, § B, "Rating the Applicants," May 2007, http://www.opm.gov/deu/Handbook_2007/DEO_Handbook.pdf.

The time and energy required to follow all of the steps of CE is by far the most common complaint about CE, and one major reason for the popularity of other hiring authorities. However, CE is designed to maximize the agency's ability to assess all interested, qualified U.S. citizens, and as such, has the greatest ability to give an agency a qualified workforce that represents the society it serves.

Veterans Employment Opportunity Act (VEOA)

VEOA is the second most commonly used hiring authority. It was enacted to help veterans gain access to Federal positions by providing opportunities to be considered for positions that might have otherwise been closed to them.

Until VEOA, agencies had the option to open vacancies to only current Federal employees ("status" employees) under the agency's merit promotion plan (MPP).¹¹ Under their MPPs, agencies could decide how many other hiring authorities beyond the MPP they wanted to use—and could restrict hiring to within the Government if that was what they wanted. However, in 1998 VEOA was enacted, which states that when an agency is considering applicants from outside that agency, and an MPP is being used, the agency is required to allow honorably separated veterans with either preference or 3 years of service to apply for those positions.¹² Agencies can still add other appropriate hiring authorities as well (including but not limited to FCIP and VRA) if they desire.

Under VEOA, an agency uses its MPP to evaluate the veterans on a par with each other and with all status employees. An MPP must have written procedures to ensure the identification, qualification, evaluation and selection of candidates will "be based solely on job-related criteria."¹³ Non-merit criteria cannot be used, and no preference points are applied.¹⁴ Because the recruitment process for VEOA uses the MPP, agencies using VEOA bypass some CE requirements (such as ACWA). Other requirements, such as the use of a 1-year probationary period, remain.¹⁵

¹¹ 5 CFR 335.103 (b)(4). (This report addresses only new hires, so it does not cover MPP, which is a more common method of competing for a position than even CE.)

¹² U.S. Office of Personnel Management, Veteran's Employment Opportunity Act of 1998 as Amended, <http://www.usajobs.gov/EI52.asp>. Note: a veteran who is honorably discharged shortly before completing 3 years of service is also eligible for this authority. 5 U.S.C. § 3304 (f)(5).

¹³ 5 CFR 335.103 (b)(1).

¹⁴ Ibid., and U.S. Office of Personnel Management, Veteran's Employment Opportunity Act of 1998 as Amended, <http://www.usajobs.gov/EI52.asp>.

¹⁵ U.S. Office of Personnel Management, VetGuide, "Veterans Employment Opportunities Act," at <http://www.opm.gov/veterans/html/vetguide.asp>.

VEOA has both advantages and disadvantages. When an agency recruits from outside that agency's workforce, VEOA requires that the agency consider non-status veteran applicants without requiring the agency to open the vacancy to all U.S. citizens (which given the size of the U.S. population, can be a very large number of applications to consider). This extra opportunity for veterans to be considered can make it easier for them to enter the civil service, and gives the agency a larger pool than just Government employees. However, because veterans are a limited population, agencies should only use VEOA—as with any other exception to CE—as a part of a larger recruitment strategy that brings in applicants from all groups in society.

The first merit principle seeks a workforce that is representative of the qualified members of society. If any non-CE authority is used exclusively by an agency, the result may be a workforce at that agency that does not meet this goal. As veterans are disproportionately male in comparison to society at large, a recruitment strategy that brings in only veterans could create a disproportionate workforce. In FY 2005, more than three quarters of VEOA hires were male.¹⁶ So long as VEOA is only one component of a larger strategy that brings in members from all society, this is not automatically problematic. However, agencies should be sensitive to the fact that this authority brings in a limited segment of society and they should ensure that other authorities are also used in tandem with VEOA to identify and hire the best qualified applicants from other segments of society, including women.

Anecdotal evidence indicates that agencies usually use VEOA as a part of a larger recruitment approach, where the candidate pool includes either all qualified U.S. citizens, candidates who are already working for the Government, or both. In order to ensure veterans' preference is honored and that qualified citizens from all segments of society are considered, it is important for agencies to continue this practice of using VEOA as a supplement rather than as a stand alone authority (although stand alone use is rare). When used as a part of a recruitment strategy to identify and hire the best qualified applicants from all segments of society, VEOA is a valuable tool. The Government has dedicated time and money to train veterans for their military careers, and many of the veterans' skills are transferable to the Federal civil service. Some skills that the military instills in their people, such as leadership and teamwork, can be beneficial in any position. The military also invests in training and educating its members for professions that take years of studying such as medicine, engineering and the law. VEOA can help agencies bring employees with such knowledge, skills and experience into the civil service while simultaneously assisting those who have served our country to re-enter the workforce: a win-win situation for the veterans and the Government.

¹⁶ U.S. Office of Personnel Management, Central Personnel Data File, full-time, permanent appointments.

Veterans Reemployment Act (VRA)

The Veterans Reemployment Act was formerly the Vietnam Era Veterans' Readjustment Assistance Act of 1974, which in turn began as an Executive Order issued by President Nixon in 1970.¹⁷ It was first designed to assist veterans who had served during the Vietnam era to enter the Federal civil service, but has since evolved in several ways, not the least of which is that it no longer requires that the veteran has served in any particular conflict, but rather that one of the following conditions applies:

- The veteran has a qualifying service-connected disability;
- The veteran served on active duty in the Armed Forces during a war, or in a campaign or expedition for which a campaign badge has been authorized;
- The veteran, while on active duty, participated in a United States military operation for which an Armed Forces Service Medal was awarded; or
- The veteran was separated less than 3 years prior to the appointment date.¹⁸

A VRA appointment is an appointment that can be made noncompetitively to a position that would otherwise be in the competitive service, provided the position is at or below GS-11 or an equivalent grade. However, while agencies can select a veteran without competition, if there is more than one candidate, veterans' preference must be applied.¹⁹ If an agency has a database of resumes of applicants who have expressed interest in the type of position being filled, qualified veterans with preference from that database must be considered, with preference points added, regardless of whether or not the applicants knew of the particular vacancy.²⁰

A VRA appointment is into the excepted service—not the competitive service. This means that instead of a 1-year probationary period, there is a 2-year trial period that serves a similar purpose—assessment of the candidate before there is a conversion to a permanent appointment in the competitive service.²¹ During this trial period, a new hire has the same limited appeal rights as a probationer in the competitive service.²² However, the appeal rights of a trial period VRA hire with no veterans' preference are different from those of a VRA hire in a trial period who is preference eligible. (Preference eligibles have appeal rights after 1 year, while other veterans

¹⁷ P.L. 93-508, § 403; E.O. 11521, "Authorizing veterans readjustment appointments for veterans of the Vietnam era," Mar. 26, 1970; F.R. "Veterans Readjustment Appointments," Vol. 69, No. 214, 64503-64504, Nov. 5, 2004.

¹⁸ 5 CFR § 307.102. See also: U.S. Office of Personnel Management, VetGuide, "Veterans Recruitment Appointment (VRA) Authority," <http://www.opm.gov/veterans/html/vetguide.asp>.

¹⁹ 5 CFR § 307.103.

²⁰ U.S. Office of Personnel Management, VetGuide, "Veterans Recruitment Appointment (VRA) Authority," <http://www.opm.gov/veterans/html/vetguide.asp>.

²¹ 5 CFR § 307.102 (b).

²² 5 CFR § 307.105. See also: 5 CFR § 315.806.

must wait 2 years.)²³ Supervisors who use VRA as a hiring authority should be aware of the difference in individuals' rights, and ensure they know the rights that apply to their particular hire.

VRA has the benefit of being fast if there are no candidates in the database to also assess—only the one person who interests management needs to be assessed for qualifications, and the appointment can then occur. No announcement is required,²⁴ and ACWA is bypassed because it applies to competitive examining, not noncompetitive placements.²⁵ VRA also has the advantage of allowing for a longer assessment period. However, there are some things supervisors should consider before hiring under VRA.

One consideration is that VRA can require additional training for the individual, regardless of whether or not that person needs it for the position. If the individual has less than 15 years of education (typically 3 years of college beyond a high school diploma), the agency must provide training or education.²⁶

Another consideration is similar to the challenge posed by VEOA. The pool of candidates for VRA is not necessarily representative of our society as a whole. When VRA is used as a part of a larger recruitment strategy, it can be a helpful tool to integrate veterans into the civil service. However, in FY 2005, 76 percent of VRA hires were male. Therefore, as with any exception to CE, VRA should be used as a part of a broader recruitment strategy designed to bring in qualified employees from all segments of society.

Also, because VRA enables supervisors to select an individual without any announcement or competition, supervisors should be sensitive to any possible perceptions of favoritism. Furthermore, if a veteran has worked for the organization while in the military, and is retiring, it may appear to be a good idea to noncompetitively hire the veteran to fill a vacancy for a position the veteran is clearly qualified to do, having done similar work in the very same office. However, supervisors should be aware of possible drawbacks to this approach. First, equally or more qualified veterans returning from Iraq and Afghanistan will not have served most recently on a post in the United States, and if the vacancy is never announced because VRA is used, these qualified veterans may not have a chance to compete for the position.²⁷

²³ 5 U.S.C. § 7511 (a)(1)(B).

²⁴ Agencies may be required to first ensure there are no surplus or displaced employees who need a placement before the agency may hire an external candidate under VRA. For more information, see 5 CFR §§ 300.601-711.

²⁵ *Taydus v. Cisneros*, 902 F.Supp. 278, 282-83 (D. Mass. 1995).

²⁶ 38 U.S.C.A. § 4214 (b)(1)(D)(i) (2006).

²⁷ Another drawback is, as mentioned earlier, that if the individual has less than 15 years of education, the agency may be put in the position of being required to provide education and/or training even if the person has performed the job already as a soldier. (This requirement probably exists because the law was originally designed to help veterans to re-adjust to the civilian world and presumed they needed assistance to make this transition.)

Also, for more than 40 years, there has been a law that generally prohibits the placement of a retiring veteran within 180 days of that retirement.²⁸ This prohibition on the immediate placement of retiring veterans began as a policy within the Department of Defense and was made into law in 1964.²⁹ The purpose was to avoid both the practice and the appearance of preferential treatment in order to ensure merit-based hiring.³⁰ The prohibition on appointing a retired veteran within 180 days of retirement can be waived under limited circumstances or suspended when a state of national emergency exists. This rule has been suspended since September of 2001 under a special provision of the law to address national emergencies.³¹ However, the law is still valid, and the rule should resume effect when the current crisis is over.

While the 180-days rule applies to appointments of retired veterans regardless of hiring authority, it is particularly relevant for VRA because to obtain a waiver of this waiting period (when the rule is not suspended), the agency must, by law, document that “consideration, in accordance with placement and promotion procedures of the department concerned, was given to eligible career employees.”³² If VRA is used to immediately hire a retired veteran, without first attempting to fill the position under MPP or CE, it would be a violation of this provision of the law under normal conditions.³³ Supervisors using VRA to noncompetitively hire new retirees—and according to our survey this is happening—should be aware that the ability to do this without using MPP or CE is limited to the period of the declared emergency.

Federal Career Intern Program (FCIP)

FCIP was created by an Executive Order as an exception to CE to enable the Government to bring in “exceptional employees” for future “careers in analyzing and implementing public programs.”³⁴ Under FCIP, interns are hired into the excepted service for two years (3 years if an exception is granted by OPM). During this period, they are given formal training and development opportunities to develop into journey-level employees. These interns are in a trial period, and should be

²⁸ 5 U.S.C. § 3326 (b).

²⁹ S. Rep 88-935, Mar. 4, 1964.

³⁰ Delegation of Authority to Approve Appointments of Retired Members of the Armed Forces Within 180 Days After Retirement, http://cpol.army.mil/library/staff/del_auth180.html.

³¹ Suspension of the need for a waiver based upon a state of national emergency is available at http://cpol.army.mil/library/staff/stf_092701.html.

³² 5 U.S.C. § 3326 (c)(1).

³³ Issuing a vacancy announcement under CE can meet the requirement to permit internal candidates an opportunity to apply because internal candidates are permitted to apply to CE announcements.

³⁴ E.O. 13162, Federal Career Intern Program, July 6, 2000.

regularly assessed as they progress through training and rotational assignments. At the end of the 2 years, successful interns are converted to the competitive service.³⁵

FCIP enables agencies to hire at grades GS-05 through GS-09 (or equivalent) without public notice or competition. Agencies can go to job fairs, speak with potential candidates and select from the most impressive candidates, without ever posting an announcement to the general public. This has the benefit of being faster than CE. However, it is important to balance speed with the even greater need to make high-quality selections.

OPM's website on hiring flexibilities includes a brief description of how some agencies have used FCIP to build their workforces in the face of projections of large numbers of retirements. When describing their use of FCIP, the Missile Defense Agency "suggests focusing on finding the right fit by making sure the job details are clear, conducting thorough interviews, and assessing behavioral as well as technical competencies."³⁶ One of the benefits of FCIP is that the agency can design its own assessment process, although ACWA cannot be bypassed for the ACWA-covered positions.³⁷

FCIP has quickly become the third most commonly used hiring authority in the Government. In FY 2005, nearly 10,000 new hires entered Government service for the first time through this authority. In the professional and administrative occupations, at entry grades GS-05 and GS-07, more than half of all new hires in FY 2005 entered service through FCIP.³⁸

However, FCIP has its critics, most notably the National Treasury Employees Union (NTEU), which in 2007 filed a lawsuit against OPM alleging (among other issues) that the lack of public notice for some FCIP vacancies has deprived current Federal employees of an opportunity to apply and be considered.³⁹ FCIP also has the potential to affect the demographic composition of the Federal workforce. Agencies should therefore be sensitive to how they use this authority to ensure there is no adverse impact on qualified candidates who may not be reached through narrow recruitment methods.

As an excepted service authority, FCIP offers agencies greater flexibility and speed by allowing them to create their own candidate assessment processes. It also permits

³⁵ 5 CFR, § 213.3202 (o). For more information on FCIP, see: U.S. Merit Systems Protection Board, *Building a High Quality Workforce, The Federal Career Intern Program*, Washington, D.C., 2005, also available at www.mspb.gov.

³⁶ U.S. Office of Personnel Management, Hiring Flexibilities Center, http://www.opm.gov/Strategic_Management_of_Human_Capital/fhfr/FLX04050.asp.

³⁷ <http://www.opm.gov/careerintern/QandAof12-20-00.asp>.

³⁸ Data from Central Personnel Data File, full-time, permanent hires. VEOA slightly exceeded FCIP in FY 2005, with 15.1 percent of new hires (9,670) appointed under VEOA compared to 14.7 percent (9,458) under FCIP.

³⁹ *N.T.E.U. v. Springer*, 1:07CV 0168 (D.D.C.), Complaint, Jan. 24, 2007, ¶¶ 27-30.

agencies to bypass a public announcement on USAJOBS, which can not only take time, but may also result in a large volume of applications that will require resources to review.

However, some of the flexibilities associated with FCIP can also be used in CE. For example, FCIP allows agencies to use job fairs and college campus newspapers to advertise vacancies. While CE requires public notice, it also allows for the use of these tools when employed along with the notice to the public at large. The formal training programs associated with FCIP can also be used for CE appointees. Furthermore, if the position is advertised as having a career ladder (built in promotions to the journey-level), the CE hire can be noncompetitively promoted up to the target grade in the same manner as an FCIP hire.

One benefit of FCIP that CE does not currently offer Governmentwide is the longer trial period. Because it can take time to know if an intern can learn and apply all that is required to be successful at the journey-level, FCIP provides for a 2-year assessment before conversion to the competitive service. Under CE, the appointment becomes final after 1 year.⁴⁰ In our 2005 report, *The Probationary Period: A Critical Assessment Opportunity*, we recommended that Congress change the rules for CE to permit a longer probationary period for trainee positions. However, at this time, the statutory probationary period for most CE appointments is 1 year. FCIP is one tool currently available to enable agencies to use a longer assessment period for trainees before the appointment is finalized.

A Snapshot of Differences

Each of these authorities has a unique purpose, and its own set of rules. The rules for announcing a vacancy, deciding who is eligible to apply, analyzing what positions are eligible for use of the authority, the requirements for a crediting plan to assess candidates and the requirements to train a hire, vary by authority. Two of these four authorities do not begin in the competitive service, but rather provide for conversion to the competitive service if the individual is successful on the job. As can be seen in **Table 1**, while the authorities share some characteristics in common, no two authorities are the same.⁴¹

⁴⁰ There are exceptions to this 1-year rule, such as certain positions in the IRS and some demonstration projects. (There are also provisions for a longer probationary period for some positions in the rules for the National Security Personnel System.)

⁴¹ The table includes the use of a probationary or trial period. Typically, a probationary period is used for the competitive service while the trial period is used in the excepted service. While both periods are used to assess new hires, a trial period is used in situations where competitive examining is not required, making the use of the trial period as an assessment tool even more critical. For more on the use of a probationary or trial period as an assessment tool, please see the MSPB report, *The Probationary Period: A Critical Assessment Opportunity* available at www.mspb.gov.

Table 1: Hiring Authority Conditions

	CE	VEOA	FCIP	VRA
	Competitive Service	Competitive Service	Excepted Service	Excepted Service
Probationary period	1 year	1 year	--	--
Trial period	--	--	2 years	2 years
Citizens with no military service eligible for appointment	Yes	No	Yes	No
Public announcement of vacancy required	Yes	Yes	No	No
Training of candidate required as condition of use of the authority	No	No	Yes	Sometimes
All eligible applicants must be considered to determine the best qualified among candidates	Yes	Yes	No	No
Appointment to competitive service	Finalized after 1 year	Finalized after 1 year	Conversion in 2 years	Conversion in 2 years
Available for all grade levels*	Yes	Yes	Only GS-05 through GS-09**	Only up through GS-11
Waiting period for appeal rights for adverse action such as removal if an individual does not have preference	1 year	1 year	2 years	2 years
Waiting period for appeal rights for adverse action such as removal if an individual has preference	1 year	1 year	1 year	1 year
Veterans with preference points given an advantage in hiring over veterans without preference points	Yes	No	Yes	Yes
Amount of active duty military service required to use authority	None	3 Years	None	Any Amount
Military service within last 3 years required	No	No	No	Yes***

* Several Federal pay systems, including those with pay-banding, do not use the General Schedule (GS). For those systems, these authorities can be used at pay levels equivalent to the referenced GS level.

** A higher grade can be used with OPM approval. However, the position must be a trainee position.

*** The 3-year limitation applies unless the hire received a campaign badge, service medal, or has a qualifying service connected disability.

Other Authorities

As noted earlier, 36 percent of new hires enter the Government through an authority other than CE, VEOA, VRA or FCIP. Some authorities apply only to a few agencies or occupations. Others apply to certain groups, such as handicapped individuals or family members who have served overseas under specified conditions. The list of appointment authorities in OPM's Guide to the CPDF is 16 pages long, with more than 200 options (many of which are functionally the same).

Below is a list of just a few additional authorities for supervisors to also consider using as part of a larger, well-rounded, recruitment strategy. None of these hiring authorities are intended to replace CE, but when used in conjunction with CE and other authorities, they can help agencies to hire the best candidates and uphold the spirit of the merit principles—hiring the best qualified individuals who represent our society while supporting the Government's public policy requirements and objectives.

Family Members Appointed Overseas

A United States citizen who is a family member of a Federal civilian employee, of a non-appropriated fund employee, or of a member of a uniformed service may be eligible for a noncompetitive appointment to the competitive service based upon service performed overseas. The individual must have been employed overseas within the prior 3 years in an appropriated-fund position as a local hire for at least 52 weeks with at least a fully successful rating. (The 52 weeks can be shortened to 26 weeks under special circumstances.) Such an individual is subject to a 1-year probationary period if it has not already been completed.⁴²

This type of appointment not only helps support family members of individuals who have served our country (whether as soldiers or civilians) it also helps agencies to quickly hire individuals who are knowledgeable and have a proven track record of success. When used as a part of a larger recruitment strategy to employ members from all groups in society, this authority can result in a win-win situation for the hire, the agency and the country by supporting families who make sacrifices to serve our Nation.

⁴² 5 CFR § 315.608. While this authority is most well known within the State Department and Department of Defense, any agency can take advantage of this skilled labor pool.

Peace Corps Volunteers

An individual who has returned from satisfactory service as a Peace Corps volunteer can be noncompetitively appointed into the competitive service within 1 year of the individual's return from volunteer service.⁴³ This hiring authority enables agencies to hire skilled workers who have demonstrated a willingness to work hard and serve both their country and the global community. It also can bring in employees who are multilingual and are accustomed to—and appreciate—dealing with people from different cultures.

Presidential Management Fellows (PMF)

This program has two components: the Presidential Management Fellows and the Senior Presidential Management Fellows. The PMF is used for grades GS-9, GS-11 or GS-12 and equivalent, while the Senior PMF is for grades GS-13, GS-14 or GS-15 and equivalent. Program candidates must have completed a course of graduate study at a qualifying college or university. Candidates are nominated by their graduate schools and undergo an extensive screening process. OPM identifies the best qualified finalists, who are then offered 2-year fellowships by agencies. Program fellows can be converted to permanent status following successful completion of their fellowships.⁴⁴

Student Career Experience Program (SCEP)

This program provides permanent Federal employment opportunities to students who are enrolled or accepted for enrollment as degree seeking students in an accredited high school, technical, vocational, 2- or 4-year college or university, or graduate or professional school. SCEP offers real-world experience that is directly related to the student's academic program and career goals. SCEP students may be noncompetitively converted to term, career or career-conditional appointments once they have obtained their degree (or diploma or certificate) and have completed at least 640 hours of work for the agency.⁴⁵

There is also a program called the Student Temporary Experience Program (STEP). STEP does not require that the Government work be in a field related to the student's education, and it does not provide for a conversion to a permanent appointment at the end. However, STEP students may be noncompetitively converted to SCEP, and when the terms of SCEP have been met, a conversion to a permanent appointment is then an option.⁴⁶

⁴³ E.O. 11103; U.S. Office of Personnel Management, Guide to Processing Personnel Actions, Table 9-G; and U.S. Peace Corps, Letter to Federal Employers, <http://www.peacecorps.gov/rpcv/career/ncelletter.pdf>.

⁴⁴ 5 CFR § 362.101.

⁴⁵ 5 CFR § 213.3202 (b).

⁴⁶ 5 CFR § 213.3202 (a).

30 Percent Disabled Veteran (30% DAV)

This is a permanent hiring authority that begins with the use of a temporary appointment. If the Department of Veterans Affairs certifies that a veteran has a service connected disability of 30 percent or more, the veteran can be given a noncompetitive temporary appointment. After the individual has served at least 60 days in such an appointment, the veteran can be noncompetitively converted to the competitive service. The competitive service appointment becomes final after the completion of a probationary period.⁴⁷

Direct Hire Authority

This hiring authority is used when OPM determines that there is a severe shortage of candidates or a critical hiring need for which there is not time to perform competitive examining. When Direct Hire is used, agencies are not required to apply rating procedures, veterans' preference or the rule of three (or category rating). Direct Hire can be for specific occupations, grades and geographic areas. Agencies must be able to document the severe shortage of candidates or the critical hiring need.⁴⁸

⁴⁷ 5 CFR § 316.402 (b)(4).

⁴⁸ U.S. Office of Personnel Management, *Delegated Examining Operations Handbook: A Guide for Federal Agency Examining Offices*, Ch. 2, § A, "Direct Hire Authority," May 2007, http://www.opm.gov/deu/Handbook_2007/DEO_Handbook.pdf.

How Hiring Occurs Under the Four Largest Authorities

CE, VEOA, VRA and FCIP were created for various reasons, but were all intended to serve at least one common purpose: enabling supervisors and agencies to recruit, assess and hire high-quality employees. Our survey asked supervisors employing individuals under these authorities if they had been involved in the hiring process for a particular individual under their supervision. Supervisors who had been involved in the hiring of the individual were then asked a series of questions about what happened during the recruitment and assessment process for that hiring action. All responding supervisors, whether involved in the hiring or not, were also asked about the quality of the new hire they supervised and their awareness of their responsibility to conduct an assessment of the candidate during a probationary or trial period. We found that, unfortunately, many supervisors (44 percent) had not been involved in the hiring process, and that those who had been involved were not always aware of the differences among the hiring authorities or the responsibilities for a supervisor that accompanied each authority—a problem we discuss below.

Supervisors' Awareness of Authority Used

Before we can reasonably expect supervisors to meet their responsibilities under a particular hiring authority, they must know that they are employing a person under that authority. Yet, many supervisors who said they had been involved in the hiring process did not know applications were being considered under the particular authority that was ultimately used. If they did not know of the difference in authorities, how could they weigh the different responsibilities for supervisors that accompanied each authority?

This lack of knowledge regarding the different authorities also raises questions regarding the extent to which supervisors are meeting their post-hire obligations. If they do not know which authority was used, how are they made aware of the responsibilities that apply to them as a result of having made a selection under a particular authority?

We asked supervisors who said they had been involved in the hiring process from which groups of candidates they accepted applications. We provided a list of hiring authorities, and asked the respondents to select all that applied. The results told us that:⁴⁹

- 35 percent of supervisors involved in hiring a person through CE did not know their agency had accepted applicants under CE for that vacancy.
- 39 percent of supervisors involved in hiring a person through VRA did not know their agency had accepted applicants under VRA for that vacancy.
- 44 percent of supervisors involved in hiring a person through VEOA did not know their agency had accepted applicants under VEOA for that vacancy.
- 27 percent of supervisors involved in hiring a person through FCIP did not know their agency had accepted applicants under FCIP for that vacancy.

On the whole, 36 percent of supervisors who answered this question told us they did not know that they were considering applicants under the hiring authority that was, according to the CPDF, actually used to bring the person into the civil service.

It is not surprising that VEOA would generate the largest amount of confusion. It is an authority that is automatically generated by the act of considering any applicants outside the employing agency. If a supervisor asks for a list of candidates that already work for the Federal Government, the supervisor will automatically also get any qualified VEOA applicants. However, the rules for supervising hires from each group are not the same. Employees who have already successfully completed a probationary period are generally not subject to another one. However, supervisors have an obligation to assess VEOA selectees who have not completed a Federal civil service probationary period as new hires and to use the probationary period to remove any of them who fail to prove they are assets to the Government. This requirement for a probationary period is the same as if the new hires were appointed through CE—although they are not hired that way.⁵⁰ Because supervisors can obtain the VEOA new hire without using CE, they may fail to realize they even have a VEOA hire instead of an internal transfer who may have already successfully completed a probationary period.

These nuances require a substantial education on appointment authorities—and some supervisors may not be aware of the gaps in their knowledge. One supervisor who stated that no one discussed hiring authorities with him wrote in that “I already know the hiring authorities and responsibilities.” The supervisor told us that he

⁴⁹ The terms used for these authorities on the survey were “Civil Service Certificate,” “Veterans Employment Opportunity Act (VEOA),” “Veterans Recruitment Appointment (VRA)” and “Federal Career Intern Program (FCIP).”

⁵⁰ Individuals with prior Federal civilian service who are not truly “new” may have appeal rights during the first year of service. For more information, see: U.S. Merit Systems Protection Board, *Navigating the Probationary Period After Van Wersch and McCormick*, Washington, D.C., 2006, available at www.mspb.gov.

only accepted applications from CE and within the current agency, yet the use of CE would automatically trigger the acceptance of VEOA applications if any were submitted. He did not report that he had considered VEOA applications—even though the individual we asked about was a VEOA hire. While the supervisor believed he already knew the authorities and resultant responsibilities, it seems there was a gap in his knowledge of which he was unaware.

Another supervisor also stated there had been no discussion of authorities, but that prior experience had provided an education. This supervisor hired an individual under VRA, but did not realize VRA had been used, or that VRA had even been one of the authorities considered in the hiring process.

Both these examples raise some concerns that supervisors may believe they know enough, when in fact there are important gaps in their understanding of how employees are recruited and the importance of knowing which hiring authority was used. The system is so complicated—and often counter-intuitive—that some supervisors are unaware of critical gaps in their knowledge.

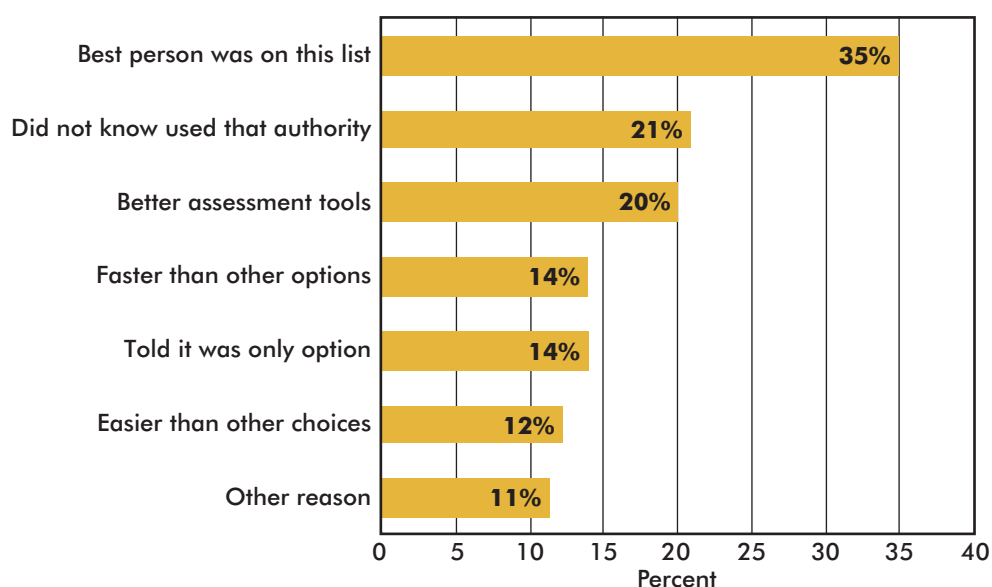
Another supervisor indicated that applications were accepted under the CE authority, which we described as “Civil Service Certificate [either from OPM or from a delegated examining unit].” Then, next to the FCIP option, the individual drew an arrow up to the CE option and wrote the question: “Same?” As discussed earlier in this report, they are not the same. They have different requirements for publicizing vacancy announcements, different training obligations, different probationary/trial period lengths, earn appeal rights at different rates and one is in the excepted service while the other is in the competitive service. Depending on the occupation, these authorities can also have different requirements for the process for distinguishing between qualified candidates. This supervisor hired an individual under FCIP without knowing there was a difference between FCIP and CE. This could lead to a failure to meet the training obligations, a failure to use the full FCIP trial period and misunderstandings regarding the hire’s due process and appeal rights if an adverse action became necessary.

Our survey also asked respondents **why** they had used a particular authority to hire the individual. The question allowed supervisors to select from a list of options to describe their reasons, and included a space to write in another answer. One option for the supervisors to select was, “I did not know I had used that authority.” Twenty-one percent of supervisors selected the “I did not know I had used that authority” option to describe why they had used a particular authority. The employees had been on board for at least 4 months before this survey was issued to the supervisors. If the supervisors were unaware of the hiring authority at that point, there is a very real potential that they were unaware of the specific post-selection responsibilities required by the authorities they used.

Given this result, it is not surprising that many of those supervisors who did know what authority was used based their decision to use an authority on something other than the responsibilities or specific flexibilities that came with the authority.

As seen in **Figure 4**, when asked the question above (why they had used a particular authority), 14 percent of supervisors said they were told the authority they used was their only option. Another 14 percent chose the authority because they believed it was faster than their other choices. Only 12 percent thought the authority they used was easier to use than their other options, while 20 percent thought it gave them the ability to use better assessment tools. However, the only answer that was selected more than a lack of knowledge as to what authority was used was the response “the best person was on this list.” This indicates that more than a knowledge of flexibilities, more than the desire to craft valid assessment tools and more than seeking speed, supervisors simply want to hire the person that impresses them the most—the best candidate.

Figure 4: Why Respondents Chose Their Particular Authority to Fill the Position



While it is good that supervisors want to hire the best candidate, it is important that they understand the obligations and consequences of choosing to use a particular authority. The two authorities that either always (FCIP) or sometimes (VRA) required training fortunately had a lower percentage of supervisors who were unaware of the authority used. While a quarter of both CE and VEOA supervisors said in response to this question that they did not know they had used those authorities, only 15 percent of VRA and 11 percent of FCIP supervisors involved in the hiring said in response to this question that they were unaware of the authority that had been used.

Thus, there may have been more of an effort to educate supervisors where training was a requirement of the authority. This conclusion was also suggested in the responses to our question, “*Who discussed with you the specific training and/or assessment responsibilities associated with each hiring authority that was considered?*” Forty-three percent of respondents overall told us no one had discussed this with them. However, while 42 to 48 percent of CE, VEOA and VRA supervisors said no

one had this conversation with them, only 27 percent of FCIP supervisors reported that no one had discussed the training and/or assessment responsibilities with them. (As noted earlier, FCIP is the one authority that will always have a training component.)

In addition to conversations with human resources staff, training and other sources of possible education, 25 percent of FCIP supervisors reported that their own supervisor had discussed the training and/or assessment responsibilities with them. While this number should be higher, it is a good start. It is also a better rate than for the other three authorities, which averaged 14 to 17 percent of supervisors having had a discussion about their responsibilities with their own supervisor.

This leads to a question that is not new but that has not been permanently resolved on a large-scale basis. When recruiting for a new employee, what responsibilities should belong to the staffing specialist, and what responsibilities should belong to the supervisor of the position being filled?

As stated earlier, hiring someone is not just about signing a form stating who has been selected for the position. There are many critical steps that precede the selection. For each one of these steps, it may not be completely clear whether it is a job for human resources or for the supervisor of the position being filled. The answer may often be that it is a job for both human resources and the supervisor, acting in concert.

Should human resources identify which recruitment authorities will be used, or is that a job for the supervisor of the position? Who is better able to identify the necessary competencies for the position, human resources or the future supervisor? Who is better able to decide if a work sample test is appropriate? Who is more capable of drafting structured interview questions that will accurately differentiate between candidates based upon the needs of the job? Who should determine what weight will be given to the outcome of one assessment tool (such as the structured interview) compared to the outcome of another assessment tool (such as the work sample test)?

Supervisors will typically know the job better than human resources, but human resources will (or should) often know the staffing principles and rules better than supervisors. Agencies, supervisors and human resources policy makers need to decide how much responsibility should lie with supervisors, and what duties remain with human resources staff.

The correct place to draw the line between a supervisor's responsibilities and those of human resources may not always be the same for all agencies. It may not even be the same for all environments within a single agency. It may even vary on a case-by-case basis. However, the division of responsibilities should be the result of a careful deliberation. Furthermore, wherever the line is drawn, the supervisors should be thoroughly educated about the portion that belongs to them.

At a minimum, no matter how much of the recruitment responsibility rests with human resources, supervisors need to know about the hiring authorities that are being considered for a position they will later supervise. If supervisors receive multiple referral lists using more than one authority, they should be educated on the positive aspects of each authority, as well as any potential drawbacks, before selecting a candidate from any particular recruitment authority.

Supervisors also must know about their responsibilities to train an employee when the appointment authority, as a matter of law, requires training. In addition, supervisors need to know about their responsibility to assess the candidate post-hire before the appointment is finalized—a responsibility that exists for all new Federal hires, irrespective of the legal authority under which they were hired. This means supervisors must know the purpose of the probationary or trial period, its length and their additional responsibilities during this period.

In short, no matter how much responsibility agencies give to the human resources staff, supervisors still need to know a lot in order to effectively meet their obligations regarding their new hires; because ultimately, supervisors are responsible for these individuals, not human resources.

FCIP on the Survey

Because the FCIP authority includes a training requirement, we asked FCIP supervisors involved in the hiring of their intern, *“Has anyone discussed with you the specific training responsibilities associated with the Federal Career Intern Program (FCIP) authority you used?”* Seventy-three percent of FCIP respondents said this discussion had taken place, while 7 percent were not sure if the discussion occurred. While this is a good start, there is a need for improvement.

As noted earlier, FCIP has quickly become the third most commonly used hiring authority in the Government. In FY 2005, nearly 10,000 new hires entered Government service through this authority. In the professional and administrative occupations, at entry grades GS-05 and GS-07, more than half of all new hires entered service through FCIP. These FCIP interns are a feeder group for future leaders in professional and administrative occupations, and thus can have a crucial long-term impact on the future success of the civil service. Given that the use of thorough assessment tools when selecting a new hire is not required for this authority, it is even more vital that supervisors take seriously their training and assessment responsibilities.

Also, as noted earlier, the FCIP authority was created to recruit individuals who will need training in order to succeed in their new positions. One requirement of the authority is that a “Career Intern shall participate in a formal program of training and job assignments to develop competencies that the OPM identifies as core to the Program, and the employing agency identifies as appropriate to the agency’s mission and needs.”⁵¹

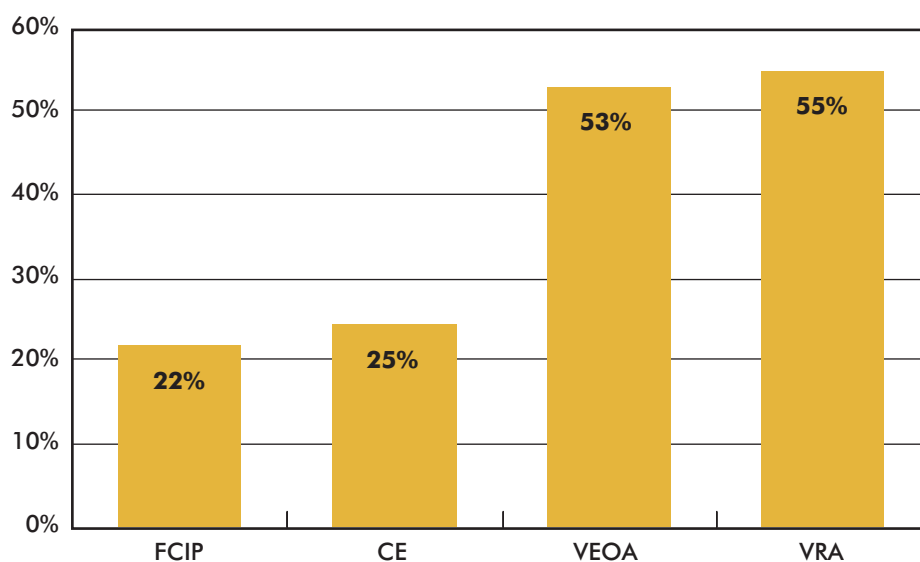
⁵¹ E.O. 13162 § 5.

When making the decision to hire, it is very difficult to assess the ability of individuals to do a task when they do not yet know how to do it. That is one reason why FCIP was created as an exception to CE—to enable supervisors to train the individuals and then assess how well they are able to put that training into practice. It could therefore be highly problematic if at least 20 percent of FCIP supervisors are not aware of their obligation to provide training under this authority. In our recent report, *Building a High-Quality Workforce: The Federal Career Intern Program*, we found that more than 20 percent of FCIP hires who completed their two year internship received 2 weeks or less of formal training over the course of those two years.⁵²

One possible reason for the popularity of FCIP is that no public announcement is required, and not every application must be read. Both of these features can mean faster recruitment. Half of FCIP supervisors reported filling their position in 6 weeks or less, while only 32 percent of CE supervisors reported that speed. Of those supervisors who told us why they used their particular authority, 35 percent of FCIP supervisors told us the ability to hire faster was a factor in their decision to use FCIP. Only 10 percent of CE supervisors made that same claim.

FCIP was also considered an easier authority to use. Twenty-eight percent of FCIP supervisors reported that they chose FCIP because it was easier than their other choices. What is particularly interesting is that while supervisors were concerned with the ease of making a selection, the ability to choose the best person was not as big a reason for picking FCIP, as can be seen in **Figure 5**, below.

Figure 5: Percent of Respondents for Each Authority Who Selected “Best Person Was on This List” as a Reason for Using That Hiring Authority



⁵² U.S. Merit Systems Protection Board, *Building a High-Quality Workforce, The Federal Career Intern Program*, Washington, DC, 2005, p. 42, available on line at www.mspb.gov.

As mentioned earlier, we asked respondents why they chose to use the authority they selected, and the answer that was given most often was that the respondents were able to reach the person they considered “best” through that authority. The ability to choose the best person was a factor for more than half of the supervisors who chose a veteran-status based authority (VRA or VEOA). Yet, CE was considered as helpful as FCIP when it came to hiring the best person. In fact, the ability to hire faster (35 percent) and the ease of the process (28 percent) were greater reasons for using FCIP than the quality of the individual that was reached via that authority (22 percent).

This prevalence of speed and ease over quality as a reason to use FCIP is of some concern, as FCIP does not require open competition. The decision to use a noncompetitive authority should be carefully thought out, after considering the costs and benefits of using an authority that (1) permits the agency to bypass both open competition and thorough pre-selection assessment, and (2) carries with it an obligation for extensive training. The use of the trial period becomes even more important as a tool for preventing the conversion of poorer quality individuals when there is less pre-hire assessment. However, as noted in our recent report on the Federal Career Intern Program, evidence suggests “that the trial period is not optimally being used.”⁵³

As we have shown, despite the important consequences of selecting a particular authority, there are indications from our survey that the decision to use any particular hiring authority has not always been carefully thought out. When survey respondents indicated that the person they selected appeared on more than one hiring authority’s referral list, we asked them why they selected from the authority they chose. One of the most common reasons given for selecting from the list in question was that when it came time to indicate the selection, this list was the first place the supervisor saw the selected person’s name. With all the post-hire differences between the authorities, the choice of hiring authority should be deliberate and strategic—not the result of random chance. This is particularly true of FCIP, which requires an investment of a potentially large amount of time and money to train the new hire.

Quality of the Newly Hired

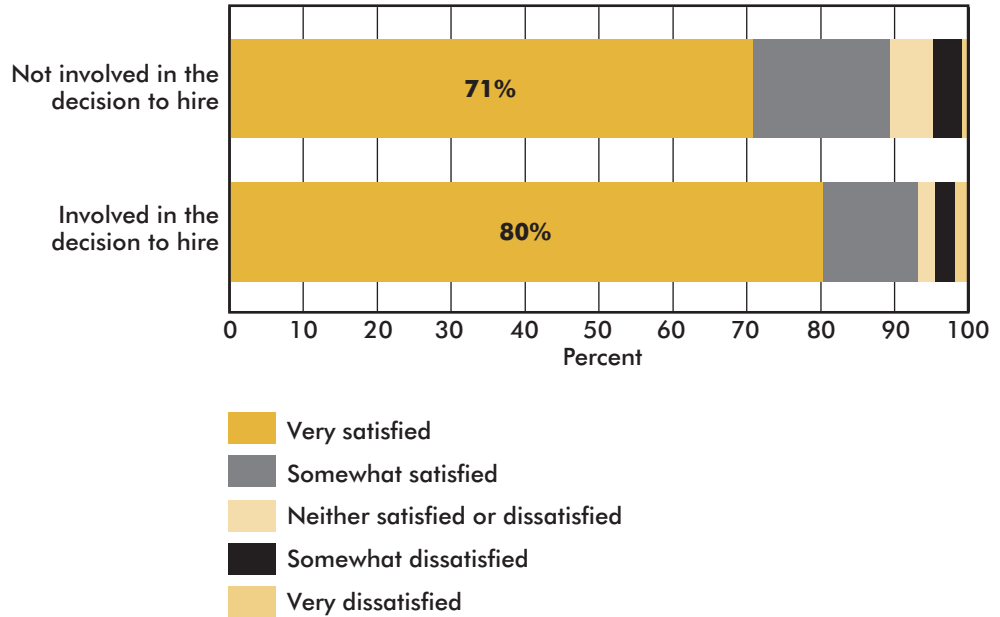
While some supervisors appear to lack important knowledge about the hiring authorities they used—and therefore their obligations as supervisors—supervisors’ perceptions of the quality of their new hires appears to be rather good overall. Seventy-six percent of all supervisors reported that they were very satisfied with their candidate overall, with another 15 percent somewhat satisfied. In total, over 90 percent of CE, FCIP, VEOA and VRA supervisors were either very or somewhat satisfied with their hires.

While the authority used did not seem to impact satisfaction very much, the supervisors’ involvement in the hiring process did have an impact. As can be seen in

⁵³ Ibid., pp. 34-35.

Figure 6, supervisors were more likely to describe themselves as “very satisfied” with the quality of the individual if they had been involved in the hiring process.

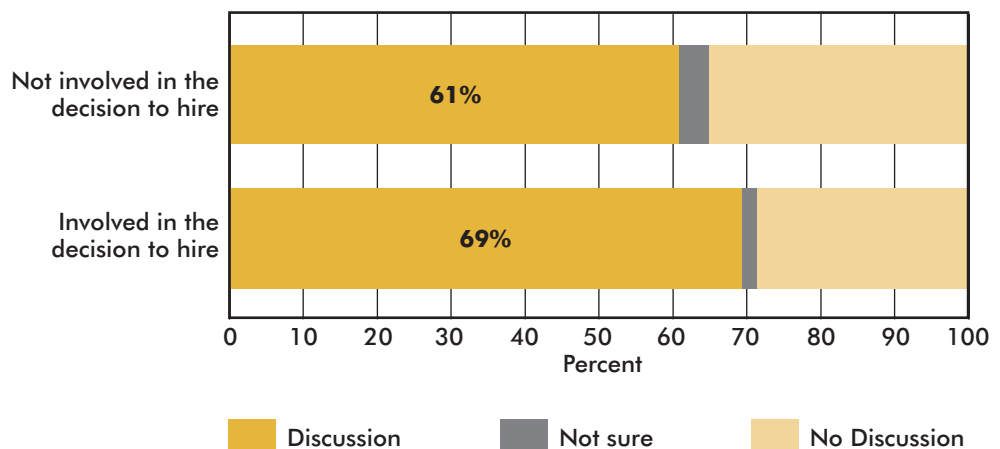
Figure 6: Supervisory Involvement in the Decision to Hire and Supervisory Satisfaction with the Individual Hired



Probationary or Trial Period Assessment

Supervisors were also more likely to be aware of their probationary and trial period responsibilities if they had been involved in the hiring process. We asked supervisors if anyone had discussed with them the purpose of the trial or probationary period for the individual selected. As can be seen in **Figure 7**, those supervisors who were involved in the decision to hire were somewhat more likely to have experienced this discussion.

Figure 7: Supervisory Involvement in the Decision to Hire and Discussions Regarding Probation or Trial Period Responsibilities



While our question asked supervisors if they had been told of the trial or probationary period, we did not ask them to tell us the details of their understanding. However, we did offer an opportunity at the end of the survey for supervisors to make any comments they felt relevant to the survey. Based upon what they chose to write, it appears that a number of supervisors are operating based upon incorrect information when it comes to the probationary or trial period.

One respondent with 4 years as a supervisor told us he was confused by our question, stating:

Employee's probationary period is up [within the next 3 months]. I'm unsure what you mean when you ask if anyone has discussed the trial or probationary period for this individual with me. All employees (newly hired) are under a 1-year probationary period.

The employee in question was appointed under FCIP. FCIP employees do not have a 1-year probationary period; they have a 2-year trial period. The supervisor's comments indicate that he or she was mistaken by a full year on this hire's remaining time in an assessment phase before the appointment to the civil service could be finalized.

Several other VRA and FCIP supervisors made a similar mistake and said that there was a 1-year probationary period, when in fact there was a 2-year trial period.

Other respondents erroneously believed there was no trial period at all. One supervisor told us he hired his VRA candidate immediately after the person retired from active duty. When asked if the person was in a probationary or trial period, the supervisor indicated "not applicable." This answer is most likely wrong. Only individuals who have previously completed a civil service probationary or trial period can be appointed under any of these authorities without a new probationary or trial period. (Our survey method for selecting new hires based on the length of service makes it impossible that this person could have completed such a period, unless the data was entered incorrectly into the CPDF.) It appears the supervisor simply did not know that former military hires are required to serve a 2-year trial period on a VRA appointment. (If this had been a VEOA hire, there still would have been a probationary period.)

As noted in our report, *The Probationary Period: A Critical Assessment Opportunity*, the probationary period cannot be used effectively if supervisors are not aware that it is in effect.⁵⁴ While there are good reasons for varying lengths of the probationary or trial period based on the need to assess a candidate for a longer period of time, it is crucial that supervisors be educated on its existence, purpose and length. Because the hiring authority determines the length of the probationary or trial period, supervisors need to be educated on the details of the terms and responsibilities that come with the hiring authorities they use.

⁵⁴ U.S. Merit Systems Protection Board, *The Probationary Period: A Critical Assessment Opportunity*, Washington, D.C., 2005, p. 31, available at www.mspb.gov.

Conclusions and Recommendations

There are many hiring authorities receiving a significant level of use, with no single authority accounting for a majority of new hires. Less than one-third of new hires in 2005 came from CE—the traditional hiring authority that is also open to all qualified U.S. citizens. The top four authorities combined accounted for two-thirds of new hires, with the remaining third coming from a combination of all other new-hire appointment authorities.

Our study of the four most commonly used authorities found that:

- Thirty-six percent of supervisors did not recognize that they had accepted applications under the authority that was used to hire their employee, with the percent who were unaware varying based upon the authority used.
- The authority that was used to hire an individual appeared to often be a product of convenience or coincidence rather than the result of a thoughtful and deliberate choice to effectively use the most appropriate hiring authority.
- Confusion about the different authorities caused misunderstandings regarding the length of an individual hire's probationary or trial period, potentially hampering the ability of the supervisors to use that period to effectively evaluate that person.
- Forty-three percent of supervisors reported that no one discussed with them the training or assessment responsibilities associated with the hiring authorities they considered using. It may be difficult for supervisors to meet their training and assessment obligations if they are unaware the obligations exist.

We also found that involvement in the hiring process made a difference in supervisors' satisfaction with the person selected. Supervisors who were involved in hiring decisions reported being more satisfied with the individual hired than those supervisors who were not involved. However, 44 percent of supervisors responding to our survey indicated they were not involved in the process of hiring the employee about whom we asked.

Our findings also confirmed the importance of making strategic decisions about recruitment for agency workforces—decisions that look beyond any single selection. It is important for agencies to understand that different hiring authorities bring in different demographic groups.

Ultimately, agencies are responsible for ensuring that they have workforces that represent society in keeping with the merit principles. For this reason, agencies and supervisors should have well-rounded recruitment strategies to ensure that all segments of society are represented in the Federal workforce. The strategies should include monitoring the composition of that workforce in relationship to the hiring authorities they have used to ensure that the decisions they make in terms of the use of various hiring authorities are helping them to achieve this objective. Extensive use of any authority that results in the disproportionate hiring of any segment of society should be balanced with other authorities to ensure a pattern does not develop of hiring from only select groups.

Supervisors should make a deliberate and informed choice to use a particular authority, and meet their obligations under the hiring authority they use. This means not only providing any required training, but also seriously assessing the candidate during the trial or probationary period to ensure the individual is successful in the position before the appointment is finalized.

Agencies should ensure that supervisors are educated on the terms of each hiring authority that is considered or used so that they will fully understand their responsibilities, be able to make strategic choices about what authority best serves their particular needs and understand the demographic consequences of their chosen hiring authorities.

More supervisors should be involved with hiring decision-making activities. Supervisors who were involved in the hiring process reported a greater level of overall satisfaction with their employees and a greater awareness of their responsibilities to assess a hire during the probationary or trial period.

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