

## Office of Personnel Management

## § 351.705

employee must meet all of the conditions required for selection and entry into the program.

[51 FR 319, Jan. 3, 1986, as amended at 60 FR 3063, Jan. 13, 1995]

### § 351.703 Exception to qualifications.

An agency may assign an employee to a vacant position under § 351.201(b) or § 351.701 of this part without regard to OPM's standards and requirements for the position if:

(a) The employee meets any minimum education requirement for the position; and

(b) The agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

[56 FR 65417, Dec. 17, 1991]

### § 351.704 Rights and prohibitions.

(a)(1) An agency may satisfy an employee's right to assignment under § 351.701 by assignment to a vacant position under § 351.201(b), or by assignment under any applicable administrative assignment provisions of § 351.705, to a position having a representative rate equal to that the employee would be entitled under § 351.701. An agency may also offer an employee assignment under § 351.201(b) to a vacant position in lieu of separation by reduction in force under 5 CFR part 351. Any offer of assignment under § 351.201(b) to a vacant position must meet the requirements set forth under § 351.701.

(2) An agency may, at its discretion, choose to offer a vacant other-than-full-time position to a full-time employee or to offer a vacant full-time position to an other-than-full-time employee in lieu of separation by reduction in force.

(b) Section 351.701 does not:

(1) Authorize or permit an agency to assign an employee to a position having a higher representative rate;

(2) Authorize or permit an agency to displace a full-time employee by an other-than-full-time employee, or to satisfy an other-than-full-time employee's right to assignment by assigning the employee to a vacant full-time position.

(3) Authorize or permit an agency to displace an other-than-full-time employee by a full-time employee, or to satisfy a full-time employee's right to assignment by assigning the employee to a vacant other-than-full-time position.

(4) Authorize or permit an agency to assign a competing employee to a temporary position (i.e., a position under an appointment not to exceed 1 year), except as an offer of assignment in lieu of separation by reduction in force under this part when the employee has no right to a position under § 351.701 or § 351.704(a)(1) of this part. This option does not preclude an agency from, as an alternative, also using a temporary position to reemploy a competing employee following separation by reduction in force under this part.

(5) Authorize or permit an agency to displace an employee or to satisfy a competing employee's right to assignment by assigning the employee to a position with a different type of work schedule (e.g., full-time, part-time, intermittent, or seasonal) than the position from which the employee is released.

[51 FR 319, Jan. 3, 1986, as amended at 56 FR 65417, Dec. 17, 1991; 60 FR 3063, Jan. 13, 1995; 63 FR 63591, Nov. 16, 1998]

### § 351.705 Administrative assignment.

(a) An agency may, at its discretion, adopt provisions which:

(1) Permit a competing employee to displace an employee with lower retention standing in the same subgroup consistent with § 351.701 when the agency cannot make an equally reasonable assignment by displacing an employee in a lower subgroup;

(2) Permit an employee in subgroup III-AD to displace an employee in subgroup III-A or III-B, or permit an employee in subgroup III-A to displace an employee in subgroup III-B consistent with § 351.701; or

(3) Provide competing employees in the excepted service with assignment rights to other positions under the same appointing authority on the same basis as assignment rights provided to competitive service employees under § 351.701 and in paragraphs (a) (1) and (2) of this section.