

**Subpart E—Retention Standing****§ 351.501 Order of retention—competitive service.**

(a) Competing employees shall be classified on a retention register on the basis of their tenure of employment, veteran preference, length of service, and performance in descending order as follows:

(1) By tenure group I, group II, group III; and

(2) Within each group by veteran preference subgroup AD, subgroup A, subgroup B; and

(3) Within each subgroup by years of service as augmented by credit for performance under § 351.504, beginning with the earliest service date.

(b) Groups are defined as follows:

(1) Group I includes each career employee who is not serving a probationary period. (A supervisory or managerial employee serving a probationary period required by subpart I of part 315 of this title is in group I if the employee is otherwise eligible to be included in this group.) The following employees are in group I as soon as the employee completes any required probationary period for initial appointment:

(i) An employee for whom substantial evidence exists of eligibility to immediately acquire status and career tenure, and whose case is pending final resolution by OPM (including cases under Executive Order 10826 to correct certain administrative errors);

(ii) An employee who acquires competitive status and satisfies the service requirement for career tenure when the employee's position is brought into the competitive service;

(iii) An administrative law judge;

(iv) An employee appointed under 5 U.S.C. 3104, which provides for the employment of specially qualified scientific or professional personnel, or a similar authority; and

(v) An employee who acquires status under 5 U.S.C. 3304(c) on transfer to the competitive service from the legislative or judicial branches of the Federal Government.

(2) Group II includes each career-conditional employee, and each employee serving a probationary period under subpart H of part 315 of this chapter. (A

supervisory or managerial employee serving a probationary period required by subpart I of part 315 of this title is in group II if the employee has not completed a probationary period under subpart H of part 315 of this title.) Group II also includes an employee when substantial evidence exists of the employee's eligibility to immediately acquire status and career-conditional tenure, and the employee's case is pending final resolution by OPM (including cases under Executive Order 10826 to correct certain administrative errors).

(3) Group III includes all employees serving under indefinite appointments, temporary appointments pending establishment of a register, status quo appointments, term appointments, and any other nonstatus nontemporary appointments which meet the definition of provisional appointments contained in §§ 316.401 and 316.403 of this chapter.

(c) Subgroups are defined as follows:

(1) Subgroup AD includes each preference eligible employee who has a compensable service-connected disability of 30 percent or more.

(2) Subgroup A includes each preference eligible employee not included in subgroup AD.

(3) Subgroup B includes each non-preference eligible employee.

(d) A retired member of a uniformed service is considered a preference eligible under this part only if the member meets at least one of the conditions of the following paragraphs (d)(1), (2), or (3) of this section, except as limited by paragraph (d)(4) or (d)(5):

(1) The employee's military retirement is based on disability that either:

(i) Resulted from injury or disease received in the line of duty as a direct result of armed conflict; or

(ii) Was caused by an instrumentality of war incurred in the line of duty during a period of war as defined by sections 101 and 301 of title 38, United States Code.

(2) The employee's retired pay from a uniformed service is not based upon 20 or more years of full-time active service, regardless of when performed but not including periods of active duty for training.

(3) The employee has been continuously employed in a position covered

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by this part since November 30, 1964, without a break in service of more than 30 days.

(4) An employee retired at the rank of major or above (or equivalent) is considered a preference eligible under this part if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code, and meets one of the conditions covered in paragraph (d)(1), (2), or (3) of this section.

(5) An employee who is eligible for retired pay under chapter 67 of title 10, United States Code, and who retired at the rank of major or above (or equivalent) is considered a preference eligible under this part at age 60, only if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code.

[51 FR 319, Jan. 3, 1986, as amended at 56 FR 10142, Mar. 11, 1991; 60 FR 3062, Jan. 13, 1995; 62 FR 62500, Nov. 24, 1997]

## § 351.502 Order of retention—excepted service.

(a) Competing employees shall be classified on a retention register in tenure groups on the basis of their tenure of employment, veteran preference, length of service, and performance in descending order as set forth under § 351.501(a) for competing employees in the competitive service.

(b) Groups are defined as follows:

(1) Group I includes each permanent employee whose appointment carries no restriction or condition such as conditional, indefinite, specific time limit, or trial period.

(2) Group II includes each employee:

(i) Serving a trial period; or

(ii) Whose tenure is equivalent to a career-conditional appointment in the competitive service in agencies having such excepted appointments.

(3) Group III includes each employee:

(i) Whose tenure is indefinite (i.e., without specific time limit), but not actually or potentially permanent;

(ii) Whose appointment has a specific time limitation of more than 1 year; or

(iii) Who is currently employed under a temporary appointment limited to 1 year or less, but who has completed 1 year of current continuous service under a temporary appointment with

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no break in service of 1 workday or more.

[60 FR 3063, Jan. 13, 1995]

## § 351.503 Length of service.

(a) All civilian service as a Federal employee, as defined in 5 U.S.C. 2105(a), is creditable for purposes of this part. Civilian service performed in employment that does not meet the definition of *Federal employee* set forth in 5 U.S.C. 2105(a) is creditable for purposes of this part only if specifically authorized by statute as creditable for retention purposes.

(b)(1) As authorized by 5 U.S.C. 3502(a)(A), all active duty in a uniformed service, as defined in 5 U.S.C. 2101(3), is creditable for purposes of this part, except as provided in paragraphs (b)(2) and (b)(3) of this section.

(2) As authorized by 5 U.S.C. 3502(a)(B), a retired member of a uniformed service who is covered by § 351.501(d) is entitled to credit under this part only for:

(i) The length of time in active service in the Armed Forces during a war, or in a campaign or expedition for which a campaign or expedition badge has been authorized; or

(ii) The total length of time in active service in the Armed Forces if the employee is considered a preference eligible under 5 U.S.C. 2108 and 5 U.S.C. 3501(a), as implemented in § 351.501(d).

(3) An employee may not receive dual service credit for purposes of this part for service performed on active duty in the Armed Forces that was performed during concurrent civilian employment as a Federal employee, as defined in 5 U.S.C. 2105(a).

(c)(1) The agency is responsible for establishing both the service computation date, and the adjusted service computation date, applicable to each employee competing for retention under this part. If applicable, the agency is also responsible for adjusting the service computation date and the adjusted service computation date to withhold retention service credit for noncreditable service.

(2) The service computation date includes all actual creditable service under paragraph (a) and paragraph (b) of this section.