

# Excepted Service Hiring Authorities

*Their Use and Effectiveness  
in the Executive Branch*



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**U.S. Office of Personnel Management**  
**Merit System Accountability and Compliance**  
**Agency Compliance and Evaluation**

*Special Study*

**Excepted Service**  
**Hiring Authorities:**  
*Their Use and Effectiveness*  
*in the Executive Branch*

**July 2018**

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## Executive Summary

The ability to hire the right people is one of the most important characteristics of a successful organization. Effective recruitment and selection reduces turnover, increases employee morale and engagement, and leads to higher productivity and organizational success. Hiring in today’s environment is competitive as well as challenging for Federal agencies, especially for mission-critical occupations. Clearly defining positions and their unique characteristics and effectively assessing the qualifications of applicants is critical to attracting and selecting the best candidate for the job.

Most positions in the Executive Branch are in the competitive service unless specifically excepted by statute, Executive Order, or by a determination of the U.S. Office of Personnel Management (OPM). The excepted service provides a more flexible approach to hiring to support agency mission needs when it is “impracticable” to apply traditional examining methods.<sup>1</sup>

It has been over 40 years since OPM has conducted a formal study of the excepted service. In its 1973 report,<sup>2</sup> the Civil Service Commission described the excepted service as a tangled web of laws, regulations, authorities, and exceptions. This is abundantly true today – excepted service hiring has evolved both in terms of complexity and scope of application. Data collected on Federal hiring points to an increasing use of exceptions to competitive service examining in the Executive Branch, with particular emphasis on agency-unique exceptions. Most excepted service occupied positions (82.1 percent in 2015) were filled using hiring authorities granted by Congress or Executive Order, rather than authorized by OPM through regulation. Many of those authorities place the resulting hiring processes outside of the operation of title 5 of the U.S. Code. Because of the complex nature of the excepted service, OPM narrowed the focus of this study to excepted service hiring under title 5 in the Executive Branch to assess: (1) the extent to which agencies use title 5 excepted service hiring authorities; (2) the effectiveness of excepted service hiring policies and practices; and (3) compliance with related regulations and laws.

A review of usage patterns of title 5 excepted service hiring authorities Governmentwide over a five-year period yielded some interesting results. Between FY12 and FY16, agencies used 51 of the 62 legal authorities that were available at the time. In addition, 92 percent of excepted service appointments were made using only 11 of the 51 legal authorities actually used by agencies during this period. Agencies may be unaware that some of these authorities exist; however, the non-use and low use of a significant number of excepted service legal authorities suggests it might be useful to explore ways to streamline the current authorities, where appropriate, as they may have become ineffective or obsolete. OPM also found some hiring authorities have similar purposes, which may indicate additional opportunities for streamlining.

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<sup>1</sup> The excepted service also encompasses positions of a confidential or policy-determining nature, which are filled through separate procedures, not discussed in this report.

<sup>2</sup> The Civil Service Commission, OPM’s predecessor agency, conducted the review.

Agencies are using excepted service hiring authorities to support their missions. About 55 percent of agency mission-critical occupation (MCO) positions were filled through excepted service hiring authorities under both title 5 and non-title 5. Study data also shows that appointments made between FY13 and FY16 under the Veterans Recruitment Appointment (VRA) and Severe Physical Disability<sup>3</sup> excepted service hiring authorities increased by 59 percent and 66 percent, respectively, pointing to successful efforts to support the goals set forth in Governmentwide strategic plans established to improve the hiring of individuals in these two groups. However, the complexities inherent in excepted service hiring make it important for hiring managers and human resources professionals to understand the nuances of the excepted service in order to take advantage of the flexibilities it provides. Agency usage patterns and hiring practices suggest knowledge gaps exist in this area, which possibly create barriers to a more effective use of excepted service hiring authorities.

Agencies are missing an opportunity to implement more strategic, innovative, and targeted recruitment activities to reach highly qualified applicants. For example, agencies using Schedule A hiring authorities are required, in most cases, to develop their own unique qualification standards or modify existing OPM standards to meet agency-specific needs. Study results indicate agencies are applying OPM qualification standards instead. The purpose of these authorities is to allow agencies to create the assessment tools/methods most practical when hiring for those positions.

Another inherent flexibility in excepted service hiring is public notice generally is not a requirement,<sup>4</sup> which allows agencies to focus on candidates who have been identified and recruited through sources and tools designed to meet their own unique skill needs. However, 48 percent of the recruitment actions OPM reviewed contained only the resume of the selectee(s) and no information on other applicants, specific recruitment sources used, or even information about how the one selectee was identified with no evidence of outreach. This made it impossible for OPM to determine if fair and open competition consistently occurs when agencies use excepted service hiring authorities.

OPM also found many agencies do not have policies in place or their policies do not sufficiently cover important aspects of how authorities are to be implemented. Only 56 percent of agencies have a policy on handling applications for excepted service hiring, as required. Only 40 percent of agencies have policies regarding how to apply priority reemployment rights for certain individuals, and only half have a documented process for affording veterans' preference in excepted service hiring.

Based on the findings of the study, this report contains several actions OPM will pursue and recommendations for agencies to consider.

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<sup>3</sup> Severe Physical Disability is one of three categories of disabilities that could make an applicant eligible for appointment under 5 C.F.R. 213.3102(u). The other two are Psychiatric Disability and Intellectual Disability.

<sup>4</sup> But see *Dean v. Office of Personnel Management*, 115 M.S.P.R. 157 (2010), where the Merit Systems Protection Board suggested that the failure to post deprives preference eligibles of the value of their preference.

## Background

The Federal Government consists of three types of services – the Senior Executive Service, the competitive service, and the excepted service.

*The Senior Executive Service (SES)* leads America’s Federal workforce. As described in section 3131 of title 5, U.S. Code, the SES was established to ensure executive management of the Federal Government is responsive to the needs, policies, and goals of the Nation. Members of the Senior Executive Service hold key positions just below top Presidential appointees.

*The competitive service* consists of all civil service positions in the Executive Branch of the Federal Government with some exceptions, which are defined in section 2102 of title 5, U.S. Code. Individuals must go through a competitive examining process open to all applicants. This process should consist of a determination of minimum qualifications through an evaluation of experience and/or education and one or more assessments of the competencies (knowledge, skills, and abilities) necessary for successful job performance.

*The excepted service*, as defined in section 2103 of title 5, U.S. Code, consists of all positions in the Executive Branch that are specifically excepted from the competitive service either by statute, the President, or by OPM, and that are not in the Senior Executive Service. The excepted service enables agencies to fill positions for which it is “impracticable to examine” (these positions are placed by OPM in a category called “Schedule A”) or “not practicable to hold a *competitive* examination” (“Schedule B”). The excepted service also encompasses hiring authorities created because the competitive service requirements “make impracticable the adequate recruitment of sufficient numbers” of students or recent graduates (Schedule D).

Agencies should be aware that 5 U.S.C. § 3320 generally requires that an agency “shall select for appointment to each vacancy in the excepted service in the executive branch ... in the same manner and under the same conditions required for the competitive service by sections 3308-3318 of this title.” (Today, selections covered by section 3319 would be available as an alternative to selections under sections 3317 and 3318.) In 5 CFR part 302, OPM established procedures that would fulfill this requirement, while still providing greater flexibility. To withstand challenges, agencies need to be able to demonstrate that they met part 302 requirements.

To appreciate more fully the purpose and intent behind excepted service hiring, it is important to understand the history that gave rise to its current-day use.

## Historical Context

Before a first attempt at establishing the Civil Service was enacted in **1871**, Federal employee hiring was often referred to as the “spoils system” because it was based largely on political party affiliation. The 1871 legislation, and especially the Civil Service Act of **1883** (often called the

Pendleton Act) changed that. The Act created the Civil Service Commission (CSC)<sup>5</sup>, replaced the “spoils system” with the “merit system,” and recognized that certain positions should not be part of the “merit system.” The Act simultaneously created the competitive service and the first exceptions to competitive service--hiring under Schedule A and Schedule B authorities.

However, over time, the lines between the competitive service and the excepted service became increasingly blurred, as employees occupying positions in both services had essentially the same status and rights. In an effort to create clearer distinctions between the two services, President Eisenhower directed the CSC to review the justifications for all Schedule A positions and redefine the requirements for these positions. The resulting Commission Report of 1956<sup>6</sup> led to the creation of the Schedule C appointing authority and the redefinition of Schedules A and B authorities. The 1956 definitions for these three schedules are the same as currently used today.

While these new definitions helped clarify the differences between the two services and how and when they should each be applied, over time excepted service hiring grew more complex. In particular, the number of statutory exceptions steadily increased. Because statutory exceptions are directly tied to the unique missions and goals of agencies that use them, the number of underlying legal bases for these exceptions also grew. This prompted Congress to request a new study on the excepted service be conducted by the CSC. In its 1973 report, the CSC described the excepted service as a tangled web of laws, regulations, authorities, and exceptions.<sup>7</sup> This is abundantly true today. The study focused on exploring the bases for statutory exceptions and reasons for continuing their use, especially in light of competitive service hiring flexibilities established at that time. Recommendations as to whether or not there was a continued need for the exceptions were strictly from a technical HR point of view and did not include verification of agencies’ actual use of the excepted service policies or practices they reported to the CSC, which was beyond the scope of the study.

Twenty-four years later, the Government Accountability Office (GAO) conducted a study to take a more comprehensive look at the excepted service. In its 1997 study<sup>8</sup>, GAO set out to describe: (1) the distribution of excepted service employees Governmentwide; (2) the various legal bases for appointments; (3) excepted service policy concerns; and (4) excepted service coverage by agency. In addition to addressing these objectives, GAO’s report discusses the various research and methodological difficulties it encountered as a result of the wide variety of rationales, legal bases, and scope of exceptions to the competitive service.

In 2012, OPM created an additional schedule, Schedule D, to cover the Pathways Programs, which are comprised of two new programs -- the Internship Program and the Recent Graduates Program -- and a revised existing program -- the Presidential Management Fellows (PMF) Program.<sup>9</sup> The Internship Program replaced the former Student Career Experience Program and

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<sup>5</sup> In 1978, the Civil Service Commission was reorganized into three new organizations: the Office of Personnel Management, the Merit Systems Protection Board, and the Federal Labor Relations Authority.

<sup>6</sup> *Extension and Definition of the Merit System*, Civil Service Commission, April 1956.

<sup>7</sup> *Statutory Exceptions to the Competitive Service*, Civil Service Commission, September 1973.

<sup>8</sup> *The Excepted Service: A Research Profile*, GAO, May 1997.

<sup>9</sup> Excepted Service, Career and Career-Conditional Employment; and Pathways Programs, 77 Fed. Reg. 28,194 (OPM May 11, 2012).

Student Temporary Employment Program, while the Recent Graduates Program provides another entry path to Federal careers for candidates who recently graduated from qualifying education institutions or programs. The PMF program provides entry-level leadership development opportunities for advanced degree candidates.

In August 2016, GAO issued a report based on its study of hiring authorities. The report<sup>10</sup> focused on the extent to which federal hiring authorities used in FY14 were meeting selected agency needs. In particular, GAO looked at (1) hiring authority usage, (2) whether agencies and OPM assessed the effectiveness of hiring authorities, and (3) how OPM ensured that agencies understood how to use hiring authorities effectively. GAO found that of the 105 hiring authorities available, agencies used 20 hiring authorities to fill 91 percent of job vacancies in FY14, and the remaining nine percent of appointments were filled using the 85 remaining hiring authorities. Appointments studied by GAO included those in the competitive service and excepted service, under title 5 and non-title 5 authorities. Through this study GAO concluded that agencies and OPM would benefit from measuring the effectiveness of hiring authorities and identify ways to streamline the current hiring authorities to help improve the hiring process.

This historical information provides a valuable backdrop for the present study. Since its inception, the exclusive reason excepted service hiring authorities exist is to enable agencies to fill positions for which it is not practical or feasible to use traditional, competitive examining procedures. However, the growing complexity of the excepted service creates challenges to conducting a comprehensive assessment of the usage and effectiveness of the various hiring authorities. A few key observations emerge from these historical studies and analysis of hiring trends:

*Although exceptions to the competitive service may be granted by statute, the President, or OPM, the most widely used exceptions are statutory.*

*Because the scope and impact of exceptions varies widely, a Governmentwide comparative analysis of all excepted service hiring authorities was not practical.*

*Because there are numerous justifications for agency-unique exceptions to competitive service hiring, it is a challenge to monitor effectively how they are used and whether there is a continued need for their use.*

As OPM planned this study, it became evident that a narrow scope was needed to identify very specific study objectives that would yield meaningful Governmentwide results. These key observations helped inform the purpose and methodology for the study.

## **Purpose of this Study**

Embedded in OPM's mission is the establishment of human capital regulations, policies, programs and related guidance for Federal agencies. OPM also is charged with practicing

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<sup>10</sup> *Federal Hiring: OPM Needs to Improve Management and Oversight of Hiring Authorities*, GAO, August 2016.

responsible stewardship of Federal human capital management by conducting oversight to determine whether agency human capital programs and practices are compliant with applicable law and effectively support agencies’ missions and goals. It is because of OPM’s statutory oversight responsibility that we conducted this study.

*OPM conducted this study to assess:*

- *the extent to which agencies use the identified excepted service hiring authorities,*
- *the effectiveness of excepted service hiring policies and practices, and*
- *the areas of non-compliance with related laws and regulations*

## Methodology

OPM analyzed different sets of data from differing timeframes to assess usage of hiring authorities, effectiveness of policies and practices, and compliance with laws and regulations. Table 1 outlines the different approaches used and the objectives behind each approach.

**Table 1 – Approaches to Data Analysis**

| Study Goal    | Data Used             | Timeframe                      | Objective   |
|---------------|-----------------------|--------------------------------|---|
| Usage         | FedScope              | 1995-2015                      | Identify employee population trends across the three services.  |
| Usage         | FedScope              | 1995-2015                      | Identify employee population trends within the excepted service.  |
| Usage         | EHRI-SDM              | FY12-FY16                      | Identify hiring trends across three groups of excepted service hiring authorities – title 5, non-title 5, and ZLM .                 |
| Usage         | EHRI-SDM              | FY12-FY16                      | Identify hiring trends within the excepted service, title 5 .   |
| Usage         | EHRI-SDM              | Review period (7/1/15-6/30/16) | Compare usage of ten selected authorities vs. all other title 5 authorities for the 15 agencies studied vs. the rest of Government. |
| Effectiveness | EHRI-SDM              | Review period (7/1/15-6/30/16) | Compare the proportion of mission critical occupations filled in the competitive service vs. the excepted service.                  |
| Effectiveness | Hiring Manager Survey | May 2017                       | Gauge perceptions about effectiveness and identify knowledge gaps.  |
| Effectiveness | HR Interviews         | September 2017                 | Gauge perceptions about effectiveness.  |
| Compliance    | Agency Policy Review  | February 2017                  | Assess regulatory compliance and effectiveness of guidance.   |
| Compliance    | Transactional Review  | Review period (7/1/15-6/30/16) | Assess compliance with excepted service laws, regulations, and merit system principles.   |
| Compliance    | HR Interviews         | September 2017                 | Identify knowledge gaps.  |

The following is a summary of the methodology OPM used to identify the hiring authorities, agencies, and case files for the transactional review. A more detailed explanation of this methodology may be found in the Appendix.

## Hiring Authorities

In order to determine the extent to which title 5 excepted service hiring authorities are used, OPM analyzed Governmentwide data from the Enterprise Human Resources Integration Statistical Data Mart (EHRI-SDM) on excepted service appointments made during FY15. Most hiring authorities are reported to OPM in EHRI-SDM with a unique legal authority code (LAC). The exception is a group of agency-unique Schedule A and B appointment authorities granted under as many as 158 various legal citations. Appointments made under any of the 158 legal authorities are reported to OPM using only one of two codes and a “generic” description of the authorities that does not distinguish the underlying, agency-unique authority being applied. Even though the specific authorities for these appointments cannot be identified, OPM included appointments reported to these two codes in our study and will refer to each of these two codes in this report as “authorities.”

OPM selected the eight most frequently reported excepted service hiring authorities, along with two that appeared to have a pattern of misapplication (law clerk and chaplain/chaplain assistant). These 10 hiring authorities represent 96 percent of title 5 excepted service hiring Governmentwide in FY15.

Schedule C appointing authorities are for political appointments to confidential or policy-setting positions. These authorities are not included as part of this study. Hiring authorities related to the Pathways Programs, which are under Schedule D, also are excluded from this study since OPM conducted a study on these programs in FY16.<sup>11</sup> In addition, appointments that are reported using a third “generic” reporting code (ZLM), which covers both title 5 and non-title 5 authorities, and were not readily distinguishable are excluded. However, we do describe overall usage of the ZLM code since it accounted for 20 percent of all excepted service hiring over a five-year period. Other authorities excluded from the study are used sporadically by a few agencies and not representative of Governmentwide usage.

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<sup>11</sup> *The Pathways Programs Their Use and Effectiveness Two Years After Implementation*, OPM, August 2016.

## Agencies

For this study, OPM identified the top 12 agencies that met at least two of the following criteria:

- ▶ at least 1,000 title 5 excepted service appointments in FY15;
- ▶ 50 percent or more of all hiring in FY15 were title 5 excepted service appointments; and
- ▶ 50 percent or more of excepted service appointments in FY15 used the top eight hiring authorities and associated legal authority codes selected for the study.

In addition, OPM included three agencies with low-volume excepted service hiring to provide representation from low-volume users. These 15 agencies participated in all phases of the study.

**Table 2 - Selected Agencies**

| Number | Agency                  | 1K+ ES Appointments | 50%+ Hiring in ES | 50%+ ES Appointments in Top 8 LACs |
|--------|-------------------------|---------------------|-------------------|------------------------------------|
| 1      | DHS                     | Y                   | N                 | Y                                  |
| 2      | DOI                     | Y                   | Y                 | Y                                  |
| 3      | USDA                    | Y                   | Y                 | Y                                  |
| 4      | DOC                     | Y                   | Y                 | Y                                  |
| 5      | HHS                     | Y                   | N                 | Y                                  |
| 6      | Navy                    | Y                   | N                 | Y                                  |
| 7      | DOJ                     | Y                   | N                 | Y                                  |
| 8      | Air Force               | Y                   | N                 | Y                                  |
| 9      | Army                    | Y                   | N                 | Y                                  |
| 10     | VA                      | Y                   | N                 | Y                                  |
| 11     | DoD-4 <sup>th</sup> Est | Y                   | N                 | Y                                  |
| 12     | SSA                     | Y                   | N                 | Y                                  |
| 13     | Education               | N/A                 | N/A               | N/A                                |
| 14     | USAID                   | N/A                 | N/A               | N/A                                |
| 15     | SEC                     | N/A                 | N/A               | N/A                                |

Source: EHRI-SDM, Governmentwide, FY15 (as of November 2017)

OPM also analyzed EHRI Governmentwide hiring data reported from FY12 to FY16, to identify Governmentwide excepted service hiring patterns and trends, with a special emphasis on agency-unique hiring authorities and authorities created to improve the Federal employment of veterans and individuals with disabilities.

## Agency Policies

To obtain a Governmentwide view of compliance with specific title 5 excepted service requirements, OPM collected and analyzed agency policies on excepted service hiring processes, as well as agency-developed qualification standards. OPM requested information from 69 agencies and received responses from 55. This group of 55 agencies included the 15 agencies selected for full participation in the study.

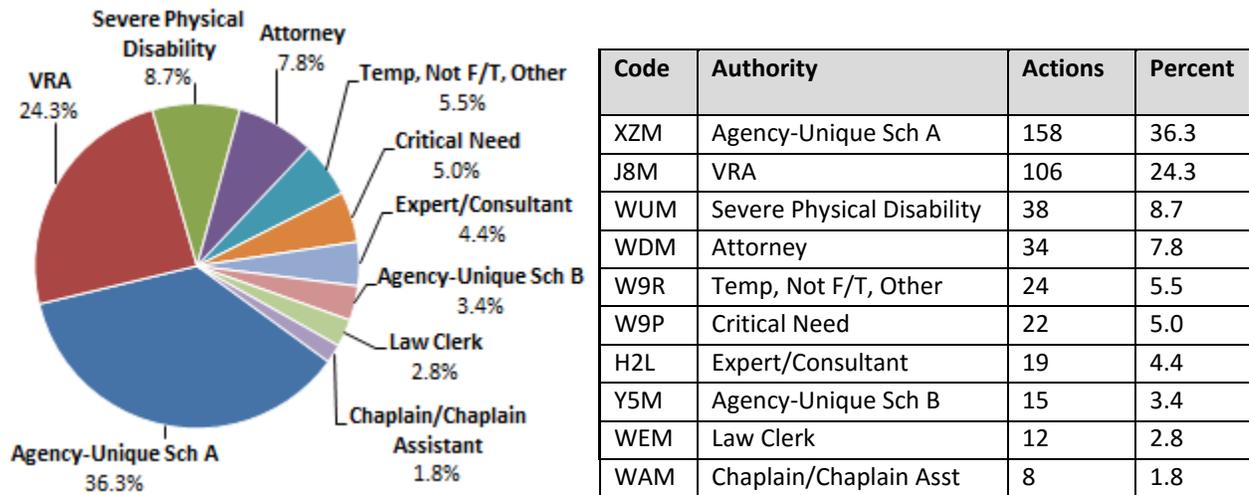
## Interviews

To gauge perceptions of HR staff, OPM conducted 147 interviews with 518 HR professionals at the 15 agencies selected for full participation in the study. The target interviewees were agency HR policy managers, special emphasis program managers (SEPMs), HR directors, and HR practitioners. Interviews were conducted at the department, component, and field installation levels to gauge how excepted service guidance is applied throughout the agencies.

## Transactional reviews

OPM reviewed a sample of hiring actions from among ten of the authorities shown in Figure 1 below. The sample consisted of a total of 436 hiring actions effected at the 15 agencies during the review period, July 1, 2015 to June 30, 2016. This review period was selected to ensure the sample included the most recent hiring actions captured in the most current, empirical hiring data available. Hiring action sample sizes for each agency are based on the overall volume of hiring under each hiring authority in FY15.

**Figure 1 - Hiring Actions Selected for Transactional Review**



Source: OPM Excepted Service Study, Transactional Review (May 2017)

## Surveys

OPM sent out 278,946 surveys to hiring managers<sup>12</sup> in the 15 agencies selected for full participation in the study and received responses from 41,203 individuals. Screen-out questions were used to excuse survey responses from hiring managers who did not have experience with excepted service hiring. Consequently, 12,337 survey responses are included in the study.

## Findings

OPM’s findings, along with recommendations, are discussed below and organized by three overarching areas of focus: *usage*, *effectiveness*, and *compliance with laws and regulations*.

<sup>12</sup> All employees coded as supervisors in EHRI in the 15 agencies identified in Table 1.

## Usage

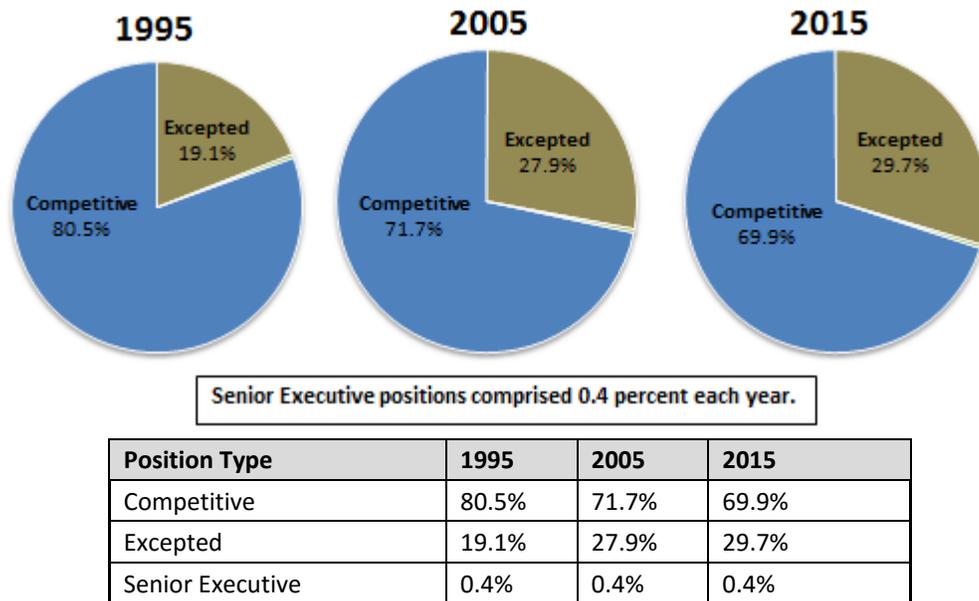
In assessing the extent to which excepted service hiring authorities are being used, OPM created a tiered data analysis approach to consider:

- Usage of all excepted service authorities (title 5 and non-title 5) for the 15 agencies that participated in the study, with particular focus on title 5 usage; and
- Usage of the ten excepted service hiring authorities selected for the study.

As discussed in this section, over 40 percent of excepted service hiring was done using non-title 5 hiring authorities. Over a five-year period, 92 percent of title 5 excepted service appointments were made using only 11 of the 62 hiring authorities available to agencies. Of the ten specific hiring authorities selected for this study, 71 percent of hiring in the 15 agencies studied occurred using only two of those authorities: agency-unique Schedule A and the Veterans Recruitment Appointment (VRA) authorities.

To help create the context for this study, OPM looked at Federal employee population trends in the three services over a 20-year period. As Figure 2 illustrates, the number of excepted service positions trended upward by almost 11 percentage points, with a corresponding downward trend in the number of competitive service positions. The number of Senior Executive Service positions remained constant.

**Figure 2 - Executive Branch Employment Trends by Service**

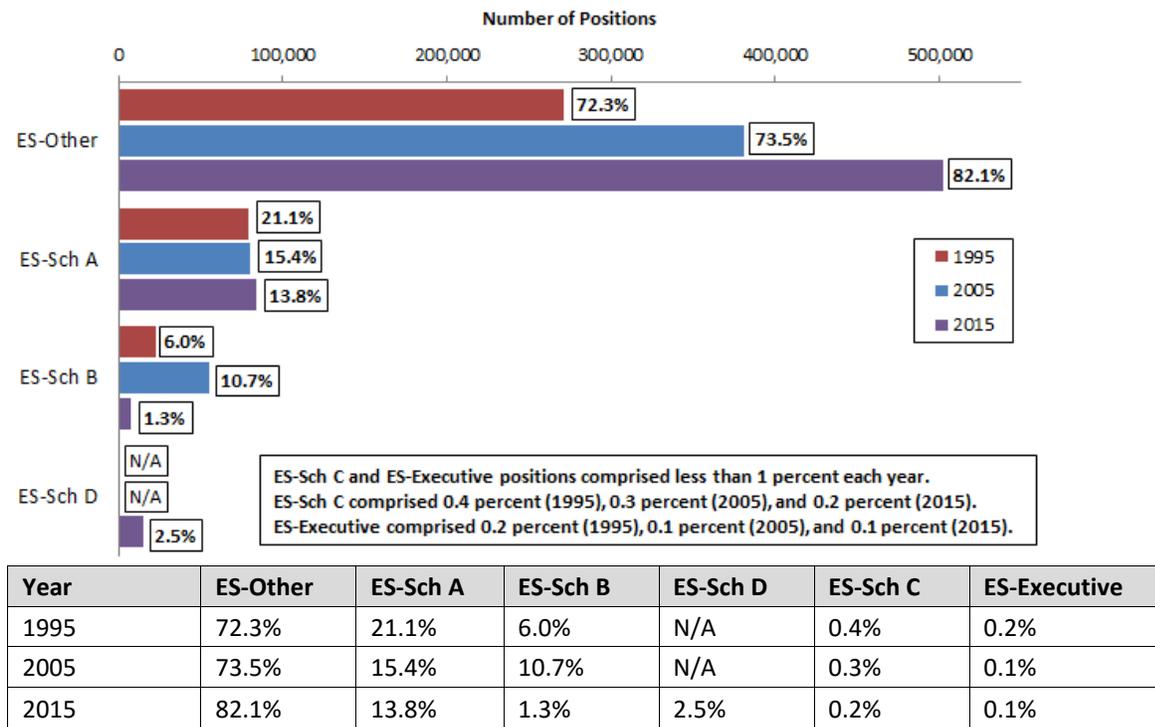


Sources: Central Personnel Data File (CPDF) 1995, FedScope<sup>13</sup> September 2005 and September 2015

<sup>13</sup> All EHRI and FedScope data is based on EHRI-SDM data. Along with CPDF data, they include all Executive Branch agencies, except Board of Governors of the Federal Reserve, Central Intelligence Agency, Defense

A closer look at the data in the excepted service category revealed the vast majority (82.1 percent in 2015) of excepted service occupied positions increasingly were filled using hiring authorities granted outside of the four OPM schedules (Schedules A, B, C, and D). A significant portion of these authorities are outside of title 5.

**Figure 3 - Executive Branch Excepted Service (ES) Employment**



Source: CPDF 1995, FedScope September 2005 and September 2015

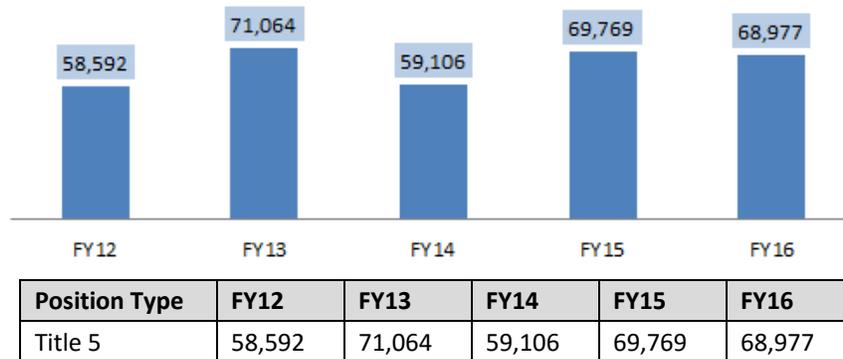
In looking at the aggregate usage of the 15 agencies selected for this study, OPM grouped appointing authorities into three major categories: title 5 hiring authorities, non-title 5 hiring authorities, and the ZLM authority (which may be based in any title). As previously discussed, OPM may except positions from the competitive service when it is not practicable to use traditional competitive examining processes. OPM exceptions may be Governmentwide or agency-unique. Non-title 5 exceptions to competitive examining are typically agency-unique because they are established by legislation or Executive Orders that support specific agency mission needs. ZLM is a generic catch-all code to describe any number of legal authorities based on statute, Executive Order, or regulation. Because use of ZLM is significant and is associated with underlying authorities that may be covered under any title of the U.S. Code, we used it only as another point of comparison related to overall usage.

Intelligence Agency, Foreign Service personnel at the State Department (included until March 2006), National Geospatial-Intelligence Agency, National Security Agency, Office of the Director of National Intelligence, Office of the Vice President, Postal Regulatory Commission, Tennessee Valley Authority, U.S. Postal Service, and White House Office.

*Title 5 Usage*

The Governmentwide or agency-unique exceptions to competitive examining OPM grants under title 5 are organized and published in schedules in the *Federal Register* annually, with monthly updates. A few title 5 exceptions are not included in the schedules because they are based on other underlying authorities, such as public laws (e.g., Veterans Recruitment Appointment). Figure 4 shows the number of excepted service appointments made under title 5 authorities has remained somewhat stable over the FY12-FY16 period, with significant dips in FY12 and FY14.

**Figure 4 - Title 5 Excepted Service Appointment Trends**



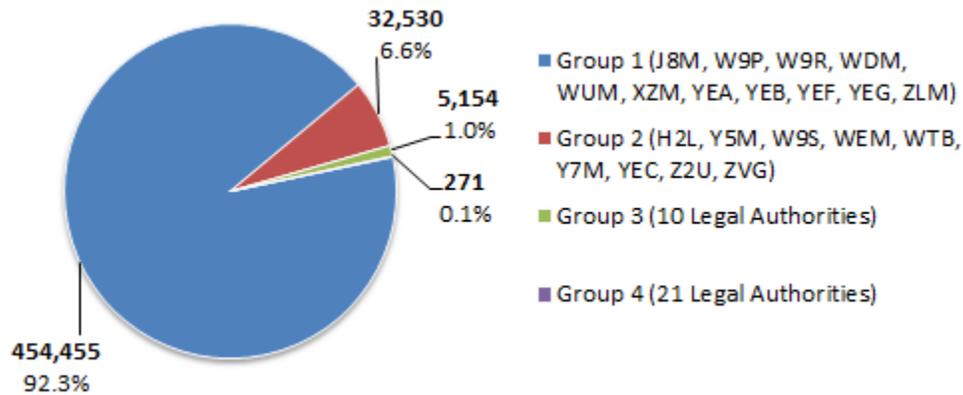
Source: EHRI-SDM, Governmentwide, FY12-FY16 (Data as of November 2017)

Agency-unique authorities under both Schedule A and Schedule B are exceptions to competitive examining in situations where it is impractical to apply traditional examining methods. However, the difference between the two schedules is that in most cases, agencies must create their own qualification standards or modify existing OPM standards when applying a Schedule A authority. In contrast, all appointments under Schedule B authorities are subject to the OPM qualification standards that apply to the respective occupation and grade level. Among the excepted service schedules, Schedule A accounted for 14 percent of occupied excepted service positions in FY15 and represents the largest proportion (78 percent) of positions occupied in all four schedules.

In analyzing the extent to which agencies use existing title 5 excepted service hiring authorities, OPM considered aggregate usage data over a five-year period, FY12 to FY16. During that time, 62 excepted service legal authority codes were available for Governmentwide use; one has since expired (see Appendix, Table 7 for a current listing). Agencies used 51 of the 62 available authorities during the last five years. Of the 51 authorities used, only 11 of them were used to make 92.3 percent of excepted service appointments during that time period.

Figure 5 represents aggregate usage data for the 51 legal authority codes used over the five-year period and is broken down to demonstrate volume of hiring: Group 1=Over 10,000 appointments; Group 2=1,000-10,000 appointments; Group 3=100-999 appointments; and Group 4=Less than 100 appointments.

**Figure 5 - Excepted Service LAC Aggregate Usage by Group**



| Group of LACs   | Total Actions | Percent |
|---|---------------|---------|
| Group 1 (J8M, W9P, W9R, WDM, WUM, XZM, YEA, YEB, YEF, YEG, ZLM) | 454,455       | 92.3%   |
| Group 2 (H2L, Y5M, W9S, WEM, WTB, Y7M, YEC, Z2U, ZVG)           | 32,530        | 6.6%    |
| Group 3 (10 Legal Authorities)                                  | 5,154         | 1.0%    |
| Group 4 (21 Legal Authorities)                                  | 271           | 0.1%    |

Source: EHRI-SDM, Governmentwide, FY12-FY16 (Data as of November 2017)

Group 1 hiring authorities are:

**Table 3 - Group 1 Authorities**

|     |  |
|-----|--|
| J8M | Veterans Recruitment Appointment                 |
| W9P | Critical Need                                    |
| W9R | Temporary/not Full-Time/Other                    |
| WDM | Attorney   |
| WUM | Severe Physical Disability                       |
| XZM | Agency-Unique Schedule A                         |
| YEA | Pathways Program - Intern                        |
| YEB | Pathways Program – Recent Graduate               |
| YEF | Pathways Program – Intern (Former SCEP)          |
| YEG | Pathways Program – Intern (Former STEP)          |
| ZLM | Law, Regulation, EO not covered under other rule |

The low usage of the 21 legal authority codes in Group 4 and the non-use of 11 others over the last five years may indicate hiring managers are not aware some of the authorities exist. In addition, hiring managers’ perceptions of their use of excepted service hiring authorities during the review period were inconsistent with their actual use. For example, hiring manager survey respondents believed their use of the Temporary/not Full-time/Other authority was 182 percent higher than EHRI data indicated. These results combined point to an opportunity for agencies to educate hiring managers on the various excepted service hiring authorities available to them.

**Recommendation for Agencies:** Periodically, provide hiring managers with training and guidance on the various excepted service hiring authorities, including agency-unique authorities and the differences between appointments in the competitive and excepted services discussed in this report.

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In addition, there may be opportunities to streamline the current excepted service hiring legal authorities. For example, three Pathways-related authorities were established for the transition of individuals employed under the previous student program authorities. With the transition complete, these authorities will no longer be needed. However, OPM recognizes that, in other instances, low or non-usage does not necessarily mean the legal authority is obsolete. The 11 legal authorities that were not used over a five-year period are considered necessary to cover actions that, however rare, may be needed in the future (e.g., to effect an appointment ordered by the Merit Systems Protection Board). In addition, several hiring authorities appear to have similar purposes, regardless of their usage. These similarities may provide additional support for considering streamlining authorities. The authorities appearing to have similar purposes are as follows:

- *Nine authorities are related to Pathways Programs*  
Three of these authorities are currently used to make initial appointments in one of the three Pathways Programs. While three other authorities were intended for use to convert existing Pathways Programs appointees to similar positions in other agencies, these three authorities have not been used between FY12 and FY16. The final three authorities were created to convert existing employees from predecessor SCEP, STEP, and PMF appointments into corresponding Pathways Programs intern and PMF appointments. Since all affected employees should have been converted during the Pathways Programs transition period, which ended January 6, 2013, these three authorities appear to be obsolete.
- *Five authorities have academic bases (e.g., internships, fellowships, research)*  
All five authorities are under Schedule A – three are specific to science, professional or medical disciplines, and two are not associated with specific disciplines. While one of these authorities, for agency internship and fellowship programs, had relatively high usage (2,489), the other four had relatively low usage that ranged from 14 to 315 appointments during the period, FY12-FY16.
- *Five authorities invoke reemployment rights*  
Three authorities are for reemployment after international service; one authority is for use during a qualifying emergency, and one provides agencies reemployment authority not covered elsewhere. Two of these authorities, for reemployment after service with AID and for reemployment after an emergency interagency move, were not used at all in the last five years. Also, the total usage for the remaining three authorities is 25 for the FY12-FY16 period.
- *Three authorities are for hiring individuals with certain disabilities*  
All three hiring authorities apply similar legal bases under Schedule A (5 CFR 213.3102(u), 5 CFR 213.3102(u)-ID, and 5 CFR 213.3102(u)-PD) but have three distinct

legal authority codes (WTA, WTB, and WUM). These authorities had moderate to high usage in the last five years.

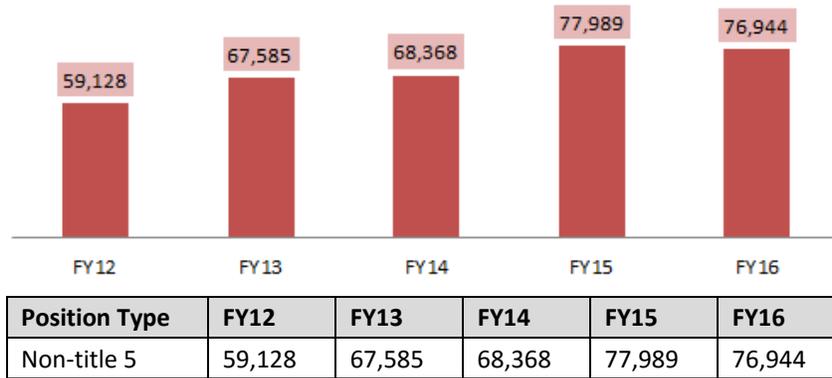
- *Three authorities invoke restoration rights*  
All three authorities are based on different subparts of 5 CFR 353. Two are for application after full or partial recovery from a compensable injury, and the other is for restoration after military service. The authority based on partial recovery was not used at all FY12-FY16, and the usage total for the other two was 33 appointments in the same period of time.
- *Two authorities are related to hiring consultants*  
One authority has a legal basis in 5 U.S.C. 3109, and the other is under Schedule A (5 CFR 213.3102(l)). The latter authority had significantly less usage (132) than the former authority (7,434) during the FY12-FY16 period.
- *Two authorities are based on MSPB directives*  
One authority is specifically for recovery from an injury; the other is for all other situations. Neither of these authorities were used FY12-FY16.
- *Four authorities are related to SES placement*  
Two authorities have the same legal basis in 5 U.S.C. 3594; one authority is for unsatisfactory performance during the SES probationary period, and the other authority, for placement out of SES for performance, had only two instances of usage in the same time period. The two other placement authorities are applied for failure to be recertified in the SES and for SES reduction-in-force actions.

Because some of these authorities are rooted in unique regulations, laws, or public policies, a deeper review would be required to determine if streamlining the authorities is a practical way to improve the efficiency of excepted service hiring, without compromising OPM's ability to track hiring data that may provide valuable information regarding excepted service hiring patterns and trends. OPM will determine whether excepted service hiring authorities that are similar in application can be streamlined.

### *Non-Title 5 Usage*

As Figure 6 shows, the number of appointments made Governmentwide, using non-title 5 excepted service hiring authorities increased significantly since FY12. Non-title 5 hiring authorities comprised 41 percent of excepted service hiring during the FY12-FY16 period.

**Figure 6 - Non-title 5 Excepted Service Appointment Trends**



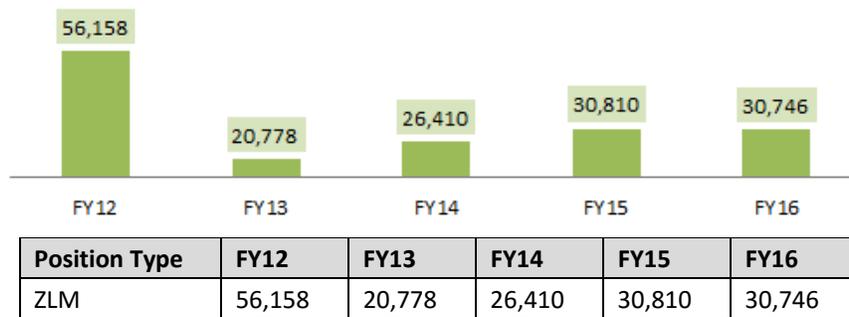
Source: EHRI-SDM, Governmentwide, FY12-FY16 (Data as of November 2017)

Further analysis of non-title 5 hiring authorities revealed a small number of those authorities were used for a large number of hiring actions. These authorities are discussed in the Effectiveness section of this report.

*ZLM Usage*

The ZLM legal authority code was used for about 20 percent of all excepted service appointments made over a five-year period (FY12-FY16).

**Figure 7 - ZLM Excepted Service Appointment Trends**



Source: EHRI-SDM, Governmentwide, FY12-FY16 (Data as of November 2017)

For five of the 15 agencies, 41-55 percent of their excepted service appointments during the review period applied the ZLM code.

- Justice (55%)
- Interior (52%)
- Homeland Security (45%)
- Health and Human Services (42%)
- Agency for International Development (41%)

Why these five agencies hired such a large proportion of their workforce using this code is unclear. OPM was unable to conduct analysis beyond overall usage because EHRI data does not

include information on the specific underlying authorities agencies use. Agencies are required to manually enter this information through their backend HR data systems to ensure employee personnel actions contain complete references to respective legal authorities. EHRI is not programmed to capture this manually-entered information in a report. This lack of information creates a barrier to a more complete understanding of the increasing use of this legal authority code by some agencies.

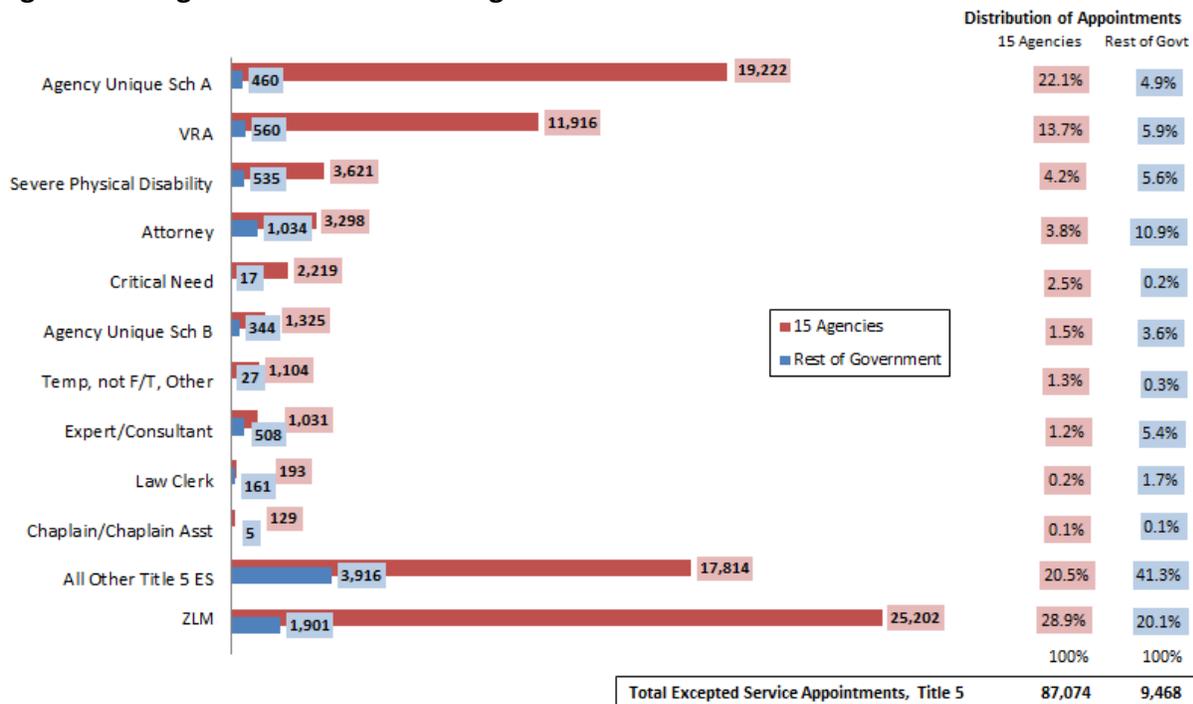
Because ZLM is used so prevalently, it is important to understand the increasing use of this code. In situations where a hiring authority is created under title 5 by an Executive Order or law, and OPM is not required to regulate the authority or place it under an OPM schedule, agencies must apply the ZLM code to these hiring actions. Absent information about the underlying Executive Orders or laws, it is possible that overlapping or incongruent relationships exist between agency-unique authorities under ZLM and agency-unique authorities under Schedule A (XZM) and Schedule B (Y5M).

OPM will explore: (1) other approaches to capture complete data on the use of the ZLM, XZM, and Y5M codes by each agency, which includes the corresponding legal authority used by the agency; (2) finding a means to identify possible redundancies or incongruent relationships among agency-unique authorities under ZLM, XZM, and Y5M; and (3) determining if any agency-unique authorities should be streamlined or consolidated for Governmentwide application.

### *Usage of the Ten Hiring Authorities*

When OPM analyzed data for the ten hiring authorities and associated legal authority codes within the parameters and scope of this study, noteworthy patterns emerged. The data in Figure 8 below compares usage of the ten excepted service hiring authorities for the 15 agencies studied against the rest of Government, during the review period, July 1, 2015-June 30, 2016.

**Figure 8 - Usage of Ten Selected Hiring Authorities**



| Legal Authority              | 15 Agencies - Appointments | 15 Agencies - Percentage | Rest of Government - Appointments | Rest of Government - Percentage |
|------------------------------|----------------------------|--------------------------|-----------------------------------|---------------------------------|
| Agency Unique Sch A          | 19,222                     | 22.1%                    | 460                               | 4.9%                            |
| VRA                          | 11,916                     | 13.7%                    | 560                               | 5.9%                            |
| Severe Physical Disability   | 3,621                      | 4.2%                     | 535                               | 5.6%                            |
| Attorney                     | 3,298                      | 3.8%                     | 1,034                             | 10.9%                           |
| Critical Need                | 2,219                      | 2.5%                     | 17                                | 0.2%                            |
| Agency Unique Sch B          | 1,325                      | 1.5%                     | 344                               | 3.6%                            |
| Temp, not F/T, Other         | 1,104                      | 1.3%                     | 27                                | 0.3%                            |
| Expert/Consultant            | 1,031                      | 1.2%                     | 508                               | 5.4%                            |
| Law Clerk                    | 193                        | 0.2%                     | 161                               | 1.7%                            |
| Chaplain/Chaplain Asst       | 129                        | 0.1%                     | 5                                 | 0.1%                            |
| ZLM                          | 17,814                     | 20.5%                    | 3,916                             | 41.3%                           |
| All Other Title 5 ES         | 25,202                     | 28.9%                    | 1,901                             | 20.1%                           |
| <b>Total ES Appointments</b> | <b>87,074</b>              | <b>100.0%</b>            | <b>9,468</b>                      | <b>100.0%</b>                   |

Source: EHRI-SDM, Governmentwide, review period, July 1, 2015-June 30, 2016 (Data as of November 2017)

OPM found the 15 agencies that participated in the study accounted for 92 percent of the government's use of these 10 hiring authorities. In addition, the bulk of the hiring occurred through use of the agency-unique Schedule A and VRA hiring authorities. The 15 agencies used these two authorities for 71 percent of their hiring under the 10 authorities. Within the larger universe of hiring effected during the review period, these two authorities comprise 36 percent of all hiring by the 15 agencies under title 5 authorities (listed in Table 7 in the Appendix).

To recap, over 40 percent of excepted service hiring, between FY12 and FY16, occurred using non-title 5 authorities, and 20 percent of hiring during the same time period used the code ZLM, which may be applied under any title. While there were 62 hiring authorities available for use under title 5 between FY12 and FY16, 11 of these authorities were used to make over 92 percent of excepted service appointments during that period of time. Also, usage patterns and trends point to opportunities for agencies to educate hiring managers about the availability of excepted service appointing authorities, particularly agency-specific authorities, and for OPM to consider options for streamlining some of the unused or low-usage authorities and those that appear to have similar legal bases.

## Effectiveness

To assess the effectiveness of excepted service hiring procedures, OPM considered:

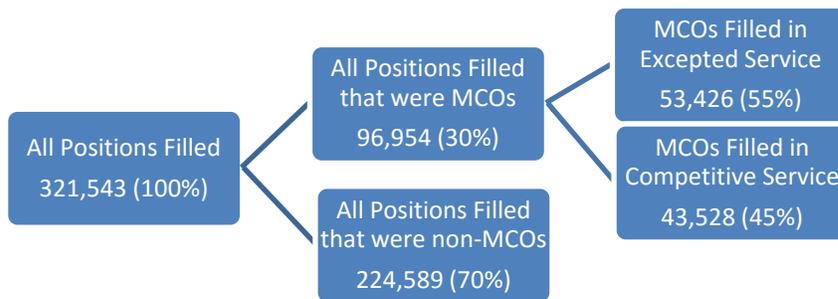
- The extent to which use of excepted service hiring authorities supports mission accomplishment
- Whether recruitment efforts yield sufficient quantity and quality of applicants
- The extent to which knowledge gaps exist

OPM found that excepted service hiring authorities help agencies support their missions. However, agencies are missing opportunities to implement more strategic, innovative, and targeted recruitment activities to better reach highly qualified applicants. Confusion about excepted service hiring requirements and the flexibilities permitted point to knowledge gaps that should be addressed.

### *Support of Mission Accomplishment*

To better understand how agencies use excepted service hiring authorities to support their missions, OPM analyzed how agency-identified MCOs are filled in the 15 agencies selected for the study. The EHRI data displayed in Figure 9 shows that 55 percent of MCO vacancies during the review period were filled in the excepted service (title 5 and non-title 5).

**Figure 9 - MCO Positions Filled During Review Period**



Source: EHRI-SDM, 15 agencies, review period, July 1, 2015-June 30, 2016 (Data as of August 2017)

When asked if the excepted service hiring authorities selected for this study aided them in meeting organizational goals, 77 percent of hiring managers who participated in the study survey responded positively. Similarly, HR directors and practitioners interviewed also shared positive perceptions about excepted service hiring authorities supporting their agency's mission.

**Table 4**

**“Are agency-unique authorities serving their intended purpose to help support agency mission?”**

| Group            | Yes | No | No Response |
|------------------|-----|----|-------------|
| HR Directors     | 55% | 3% | 42%         |
| HR Practitioners | 66% | 9% | 25%         |

**Table 5**

**“Are Governmentwide excepted service authorities used to help support agency mission or fill vacancies for mission critical occupations?”**

| Group            | Yes | No  | No Response |
|------------------|-----|-----|-------------|
| HR Directors     | 45% | 13% | 42%         |
| HR Practitioners | 75% | 9%  | 16%         |

Source: OPM Excepted Service Study HR Interviews (November 2017)

Through this study, OPM found a large portion of agency MCOs are filled using non-title 5 hiring authorities. For example, five of the 15 agencies effected between 44-87 percent of their excepted service hiring during the review period using non-title 5 authorities. Specifically, they fill jobs in occupations that are exclusive or almost exclusive to their agencies:

- **Veterans Affairs (87%)** – used to hire various health care occupations under title 38 and is exclusive to VA (V8V LAC);
- **Air Force (66%)** – used to hire national guard technicians under title 32 and is exclusive to Air Force and Army (V8K LAC);
- **Agency for International Development (49%)** – used to hire foreign service officers, members, and personnel under title 22 and is exclusive to AID, Board of Broadcasting Governors, and the Departments of State, Commerce, and Veterans Affairs (UFM LAC);
- **Army (48%)** – used to hire national guard technicians under title 32 and is exclusive to Air Force and Army (V8K LAC); and
- **Homeland Security (44%)** – used to hire employees of the Transportation Security Administration under Public Law 107-71 and is exclusive to DHS (ZVC LAC).

Also, as corroborated by HR perceptions captured in Table 4 above, title 5 agency-unique hiring authorities play a dominant role in excepted service hiring. When the proportional usage data for each of the 15 agencies in the study was analyzed, OPM found that three agencies did 39-66 percent of their excepted service hiring using agency-unique Schedule A and/or B authorities to fill positions that are directly mission-related:

- **Agriculture (66%);**
- **Commerce (53%);** and
- **Defense (39%).**<sup>14</sup>

<sup>14</sup> See Appendix, Table 8 for proportional hiring authority usage data for each of the 15 agencies.

Hiring managers in a few agencies remarked on the effectiveness of agency-unique hiring authorities. At DOD, these hiring authorities are used to facilitate overseas hiring for positions that would be otherwise difficult to fill. DOI makes excellent use of agency-unique authorities to fill positions in remote locations and tribal communities, which in turn have fostered positive relationships with communities having few job opportunities and helped with the agency’s diversity efforts. Similarly, USDA incorporates use of agency-unique authorities in workforce plans to hire individuals with very specific competencies needed for critical agricultural research projects.

OPM sought to take a closer look at each authority of the 158 agency-unique hiring authorities tallied in Table 4, to assess the extent to which agencies used them and whether their use helped meet mission needs.

**Table 6 - Number of Agency-Unique Schedule A and B Authorities**

| Agency                               | Sch A      | Sch B     |
|--------------------------------------|------------|-----------|
| Agency for International Development | 0          | 0         |
| Agriculture                          | 12         | 3         |
| Air Force                            | 12         | 3         |
| Army                                 | 5          | 1         |
| Commerce                             | 8          | 2         |
| Defense <sup>15</sup>                | 22         | 10        |
| Education                            | 1          | 2         |
| Health and Human Services            | 7          | 3         |
| Homeland Security                    | 11         | 1         |
| Interior                             | 21         | 0         |
| Justice                              | 8          | 4         |
| Navy                                 | 6          | 5         |
| Securities Exchange Commission       | 0          | 0         |
| Social Security Administration       | 3          | 0         |
| Veterans Affairs                     | 6          | 2         |
| <b>Total</b>                         | <b>122</b> | <b>36</b> |

Source: *Federal Register*, January 2016 through June 2016

Although this study included a transactional review of 158 agency-unique Schedule A and 15 agency-unique Schedule B appointments across the 15 agencies, OPM was unable to assess fully whether the authorities are effectively used. Similar to the issue with the ZLM legal authority code, there currently is no way to capture the underlying agency-unique authority and the two-digit agency number OPM assigns to each authority under Schedules A and B. This two-digit number identifies the specific agency-unique authority described in the *Federal Register*.

OPM currently updates the *Federal Register* listing of Schedule A and B authorities to remove authorities that have expired, add new ones, or extend authorities that are due to expire. OPM’s ability to fully monitor the use of these authorities and assess their continued need has been hampered by the lack of a central electronic repository of authorities granted over the years.

<sup>15</sup> DoD Schedule A/B authorities that apply to more than one component are listed under Defense.

Thus, OPM will establish a digital library to house hard-copy and electronic agency requests and approvals for exceptions to competitive examining, as well as a process to monitor and oversee use of these authorities as part of its oversight and evaluation responsibilities.

### *Use of Agency-Specific or OPM-Modified Qualification Standards for Schedule A Positions*

Schedule A hiring comprised about 68 percent of the study's 15 participating agencies' title 5 excepted service hiring during the review period. However, the results of both the hiring manager survey and transactional review of hiring case files indicate agencies are not always applying Schedule A authorities as originally intended – to allow agencies to make appointments for which it is “impracticable to examine.” Placement of a position in Schedule A was originally intended to connote that the agency was free to use its own qualification standards and requirements. In most cases, the Schedule A authorities agencies used required agency-unique qualification standards or modified OPM standards to fit their specific needs. This notwithstanding, agencies used OPM's Governmentwide qualification standards established for the competitive service in the majority of Schedule A hiring cases reviewed.

Of the 55 agencies that responded to OPM's request for information about their use of agency-specific qualification standards, 38 (69 percent) reported using OPM qualification standards. Similarly, 80 percent of the 15 agencies that participated in the study also reported using OPM qualification standards. Of those agencies that did develop their own internal standards, most were established for attorney and law clerk positions.

Because agency-unique Schedule A hiring authorities may be applied to a wide variety of occupations, OPM's expectation is that agencies would have created a wide variety of accompanying qualification standards in accordance with 5 CFR 213.3101 and 5 CFR 302.202. However, study results identified that only eight of the 15 agencies and 21 of the larger group of 55 created their own qualification standards. In addition data appears to indicate that agencies may not always need to tailor qualification standards to meet agency-specific needs and attract higher quality applicant pools.

This data raises the possibility that modifications of agency-unique Schedule A hiring authorities may be warranted, to bring them more in line with current agency use and needs. Considering options for reshaping and streamlining agency-unique excepted service hiring authorities to reflect current Governmentwide hiring practices could promote a more effective hiring process. OPM will partner with agencies to review agency-unique Schedule A hiring authorities to determine whether those positions that are now filled using OPM's qualification standards might be redistributed under different hiring authorities or whether the authorities may be otherwise streamlined to promote a more effective and efficient hiring process Governmentwide.

### *Recruitment Sources*

The quality and quantity of candidates is impacted significantly by the recruitment sources and methods used to attract and identify highly competent job seekers. Unlike the competitive service, hiring in the excepted service generally does not require public notice, and vacancies need not be posted on OPM's USAJOBS website. (The Pathways Programs, discussed in an earlier report, are an exception.) This inherent flexibility may reduce the volume of candidates

and thus allow agencies to focus time and resources upon candidates who have been identified and recruited through sources and tools of the agency's own design, shaped to meet the agency's unique needs. This should be an opportunity to use innovative ideas to their best effect.

Study data shows that significant efforts were made Governmentwide to enhance opportunities for veterans and individuals with disabilities under the VRA and Severe Physical Disability excepted service hiring authorities, which increased in usage by 59 percent and 66 percent, respectively, between 2013 and 2016. These efforts directly supported goals of the prior administration.<sup>16</sup>

When viewing data in terms of the proportional usage of these two hiring authorities, as part of all excepted service hiring (including non-title 5), the top three users of both authorities during the review period are the Social Security Administration, Navy, and Army. Hiring managers from these agencies shared the innovative recruitment sources below, which helped their agencies achieve these results.

- **SSA** - job boards, veteran organizations, rehabilitation organizations, professional organizations, Peace Corps, and Workforce Recruitment Program (managed by DOL and DOD).
- **Navy** – internal employee referral program, Navy's local broadcasting system, affinity groups, Wounded Warriors Program, OPM's Shared Recruitment List, and HR's Microsoft SharePoint page with recruitment sources.
- **Army** – STEM tours (job shadowing), university veteran organizations, virtual job fairs, Yellow Ribbon Network (for veterans), military transition programs, and military spouse organizations.

OPM attempted to determine recruitment sources used for the hiring actions reviewed for this study. This proved difficult because, while 26 percent of the case files contained evidence that USAJOBS was the recruitment source, almost half (48 percent) lacked any information about recruitment, aside from the selectees' resumes. HR practitioners were unaware of how hiring managers solicited these seemingly isolated resumes or how many resumes they collected during their search for candidates. Although OPM could partially reconstruct the remaining 52 percent of the case files reviewed, there was little documented evidence of innovative recruitment sources in the case files. Without a clear "paper trail" to fully reconstruct recruitment and hiring actions, agency accountability is essentially absent and may give rise to an appearance of preferential treatment to certain applicants.

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***Recommendation for Agencies:*** Establish protocols to document fully all excepted service hiring actions to strengthen accountability and maintain evidence of merit-based reasons for hiring selections.

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Also, while 11 percent of hiring managers cited using online job boards and eight percent cited using social media to attract job candidates, these results represent a small proportion of all

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<sup>16</sup> FY14-17 Governmentwide Veterans Recruitment and Employment Strategic Plan, FY11 Governmentwide Diversity and Inclusion Strategic Plan, and FY16 Governmentwide Diversity and Inclusion Strategic Plan

hiring managers who responded to the survey. According to research, these recruitment sources are used increasingly in the private sector to identify highly qualified applicants. For example:

- 92 percent of companies surveyed use social media for recruitment<sup>17</sup> and
- 77 percent of organizations use social media to increase employer brand and recognition.<sup>18</sup>

The data below support a pragmatic business case for using social media to reach the growing number of users who access these sites regularly as a way to connect with others.

- LinkedIn has 467 million users<sup>19</sup>
- Twitter has 330 million monthly active users<sup>20</sup>

These compelling statistics are likely to have influenced private sector companies to increase their use of social media to recruit prospective job candidates. Today, LinkedIn and Twitter are sites where employers not only advertise available jobs, but a growing number use or plan to use the sites to promote corporate values, vision, and brand.<sup>21</sup>

This movement toward establishing relationships with prospective employees, through branding, is supported by research that reveals, aside from basic information like compensation and benefits, the organization's mission, vision, and values are among the top five pieces of information job seekers want employers to provide during their job search.<sup>22</sup> In addition, 80 percent of recruiters say employer branding has a significant impact on acquiring quality talent that is already engaged with the organization.<sup>23</sup>

Private sector recruitment is no longer based on one-way communication about job vacancies. It is more strategically focused on engaging potential job candidates and assessing how well they would fit in the employing organization's culture and vision. The days of simply advertising job vacancies and hoping highly qualified, good-fit candidates apply essentially are over. Aside from helping to create a stronger Federal Government talent pipeline, documented use of a wider variety of recruitment sources, such as social media and online job boards, also would support the merit system principle of fair and open competition. OPM will provide guidance to agencies on how to leverage social media, consistent with governing law and merit system principles, to create more robust recruitment strategies, align with proven recruitment practices, market their agency brand, and connect directly with existing talent pools.

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<sup>17</sup> *Jobvite Recruiter Nation Survey*, 2015.

<sup>18</sup> *SHRM Survey Findings: Using Social Media for Talent Acquisition-Recruitment and Screening*, January 7, 2016.

<sup>19</sup> [www.linkedin.com/pulse/linkedin-numbers-2017-statistics-meenakshi-chaudhary](http://www.linkedin.com/pulse/linkedin-numbers-2017-statistics-meenakshi-chaudhary).

<sup>20</sup> [www.statista.com/statistics/282087/number-of-monthly-active-twitter-users/](http://www.statista.com/statistics/282087/number-of-monthly-active-twitter-users/).

<sup>21</sup> *Jobvite Recruiter Nation Survey*, 2015.

<sup>22</sup> *Glassdoor U.S. Site Survey*, January, 2016.

<sup>23</sup> *LinkedIn Global Recruiting Trends*, 2017.

### *Satisfaction with Quantity and Quality of Applicants*

Although over 60 percent of hiring managers were satisfied with the quantity and quality of applicants, the study did identify some concerns among the 35 to 36 percent of hiring managers who indicated both were either fair or poor.

*“Even though I am a selecting official in a very large highly populated urban-metro area, the quantity and quality of excepted service applicants are both VERY low. ..most candidates eventually hired are only marginally successful at best.”*

*“As a recruiter/selecting official, the excepted service hiring severely hampers my ability to find high quality individuals for my vacancies.”*

*“As a District Manager in a small rural area, I am having a hard time finding and retaining quality candidates under the Excepted Service hiring authority. I have about a 50% success rate when it comes to these hires.”*

In accordance with 5 CFR part 302, agencies may choose to have applicants referred to hiring managers using a ranked or unranked process. The ranked option requires HR staff to determine which applicants meet the position’s minimum qualification requirements, as a first step. Qualified applicants are then assessed further in a second step. HR staff collaborate with hiring managers to develop assessment criteria, which they apply to distinguish highly qualified applicants from those minimally qualified. In the final step, only the more highly qualified applicants are referred to the hiring manager for consideration.

In general, when the unranked process is used, all minimally qualified applicants are referred to the hiring manager, with preference eligibles having selection priority. HR staff does not conduct any further assessment to distinguish the qualifications of applicants. Hiring managers have the sole responsibility for identifying which of the minimally qualified applicants are highly qualified and must first exhaust the list of preference eligible candidates whether they are highly qualified or not.

The negative perceptions OPM collected through the study survey are likely the result of the low use of agency-specific or modified OPM qualification standards when hiring under Schedule A discussed earlier, as well as the method used to assess applicants prior to referral. For example, approximately 64 percent of all applicants who applied for the positions in the case file sample were screened only for minimum qualifications for the position. Because of the insufficient documentation issue already discussed, it is unclear how many of these candidates could be characterized as highly qualified. Additionally, while some agencies developed appropriate assessment criteria, in many of those cases, all minimally qualified applicants were referred to the hiring manager, without further assessment.

Not ranking applicants, which is an option for the excepted service, places the responsibility of identifying highly qualified candidates on hiring managers. This may have unintended consequences of promoting inefficiencies within the hiring process for certain occupations and may be driving the negative perceptions of some hiring managers. Based on concerns raised by some hiring managers, like those cited above, it may be beneficial to rank applicants for specific

types of positions where the quality of applicants has been an issue or where agency critical skill needs are not being met.

### *Involvement of Hiring Managers in the Hiring Process*

While 86 percent of the hiring managers responding to our survey reported being involved in interviewing applicants, most had no role in earlier stages of the hiring process. In fact, 46 percent reported being involved with recruitment, 37 percent were involved in the development of job analyses, and 34 percent helped develop assessment criteria. However, hiring managers can play a critical role in the development of agency-specific qualification standards. This lack of collaboration between HR and hiring managers in the early stages of the hiring process may explain some of the dissatisfaction with the quality of applicants.

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***Recommendation for Agencies:*** Train HR staff to collaborate with hiring managers when filling excepted service positions, to develop new or modify existing qualifications standards, merit-based job analyses, and assessment criteria, as appropriate, with a stronger strategic focus.

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### *Knowledge Gaps*

Agency HR offices are expected to promote and sustain a learning environment that drives continuous improvement in the effective and efficient use of hiring authorities, including those for the excepted service. An effective learning environment includes comprehensive policies, formal training, and other guidance tailored to hiring manager needs. It also includes conducting competency assessments for HR staff involved in hiring, identifying knowledge gaps, and creating strategies to address gaps identified.

Survey responses from hiring managers indicate they rely more heavily on excepted service hiring guidance provided by their agency HR offices than on guidance available through OPM, special emphasis program managers, or other sources. About 33 percent of hiring managers and HR staff (HR policy managers, HR directors, and HR practitioners) mentioned meetings/discussions as the most common platform for training. The second most common training delivery method was agency in-house training, which 20 percent cited.

The overall low number of responses regarding training of any kind is a concern, given the complexities and nuanced nature of excepted service hiring. For example, despite perceptions that, overall, excepted service guidance and training are sufficient and helpful, many comments shared by hiring managers point to a need for clarification on existing guidance.

*“Also, there is a lot of confusion as to whether or not OPM qual [sic] standards apply to Sch A appointments. It’s clear the OPM qual[sic] standards only apply to competitive service (and optional to Sch B).”*

*“At the road level [sic] I don’t think organizations use excepted service rules to their benefit. Organization are too worried about the view that it is not transparent enough. Some Orgs [sic] won’t even use this authority because they think all candidates have to be interviewed and scored.”*

*“5 CFR 302 needs to be updated to align with category rating veterans [sic] preference procedures. Example: CFR 302 [sic] requires listing veterans in order of preference, which dates back to rule of 3. Category rating does not require listing in order of preference. We should be treating vets [sic] the same for both competitive and excepted service.”*

The examples above point to knowledge gaps among hiring managers about the application of veterans' preference, order of consideration, ranked/unranked referral list options, and the application of OPM qualification standards. Similarly, comments from HR practitioners indicate a desire for training and/or clarification of agency and OPM policy in specific areas, particularly the application of veterans' preference and the Schedule A-Severe Physical Disability hiring authority. These knowledge gaps should be addressed to correct misinterpretations and minimize negative impacts on future hiring. OPM will use the results from this report to identify topics for training and/or guidance on excepted service hiring for HR staff and hiring managers.

### *Hiring Process Improvement*

When hiring managers were asked to rank specific steps of the excepted service hiring process according to how much each step needed improvement, their top concerns included improving qualification standards and assessment criteria.

Given that 36 percent of hiring managers rated the quality of applicants as fair or poor, having them collaborate with HR staff to develop agency-specific qualification standards and improve assessment criteria will have a major impact on improving the overall quality of referred applicants and hiring manager satisfaction. Agency-specific qualification standards will more effectively screen out applicants who do not possess minimum competencies and skills. Assessment criteria used in conjunction with these standards will further distinguish highly qualified applicants from those minimally qualified.

One noteworthy example of an effort to improve the hiring process is DOJ's Bureau of Prison's policy and procedures for staffing chaplain positions, which are well-documented in the *HR Management Manual* and "*Step-By-Step Process to Announce and Select a Chaplain.*" BOP's guidance documents help ensure the complex, multiple-hurdle hiring process for chaplains is performed properly, efficiently, and effectively.

In summary, while the majority of mission critical occupations, at the 15 agencies studied, were filled through the strategic use of excepted service hiring authorities, effective use of these authorities would be improved by addressing knowledge gaps, fostering collaboration between HR staff and hiring managers, and creating a stronger social media recruitment presence. Adhering to excepted service hiring laws and regulations also contributes to improved hiring effectiveness.

## Compliance with Laws and Regulations

To assess the extent to which agencies are in compliance with excepted service hiring requirements, OPM considered:

- Whether agencies have excepted service hiring policies
- How agencies apply veterans' preference, order of consideration, and selection rules
- How agencies document efforts to uphold priority reemployment rights

As discussed in this section, agencies must develop new and revise existing excepted service hiring policies and guidance to support compliance with implementing regulations. Almost half have no policies on the acceptance of applications or how to apply veterans' preference requirements. There also is much confusion about priority reemployment requirements.

To assess agency compliance with excepted service hiring requirements, OPM first reviewed the legal and regulatory underpinnings to the exceptions. The most relevant implementing regulations are:

### *5 CFR 6*

- Provides OPM authority to except certain positions from the competitive service and publish lists of these positions in Schedules A, B, C, and D.

### *5 CFR 213*

- Defines the excepted service as all positions in the Executive Branch that are excepted from the competitive service by statute, the President, or by OPM, and that are not in the Senior Executive Service.
- Describes the four schedules used to categorize positions in the excepted service, their respective appointment requirements, and any special provisions for time-limited, intermittent, and seasonal employment under these schedules.

### *5 CFR 302*

- Describes the parameters agencies must follow when operationalizing their use of title 5 excepted service hiring authorities subject to 5 CFR 302 requirements, including accepting applications, assessing applicants, applying veterans' preference, and issuing candidate referral lists.
- Provides exemptions from appointment requirements under 5 CFR 302 for select positions, which must apply the principles of veterans' preference "as far as administratively feasible."

As noted in the Methodology section, OPM analyzed agency policies and conducted transactional reviews of a representative sample of excepted service hiring actions. We requested information about excepted service hiring policies from 69 Executive Branch agencies. Responses were received from 55 agencies, including the 15 agencies selected for full participation in the study. For the transactional review, OPM selected 436 hiring cases from those 15 agencies, with particular focus on their application of veterans' preference, order of consideration and selection procedures, and process for ensuring priority reemployment requirements are upheld.

### *Application Acceptance Policies*

Agencies are required to establish policies regarding the acceptance of applications for employment to ensure applicants are treated in a fair and consistent manner. Only 31 of the 55 responding agencies (56 percent) provided documents to support this requirement. Of the 15 agencies selected for full participation in this study, 11 (73 percent) had such policies.

### *Veterans' Preference Policies*

Thirty of the 55 agencies (55 percent) document their process for affording preference to veterans under excepted service hiring. Of the 15 agencies included in the study, 9 (60 percent) provide veterans' preference guidance in their policies. OPM further assessed whether agency policies include guidance for affording veterans' preference "as far as administratively feasible," for positions exempt from excepted service hiring procedures (e.g., attorneys). Twenty of the 55 agencies (36 percent) had policies that addressed this regulatory provision.

DOJ's policy for attorney hiring is a noteworthy example of applying the "administratively feasible" provision. The policy requires hiring managers to not only consider veterans for attorney positions; it further views veterans' preference as "a positive factor" in attorney hiring and documents consideration of veterans at every stage of the attorney hiring process. Policy guidelines state, when "all relevant considerations for the position are deemed equal, the selecting official must offer the position to a preference eligible candidate as opposed to an equally well-qualified, non-preference eligible candidate."

As in the competitive service, procedures to pass over 30 percent or more disabled veterans must be applied in the excepted service. OPM issued related guidance to agencies in a CHCO memorandum dated March 12, 2009. However, only 25 of the 55 agencies (45 percent) had policies that included guidance on this key requirement; eight (53 percent) of the 15 agencies studied provided such guidance.

### *Order of Consideration and Selection Policies*

Agencies must follow specific rules when establishing referral lists and making selections. Eligible applicants are referred using one of four methods or orders. Within each of these orders, applicants are listed based on entitlement to reemployment, veterans' preference category, and numerical rating, if used. Agencies should have policies that define the ranking and referral process to meet regulatory requirements, including that HR staff are required to document the rationale for choosing one ranking method over others. OPM found that 22 (40 percent) of the

agency policies reviewed provide guidance on how to structure referral lists for employment consideration; 7 (47 percent) of the 15 agencies studied had such guidance.

### *Reemployment Rights Policies*

Agencies must adhere to requirements regarding the use of employment lists in excepted service hiring to ensure certain former employees receive proper reemployment consideration during the hiring process. In our assessment of agency policies, 22 (40 percent) agencies had documented guidance on how they would meet employment list requirements.

### *Comprehensiveness of Excepted Service Hiring Policies*

As mentioned earlier, an effective learning environment includes comprehensive policies. To assess the comprehensiveness of excepted service hiring policies, OPM applied the following criteria to the policy review portion of the study. To be considered comprehensive, policies should include:

- General excepted service hiring requirements and procedures.
- Guidance on applying the excepted service legal authorities the agency uses.
- Appropriate, dated approvals, to show policies are current and final.

While 68 percent of the 55 agencies have some form of excepted service policies in place, only 24 percent of policies contain comprehensive information about general excepted service hiring requirements and procedures. The overwhelming majority (94 percent) of agency policies do not include guidance on how to apply the legal authorities the agency uses, including agency-unique authorities, and only 33 percent of policies have been reviewed/updated in the past ten years.

HR practitioners rely heavily on agency policy to provide guidance and procedures related to hiring processes. Policies describing application handling procedures help ensure agencies adhere to the merit system principle of fair and open competition. Agency policies provide a stronger foundation for compliance when they convey detailed instructions on how employees will carry out laws and regulations associated with excepted service hiring. Policies should fully address and support 5 CFR 213 and 5 CFR 302, as well as any other laws or regulations specific to the excepted service (e.g., 5 CFR 304-Experts and Consultants). The lack of comprehensive agency guidance related to critical aspects of excepted service hiring likely has contributed to the knowledge gaps and ineffective practices discussed earlier as well as the compliance issues discussed below.

### *Transactional Review*

Because there is no public notice requirement, there is an inherent flexibility in excepted service hiring that allows agencies to focus upon recruitment from the best sources and apply innovative techniques and a broad array of recruitment sources and tools to best effect to reach candidates that have the desired competencies and skills. As stated above, of the 436 hiring transactions reviewed, close to half (48 percent) contained only the resumes for the individuals selected.

There were no other documents to show other resumes were solicited or considered. Case files also were void of definitive recruitment documentation to indicate how the selectees' resumes were solicited and collected. Therefore, OPM was unable to assess fully the extent to which agencies applied veterans' preference, afforded required priority reemployment consideration, and adhered to the intent of the merit system principles, specifically those related to fair and open competition and fair and equitable treatment of all applicants.

### *Application of Veterans' Preference*

Federal laws and regulations specify the eligibility standards for persons entitled to veterans' preference and communicate to agencies how applicants with preference must be considered, referred, and selected in the excepted service hiring process. The regulation at 5 CFR 302.101 stipulates which positions are exempt from the required appointment procedures. For these positions, veterans' preference must be applied in the hiring process "as far as administratively feasible." See 5 CFR 302.101(c). The most commonly used excepted service hiring authorities for which these exemptions apply are the attorney and critical need authorities. Together, these two hiring authorities account for approximately 13 percent of the hiring transactions reviewed as part of this study.

OPM found that agencies applied the "administratively feasible" criteria in 67 percent of hiring actions where it was required. In addition, some agencies mistakenly applied the criteria to law clerk positions. While hiring for attorneys is exempt from excepted service appointment procedures, hiring for law clerk positions is not. This means agencies must apply full veterans' preference rules to fill law clerk positions and cannot pass over a veteran on a referral list to select a non-veteran without following proper pass over procedures.

### *Application of Order of Consideration and Selection Rules*

The regulation at 5 CFR 302.304 instructs agencies on how to "order" referral lists. Once priority reemployment candidates have been identified and veterans' preference has been adjudicated for eligible candidates, applicants are referred using one of four orders:

- Ranked order – involves numerical ranking with three ordering options available;
- Unranked order – when numerical scores are not assigned, agencies may consider applicants based on meeting minimum qualification requirements;
- Professional order – rules for professional and scientific positions at the GS-9 level and above, or equivalent; or
- Special agency plan – an example is an ordering system that is similar to category-rating.<sup>24</sup>

As mentioned previously, almost half of the case files reviewed contained only a single resume. For the remaining case files, which we were able to partially reconstruct, the unranked and

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<sup>24</sup> Under competitive service category rating, applicants who meet the basic minimum qualification requirements for the position are assessed and placed in one of two or more predefined quality categories instead of being ranked in numerical score order. Veterans' preference is absolute within each quality category.

category rating-like (special agency plan) orders were the most commonly used, and referral lists appeared to be properly prepared.

Pursuant to section 3320, title 5, U.S. Code, veterans' preference rules in the excepted service are governed by the same rules that apply to the competitive service, specifically sections 3308-3318. OPM found that some agencies are not applying veterans' preference on ranked, unranked, or professional order referral lists. During interviews, HR directors and staff expressed concerns about applying veterans' preference and order of consideration correctly in excepted service hiring, and they find implementing regulations at 5 CFR part 302 to be confusing. Many HR practitioners stated they did not have an established practice of placing preference eligibles above non-preference eligibles to distinguish veterans clearly during the selection process. Others were unaware that veterans' preference is applicable to the excepted service.

### *Upholding Priority Reemployment Rights*

Agencies must adhere to regulatory requirements regarding the reemployment rights of certain former employees by establishing and maintaining a Priority Reemployment List (PRL) for:

- Preference eligibles who have been furloughed or separated from a continuing appointment, and who apply for reemployment;
- Preference eligibles found by MSPB to have been unjustifiably dismissed, but not entitled to immediate restoration, and who apply for reemployment;
- Employees who were furloughed or separated due to a compensable work injury, and who apply for reemployment; and
- At agency discretion, any former agency employee, who is not a preference eligible, separated or furloughed from a continuing position, and who applies for reemployment.

When we assessed hiring transactions against agency obligation to afford reemployment rights, we found that most agencies did not maintain a PRL, and only seven agencies (47 percent) properly cleared the PRL before making selections, as required. When questioned about these results, most HR staff and managers indicated they were not aware of the PRL or its intent. In fact, some of the individuals stated they were familiar with the Reemployment Priority List (RPL), with several citing they cleared this list as part of the excepted service hiring process. However, the RPL applies to competitive, not excepted, service examining. Clearly, there is a need for agencies to establish protocols necessary for HR operations to meet excepted service priority reemployment requirements.

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***Recommendation for Agencies:*** Agencies should ensure they have clear policies and guidance on accepting applications, applying veterans' preference, passing over 30 percent disabled veterans, and referring applicants for consideration. Policies should also contain guidance on the application of excepted service hiring authorities, especially agency-unique authorities. In addition, given the current climate of agency restructuring and reorganization, agencies policies should include clear guidance on reemployment rights under the excepted service.

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## Conclusion

While the results of this study provide strong indicators that excepted service hiring is used to support agency mission accomplishment, agencies conducted most of their title 5 excepted service hiring during the review period using 11 out of the 61 currently available hiring authorities. In addition, most agencies could apply more effectively the agency-unique Schedule A authority. When using this authority, most agencies use OPM qualification standards, instead of tailoring qualification standards to better meet agency mission needs. These results indicate an opportunity to reassess the use of several excepted service hiring authorities, with a separate focus on how agencies apply the agency-unique Schedule A authorities.

OPM also found many agencies do not have excepted service hiring policies in place or their policies do not cover important aspects of how authorities are to be implemented. For example, most policies do not contain general guidance on excepted service or specific guidance on how to apply authorities unique to the agency. In addition, agencies would be well-served to update their excepted service policies and guidance to support compliance with veterans' preference and priority reemployment requirements as well as the documentation of application acceptance procedures.

OPM identified several knowledge gaps among hiring managers and HR staff. Only half of hiring managers surveyed stated they were involved with recruitment, and only one third stated they were involved with the development of job analysis and applicant assessment criteria. Training HR staff and hiring managers to collaborate on developing job analysis and resulting assessment tools will help agencies identify candidates with desired competencies and skills during the hiring process.

To help agencies address knowledge gaps, strengthen accountability, and improve the effectiveness of their excepted service hiring policies and practices, OPM offers the following recommendations:

- Periodically, provide hiring managers with training and guidance on the various excepted service hiring authorities, including agency-unique authorities and the differences between appointments in the competitive and excepted services discussed in this report.
- Establish protocols to fully document all excepted service hiring actions to strengthen accountability and maintain evidence of merit-based reasons for hiring selections.
- Train HR staff to collaborate with hiring managers when filling excepted service positions, to develop new or modify existing qualifications standards, merit-based job analyses, and assessment criteria, as appropriate, with a stronger strategic focus.
- Agencies should ensure they have clear policies and guidance on accepting applications, applying veterans' preference, passing over 30 percent disabled veterans, and referring applicants for consideration. Policies should also contain guidance on the application of excepted service hiring authorities, especially agency-unique authorities. In addition, given the current climate of agency restructuring and reorganization, agencies policies should include clear guidance on reemployment rights under the excepted service.

Going forward, OPM will:

- Determine whether excepted service hiring authorities that are similar in application can be streamlined.
- Explore (1) other approaches to capture complete data on the use of the ZLM, XZM, and Y5M codes by each agency, which includes the corresponding legal authority entered by the agency; (2) finding a means to identify possible redundancies or incongruent relationships among agency-unique authorities under ZLM, XZM, and Y5M; and (3) determining if any agency-unique authorities should be streamlined or consolidated for Governmentwide application.
- Establish a digital library to house hard-copy and electronic agency requests and approvals for exceptions to competitive examining, as well as a process to monitor and oversee use of these authorities as part of its oversight and evaluation responsibilities.
- Partner with agencies to review agency-unique Schedule A hiring authorities to determine whether those positions that are now filled using OPM's qualification standards might be redistributed under different hiring authorities or whether the authorities may be otherwise streamlined to promote a more effective and efficient hiring process Governmentwide
- Provide guidance to agencies on how to leverage social media to create more robust recruitment strategies, align with proven recruitment practices, market their agency brand, and connect directly with existing talent pools.
- Use the results from this report to identify topics for training and/or guidance on excepted service hiring for HR staff and hiring managers.

## Appendix

### Methodology for Assessing Usage and Selecting Hiring Authorities, Agencies, and Hiring Transactions

To assess the three goals of this study – usage of excepted service hiring authorities, effectiveness of hiring practices, and compliance with related laws and regulations – OPM created the following approach to narrow the scope of possible coverage areas, to obtain results that were most relevant and meaningful, considering OPM’s lines of authority in excepted service hiring.

1. While planning this study in early FY16, OPM analyzed the most recent excepted service hiring data available in EHRI-Data Warehouse at that time, which was for FY15.

#### **Report 1: EHRI, Governmentwide, FY15 (run in May 2016)**

OPM used the following parameters: (a) nature of action code (NOAC), excepted service legal authority code (LAC), (b) agency, (c) sub-agency, (d) position title, (e) occupational series, and (f) grade level. The specific NOACs used were: 130, 170, 171, 190, 570, 571, and 590.

The specific LACs used were those listed in Table 7 that are not highlighted. Pathways Programs authorities were excluded from this list because OPM conducted a study on hiring under these programs in FY15. OPM also excluded Schedule C authorities since approval for these political appointments comes from the White House, rather than OPM. In addition, OPM excluded hiring authorities related to demonstration projects, which were outside the scope of this study. Although some hiring actions require the use of first and second LACs, OPM only used the first LAC to identify and group the appointments by hiring authority.

2. Data from the EHRI report was analyzed to identify the title 5 excepted service hiring authorities most used in FY15, Governmentwide. Although the catch-all authority code ZLM may apply under title 5 and non-title 5 authorities, OPM excluded it from the transactional review portion of the study because EHRI did not provide sufficient information to distinguish ZLM appointments made under title 5.

Also, during the analysis of the EHRI data, OPM identified two hiring authorities (for law clerk and chaplain/chaplain assistant positions) that appeared to be misapplied or miscoded. Therefore, these two hiring authorities also were included in the transactional review portion, regardless of their overall usage. Table 9 displays the resulting eight hiring authorities most used, along with the two authorities of questionable use.

3. In the next step for planning this study, OPM identified which Federal agencies used the authorities in Table 9 the most in FY15. As explained on page 5 and Table 2 of this report, OPM applied the criteria below to identify the top 12 agencies that were the highest users of these authorities:

- at least 1,000 title 5 excepted service appointments in FY15;
- 50 percent or more of all hiring in FY15 were title 5 excepted service

- appointments;
- 50 percent or more of excepted service appointments in FY15 used the top eight hiring authorities in Table 9.

Three agencies with low volume usage were added to this list to ensure the representation of low volume users in the study findings.

(Because data from the EHRI Statistical Data Mart (SDM) undergoes a more rigorous “scrub,” OPM re-ran the EHRI report in Step 1 in August 2017, using EHRI- SDM data and the same parameters as in Step 1. In November 2017, OPM again ran this report, to only include the excepted service authorities within the scope of the study, which are those not highlighted in Table 7. The resulting data was analyzed to create the final versions of Table 2-Selected Agencies and Table 9-Selected Title 5 Legal Authorities/Codes).

4. For the transactional review portion of the study, OPM reviewed an overall transactional sample size of 436 hiring actions effected during the review period, July 1, 2015-June 30, 2016. This sample was stratified by legal authority. The plan was to have the number of hiring transactions reviewed per legal authority mirror the percent usage in Table 9. For example, about 37.7 percent of the 436 hiring transactions reviewed were planned to be agency-unique Schedule A appointments.

Because of numerous coding errors found during the transactional review part of the study, several adjustments were made to the actual number of hiring transactions reviewed within each stratified group. These adjustments resulted in percentages of transactions reviewed that did not exactly mirror the percent usage in Table 9. The actual number of hiring actions reviewed under each hiring authority is displayed in Figure 1 of the report. OPM evaluators individually assessed the hiring transaction data and applied judgment to identify the specific transactions selected for review.

5. To assess hiring authority usage, OPM ran additional EHRI-SDM reports in August and November 2017. The parameters used to run these reports are explained below.

**Report 2: EHRI-SDM, Governmentwide, FY12-16 (run in August 2017)**

This report included the 10 selected excepted service LACs and was used to identify trends in the use of excepted service hiring authorities for individuals with severe physical disabilities and Veterans Recruitment Appointment. Figures 10 and 11 use data from this report to show usage of the two LACs (J8M and WUM) for the 15 agencies versus the rest of Government.

**Report 3: EHRI-SDM, 15 agencies, review period (run in August 2017)**

This report included all competitive and excepted service hiring NOACs and was used to:

- a. Determine if excepted service hiring authorities supported agencies’ missions. To do this, OPM assessed data regarding mission critical occupation hiring during the review period. Figure 9 uses data from this report to show: (a) excepted service LACs under all titles, (b) competitive service LACs, (c) mission critical occupations as reported to OPM by each of the selected 15 agencies.

- b. Create Table 8 – Proportional Usage of Excepted Service Hiring Authorities and corresponding information within the report.

**Report 4: EHRI-SDM, Governmentwide, FY12-16 (run in November 2017)**

This report expanded Report 2 to include all excepted service hiring under title 5, non-title 5, and ZLM authorities. This report was used to:

- a. Identify patterns and trends in usage for all 62 title 5 hiring authorities listed in Table 7. OPM grouped authorities by usage in Figure 5 to distinguish which authorities had the highest and lowest usage.
- b. Compare usage of the ten selected hiring authorities, the rest of the remaining title 5 authorities in Table 7, and ZLM for the 15 selected agencies versus the rest of Government. Figure 8 uses data from this report to show usage of: 1) the ten selected excepted service LACs; 2) all other title 5 excepted service LACs; and 3) ZLM for the 15 selected agencies and the rest of Government agencies during the review period, July 1 2015-June 30, 2016.
- c. Compare five-year trends in usage of title 5, non-title 5, and ZLM in Figures 4, 6, and 7, respectively.

**Table 7 - Title 5 Excepted Service Hiring Authorities**

| #  | LAC | Authority   |
|----|-----|---|
| 1  | ALM | MSPB Directive  |
| 2  | AQM | MSPB Directive- Based on recovery from injury   |
| 3  | BPM | CS Rule 8.3; foreign national recruited overseas for overseas position                              |
| 4  | H2L | 5 USC 3109, Expert/Consultant   |
| 5  | HAM | Reg 250.101. Action Required By A Decision  |
| 6  | J8M | Public Law 107-288. Veterans' Recruitment Appointment (VRA)   |
| 7  | P3M | Exercises reemployment rights after transfer to international organization                          |
| 8  | P5M | Exercises reemployment rights after service with AID  |
| 9  | P7M | Exercises reemployment rights after service with American Institute in Taiwan                       |
| 10 | PWM | Reemployment rights based on movement between Exec agencies during emergency                        |
| 11 | QAK | Reg 353.207; exercising restoration rights upon return from uniformed service                       |
| 12 | QBK | Reg 353.304(D); restoration rights upon full recovery from compensable injury                       |
| 13 | QCK | Reg 353.301(D); restoration rights upon partial recovery from compensable injury                    |
| 14 | VCS | 5 U.S.C. 3594(B)(1). Placement Out of SES--Performance  |
| 15 | VCT | 5 U.S.C. 3594(B)(2). Placement Out of SES--RIF  |
| 16 | VCW | 5 U.S.C. 3594(B)(3). Failure to be Recertified in SES   |
| 17 | VDJ | 5 U.S.C. 3594(A). Unsat-Perf—SES Prob Period  |
| 18 | VPE | 5 U.S.C. 3374. Assignment from State/Local Govt/ selected under the Intergovernmental Personnel Act |
| 19 | W6M | Schedule A 213.3102(o); Faculty Mbr—Sci/Prof/Anal Psn   |
| 20 | W9N | Schedule A 213.3102(i)(1); Temp, Not F/T-Remote Loc   |
| 21 | W9P | Schedule A 213.3102(i)(2), Critical Need  |
| 22 | W9R | Schedule A 213.3102(i)(3), Temp, Not FT, Other  |
| 23 | W9S | Schedule A 213.3102(r); Internship or Fellowship Programs   |
| 24 | W9T | Schedule A 213.3102(s); Student Assigned to Medical Facility  |
| 25 | WAM | Schedule A 213.3102(a), Chaplain/Chaplain Asst  |
| 26 | WCM | Schedule A 213.3102(c); Pres Appt w/o Senate Confirmation   |
| 27 | WDM | Schedule A 213.3102(d); Attorney  |
| 28 | WEM | Schedule A 213.3102(e), Law Clerk   |
| 29 | WJM | Schedule A 213.3102(j), Former National Guard Tech  |
| 30 | WKM | Schedule A 213.3102(k); Appointment Without Compensation  |
| 31 | WLM | Schedule A 213.3102(l); Consultants   |
| 32 | WNM | Schedule A 213.3102(n); Physicians, Surgeons, Denists   |
| 33 | WTA | Schedule A 213.3102(u) - Intellectual Disability  |
| 34 | WTB | Schedule A 213.3102(u) - Psychiatric Disability   |
| 35 | WUM | Schedule A 213.3102(u) - Severe Physical Disability   |
| 36 | WXM | Schedule A 213.3102(x); Work-Release Program  |
| 37 | WZM | Schedule A 213.3102(z); White House Fellows   |
| 38 | XAM | Schedule A 213.3102(aa); GS 11+ Sci/Prof Research Assoc   |

| #  | LAC               | Authority  |
|----|-------------------|--|
| 39 | XBM               | Schedule A 213.3102(bb), Employment of alien in absence of qualified citizens  |
| 40 | XFM               | Schedule A 213.3102(ff), Attny General Programs.   |
| 41 | XXM               | Schedule A 213.3102(ll); Reader/Interpreter/Pers Asst  |
| 42 | XZM               | Schedule A 213.31XX; Agency Unique   |
| 43 | Y5M               | Schedule B 213.32XX, Agency Unique   |
| 44 | Y7M*              | Schedule C 213.33XX. Agency Unique   |
| 45 | Y8M*              | Authority other than Sch C, 213.33XX, (i.e., Law or E.O. establishing a Sch C Position)  |
| 46 | Y9K*              | Schedule C 213.3302(a), Temp Transitional  |
| 47 | YEA*              | Schedule D 213.3402(a), Pathways Program Intern  |
| 48 | YEB*              | Schedule D 213.3402(b), Pathways Program Recent Grad   |
| 49 | YEC*              | Schedule D 213.3402(c), Pathways Program PMF   |
| 50 | YEF*              | Schedule D 213.3402(a) - SCEP, Pathways Program Intern (Former SCEP)   |
| 51 | YEG*              | Schedule D 213.3402(a) - STEP, Pathways Program Intern (Former STEP)   |
| 52 | YEH*              | Schedule D 213.3402(c) - PMF, Pathways Program Intern (Former PMF before Pathways)   |
| 53 | YEP*              | 5 CFR 362.304, Pathways Program Recent Grad (already employed at other agency)   |
| 54 | YER*              | 5 CFR 362.406, Pathways Program PMF (already employed at other agency)   |
| 55 | YES*              | 5 CFR 362.407, Pathways Program PMF (readmitted PMF)   |
| 56 | YJM               | Schedule B 213.3202(j); SES Executive Development Program  |
| 57 | YMM               | Schedule B 213.3202(m); Appointment Following Removal from the SES   |
| 58 | Z2U*              | P.L. 103-337. Defense Lab Demo   |
| 59 | Z2W*              | P.L. 104-106. Defense Acquisition Demo   |
| 60 | ZLM*              | Any authority of any other law, EO, or reg not covered in preceding rules  |
| 61 | ZRM               | Agency Restoration Authority; exercises reemployment rights under circumstances not covered in rules                               |
| 62 | ZVG <sup>25</sup> | Schedule A 213.3106(b)(10), Temporary or Time-Limited Positions in Direct Support of U.S. Government Efforts (Effective 10/1/2012) |

\*Note: The highlighted legal authorities were beyond the scope of this study and were, therefore, excluded.

<sup>25</sup> The ZVG code was for an agency-unique DOD authority that expired in 2014 and is no longer active.

Table 8 - Proportional Usage of Excepted Service Hiring Authorities

| Agency      | XZM                 | J8M   | WDM      | W9R                  | WUM                        | W9P           | Y5M                 | H2L               | WEM       | WAM                |               |       |             | Total  |
|-------------|---------------------|-------|----------|----------------------|----------------------------|---------------|---------------------|-------------------|-----------|--------------------|---------------|-------|-------------|--------|
|             | Agency-Unique Sch A | VRA   | Attorney | Temp, not F/T, Other | Severe Physical Disability | Critical Need | Agency-Unique Sch B | Expert/Consultant | Law Clerk | Chaplain/Assistant | Other Title 5 | ZLM   | Non-Title 5 |        |
|             | 5,144               | 383   | 16       | 0                    | 226                        | 234           | 206                 | 9                 | 0         | 1                  | 1,837         | 38    | 37          | 8,131  |
| Agriculture | 63.3%               | 4.7%  | 0.2%     | 0.0%                 | 2.8%                       | 2.9%          | 2.5%                | 0.1%              | 0.0%      | 0.0%               | 22.6%         | 0.5%  | 0.4%        | 100%   |
|             | 2,149               | 101   | 118      | 891                  | 86                         | 9             | 9                   | 27                | 4         | 0                  | 569           | 61    | 16          | 4,040  |
| Commerce    | 53.2%               | 2.5%  | 2.9%     | 22.1%                | 2.1%                       | 0.2%          | 0.2%                | 0.7%              | 0.1%      | 0.0%               | 14.1%         | 1.5%  | 0.4%        | 100%   |
|             | 1,002               | 308   | 73       | 0                    | 283                        | 9             | 14                  | 42                | 0         | 2                  | 2,248         | 26    | 10,070      | 14,077 |
| Air Force   | 7.1%                | 2.2%  | 0.5%     | 0.0%                 | 2.0%                       | 0.1%          | 0.1%                | 0.3%              | 0.0%      | 0.0%               | 16.0%         | 0.2%  | 71.5%       | 100%   |
|             | 1,294               | 2,110 | 183      | 0                    | 186                        | 73            | 6                   | 316               | 10        | 2                  | 2,767         | 166   | 6,579       | 13,692 |
| Army        | 9.5%                | 15.4% | 1.3%     | 0.0%                 | 1.4%                       | 0.5%          | 0.0%                | 2.3%              | 0.1%      | 0.0%               | 20.2%         | 1.2%  | 48.1%       | 100%   |
|             | 3,383               | 368   | 115      | 64                   | 260                        | 41            | 41                  | 487               | 2         | 0                  | 1,251         | 2,533 | 231         | 8,776  |
| 4th Estate  | 38.5%               | 4.2%  | 1.3%     | 0.7%                 | 3.0%                       | 0.5%          | 0.5%                | 5.5%              | 0.0%      | 0.0%               | 14.3%         | 28.9% | 2.6%        | 100%   |
|             | 2,003               | 2,171 | 93       | 1                    | 272                        | 1             | 0                   | 30                | 1         | 2                  | 2,051         | 51    | 302         | 6,978  |
| Navy        | 28.7%               | 31.1% | 1.3%     | 0.0%                 | 3.9%                       | 0.0%          | 0.0%                | 0.5%              | 0.0%      | 0.0%               | 29.5%         | 0.7%  | 4.3%        | 100%   |
|             | 104                 | 569   | 263      | 19                   | 197                        | 0             | 447                 | 10                | 11        | 1                  | 736           | 9,559 | 9,315       | 21,231 |
| DHS         | 0.5%                | 2.7%  | 1.2%     | 0.1%                 | 0.9%                       | 0.0%          | 2.1%                | 0.0%              | 0.1%      | 0.0%               | 3.5%          | 45.0% | 43.9%       | 100%   |
|             | 0                   | 7     | 128      | 2                    | 24                         | 0             | 0                   | 11                | 3         | 1                  | 171           | 69    | 1           | 417    |
| Education   | 0.0%                | 1.7%  | 30.7%    | 0.5%                 | 5.8%                       | 0.0%          | 0.0%                | 2.6%              | 0.7%      | 0.2%               | 41.0%         | 16.6% | 0.2%        | 100%   |
|             | 1,166               | 76    | 108      | 67                   | 553                        | 664           | 0                   | 68                | 9         | 0                  | 1,337         | 2,872 | 2           | 6,922  |
| HHS         | 16.8%               | 1.1%  | 1.6%     | 1.0%                 | 8.0%                       | 9.6%          | 0.0%                | 1.0%              | 0.1%      | 0.0%               | 19.3%         | 41.5% | 0.0%        | 100%   |
|             | 2,902               | 515   | 53       | 53                   | 184                        | 1,079         | 0                   | 1                 | 1         | 2                  | 1,627         | 7,001 | 4           | 13,422 |
| Interior    | 21.6%               | 3.8%  | 0.4%     | 0.4%                 | 1.4%                       | 8.1%          | 0.0%                | 0.0%              | 0.0%      | 0.0%               | 12.1%         | 52.2% | 0.0%        | 100%   |
|             | 11                  | 296   | 1,087    | 0                    | 72                         | 0             | 417                 | 0                 | 129       | 26                 | 624           | 3,195 | 7           | 5,864  |
| Justice     | 0.2%                | 5.1%  | 18.6%    | 0.0%                 | 1.2%                       | 0.0%          | 7.1%                | 0.0%              | 2.2%      | 0.4%               | 10.6%         | 54.5% | 0.1%        | 100%   |
|             | 0                   | 1     | 216      | 0                    | 11                         | 0             | 0                   | 7                 | 14        | 0                  | 86            | 2     | 0           | 337    |
| SEC         | 0.0%                | 0.3%  | 64.1%    | 0.0%                 | 3.3%                       | 0.0%          | 0.0%                | 2.1%              | 4.1%      | 0.0%               | 25.5%         | 0.6%  | 0.0%        | 100%   |
|             | 0                   | 1,035 | 683      | 6                    | 335                        | 1             | 0                   | 8                 | 9         | 0                  | 995           | 10    | 0           | 3,082  |
| SSA         | 0.0%                | 33.6% | 22.1%    | 0.2%                 | 10.9%                      | 0.0%          | 0.0%                | 0.3%              | 0.3%      | 0.0%               | 32.3%         | 0.3%  | 0.0%        | 100%   |
|             | 0                   | 2     | 6        | 0                    | 27                         | 0             | 0                   | 2                 | 0         | 0                  | 42            | 347   | 417         | 843    |
| USAID       | 0.0%                | 0.2%  | 0.7%     | 0.0%                 | 3.2%                       | 0.0%          | 0.0%                | 0.2%              | 0.0%      | 0.0%               | 5.0%          | 41.2% | 49.5%       | 100%   |
|             | 64                  | 3,966 | 151      | 1                    | 897                        | 109           | 185                 | 10                | 0         | 92                 | 1,477         | 200   | 46,521      | 53,673 |
| VA          | 0.1%                | 7.4%  | 0.3%     | 0.0%                 | 1.7%                       | 0.2%          | 0.3%                | 0.0%              | 0.0%      | 0.2%               | 2.7%          | 0.4%  | 86.7%       | 100%   |

Source: EHRI-SDM, 15 agencies, review period, July 1, 2015-June 30, 2016 (Data as of August 2017)

**Table 9 – Selected Title 5 Legal Authorities/Codes**

| #                              | LAC   | Legal Authority            | # Appts       | % Appts      |
|--------------------------------|-------|----------------------------|---------------|--------------|
| <b>Top 8 LACs</b>              |       |                            |               |              |
| 1                              | XZM   | Agency-Unique Sch A        | 19,277        | 37.7%        |
| 2                              | J8M   | VRA                        | 12,170        | 23.8%        |
| 3                              | WDM   | Attorney                   | 3,914         | 7.6%         |
| 4                              | W9R   | Temp, not F/T, Other       | 3,892         | 7.6%         |
| 5                              | WUM   | Severe Physical Disability | 3,658         | 7.2%         |
| 6                              | W9P   | Critical Need              | 2,534         | 4.9%         |
| 7                              | H2L   | Expert/Consultant          | 1,623         | 3.2%         |
| 8                              | Y5M   | Agency-Unique Sch B        | 1,385         | 2.7%         |
|                                |       | <b>Top 8 LAC Total</b>     | <b>48,453</b> | <b>94.7%</b> |
| <b>Questionable Use of LAC</b> |       |                            |               |              |
| 9                              | WAM   | Chaplain/Chaplain Asst     | 146           | 0.3%         |
| 10                             | WEM   | Law Clerk                  | 371           | 0.7%         |
|                                |       | <b>Subtotal</b>            | <b>48,970</b> | <b>95.7%</b> |
|                                | Other | 24 LACs                    | 2,183         | 4.3%         |

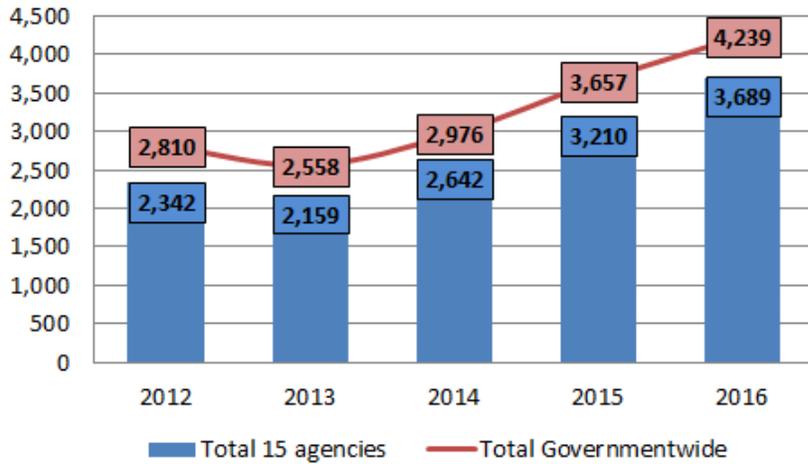
Source: EHRI- SDM, Governmentwide, FY15 (Data as of November 2017)

**Table 10 - Qualified Applicants**

| LAC | Legal Authority        | #Case Files Reviewed | # Applied     | Average # Applied | # Qualified   | % Qualified |
|-----|------------------------|----------------------|---------------|-------------------|---------------|-------------|
| H2L | Expert/Consultant      | 19                   | 23            | 1                 | 23            | 100%        |
| J8M | VRA                    | 106                  | 1,487         | 14                | 546           | 37%         |
| WAM | Chaplain/Chaplain Asst | 8                    | 206           | 26                | 86            | 42%         |
| WDM | Attorney               | 34                   | 3,056         | 90                | 2,071         | 68%         |
| WEM | Law Clerk              | 12                   | 292           | 24                | 19            | 7%          |
| WUM | Severe Physical Disab  | 38                   | 65            | 1-2               | 54            | 83%         |
| W9P | Critical Need          | 22                   | 23            | 1                 | 23            | 100%        |
| W9R | Temp/not FT/Other      | 24                   | 73            | 3                 | 40            | 55%         |
| XZM | Agency Unique Sch A    | 158                  | 39,712        | 251               | 24,927        | 63%         |
| Y5M | Agency Unique Sch B    | 15                   | 34,625        | 2,308             | 23,269        | 67%         |
|     | <b>Totals</b>          | <b>436</b>           | <b>79,544</b> |                   | <b>51,058</b> |             |

Source: OPM Excepted Service Study, Transactional Review (September 2017)

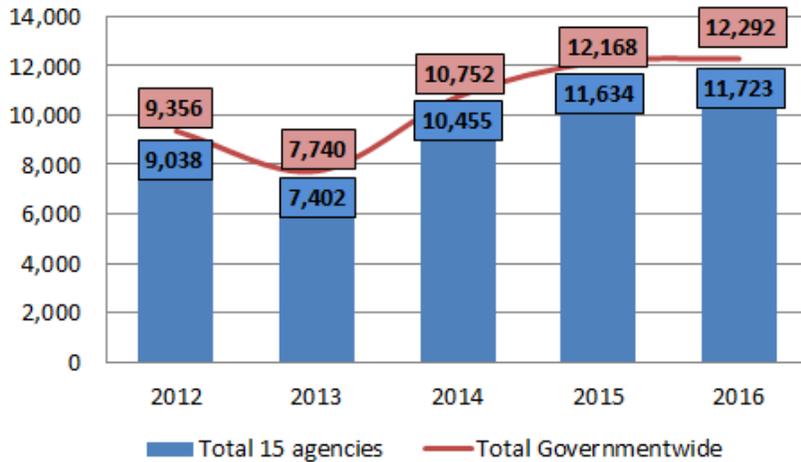
**Figure 10 - Severe Physical Disability Appointments - 15 Agencies vs. Governmentwide**



| Agency               | FY12  | FY13  | FY14  | FY15  | FY16  |
|----------------------|-------|-------|-------|-------|-------|
| Total 15 agencies    | 2,342 | 2,159 | 2,642 | 3,210 | 3,689 |
| Total Governmentwide | 2,810 | 2,558 | 2,976 | 3,657 | 4,239 |

Source: EHRI-SDM, Governmentwide, FY12-FY16 (Data as of August 2017)

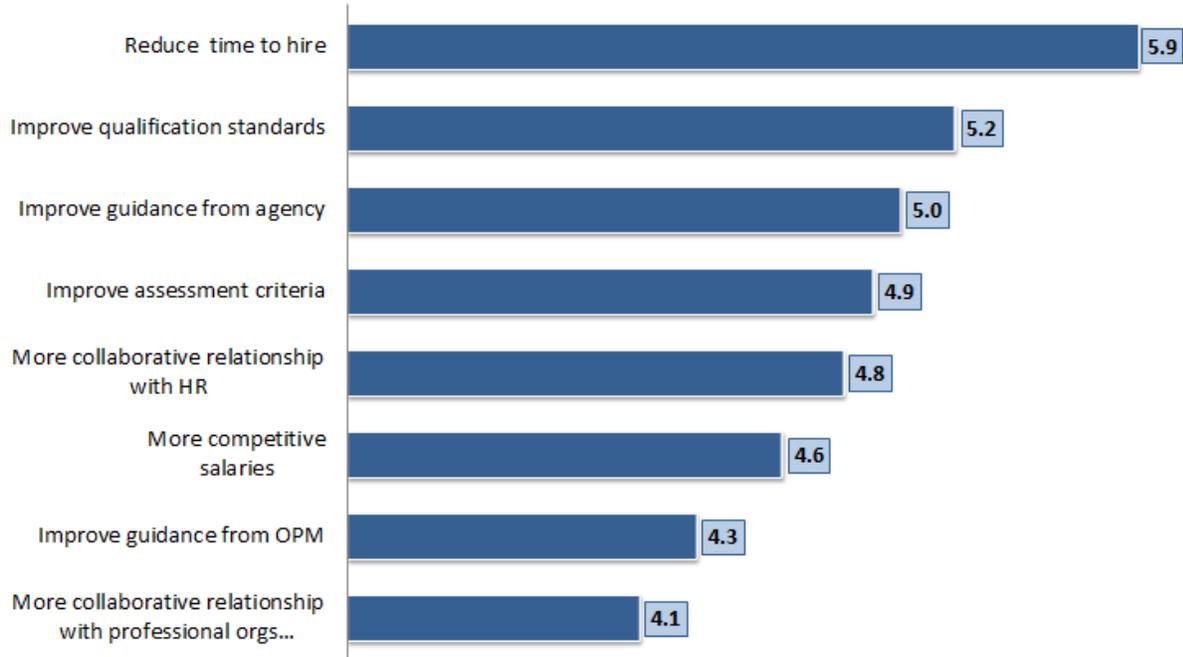
**Figure 11 - VRA Appointments - 15 Agencies vs. Governmentwide**



| Agency               | FY12  | FY13  | FY14   | FY15   | FY16   |
|----------------------|-------|-------|--------|--------|--------|
| Total 15 agencies    | 9,038 | 7,402 | 10,455 | 11,634 | 11,723 |
| Total Governmentwide | 9,356 | 7,740 | 10,752 | 12,168 | 12,292 |

Source: EHRI-SDM, Governmentwide, FY12-FY16 (Data as of August 2017)

**Figure 12 - “What steps do you believe could be taken to improve the excepted service hiring process?” (Select all that apply and rank items by placing them in order of priority)**



Average Ranking of Responses

| Response Option   | Average Ranking of Responses |
|---|------------------------------|
| Reduce time to hire   | 5.9                          |
| Improve qualification standards   | 5.2                          |
| Improve guidance from agency  | 5.0                          |
| Improve assessment criteria   | 4.9                          |
| More collaborative relationship with HR   | 4.8                          |
| More competitive salaries   | 4.6                          |
| Improve guidance from OPM   | 4.3                          |
| More collaborative relationship with professional orgs in related field or universities | 4.1                          |

Source: OPM Excepted Service Study, Hiring Manager Survey (April 2017)



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