The Rule of Three in Federal Hiring: Boon or Bane?

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

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EXECUTIVE SUMMARY

For more than 10 years, significant changes have been dramatically affecting how the Federal Government recruits and selects new employees. Among the most visible changes are a major decentralization of authority and responsibility from the U.S. Office of Personnel Management (as the Government's central personnel agency) to individual Federal departments and agencies. These changes in roles accompany changes in the staffing process, such as the way in which Federal jobs are advertised and the methods by which job applicants are assessed and selected. The pace of these changes has quickened over the last few years as part of the general movement to reinvent and streamline Government.

While many of the ground rules governing staffing have changed during this time, one key provision of law has been in effect and unchanged for over 50 years, despite a widespread perception that it has an unintended and negative impact on the Federal hiring process. This is the "rule of three," which requires managers to select their new hires from among the top three available candidates referred to them. This requirement, in turn, is linked to the provision of veterans preference, which grants a preference in hiring to certain military veterans and some family members of veterans. In this report the U.S. Merit Systems Protection Board (MSPB or Board) questions the continued use of the rule of three in today's Government, in terms of both its utility in the overall hiring process and its actual value to veterans. We also offer alternatives that would better meet the goals of attracting and selecting highly qualified individuals according to merit principles while meeting the goals and objectives of the statutory provisions for veterans preference.

Background

Implementation of the Civil Service Reform Act of 1978 (CSRA) began a period of significant changes in Federal hiring practices that continues today. Nonetheless, Federal hiring remains subject to procedural requirements that have existed in law for more than 50 years.

This report examines the effects of one such law (5 U.S.C. 3318) on the Federal Government's ability to sustain hiring based on merit. Known as the "rule of three," that law requires managers to select new employees from among the top three available candidates rated and referred to them by an examining office. This report also examines the interaction of the rule of three with a civil service law—veterans preference—which grants preference in Federal hiring to certain veterans and family members of disabled or deceased veterans.

Executive Summary

This report is based on information obtained from (1) a sample of 1,069 "certificates"—forms containing the names of candidates referred to managers for employment consideration—prepared either by OPM offices or by agency offices with delegated examining authority, and (2) related information the examining offices maintained on their certificates. Our sample covered hiring under these three procedures:

1. Register hiring, a process that uses standing inventories (or "registers") of candidates, listed in order of their numerical ratings, and established to fill jobs as vacancies arise. Numerical ratings are assigned to candidates on the basis of their scores on written or performance tests, or an assessment of their training and experience. Veteran's positions on these registers are enhanced by points added to their numerical ratings.
2. Case examining, which involves recruiting, examining applicant submissions, and producing a certificate of eligibles for specific individual vacancies rather than using a register of candidates that has already been established. This procedure, which also lists candidates in order of their numerical ratings and which follows the same veterans preference rules that apply in register hiring, is the most common competitive hiring procedure in use today.
3. Hiring under a U.S. Department of Agriculture demonstration project that uses case examining techniques but with these significant differences:
   (a) Instead of receiving numerical scores, qualified candidates are assigned to one of two broad rating categories.
   (b) Except when veterans preference applies, managers may select any candidate referred rather than being limited to the top three candidates.
   (c) Veterans are assigned to the same rating categories as nonveterans, and solely on the basis of their own merit, without the addition of extra points. Within their assigned categories veterans receive absolute preference, i.e., they must be selected before nonveterans. (However, certain disabled veterans in the lower rating category are placed ahead of candidates in the higher rating category except when filling professional or scientific jobs at or above GS grade 9.)

Findings

- *Although conventional wisdom suggests that managers' choices in hiring are almost always limited by the rule of three, we did not find this to be the case.*

  Often the rule of three is not even a factor in managers' hiring choices. In more than one-third of the case examining certificates we reviewed, and for more than one-sixth of the register certificates, the rule did not exclude any candidates because fewer than three qualified candidates were identified by the procedure. In these instances only one or two candidates were listed on the certificate.

- *A conventional belief that managers often cannot hire preferred candidates because certificates list one or more veterans ahead of the preferred candidates is overstated.*

  About one-fifth of all certificates from registers or case examining and about one-tenth from the demonstration project involved candidates that managers had requested by name. In our sample, managers were more likely to be unable to appoint their name-requested candidates because of uncontrollable events such as job freezes than because veterans "blocked" those candidates.

- *Although certificates derived from standing registers were more likely to contain candidates with veterans preference, actual hiring of veterans was more likely when they were referred through case examining and demonstration project procedures.*

  Of the certificates we reviewed for this study, over half of those from registers contained at least one person with veterans preference, while just over one-third of the certificates from case examining and just over one-fourth from the demonstration project included veterans. Case examining and demonstration project procedures also yielded proportionately fewer certificates headed by veterans than did register hiring procedures. However, the actual appointment rates for veterans listed first on certificates were higher for certificates prepared through case examining and demonstration project procedures than for certificates prepared from registers.

- *The rule of three does not appear to be needed as a method to screen from among an overwhelming number of candidates.*

  Case examining is now the approach used most frequently to prepare certificates. This approach, focussing on specific individual vacancies, typically does not yield excessive numbers of candidates. In our sample of certificates prepared through case examining, almost 90 percent of the vacancies led to no more than 10 qualified candidates.

- *In cases with only one or two candidates, the rule of three can serve as a "floor," that is, it allows a selecting official to request that more candidates be referred to ensure a choice from among a minimum of three, but this option is rarely used.*

  Most managers who were presented with fewer than three candidates did not request more candidates when the certificates were prepared via the case examining or demonstration project procedure. Even when the certificates were prepared from standing registers, many of the managers did not request additional names when fewer than three individuals were referred.

- *When a number of candidates have identical ratings, the assignment of candidates to a certificate of eligibles often is based on a non-merit approach—the use of random numbers to break ties.*

  The rule of three requires qualified candidates to be listed in rank order and managers to select from among the top three available candidates. But often a number of candidates have identical ratings, and some method must be used to decide which candidates will be placed on the referral register and in what order. Putting veterans first takes care of some of these ties. If there are still ties after veterans preference has been applied, accommodating a manager's request for a particular candidate can further decide tie situations. However, too often these ties are broken through use of a random numbers table, essentially turning the referral process into a lottery. Of the certificates we examined, three of every five certificates prepared from registers and one of every four prepared using the case examining approach used the random numbers procedure as a tie-breaker.

Conclusions

- The hiring procedures used in the demonstration project fit better with veterans preference requirements and are arguably fairer to veterans, nonveterans, and managers than are the traditional register and case examining approaches. The traditional approaches require

that points be added to problematic numerical scores and that veterans preference interact with the rule of three. These requirements put pressure on examining techniques that are already stressed to meet all of the expectations placed on them. The demonstration project alternative reduces that pressure by first measuring all candidates' qualifications and then considering veterans preference without the complicating factor of the rule of three.

- Although the hiring shift from registers to case examining in Federal agencies could reduce veterans' opportunities to be considered for jobs, both case examining and demonstration project certificates led to higher appointment rates for veterans listed first on them. In the end, being hired is the most important criterion.
- Given the limitations of current examining processes, the rule of three remains valuable only as a "floor" to ensure that managers have choices (which was its original purpose). As a curb on the number of candidates referred to managers, it does not represent good hiring policy. Further, given the variations in ability to predict future job performance exhibited by the different Federal examining processes, a single legislated referral and selection procedure does not seem reasonable.
- Our finding of managers' evident willingness to hire from certificates containing only one or two candidates, when combined with the increased reliance on assessing candidates through their training and work experience (rather than a written examination), raises questions about future workforce quality. Less precise examining techniques ideally should be offset by larger numbers of candidates, but we found a trend in the opposite direction. Faced with the pressures of immediate work demands, managers too often appeared willing to choose from among a very limited candidate pool—an expedient approach that may not yield the best employee for the long haul.
- Managers' willingness to select from a small number of candidates also heightens our concern about the generally poor way Federal agencies have prepared managers to make hiring selections that will ensure a high-quality workforce. Managers until recently have been remote from much of the hiring process, relying on examining offices and their own personnel offices to make many key hiring decisions. This approach—which may have been practical when central registers listed hundreds or even thousands of qualified applicants—is not suited to today, when a vacancy announcement may produce relatively few candidates.
- Some managers in the demonstration project used the flexibility of the project's procedures to restrict consideration for some positions to single "in house" candidates they wanted to hire. These candidates were scientists who had already been working in the agency for as long as two years under excepted appointments as post-doctoral candidates. Workforce quality interests would be just as well served and competitive hiring better served if managers could simply convert such candidates the way that participants in the new Student Educational Employment Program may be converted to permanent positions once they have met their education and experience requirements.
- The findings in this report add to a growing body of evidence (discernible from sources as diverse as the U.S. General Accounting Office, the Pennsylvania State University (in reports prepared for OPM), the former National Advisory Council on the Public Service, and MSPB) pointing to two key conclusions:

  1. The rule of three does not represent the best way to foster merit-based hiring; and

2. Interaction between the rule of three and the current approach to veterans preference too often produces results that are not in the best interests of managers or job candidates, including candidates with veterans preference.

- In future assessments of the Federal civil service, MSPB will need to pay particular attention to actions taken by Federal departments and agencies, including the Office of Personnel Management, to address the issues discussed in this report.

Options for Improving the System

If legislation is proposed to eliminate the current rule of three (found at 5 U.S.C. 3318) in favor of a more flexible requirement for merit-based hiring, the goal of that legislation should be to better serve managers and all job candidates including veterans by—

- Encouraging selection from among as large a number of well qualified candidates as is reasonable and feasible;
- Permitting approaches that do not require administratively contrived tie-breakers to force distinctions among equally rated candidates; and
- Retaining 3 as the minimum number below which managers have a legal right to request referral of additional candidates (which currently is provided for in 5 U.S.C. 3317).

Two approaches which we think would serve that expressed goal are:

(a) Replace the rule of three with a requirement that selecting officials shall select from among an adequate number of well qualified candidates who are referred to them by the appropriate OPM or delegated examining office. The term "an adequate number of candidates" should be defined operationally with reference to how well each examining instrument can discriminate among candidates. When less discriminating instruments are used, larger numbers of candidates should be referred; and

(b) Authorize agencies to use a category rating system similar to that permitted by the USDA demonstration project. This system should replace the current numerical scoring system. (Such a provision is included in proposed draft legislation titled the "Federal Human Resource Management Reinvention Act of 1995.")

We also recommend the following actions:

1. OPM should provide more help to agencies in developing the skills their managers and supervisors will need in order to play an expanded role in the hiring process; specifically, OPM should develop and make available to agencies good tools and techniques for managers and supervisors to use in assessing job candidates. This assistance should include improving managers' and supervisors' ability to use OPM's written examinations as part of their candidate assessment process. Such improvements will require OPM to simplify the scheduling, administration, and scoring of the examinations so managers will use them.

2. At the same time, Federal departments and agencies should emphasize to managers and supervisors the value of using existing tests (e.g., the Administrative Careers With America tests) in new ways. Departments and agencies should also cooperate with OPM in developing for managers and supervisors the tools necessary for expanding their role in hiring and the skills necessary to use the tools effectively.

3. Federal departments and agencies should emphasize to managers the importance of seeking sufficient numbers (more than one or two) of

well-qualified candidates for vacancies, and should request good assessment tools from their personnel offices and OPM to help managers and supervisors select from among relatively large numbers of candidates.

4 OPM should establish a hiring authority to permit conversion of post-doctoral candidates in scientific or research organizations. This authority should be similar to the former Cooperative Education Program conversion authority (now authorized by the Student Career Experience Program, a component of the new Student Educational Employment Program).

INTRODUCTION AND BACKGROUND

Introduction

Managers' staffing decisions ultimately affect the ability of their organizations to accomplish their immediate and long-range missions. In the Federal Government, the quality of staff selections can make a difference in essential services to the public, such as the timely processing of social security claims; adequately inspecting meat and poultry before it reaches the marketplace; or ensuring that aircraft are airworthy and safely controlled while in the air.

Typically, Federal agencies haven't done a very good job of preparing managers for this critically important task. Until recently, the hiring process insulated managers from many of its steps. Managers asked for, and received, a rank order list of eligible candidates prepared by a neutral examining office. The number of referred candidates generally was small, and managers were limited to considering no more than the top three. Little or no special effort was made to prepare managers for the task of choosing from among the proffered candidates. Few or no assessment tools or techniques were made available. Perhaps their personnel offices provided strong assistance; perhaps not. Most managers were very much on their own, operating under the realization that the sooner they filled the job, the sooner the existing work would get done. In spite of this process, many good selections were made. There's no way of knowing, however, whether—or how often—better selections could have resulted.

In recent years, Federal managers' roles in the recruiting and hiring process have expanded as a result of numerous hiring policy and procedural changes (which are described in the next section of this report). However, two key laws governing Federal hiring have remained largely unchanged for more than 50 years. These are:

- The "rule of three," which requires managers to select from among the top three candidates available when hiring individuals from outside the Government; and
- Veterans preference, which gives an advantage in Federal hiring to individuals who meet specified criteria related to military service performed by themselves, their spouses or deceased spouses, or their children.

The main focus of this report is how these two largely unchanged laws interact with the many procedural changes that have been introduced into the hiring process. A second focus is how those interacting requirements and changes affect managers' hiring decisions. Overlaying these two issues are both:

- A concern for how Federal managers are or aren't being prepared for their expanded role in selecting new employees; and

- The twin imperatives of shrinking resources and immediate demands for improved service, which increasingly are likely to overshadow long-term staffing considerations when selection decisions are made.

Background

Enactment of the Civil Service Reform Act of 1978 set the stage for substantial changes in Federal personnel management, including how employees are hired. Initially hiring changes were introduced cautiously through closely drawn delegation agreements negotiated between the Office of Personnel Management and individual agencies or agency components. Considerable effort was expended to ensure that agencies exercising delegated examining authority acted to protect the merit basis of hiring, and thus the merit system. As experience was gained, OPM delegated more and broader examining authority to agencies.

Current "reinventing government" efforts initiated by the National Performance Review and budget reductions endorsed by the administration and Congress are hastening further changes to Federal personnel management, including the hiring process. Primarily, a shift has occurred in where examining is conducted and who conducts it, accompanied by profound changes in how candidates are examined and hired. Decreasing use has been made of a hiring process—"register hiring"—through which candidates apply once to a central Federal examining office and are later referred for job consideration when agencies request names of candidates. Instead, increasing use has been made of a process—"case examining"—where individual agencies generally advertise their jobs one at a time, and individuals apply for specific vacancies. Concurrently, use of written tests has declined in favor of assessing candidates through evaluation of their training and work experience.

OPM's operational role in many personnel management areas is all but gone. OPM also has significantly reduced the amount of written guidance it makes available to agencies. Not only have the rules changed, but there are fewer of them.

Agencies have received, or are receiving, authority for new or broader personnel management roles even as they are expected to reduce the number of people in their personnel office staffs. Managers and supervisors are being delegated new or expanded authority for recruiting and hiring at the very time when agency "how to" and "why" expertise to support and guide them is rapidly declining.

These changes have been initiated or proposed for the best of reasons: to give managers more control over the personnel decisions that contribute to attracting and retaining a highly qualified, efficient, and motivated Federal workforce. Goals underscoring the many changes that so far have occurred are to make hiring easier, quicker, and more understandable. However, the key consideration driving many of the changes appears to be mere expediency.

As part of its statutory responsibility to protect the Federal merit systems, the Merit Systems Protection Board is responsible for conducting periodic examinations of operations, and changes, in the Federal civil service system. In that context, we initiated this study of the effects of changes in civil service hiring practices to help policymakers determine if the desired results of recent changes are being achieved and to uncover any unintended consequences.

One focus of our study was how the changes in hiring practices have affected or been affected by two long-standing civil service laws governing hiring practices—the rule of three and veterans

preference—particularly as they interact with one another. Despite the many changes in hiring practices since CSRA implementation began, these two statutory provisions have remained virtually unchanged since 1944. They have been, in effect, twin islands of stability in a sea of change. The time is ripe to examine whether the procedures required to implement these statutory requirements remain appropriate in the environment that is evolving in the Federal Government.

In this report we:

- Discuss the possible consequences if the current trend in Federal hiring policies and practices continues;
- Describe the current operational effects of the rule of three and veterans preference, separately and as they interact with one another;
- Explore alternative approaches to achieving the purposes of the two laws;
- Recommend from among the possible alternatives the one(s) we believe are most likely to serve the citizens of the United States in the coming years; and
- Recommended needed steps to help managers gain skills in recruiting and selecting well-qualified employees, in keeping with managers' greatly expanding responsibilities for these two functions.

An Overview of Current Examining and Hiring Practices

The keystone of the Federal civil service is its merit basis. Individuals are hired and advanced on the basis of what, not who, they know. And what they know is measured before they are hired. Thus, in theory, Federal managers are able to choose from among the best available candidates for their jobs.

Examining

Civil service law requires Federal examining offices to give job applicants numerical scores and to refer candidates for employment based on their scores. Higher scores represent greater merit and thus improve candidates' employment opportunities. However, an exception to the direct relationship between examination score and inferred merit is created by another civil service law, the veterans preference law. Veterans preference requires augmenting the passing scores of certain individuals because of military service performed by them or members of their families. The mechanics and effects of this exception are discussed later.

It should also be noted that when there are fewer than four qualified candidates, so long as either all or none of them have veterans preference, the examining process is likely to be truncated. (In contrast, a mixture of veterans and nonveterans requires rating and ranking even if there are only two candidates.) Examining offices usually will simply determine that the candidates are basically qualified and then refer them as "eligible" rather than giving them numerical scores and ranking them, since the outcome of rating and ranking would be irrelevant; managers may select any of the candidates regardless of their relative scores.

The tools used to measure applicants' knowledge, skills, and abilities are critical to making good employment selections. Sometimes these tools are written or performance (skills) tests, which generally are quite good at predicting performance for specific jobs and which sometimes attempt to differentiate among candidates down to tenths of a point. Examples of written tests with good predictive ability include those used to test applicants for Social Security Claims Representative jobs, for Revenue Officer jobs at the Internal Revenue Service, and for Criminal Investigator jobs in several components of the Department of the

Treasury. However, no written or performance test measures everything important about any job. Worse, there are no such tests for many jobs.

Another way to assess candidates is by evaluating their training and experience. Although less precise in scoring candidates than written or performance tests, this form of assessment can usefully distinguish among candidates. Like written or performance tests, however, this process doesn't measure everything important about a job. The trend in examining for Federal jobs has led to increased use of this less precise assessment approach at the expense of written or performance tests—and possibly at the expense of future workforce quality. Assessing candidates through evaluation of their training and experience is better at separating candidates into broad categories (e.g., high-quality; qualified; unqualified) than in making finer distinctions among them.

Regardless of the assessment tools used, most managers won't hire solely on the basis of test scores. Instead, they seek additional information through activities such as reference checks and personal interviews. This supplemental information rounds out managers' knowledge of candidates, but is both subjective in nature and very difficult to quantify.

The point is this: even with rational examining processes, valid tests, numerical scores, and good managerial intentions, the examining process that underpins our Federal merit hiring system lacks the ability to predict future performance with the degree of precision that often is ascribed to it. This is an important limitation in view of the large number of people the Federal Government normally hires each year. Still, the Federal merit hiring system is vastly superior to the spoils system that it replaced and substantially better than most alternatives, which often tend to result in "hiring at will."

Hiring

Decentralization and increased use of case examining, which entails advertising and filling jobs "one at a time," are two important recent changes significantly affecting how the Federal Government hires. Register hiring, the traditional approach now in decline, plus case examining and a new demonstration project hiring process represent the possible trend from "hiring past" to "hiring future." A brief description of each process follows:

- **Register hiring.** Under this system, hiring is based on standing inventories of candidates, called registers. Register hiring allows an examining office to establish in advance a list of qualified candidates in rank order (including additional points awarded for veterans preference). Some registers accept candidates at all times, while others are open to new candidates only at specified intervals. Individuals usually apply "blind" for any jobs that open up on the register and are referred from the top of the registers when managers request lists of eligible candidates (called certificates of eligibles, or simply certificates). Managers must follow the rule of three when selecting from these certificates. Hiring from registers is a very efficient process when there is a need to fill many jobs at many locations, either on a continuing or one-time basis. Consequently, some agencies continue to use registers to fill key large-population jobs, such as Claims Examiner jobs in the Social Security Administration, or Criminal Investigator jobs in the Secret Service. For a long time, register hiring was the traditional way to identify and refer candidates for most Federal jobs, but in recent years the process has increasingly given way to hiring based on case examining.
- **Hiring based on case examining.** This process involves advertising and accepting applica-

tions for a specific job opening (or multiple similar openings). Under this process applicants know that a specific job in a specific agency exists, and where that job is. Candidates are still numerically scored and referred in rank order, and the selection process is still subject to the rule of three. It is the process most frequently used today.

- **Hiring under a USDA demonstration project.** Beginning in 1990, two major subdivisions of the U.S. Department of Agriculture began hiring under special OPM-approved demonstration project rules. Basically, this process (discussed later under "An Alternate Way to Refer Candidates and Grant Veterans Preference") involves hiring through case examining but with three special flexibilities. Specifically, candidates are rated and referred by one of two broad qualification categories rather than by numerical scores; managers may select anyone on the certificate without regard to the rule of three; and veterans preference is applied following different rules.

As previous MSPB[1] and General Accounting Office (GAO)[2] reports have shown, hiring new employees from certificates is only one way managers can fill vacancies. Other options include the transfer or reassignment of current Federal employees, or selection of current employees under merit promotion procedures. There are also alternative hiring provisions (such as the former Co-operative Education Program, now part of the Student Career Experience Program) which permit appointment of outside candidates without competition. Managers may consider candidates under more than one of these procedures concurrently.

The Rule of Three

As we noted earlier, the rule of three requires a manager hiring people into the civil service to select from among the top three candidates available[3] on a certificate of eligibles. From the cartoon reproduced below, it's evident that even people who don't work for the Government know something about this requirement, although they may not understand it. Implementation of this statutory requirement is assisted by a second law which requires examining offices to refer enough names to a manager to allow consideration of at least three candidates for each vacancy being filled.[4]

Few procedural requirements governing Federal civil service hiring evoke stronger—or more generally negative—reactions from managers and personnel officials than does the rule of three. Why? Because this provision of personnel law is widely perceived as limiting the choice managers may exercise when they select from among new-hire candidates.

Since the rule of three requires managers to select from among the top three available candidates, the perception that it limits managers' choices has merit. However, this requirement originally was intended to give managers choices when they hired new employees.

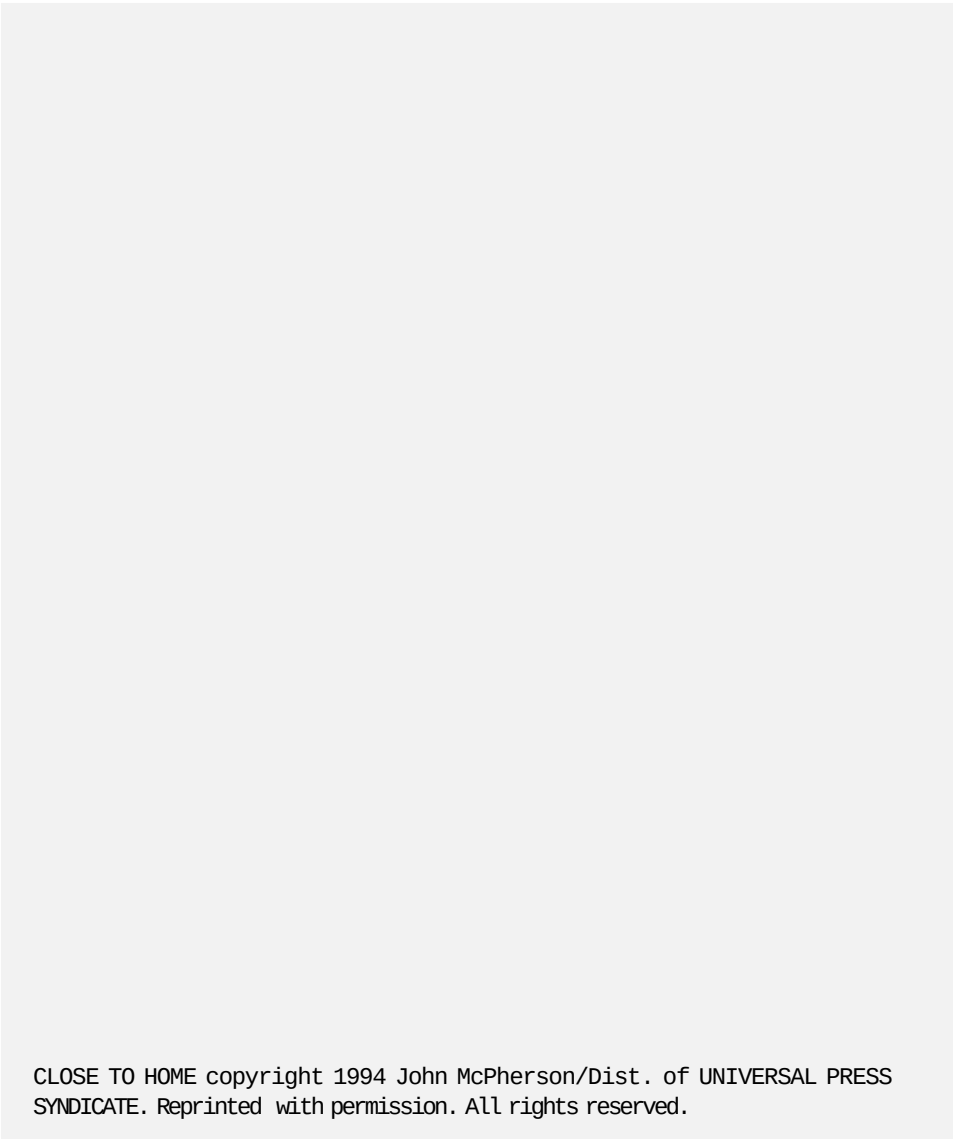
[1] U.S. Merit Systems Protection Board, "Entering Professional Positions in the Federal Workforce," Washington, DC, March 1994.

[2] U.S. General Accounting Office, "Federal Hiring: Reconciling Managerial Flexibility With Veterans' Preference," (GAO/GGD-95-102), Washington, DC, June 1995, p. 24.

[3] 5 U.S.C. 3318.

[4] 5 U.S.C. 3317.

As the brief history of the rule of three presented in appendix 1 shows, this rule—so called because it was established administratively as a civil service rule long before it was incorporated into law as a provision of the Veterans Preference Act of 1944—actually is older than the U.S. Civil Service. It was established by a short-lived civil service commission created during the presidency of Ulysses S. Grant. And its formulation was a result of an 1871 Attorney General's ruling on a proposal by that commission to establish a "rule of one" through requiring managers to select the top scoring person on the relevant employment examination. In a published opinion responding to that proposal, the Attorney General concluded that this would deny Federal managers constitutionally granted appointment discretion. The rule of three was the approach chosen to ensure that managers could exercise choice when making hiring selections.



Compared to the originally proposed "rule of one" alternative, the rule of three isn't so limiting. However, it's fair to question whether restricting managerial choice to three candidates is justifiable, especially since the examination procedures underpinning this hiring rule vary in their ability to make fine distinctions among candidates. Further, as we discuss later, the requirement to limit choice to "the top three candidates available" can reduce competitive hiring to a nonmeritorious game of chance in some circumstances. In addition, interaction between the rule of three and veterans preference can effectively restrict choice to one or two candidates, a consequence we also discuss later.

Veterans Preference

Veterans preference is a preference in Federal hiring that is granted to many, but by no means all, persons who are veterans of military service, and which is also afforded to some people who have never served in the military.[5]

Appendix 2 contains a brief history of veterans preference in Federal hiring, showing that it has been mandated by law in some form since 1865. That appendix discusses only the provisions affecting hiring because provisions concerned with job retention, appeal rights, and assessing performance are outside the scope of this study.

The following provisions of the current law are important to this study:

1. Persons with veterans preference are given precedence in hiring over equally qualified people lacking that preference;
2. The preference is granted through adding either 5 or 10 points to the individual's passing score on whatever examination has been used;
3. Veterans with a disability of at least 10 percent (called compensable veterans) receive an additional hiring boost through a process called "floating to the top." That process places this category of 10-point veterans at the top of certificates of eligibles even if their scores are lower than the scores of others on the certificates;[6]
4. A selecting official may "pass over" a person with veterans preference to select an equally or less qualified person lacking preference only by successfully objecting to the preference eligible; and
5. The reason(s) for passing over a veteran must be approved by the OPM or agency examining office and made known to the affected person.

Although the term "preference eligible" is more encompassing than "veteran" (because it includes those people whose eligibility is derived from military service performed by family members), for purposes of brevity we use only the single term "veterans" throughout most of the rest of this report.

The Interaction of the Rule of Three and Veterans Preference

Many of the concerns about these two provisions of personnel law are a result of their interaction. In combination, the two requirements may restrict managers' choices to fewer than three candidates. This can occur when the certificate of eligibles is headed by a single veteran or a pair of veterans, a situation that makes the veterans listed first the only possible choices unless they decline a job offer or can be passed over. While anecdotal information suggests that this situation occurs fairly often, we wanted to see for ourselves

[5] Veterans preference is an advantage granted by law to individuals who meet certain criteria related to military service performed by themselves, their spouses or deceased spouses, or their children. The qualifying conditions are listed in 5 U.S.C. 2108. Preference eligibility results from: (a) service during specified periods of time; (b) certain service-connected disabilities; or (c) under certain circumstances, death of a service member while on active duty. Retired members of the armed forces generally must have retired below pay grade O-4 (major or equivalent) to qualify for veterans preference.

[6] This provision does not apply to hiring for professional or scientific positions at or above grade GS-9.

if such limitations occurred frequently in our sample. Our findings are discussed later.

An Alternate Way to Refer Candidates and Grant Veterans Preference

To this point our discussion has focused on the civil service rules that apply generally to competitive Federal hiring. OPM has the authority, however, to waive civil service laws and its own regulations in certain instances to permit specific organizations to test alternative personnel management approaches. These "demonstration projects" are approved and monitored by OPM, serving as ways to test the effects of change.

As we noted earlier, two USDA components are currently operating a hiring demonstration project approved by OPM. Three provisions of this demonstration project are of particular interest to this study. Specifically, it:

- Replaces numerical scoring of qualified candidates with assignment to two broad categories ("quality" and "eligible"). All candidates within each category are considered equally qualified.
- Eliminates the requirement that managers must select from among the top three candidates available. Instead, managers may select any referred candidate, regardless of the number referred.
- Applies veterans preference in a different way. Qualified candidates are assigned to one of the two referral categories based solely on their qualifications, after which veterans are identified and placed at the top of their respective categories.[7] A manager must then select or successfully pass over veterans before being permitted to select nonveterans with the same category rating.

Because this demonstration project offered an opportunity to compare the effects of its alternative approaches to the effects of the traditional hiring processes, we included hiring under the demonstration project in our study.

[7] An exception to this general statement is the demonstration project's treatment of compensable veterans with a disability of 10 percent or more. These individuals who are rated "eligible" "float to the top" of the "quality" group except in cases involving hiring for professional or scientific positions at or above grade GS-9. This keeps the demonstration project provisions closely aligned to regular veterans preference provisions for certain disabled veterans.

METHODOLOGY

Information for this report came primarily from certificates of eligibles prepared by several examining offices, together with the background information that examining offices maintain in support of the certificates. The background information included job applications; scoring summaries; reports of any investigations that may have been conducted to determine any candidates' suitability for employment; and rulings on objections to, or proposed pass overs of, candidates. We collected information both from examining offices operated by OPM and from two USDA agency offices exercising delegated examining authority. In addition, we collected information from one USDA office conducting nationwide examining for the demonstration project mentioned above. Certificates in our sample were prepared between November 1989 and March 1994. However, the vast majority (and all from the demonstration project) were prepared in 1991, 1992, or 1993.

The OPM examining offices were: the Washington (DC) Area Service Center and the Baltimore Service Center, which provide examining services to all agencies within their geographic jurisdictions; and the Macon Staffing Service Center, which at the time of our data collection provided nationwide examining services for certain occupations at the entry- and mid-level grades. We also included a very small number of cases involving examining by other OPM service centers around the country. These cases were identified from the files of the agency examining offices we visited.

The two USDA delegated examining offices provide nationwide examining services for their respective agencies and for some other agencies for certain occupations. The examining offices were operated by the Agricultural Stabilization and Conservation Service (ASCS) in Kansas City, MO, and the Agricultural Research Service (ARS) in Greenbelt, MD. These offices operate under delegated examining authority granted by OPM. Another ARS office at the Greenbelt location conducted all of the examining under the demonstration project rules.

The information we collected came from the individual case files or standing inventories of candidates (called registers) maintained by the examining offices. Our sample included a total of 1,069 randomly drawn records. Although random, our sample wasn't drawn to be statistically representative of all hiring records. Thus, our findings are not necessarily representative of all Federal hiring. However, the occupations, grade levels, geographic coverage, and practices of the offices are typical of Federal examining offices across the United States (with the noted exception of some practices of the ARS demonstration project office). For these reasons we believe that our findings are generally indicative of Federal

hiring practices. We collected the information between May and November 1994. Appendix 3 provides additional information about our data sample.

EXAMINING THE ISSUES

Actions Taken on the Certificates in Our Sample

Federal managers may consider filling a single job vacancy at several different grade levels. When they do this, they receive different certificates listing candidates for each grade level. They may then hire from any (or none) of the certificates, but in any case must document on each certificate what action they have taken. Sometimes two or more jobs may be filled from a single certificate, but this isn't often the case. Table 1 below shows the number of vacancies that were to be filled by certificates from each of the three hiring procedures covered by this report.

In some cases, Federal managers may end up not making selections for reasons totally outside their control. One example of such a situation is the imposition of a "job freeze." Another is the granting of mandatory priority selection consideration to past or current Federal employees who have been

Table 1.
Distribution of Certificates by Number of Vacancies To Be Filled From the Certificate and Hiring Procedure

Number and percent of vacant positions to fill	Hiring Procedure (Certificate Source)					
	Register		Case Examining		USDA Demonstration	
One	194	79%	559	88%	180	95%
Two	19	8%	51	8%	6	3%
Three	3	1%	11	2%	2	1%
Four	4	2%	7	1%	2	1%
Five or more	26	10%	5	1%	0	0%
Total certificates in sample	**246**	**100%**	**633**	**100%**	**190**	**100%**

(or are targeted to be) displaced during downsizings. When relevant, notation of such occurrences may be included in the documentation of a certificate since a part of each certificate's documentation is a history of its outcome. This includes a record of the action taken with respect to each referred candidate and, if no appointment was made from the certificate, the reason that was so.

Table 2 below shows what happened in our sample of certificates.

Table 2.
Distribution of Certificates by Reported Action Taken and Hiring Procedure

Action manager reported taking on the certificate	Hiring Procedure (Certificate Source)					
	Register		Case Examining		USDA Demonstration	
Selection was made from it	186	76%	360	57%	123	65%
Selection made from another certificate	5	2%	58	9%	21	11%
Job filled through merit promotion	3	1%	41	7%	10	5%
Job filled by reassignment or reinstatement	2	1%	14	2%	7	4%
Job filled by displaced employee	1	*	*2	*	3	2%
No selection—fewer than 3 candidates	23	9%	57	9%	2	1%
No selection—job freeze; lack of money; etc.	15	6%	45	7%	8	4%
Management decided not to fill the job	2	1%	25	4%	4	2%
Offer made; no candidate accepted	4	2%	5	1%	6	3%
No selection; no reason given for nonselection	5	2%	26	4%	6	3%
Total certificates in sample	**246**	**100%**	**633**	**100%**	**190**	**100%**

* Less than 1 percent

Note: Percentages may not equal 100 because of rounding.

From table 2 it's clear that managers don't always fill their jobs by selecting candidates from certificates of eligibles. In our sample they made selections more than half of the time, but at rates that varied considerably by hiring procedure. We were surprised to find that case examining had the lowest selection rate, since that is the process through which outside candidates apply for specific jobs in specific agencies. Case examining had the lowest selection rate even when we combined table 2's first two "action" categories (selecting from either the certificate reviewed or another certificate).

The Rule of Three and Our Sample

How, and even whether, the rule of three affects hiring is in part determined by the number of eligible candidates. In the following discussion we examine its effect under three different scenarios.

When There Are Fewer Than Three Qualified Candidates

From the Comptroller General's decision in 1871 to the civil service laws today, it's clear that having a choice in selecting new employees is an important part of a manager's authority. In fact, when managers return certificates to examining offices to report on the action taken, they are permitted to indicate that they made no selection because the certificate contained fewer than three names. (This happens when the examining office has fewer than three qualified candidates to refer.)

Table 2 shows that managers in our sample declined to make selections because of too few candidates 9 percent of the time from both the register and the case examining certificates. However, only 1 percent of the demonstration project certificates were returned for this reason, most likely reflecting the highly targeted nature of the recruiting conducted for many of the demonstration project jobs.

How often were there fewer than three candidates on certificates, and for what proportion of those certificates did managers not make selections? Table 3 shows how often the reviewed certificates had only one or two candidates.

We also wanted to know how the presence of fewer than three candidates on certificates af-

Table 3.
Distribution of Certificates With Fewer Than Three Candidates, by Number of Names on Certificates and Hiring Procedure

	Hiring Procedure (Certificate Source)					
Number of names on certificate	**Register**		**Case Examining**		**USDA Demonstration**	
One	25	10%	116	18%	39	20%
Two	16	7%	119	19%	30	16%
Total certificates in sample	**246**		**633**		**190**	

fected managers' selection decisions and whether the likelihood of selections not being made was related to the type of hiring procedure used. The answers are found in table 4.

As table 4 shows, there was a clear link between hiring procedure and whether limited choice influenced managers not to select from a certificate. More than half the time managers returned register-based certificates containing fewer than three names. The comparable figure was only about one-fourth of the time for case examining, and minute (3 percent) for hiring under the USDA demonstration project.

One possible explanation for the differences among the three groups lies in the link the different processes offer between recruiting and hiring. Register hiring typically has the least direct link between recruiting and subsequent referral for selection because registers may encompass large geographical areas; may include candidates for more than one occupational field; often contain the names of dozens, hundreds, or even thousands of applicants, all or most of whom have essentially applied "blind" for whatever job is offered in their field; and may lead to delays of many months between when an individual applies and subsequently is referred for a job.

Of the three hiring procedures, register hiring usually will have the largest number of candidates to refer but is least likely to present managers with candidates they actually recruited. By contrast, case examining places a premium on recruiting to help attract candidates but, on average, yields fewer candidates for referral unless extraordinary recruiting efforts were undertaken. If the one or two candidates referred are ones recruited by a manager, that manager is more likely to be satisfied with the candidates referred and to make a selection.

Following this logic, a high selection rate from the USDA demonstration project should be expected since it too uses case examining procedures. Nonetheless, the extremely high selection rate from among demonstration project certificates with fewer than three candidates is noteworthy. It may be explained in part by the fact that about

Table 4.
Distribution of Certificates With Fewer Than Three Candidates, by Selection Action Taken and Hiring Procedure

	Hiring Procedure (Certificate Source)					
Action taken	**Case Register**		**USDA Examining**		**Demonstration**	
Selection made	18	44%	178	76%	67	97%
No selection made	23	56%	57	24%	2	3%
Total certificates with fewer than three candidates	**41**	**100%**	**235**	**100%**	**69**	**100%**

one-third of our demonstration project sample certificates were for research scientist jobs, which often involve recruting for unique or highly unusual qualifications. This frequently results in very targeted recruiting or very extensive recruiting in a small candidate pool. Either way, managers of these jobs may consider themselves successful if even one or two candidates are referred to them.

However, the demonstration project's high selection rate from among certificates with fewer than three names is also explainable by a particular flexibility it grants to managers. As noted in the first and second annual evaluation reports of this demonstration project, managers may adjust recruiting strategies to control the number of applicants. The following quotations from those evaluation reports are instructive (the third annual report was silent on this issue):

> *At several sites it was reported that the length of time that vacancy announcements remained open beyond the minimum depended on whether site personnel were aware that suitable candidates would be applying. If site personnel were aware that highly qualified personnel would apply, the advertisement period was shorter. Although there is no evidence of any negative impact on the application of merit principles, this issue warrants further attention.*[8]

> *Demonstration site respondents often reported that they adjusted recruitment strategies in part to control the number of applicants. Given that excessive numbers of applications could provide a workload burden and slow the hiring process, at demonstration sites the anticipated number of applications often influenced such decisions as the number and location of outlets used for paid advertising. Thus, sites involved in hiring under the demonstration project exercise a degree of control over the number of applicants. This can be seen as consistent with the demonstration project's objective of emphasizing flexibility and responsiveness to local recruiting needs.*[9]

Our sample included examples of this flexibility's use. In some cases managers had extended the vacancy announcement time and expanded its geographic reach in attempts to expand the pool of applicants. In other cases managers had restricted to the absolute minimum both the time the announcement stayed open (a 3-day period) and the geographic area from which applications would be accepted (local commuting area). Virtually all of these cases involved scientific jobs at GS grades 11 or 12, which usually are subject to a wide recruiting effort. Invariably, these restrictions had the effect of yielding only one candidate, and invariably that one candidate was subsequently selected.

The danger of restricting competition lies in the fact that managers end up substituting their judgment of who are good candidates for the judgment of a more neutral examining process. In so doing, they deny themselves the opportunity to find out if equally good, or better, candidates are available. And they deny potential candidates the opportunity to show their interest, or at least severely limit their opportunity to do this. In the managers' defense, most of the instances we ob-

[8] U.S. Office of Personnel Management, "U.S. Department of Agriculture Personnel Management Demonstration Project First Annual Evaluation Report" (prepared under contract by the Pennsylvania State University), Washington, DC, June 1992, p. 45. There is additional related commentary on p. 65 of this source.

[9] The Pennsylvania State University, "U.S. Department of Agriculture Personnel Management Demonstration Project Second Annual Evaluation Report," Washington, DC, April 1993, p. 7.

served involved post-doctoral candidates who had worked for the managers under excepted appointments for as many as 2 years, and the managers clearly knew their quality. The actions they took to restrict the number of candidates were taken to ensure they could continue to employee those individuals when their excepted appointments ended. That is a strong argument for establishing a procedure to convert such individuals to competitive appointments (similar to the conversion authority found in the new Student Career Experience Program). But what they did is not a good justification for limiting competition to favor a particular applicant.

We have one final concern with the high selection rate from both case examining and the demonstration project. Both of those hiring procedures use the less precise assessment process of evaluating training and experience. Even when tailored to specific jobs, this assessment approach is less capable of predicting future performance than are written or performance tests. It is most useful when used to make grosser distinctions among large numbers of candidates. Using this less refined assessment technique with smaller numbers of candidates compounds managers' selections problems. Managers then see only a few candidates who have been assessed by relatively rough measurement tools, and they haven't been given very good tools to complete the assessments. To compensate for these weaknesses, managers hiring under case examining or the demonstration project should seek relatively large numbers of candidates. They then should demand good assessment tools to use to identify the very best candidates for their specific jobs. Selections made under current conditions raise concerns about the future quality of the Federal workforce.

With respect to the rule of three, tables 3 and 4 together demonstrate that, in about one-sixth of the register certificates we reviewed, and for over one-third of the certificates from both case examining and the demonstration project, that rule did not limit managers' choices. In these instances, the rule of three was available as a floor to help guarantee that the selecting official would have a real, meaningful choice. But most of the time, managers presented with case examining or demonstration project certificates containing only one or two names chose from among the referred candidates rather than ask for more. Managers also made selections from more than two of every five one- or two-name certificates prepared from registers. In all of these cases the rule of three had no effect—not even the one of ensuring that managers would have choice from among at least three candidates. This may well be a reflection of the pressure managers feel to fill jobs immediately, regardless of the long-term implications of such decisions for workforce quality.

Interestingly, the demonstration project's third annual report did note that one of the advantages of the demonstration project cited by managers and pesonnelists was "a manager's ability to review and have access to more than three candidates."[10] We agree that this flexibility is a strength of that alternative approach but are concerned with how infrequently it was used.

When There Are Exactly Three Candidates

Sometimes certificates contain exactly three names. When this happens the rule of three usually had no effect because managers can select any of the referred candidates (unless, as noted earlier, choice is limited because a certificate is headed by a veteran or veterans). Another excep-

[10] U.S. Office of Personnel Management, "U.S. Department of Agriculture Personnel Management Demonstration Project Third Annual Evaluation Report" (prepared under contract by the Pennsylvania State University), Washington, DC, August 1994, p. 37.

tion to this general premise would occur if one or more of the candidates chose to decline consideration (and thus not be "available" for the job). Then the rule of three would again be a floor that a manager could use to ask for more candidates.

In our sample, only 19 certificates from registers and 26 from the demonstration project produced exactly three candidates. About four-fifths of these register certificates led to selections, while the selection rate from these demonstration project certificates was 50 percent. The numbers of three-person certificates from these sources were too small to permit analysis, such as identifying the number headed by veterans.

In contrast, almost 30 percent of our sample's 633 case examining certificates had exactly three candidates. Managers made selections from two-thirds of these selections. This is a lower selection rate than was found for case examining certificates with fewer than three candidates. Veterans were listed first on about one of every three of the three-person certificates that resulted in a nonselection. This caused us to wonder if the presence of those veterans contributed to the higher nonselection rate compared to that rate for certificates with fewer than three names. However, the categories used in our study to report reasons for nonselection were too broad to permit reaching any conclusion on reasons for the different nonselection rates.

When There Are More Than Three Candidates

Under normal staffing rules, the rule of three clearly is a factor when an examining office identifies more than three qualified candidates for a vacancy. Since by law candidates must be listed on a certificate in rank order, and since in many instances numerous candidates have identical scores, examining offices must have a way to break tie scores.[11] Tie breakers may even be used to determine whether someone will be included on a certificate.[12]

Veterans preference is always the first tie breaker. Later in this report we examine how using veterans preference as a tie breaker affected our sample of certificates. For now, it's simply important to remember that persons with veterans preference always are listed on a certificate ahead of persons with equal scores but without veterans preference.

If veterans preference alone doesn't break existing ties, many offices will turn to "name request" as a solution. "Name request" is a procedure which permits managers to request placement of a specific candidate on a certificate. Offices that permit name request will include the individual if his or her score is high enough. If the individual's score ties the highest score and veterans preference rules permit, that individual would then be listed first, and may even be the only name referred.

Name request permits a real link between recruiting and hiring. However, its value depends on the score of the requested individual relative to the scores of other candidates, and on the veterans preference status of all candidates. Finally, it's only of value if the examining office honors the request. (One of the offices in our sample didn't permit managers to use this procedure.)

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[11] For example, five candidates may be tied with the highest possible score. Some means is needed to determine the order in which they are listed on the certificate.

[12] For example, a register may contain 50 candidates tied with the highest possible score. The examining office may wish to refer only 10. Some means is needed not only to determine which candidates will be referred, but also to determine the order that those referred will be listed.

If managers were permitted to select from a larger candidate pool, name request might not be needed. However, under current law, it's a tool managers may use to help a preferred candidate avoid being eliminated from consideration in a tied-score situation.

The final, and universally used, tie breaker is random numbers. Using the last digit of each candidate's social security number and a random numbers table, each examining office uses a different random number daily to determine the referral order for candidates who have equal ratings.

From a statistical standpoint, this random numbers approach is extremely fair because it allows blind chance, instead of subjective factors, to determine how the candidates will be ordered. But is it necessary? Random numbers usually are used to break ties only because the rule of three requires candidates to be listed in rank order and selections to be from among the top three available candidates. However, considering the previously discussed limitations of current examining procedures, it is not reasonable to force the ordering of equals. Nor is it reasonable to tie examining processes of varying ability to a single referral approach that limits consideration to only the top three available candidates.

Quite simply, forcing the identification of the top three candidates too often leads to the intrusion of administrative expedients (such as random numbers) that add nothing to the merit hiring process. We say "too often" because of the information portrayed in table 5. That table shows how often tie-breakers were used in our sample to determine the referral order for candidates, and most specifically how frequently random numbers played a significant part in the selection process. Table 5 reflects only situations where tie-breakers were used to determine the order on certificates of individuals with equal scores.

As the table shows, the use of tie-breakers varied considerably by hiring procedure. For certificates from registers or case examining, all three types of tie-breakers were used to determine the order of candidates, but random numbers were by far

Table 5.
Distribution of Certificates That Had Tie-Breakers Used to Order Referred Candidates, by Type of Tie-Breaker and Hiring Procedure

	Hiring Procedure (Certificate Source)					
Tie-Breaker Used	**Register**		**Case Examining**		**USDA Demonstration**	
Random numbers	145	59%	165	26%	0	0%
Name request	5	2%	15	2%	0	0%
Veterans preference	9	4%	15	2%	42	22%
Total certificates in sample	**246**		**633**		**190**	

the most heavily used device. Since the USDA demonstration project rules don't require distinguishing among candidates within the two rating categories that system uses, only veterans preference had any tie-breaking effect on candidates scored under that system.

Alternatives to the "Rule of Three" With or Without Numerical Limits

In three past reports MSPB has discussed the desirability of finding an alternative to, or abolishing, the current rule of three.[13] What would it take for the Federal Government to accomplish this goal? As a start, we present below four alternatives for consideration.

1. One alternative would be to use category ratings such as the "quality" and "eligible" categories used in the USDA demonstration project. This approach eliminates the rule of three as a factor except as a "floor," and also eliminates the need to make fine distinctions among candidates before the selecting official gets directly involved in the process. Proposed draft legislation titled the "Federal Human Resource Management Reinvention Act of 1995" would give agencies the option of using this alternative.

   Arguably, category ratings lead to better selections. Rating by category is well suited to evaluating candidates through assessment of their training and experience, since it doesn't require fine distinctions. Managers may have more candidates to consider and aren't constrained to consider them in any particular order (except that under the demonstration project's rules veterans still have preference). Substantially equal candidates are treated as such, and individuals aren't kept off of certificates or denied real employment consideration in a seemingly arbitrary way because of numerical limits.

   If managers are given good tools to use in making their further assessments of referred candidates,[14] they should be able to make good selection choices. Using category ratings to assess and refer candidates to managers who are well prepared to complete the assessment process before making selections could strengthen merit hiring. However, giving poorly prepared managers the increased flexibilities of this alternative approach could have the opposite effect. We believe that much rests on what kind of effort is made to prepare managers for their expanded role in hiring.

2. Another possible alternative is to revise the rule of three to permit a larger number, such as a rule of five, or seven, or ten. Several State governments have adopted such larger numbers for referral of candidates.[15] However, because

[13] U.S. Merit Systems Protection Board, "Attracting and Selecting Quality Applicants for Federal Employment," Washington, DC, April 1990, p. 30; "To Meet the Needs of the Nations: Staffing the U.S. Civil Service and the Public Service of Canada," Washington, DC, January 1992, p. 51; and "Entering Professional Positions in the Federal Government," March 1994, pp. xiii and 62.

[14] This theme has been raised in several previous MSPB reports, including "Workforce Quality and Federal Procurement: An Assessment," Washington, DC, July 1992, and "Entering Professional Positions in the Federal Government," Washington, DC, March 1994.

[15] We had two sources for information about state government practices. First, staff of the International Personnel Management Association (IPMA) provided us with a summary report titled "1994 Personnel Program Inventory (PPI)," which reported on a 1994 survey conducted by IPMA. IPMA staff also provided us with special printouts from that 1994 survey, providing additional detail. Second, the author of the not-yet-released MSPB report titled "Improving State and Federal Human Resource Management: Shared Needs and Objectives" provided information about States' staffing practices furnished by States in response to the data inquiry for her study.

this alternative could still lead to a frequent need for administratively determined (and artificial) tie-breakers, MSPB would not recommend it.

3. A third alternative that could be adopted is one also used by several State governments. This is to keep a rule of three but to administer it differently. Instead of referring only the three highest scoring candidates, examiners would refer and managers would select from among all candidates with the three highest *scores*. Thus, in a case where the top six candidates were one candidate with a score of 100, one with a score of 97, and four with a score of 92, the manager would receive a certificate containing all six candidates and could select any one of them. When States using this approach find that it yields more candidates than a manager could reasonably consider, some reduce the number by limiting the referrals to those having only the top score or top two scores. Many States also have some form of veterans preference that can serve as a tie-breaker if they need to limit the number of names on a certificate.

   While this referral and selection approach is an improvement over the Federal rule of three, it still places more reliance on a predetermined process than we believe is necessary. And it offers the possibilities of being both too restrictive and too permissive, depending on circumstances (possibly too restrictive if there are few candidates for a job and their scores are widely diverse; possibly too permissive if there are many high scoring candidates for a job, including large numbers tied for the top three scores). Therefore MSPB would not recommend this approach either.

4. The last alternative we offer for consideration is to replace the current rule of three with a provision that gives managers the choice of selecting from among an adequate number of well qualified candidates referred to them by the examining office. The definition of "an adequate number of candidates" would be determined in each instance by multiple factors, including the job being filled, its duty location, the relevant job market, the examining instrument used to rate the candidates, and the ratings assigned to candidates with passing scores.

   Practically speaking, the candidate pool should be as large as feasible, and the number of referred candidates should increase in inverse relationship to the capability of the examining instrument to make fine distinctions among candidates (i.e., more candidates referred when the examining instrument is less capable of fine distinctions, as is typically the case when examining is conducted through assessing candidates' training and experience). This alternative would allow examining offices to refer, and manages to select, candidates without the intrusion of artificial tie-breakers or arbitrary limits on the number of candidates.

   With adequate guidelines and training, and a continuing OPM audit presence, delegated examining offices should be able to provide their managers high-quality service under this alternative. And it appears to us to be very consistent with the current emphasis on delegating authority and holding those who exercise the authority accountable for the results. MSPB supports this alternative on the grounds that it surpasses the current rule of three in its ability to give operational meaning to the first statutory merit system principle, which says:

   Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and ad-

vancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.[16]

Our sample of case examining and demonstration project certificates suggests that, without the rule of three, there would be little need to cap the number of candidates.[17] Table 6 covers all individuals who were minimally qualified under the two hiring processes. These candidates made up the groups that were further assessed and then ordered for referral, either with numerical scores or by category. Even if all of the case examining candidates for each job opening had tied scores, almost 90 percent of the resulting certificates would have contained no more than 10 candidates—a number many managers already see when they are considering internal candidates under merit promotion procedures. For hiring under the demonstration project, the comparable figure would have been more than 80 percent. Since both case examining and the demonstration project usually evaluate candidates through the less differentiating approach of assessing their training and experience, referring larger numbers

Table 6.
Distribution of Certificates From Case Examining and the Demonstration Project, by Number of Eligible Candidates for Jobs Being Filled

	Hiring Procedure (Certificate Source)			
Number of eligible candidates for the job(s) being filled from each certificate	**Number of Certificates From Case Examining**		**Number of Certificates From USDA Demonstration Project**	
1 through 3	336	55%	89	48%
4 through 6	127	21%	38	20%
7 through 10	77	13%	28	15%
11 through 20	49	8%	26	14%
21 or more	22	4%	6	3%
Total Certificates	**611**	**100%**	**187**	**100%**

Notes: Totals exclude certificates that had no candidates or for which information concerning candidates was incomplete. Percentages may not equal 100 because of rounding.

[16] 5 U.S.C. 2310(b)(1).

[17] We don't have similar information for most certificates based on registers. This is because we obtained the certificates months after they were prepared and couldn't determine, after the fact, the content of the registers at the time the certificates were prepared.

of candidates to managers for a final assessment is desirable.

There doesn't seem to be any approach to staffing that won't at least sometimes impose apparently arbitrary rules. For example, the decision regarding which candidates are placed in the top category under a category rating system may sometimes appear arbitrary, as may a decision concerning how many candidates to refer under a system that requires agencies to refer "an adequate number of highly qualified candidates." Perhaps then, the goal should not be to seek to eliminate seemingly arbitrary rules in every case, but rather to reduce their intrusion and to keep them from appearing capricious as well.

As they consider ways to improve Federal hiring practices, Federal officials should consider the effects of various State practices since some of those practices seem to suggest opportunities for improving how the Federal civil service refers candidates. Also, knowing what States are doing may help Federal officials to think "out of the box," to be more innovative when necessary to develop effective new approaches. The goal should be to find one or more approaches that balance five merit hiring operational concerns:

1. Identifying and referring high-quality candidates on the basis of relative merit;
2. Establishing a strong link between recruiting efforts and subsequent candidate referrals;
3. Providing managers with choices from among a reasonably large number of candidates;
4. Giving managers good tools, and the knowledge to use those tools properly, when they assess candidates; and
5. Holding managers accountable for the selection decisions they make.

Finally, we see no reason why the Federal Government has to achieve these goals through one single examining and referral approach. Given the diversity of Federal jobs and organizations, there is almost certainly no "one right way" to accomplish most human resource management processes, including hiring. Dual or multiple approaches may very well be appropriate, as long as all produce merit-based selections.

The Additional Effects of Veterans Preference

How Often Certificates Contained Veterans

We explained earlier that the interaction of veterans preference with the rule of three can reduce managers' choices to fewer than three candidates. This may occur even if there are tens or even hundreds of well-qualified applicants. "Take the veteran at the top of the certificate (if he or she wants the job) or take no one" may be the manager's only choice—a choice established by public policy and articulated in law.

We wanted to know how often veterans preference affected managers' hiring choices from the certificates in our sample. The answer begins with table 7, which shows how often our certificates contained veterans.

As the table shows, the proportion of veterans on the certificates in our sample varied significantly by hiring procedure, and the magnitude of the differences was much greater for compensable than noncompensable veterans. Because most of the veterans in our study qualified as noncompensable, the numbers for that subgroup closely resemble the "any form of preference" figures.

Based on table 7, register hiring appears to be veterans' preferred method of applying for Federal jobs. And one possible effect of the Government's reduced reliance on registers for hiring appears to be that proportionately fewer veterans are being

considered for jobs. This may be partly a consequence of losing a referral advantage associated with registers: individuals have to apply only once to be considered for multiple jobs. Candidates on registers are queued up for possible jobs. Especially in today's job markets, some may be referred for a job, decline, and later be referred for another job, while others may stay on registers for years without ever receiving a job offer, even with perfect scores.

The lower applicant rates for veterans under case examining and the demonstration project may also be partly a consequence of veterans being selective in deciding whether to apply for jobs announced under those procedures. The gain for case examining and demonstration project candidates is that there is a real job opening when they apply. The loss is that, if not selected for the particular job, they aren't automatically considered for other, similar jobs.

How Often Certificates Were Headed by Veterans

How the presence of veterans on certificates affects selections depends on where the veterans appear on the certificate. Veterans always have precedence for selection over nonveterans listed after them. Table 8 shows how often certificates in our sample had veterans listed first. In these cases, the manager could choose among candidates only if (a) the person listed first declined or failed to respond to a job offer or (b) a veteran was also listed as the second name (or second and subsequent names) on the certificate. Without these conditions, the choice was to select or not to select the top-listed candidate—a de facto "rule of one."

Table 7.
Distribution of Certificates With at Least One Person With Veterans Preference, by Type of Preference and Hiring Procedure

Type of preference held by at least one veteran on the certificate	Hiring Procedure (Certificate Source)					
	Register		Case Examining		USDA Demonstration	
10-Point compensable preference	60	24%	39	6%	5	3%
Noncompensable preference	126	51%	210	33%	49	26%
Either form of preference	138	56%	222	35%	51	27%
Total certificates in sample	**246**		**633**		**190**	

Note: Because some certificates contained both compensable and noncompensable veterans, the "Either form of preference" figures are smaller than the sum of the other two categories in each column.

Table 8.
Distribution of Certificates Headed by a Veteran, by Compensable Status of Veteran and Hiring Procedure

Compensable status of veteran heading a certificate	Hiring Procedure (Certificate Source)					
	Register		Case Examining		USDA Demonstration	
10-Point compensable preference	62	26%	43	7%	6	3%
Non-compensable preference	49	21%	112	18%	45	24%
Base number of certificates*	**234**		**619**		**187**	

* Base numbers exclude 29 certificates which contained no candidates.

The frequency with which compensable veterans headed certificates varied notably by source, with registers producing the highest share. This finding is probably partly related to the types of jobs filled through the different hiring processes. Our review of certificates revealed that more than one-fourth of the jobs filled through both case examining and the demonstration project were higher grade scientific or professional ones not subject to the "float to the top" provision that places merely qualified compensable disabled veterans ahead of all other candidates. In contrast, only a handful of jobs in the register sample were exempt from the "float" provision. Proportionately, then, far fewer compensable veterans applying for jobs under case examining or the demonstration project had the potential to benefit from floating to the top of the register. That, plus the need to apply for each specific job to be considered under those two procedures, probably accounts for much of the difference in how often compensable veterans were listed first on certificates.

The highest proportion of certificates headed by noncompensable veterans was found in those from the demonstration project (slightly exceeding those from register hiring). This isn't necessarily surprising, since under that alternate procedure's rules any veteran in the "quality" group would automatically be placed at the top of the resulting certificate. In contrast, not all noncompensable veterans who qualify for certificates under conventional staffing rules necessarily go to the top (some may have augmented scores that are below the scores achieved by some nonveterans).

Results When Veterans Headed Certificates

What happened when veterans were listed first on certificates? Register hiring, with the highest

proportion of certificates headed by veterans, had both the lowest selection rate resulting in appointments (22 percent) and the lowest nonselection rate (32 percent). This is because nearly half of the veterans listed first on certificates from registers either declined job offers or failed to reply to them, and thus weren't selected. (The 27 percent rate of declined job offers by register candidates highlights the negative effects of two of that hiring procedure's characteristics: "applying blind" for any job that later becomes available and delays between applying for jobs and receiving job offers.)

By comparison, about one-third of veterans listed first on certificates from both case examining and the demonstration project were appointed, while the nonselection rate was 64 percent for case examining and 47 percent for the demonstration project. In the end, appointment rates are the most important single criterion to consider, since only appointments mean jobs. Based on that criterion, we conclude that case examining and the demonstration project provide veterans listed first on certificates with a better likelihood of being hired than does register hiring.

Another way to examine the effect of veterans preference on hiring is to ask how often any selection was or wasn't made from certificates headed by veterans compared to ones headed by nonveterans. The GAO included such an analysis in a study on veterans preference it published in 1992.[18] Their analysis prompted GAO to report that "there is a greater chance that a certificate will be unused if a veteran is at the top." In table 9 we compare results from GAO's study with our own figures, concentrating only on *nonselections*. Because GAO and we made different kinds of distinctions among the sources of the certificates, table 9 shows only overall figures.

As the table shows, our results differed significantly from GAO's, with ours showing virtually no difference in the nonselection rates from certificates headed by veterans compared to those headed by nonveterans. As we'll discuss shortly, however, for our sample these overall figures mask major differences in selection rates based on certificate source. The differences in the MSPB and GAO results may have been caused by the two samples being drawn at different times and from different sources, as well as the fact that neither sample was drawn to be statistically representative of all Federal hiring.

Differences in Hiring Results for Compensable and Noncompensable Veterans

As we've already noted, there are some significant differences in how compensable and noncompensable veterans are treated under the preference law. The differences—which include listing compensable veterans before noncompensable ones with identical scores, and the "floating to the top" of qualified compensable veterans except on certificates for scientific or professional jobs at or above GS grade 9—are the result of policy decisions that are intended to strengthen the preference for compensable veterans. These differences in treatment led us to look for differences in results.

We hoped to answer three questions:

1. Were certificates headed by compensable veterans used substantially more or less often than ones headed by other veterans?

[18] U.S. General Accounting Office, "Federal Hiring: Does Veterans' Preference Need Updating?" (GAO/GGD-92-52), Washington, DC, March 1992, pp. 27-28.

Table 9.
MSPB and GAO Findings on Nonselection When Certificates Were Headed by Veterans Compared to Nonveterans

	Percent of time a selection was not made	
If a certificate was:	**In Current MSPB Study**	**In Earlier GAO Study**
Headed by a Nonveteran	34.7	50.8
Headed by a Veteran	38.5	70.6
Combined (total)	35.9	57.0
Total certificates reviewed	1,040	1,136

Notes: Percentages are not rounded in this table because GAO didn't round the figures in its report. The number of certificates reported for MSPB's study excludes 29 certificates for which there were no candidates.

2. How did the use of certificates headed by veterans in either category compare to the use of certificates headed by nonveterans?
3. Did the hiring procedure used appear to have any effect on the outcomes of questions 1 and 2?

The results are shown in table 10, which focuses on certificates involving selections.

We should emphasize one point concerning table 10: selection from a certificate headed by a particular category of veteran doesn't necessarily mean that that category of veteran was selected. For example, if a certificate was headed by a compensable veteran and had noncompensable veterans listed second and third, the manager could select any one of these three veterans. Or if a certificate was headed by a veteran followed by a number of nonveterans, the manager could select any of the top three nonveterans if the veteran at the top declined a job offer. As we noted earlier, about half of our certificates based on registers resulted in declinations of job offers or nonappointment because the candidate "failed to respond to an offer." Both are much higher figures than were obtained for hiring under the other procedures, and undoubtedly have a bearing on the register hiring pattern.

As table 10 shows, the pattern for register hiring is noticably different from the pattern for case examining or demonstration project hiring. For register hiring, the rates of selection of any person on a certificate were highest for certificates headed by compensable veterans, next highest for those headed by noncompensable veterans, and lowest for nonveteran-headed certificates. This high-to-low selection pattern was completely reversed for hiring based on both other processes. The kinds of jobs being filled may have contributed to this outcome. Most of the register certificates in our sample were for white-collar administrative or professional jobs at GS grades 5, 7, or 9. These are

entry- or early mid-level grades having relatively generic qualification requirements. In contrast, jobs in our sample that were being filled through case examining and the demonstration project included a full range of white- and blue-collar jobs at all grades. Many had very specific qualification requirements. It may be that the more specific requirements of these latter jobs contributed to the lower selection rates from certificates headed by compensable veterans, some of whom were only basically qualified but had "floated to the top."

It's more difficult to hypothesize an explanation for the differences in selection rate patterns for certificates headed by noncompensable veterans (who don't "float to the top") and those headed by nonveterans. Perhaps this also was related to the kinds of jobs being filled via the three hiring processes. It could be a consequence of receiving small numbers of candidates (typical of both case examining and the demonstration project). Or it could be related to the greater dependence on managerial recruiting found in case examining and the demonstration project, with nonselections indicating that veterans were "blocking" personally recruited—and thus preferred—nonveteran candidates. It could even be some combination of these factors.

As noted, case examining—which uses a traditional approach to veterans preference—increasingly is the way competitive jobs are filled. However, the demonstration project—whose alternative hiring procedures include a new approach to veterans preference—also could be used more widely in the future. Therefore, the outcomes from those procedures deserve close attention.

Table 10.
Distribution of Certificates From Which a Selection of Any Candidates Was Made, by Veteran Status of the Person Heading the Certificate and by Hiring Procedure

Status of person heading certificate	Hiring Procedure (Certificate Source)					
	Register		Case Examining		USDA Demonstration	
Compensable veteran	85%	(53/62)	47%	(20/43)	50%	(3/6)
Noncompensable veteran	82%	(40/49)	49%	(55/112)	53%	(24/45)
Nonveteran	74%	(91/123)	61%	(285/464)	71%	(96/136)

Note: The numbers appearing below the percentages reflect the numbers producing the percentages. Thus, 53/62 means that 62 certificates from registers were headed by compensable veterans and 53 of those 62 certificates led to selections.

We note that for both case examining and the demonstration project, certificates were less likely to result in appointments of any candidates when they were headed by veterans, with quite similar rates for both hiring procedures and for both competitive and noncompetitive veterans. However, we also found that case examining and the demonstration project resulted in the appointment of veterans at higher rates than were appointed from registers. From this we conclude that:

1. The demonstration project's alternate approach to granting veterans preference produces about the same results as the traditional approach, and
2. In terms of the ultimate measure—actual hiring—case examining and the demonstration project are more likely than register hiring to result in the appointment of veterans.

What Resulted When the Quality of Candidates, Including Nonveterans, Was an Issue

Although we speculated above that managers *do* sometimes choose not to select anyone rather than select a veteran they don't want, we examined our sample of certificates for more clear evidence of whether the presence of veterans on certificates affected managerial selection decisions. Specifically, we looked for evidence of veterans blocking name-requested candidates.

Twenty-two percent of our sample's register certificates involved name requests. The comparable figures for certificates from case examining and the demonstration project were 21 percent and 11 percent, respectively. In our sample, veterans blocked managers from reaching name-requested candidates only infrequently: 2 percent of the time for certificates from registers, 4 percent for those from case examining, and 5 percent for those from the demonstration project. Furthermore, 16 percent of all name-requested candidates subsequently appointed were themselves veterans.

About 7 percent of all name-requested candidates in our sample were within reach but were not selected. (The figures were about the same for all three hiring procedures.) We were curious about why this happened. In a few instances managers selected other candidates even though they could have chosen the individuals they had requested by name. However, most of the time selections weren't made because of events beyond the selecting managers' control, such as job freezes, loss of funds, or the like.

When concerns are expressed about veterans at the top of certificates, one that is frequently expressed is that managers can't successfully object to them; that managers must either take them (regardless of their qualifications or suitability for the job) or take no one. Our study findings suggest that it isn't necessarily true that managers can't object successfully, although the relatively high nonselection rates for certificates headed by veterans indicates that the "take no one" option is used fairly often.

Although our sample revealed barely a handful of formal managerial objections to veterans, those we found were more likely to be sustained than overruled. We noted similar results in an even smaller number of objections to candidates without veterans preference. Most of the objections (successful or not, and to veterans or not) were based on the suitability of particular candidate for a specific job, while the few others were based on candidates' qualifications.

It's possible that the very small number of objections in our sample may be accounted for in three ways:

1. Managers are generally satisfied with candidates referred through examining processes that are working pretty well;

2 Managers simply elect to return certificates unused when they determine that the persons they can hire (whether veterans or nonveterans) don't meet their expectations; or

3 Managers aren't willing to exert the effort necessary to pursue an objection to the qualifications or suitability of a candidate unless a lower rated candidate is particularly attractive.

Our data suggest that unqualified or unsuited candidates, whether veterans or not, can be challenged successfully by diligent managers. The probable reason managers challenge candidates so rarely is that the process requires time and effort which managers would be likely to expend only if they foresee a particular payoff (such as being able to appoint another candidate on the certificate). Otherwise, they will probably fill the vacancy through alternative procedures.

The Additional Effects of Veterans Preference in Summary

The following summarizes what our sample of certificates revealed about how veterans preference affected the referral and selection of candidates, either alone or in concert with the rule of three:

- A higher proportion of veterans (compensable or noncompensable) appeared on certificates drawn from registers than on those from case examining or the USDA demonstration project.
- Compared to register hiring, case examining and the demonstration project both had higher appointment rates for veterans listed first on certificates. Appointment rates for top-listed veterans under case examining and the USDA demonstration project were about equal. Both, however, also had more nonselections than appointments.
- In the few instances where managers contested the qualifications or job suitability of either veterans (or nonveterans), the managers' objections were usually sustained. This indicates that veterans preference is not so rigid that it forces the selection of someone believed by a manager to be unqualified or unsuited for a job.
- Veterans preference prevented the selection of name-requested candidates in only 2 to 5 percent of all certificates (varying by hiring procedure) involving name requests.
- The relatively high nonselection rate for certificates headed by veterans suggests, however, that managers fairly often choose to make no selection (and use alternative procedures to fill vacancies) rather than select or challenge a veteran.

SUMMARY, CONCLUSIONS, AND OPTIONS FOR IMPROVING THE SYSTEM

Summary and Conclusions

What are we to make, then, of the rule of three and its interaction with the policy granting hiring preference to some veterans or family members of veterans? Do these legal requirements help or hinder Federal hiring based on relative merit, and do the ground rules that govern their operation support that goal? Our findings add to a growing body of evidence[19] concerning two key points:

- The rule of three does not represent the best way to foster merit-based hiring; and
- Interaction between the rule of three and the current approach to veterans preference too often produces results that are not in the best interests of managers or job candidates, including candidates with veterans preference.

The significance of our report's findings is heightened by the current emphasis on improving the operations of the Government. Over the past 15 years MSPB has reported critically on a number of broad issues that we believed weakened or undermined merit staffing. Among those issues were questionable uses of excepted or temporary appointment authorities and various proposals to change how the Government examines candidates for employment and sets white-collar pay. In future assessments of the Federal civil service we will pay particular attention to actions taken by departments and agencies (including OPM) to address the issues discussed in this report, with special focus on the following:

The Rule of Three

1. The study suggests that the rule of three doesn't limit managers' choice as often as conventional wisdom would have us believe. The shift to case examining in place of hiring from registers appears to contribute substantially to this finding. The rule of three is not a limiting factor for managers when fewer than four qualified candidates are named on certificates. While only slightly more than one-fourth of our sample's certificates from registers contained three or fewer names, the comparable proportion from case examining was nearly seven in ten. In all of these instances, the rule

[19] Reflected in reports from sources as diverse as GAO (in the previously cited reports "Reconciling Managerial Flexibility With Veterans' Preference," and "Does Veterans Preference Need Updating?"); the Pennsylvania State University (in annual evaluation reports of the U.S. Department of Agriculture Personnel Management Demonstration Project prepared for OPM in 1992, 1993, and 1994); the former National Advisory Council on the Public Service ("Ensuring the Highest Quality National Public Service," Washington, DC, September 1993); and MSPB (in the previously cited reports "Entering Professional Positions in the Federal Government," and "Workforce Quality and Federal Procurement: An Assessment").

of three simply didn't limit managers' choices. However, regardless of the hiring procedure used, all certificates in our sample which contained only one or two names were subject to the other requirement of the rule of three—the one which gives managers the right to request additional candidates.

2. The shift in how the Government hires appears to be accompanied by a decline in the importance managers ascribe to the right to request additional candidates so that they may choose from at least three. While only a little more than two-fifths of managers filling jobs from registers made selections from certificates containing just one or two names, the comparable figures were three-fourths from case examining and almost 100 percent from the USDA demonstration project. From this we infer that managers frequently don't see a need for the guaranteed floor of at least three candidates when selecting new employees, especially when the hiring process is one that recruits directly for the job being filled.

3. Judging from the prevalence of selections from very low numbers of candidates, managers hold a very short-sighted view of their staffing responsibilities, allowing immediate staffing needs to drive their hiring decisions when they should be focusing on the long term. Managers may be sacrificing quality for expediency when they make selections from among very few candidates. Such a decisionmaking process has potential long-term negative consequences for the future quality of the Federal workforce. This outcome is made even more likely by the growing use of the less discriminating process of examining candidates through assessment of their training and experience.

4. Examination scoring problems that surface in the application of the rule of three have merit hiring implications that need attention. As background, the rule of three requires managers to select from among the top three available candidates when certificates contain more than three names. About three-fourths of all certificates from registers met this criterion (the figure was only about one-third for case examining certificates and the rule of three doesn't apply in the demonstartion project). Because they must refer candidates in rank order, examining offices must rate and rank eligible candidates when there are more than three qualified candidates. At this point the rule of three poses problems because of its effect on two situations that occur at the examining stage.

First, the differences in examination scores assigned to candidates often are so small that the meaning and importance of the differences is questionable. The rank order of the candidates resulting from those small scoring differences may be deceptive. Consequently, requiring candidates to be listed and selected in rank order does less to ensure selection based on merit than appearance suggests. The category rating process of the USDA demonstration project may serve organizations better than does the process of using specific scores to determine the order of candidates, particularly if there are a relatively large number of candidates. This is because it allows managers to consider more aspects of candidates' qualifications during the search for the best candidate for the particular job.

Second, large numbers of candidates are receiving tied scores. Since selection must be from among the top three available candidates, individuals with equal scores must be placed in rank order solely to allow identification of the "top three." Thus, examining offices must apply tie-breakers. In nearly three-fifths of our sample's certificates based on registers—and more than one-fourth of those based on case examining—a random numbers procedure was used to determine the order of the listed candidates. And in one-third of the

certificates based on registers and one-sixth of them based on case examining, random numbers were used to determine whether candidates with tied scores would even be named on the certificate. Although the application of random numbers procedures is very fair statistically, it doesn't contribute to hiring based on merit. Further, the process is needed only because the rule of three requires candidates to be listed in rank order.

With regard to the issues discussed thus far in this summary, we believe that the rule of three as now written should be supplanted by an approach that would:

- Continue to be based on a rational initial examining process;
- Attempt to draw candidates from the largest practicable candidate pool;
- Give managers good assessment tools;
- Teach them how to use those tools effectively;
- Use a new referral and selection rule that would—
  - Seek to refer to managers an adequate number of top ranked candidates;
  - Let managers determine which referred candidates are best for particular jobs (giving appropriate deference to veterans preference laws); and
- Hold managers accountable for the process they use and the results they obtain.

This approach is consistent with the National Performance Review's emphasis on letting managers make most personnel decisions and holding them accountable for the results. It's an approach that has been applied effectively in the Public Service of Canada for many years.[20] However, it wouldn't be an easy approach to implement. Managers and personnel offices (including OPM) would have to overcome decades of experience in an environment where a manager's role in assessing candidates has been limited. It would represent a sea change in roles and behavior, but a change that would better fit today's environment.

One way to implement such an approach is to extend to the rest of the Federal civil service the "category rating" process permitted by the USDA demonstration project. Category ratings eliminate the need to make fine numerical score distinctions among candidates (which may mean little or nothing in any case).

Another option is to replace the rule of three with a requirement simply to refer "an adequate number of candidates." The definition of that term would be left to the examining office and the manager, and would hinge on factors such as the nature and grade level of the job; the duty location of the job; and the relevant job market. Properly applying good assessment tools, managers would then select the candidate on the certificate who best meets the job requirements. Veterans preference procedures could operate under this approach in the same manner as they do under the rule of three, ensuring that the manager's reordering of candidates didn't adversely affect the rights of veterans on the certificate. This approach would eliminate the need to distinguish artificially among top candidates with tied scores, would acknowledge that our examining instruments aren't as fine as current practices suggest,

[20] U.S. Merit Systems Protection Board, "To Meet the Needs of the Nations: Staffing the U.S. Civil Service and the Public Service of Canada," Washington, DC, January 1992, pp. 29-32. However, the Canadian Government does not have veterans preference laws interacting with its merit hiring laws.

and would strengthen the role of the manager in the hiring process.

Both of these alternate approaches often could increase the number of candidates presented to a manager compared to the number presented by the rule of three. However, our sample suggests that—especially given the decreased use of registers—neither alternative would present managers with overwhelming numbers of candidates. There were usually fewer than 10 qualified candidates for jobs being filled through either case examining or the demonstration project. Even if all those eligible for referral on the certificate were presented to the managers, the number usually wouldn't exceed the number now often considered by managers making merit promotion selections. And we believe examining offices could make rational (and defensible) decisions concerning the number of candidates to refer when the certificates were based on registers.

Both of these options have appeal. Both address our concerns with current practice: (1) requiring more from the examining system than it is capable of giving, and (2) relying on administrative procedures to make artificial distinctions among apparently equal candidates to meet the requirements of the law called the rule of three. Either option would require legislation to implement. There appears to be room for both in the Government's inventory of hiring procedures.

The key to effectively implementing changes of this nature is how well managers are prepared to take on a greatly expanded role in assessing candidates. Part of that preparation involves persuading managers to think about the long term when they hire. Taking the long-term viewpoint includes recognizing that more candidates are preferable to fewer in most instances, even if attracting a larger applicant pool requires additional time.

Another part of the preparation is teaching managers to think about using tests in ways very different from today's use. Instead of trying to avoid using written tests that traditionally have been used as screening hurdles, managers need to think of them as additional tools that they can use to assess the best applicants. Such a change has implications for where, when, and by whom tests are given. It undoubtedly will require using technological gains to administer tests (such as the Administrative Careers With America, or ACWA, series) faster and more conveniently, so that managers may get the results almost immediately after the applicants take the tests. These changes pose a challenge not only to managers but also to OPM and to agency personnel offices. Good assessment tools exist, and others can be developed. The challenge is to make managers want to use them because they are readily available and highly useful assessment tools, while at the same time protecting the tests from compromise.

Finally, managers will need guidance in what assessment technique to use when. When all of these pieces are put together properly, Federal managers will be better able to make good hiring decisions that contribute to the immediate, short-term, and long-term goals of their organizations.

A Note About Restricted Competition in the Demonstration Project

We noted some instances where demonstration project managers restricted competition to be certain that they could reach candidates who had worked for them under excepted appointments for as long as 2 years. Certainly those candidates had already been examined fairly—they had performed the work. But restricting the flow of applications to benefit particular individuals isn't a good answer. Rather, such situations warrant a special authority equivalent to the one that per-

mits conversion of Student Career Experience Program participants.

Interaction of Veterans Preference and the Rule of Three

The following results should be noted in particular:

1. Our study did not support the often expressed view that veterans often block the selection of preferred candidates. Instead, using name-requested candidates as our point of reference, we found that veterans blocked nonveteran name-requested candidates only 4 percent of the time.
2. We found little support for the conventional perception that the selection rate for certificates headed by veterans is considerably lower than the rate for certificates headed by nonveterans. Without regard to hiring procedure, we found the differences in selection rates for those two categories of certificates to be insignificantly small. However, we did find that proportionately fewer selections were made from case examining or demonstration project certificates headed by veterans than for those headed by nonveterans.
3. Veterans preference doesn't appear to ensure jobs for individuals who aren't qualified or suitable for them. Our study belied the widespread perception that managers can't successfully object to unqualified or unsuitable veterans but rather must either select them or no one. Although the numbers of objections in our sample were small, we found that objections to both veterans and nonveterans usually were sustained. Objections appear to be saved for times when the manager believes the top rated candidate (whether a veteran or nonveteran) is a particularly poor candidate, and when someone else on the certificate is worth fighting to reach. Otherwise, making no selection and using alternative means to fill the job appears to be the usual response.
4. The "floating to the top" provision for compensable veterans—the primary focus of many managers' concerns about veterans blocking certificates—is becoming less of an issue with the shift away from hiring from registers. This "floating" provision clearly does place individuals with scores that may be just passing ahead of even candidates with perfect scores. However, the greater use of other hiring procedures is mitigating its effect. For example, although one-fourth of our sample's certificates from registers were headed by compensable veterans, comparable figures for certificates from case examining and the USDA demonstration project were only 7 and 3 percent, respectively.

As the four points just highlighted indicate, concerns persist about veterans preference. However, it may well be possible to change how veterans preference is administered to the satisfaction of both veteran and nonveteran applicants as well as managers—at least in most areas of concern. One promising alternative is the USDA demonstration project approach, which requires that all qualified candidates be placed in the appropriate rating category (quality or eligible) based solely on their qualifications. Only then is veterans preference considered, with veterans being given absolute preference over nonveterans in each rating category. However, the "float to the top" provision places compensable veterans with "eligible" scores at the top of the "quality" group except for scientific or professional jobs at or above grade GS-9. Thus, broader adoption of the demonstration project's veterans preference provisions wouldn't alleviate managers' concerns with the "float" provision for compensable veterans.

A veteran named first on a certificate was slightly more likely to be appointed from demonstration

project certificates than from certificates drawn from case examining (35 versus 31 percent of the time, respectively). We think that the USDA demonstration project's approach to veterans preference makes a strong effort to balance two important issues: ensuring that managers are allowed to choose from among the very best candidates available when the are filling their vacant jobs; and granting veterans preference when appropriate.

Options for Improving the System

If legislation is proposed to eliminate the current rule of three (found at 5 U.S.C. 3318) in favor of a more flexible requirement for merit-based hiring, the goal of that legislation should be to better serve managers and all job candidates including veterans by—

- Encouraging selection from among as large a number of well qualified candidates as is reasonable and feasible;
- Permitting approaches that do not require administratively contrived tie-breakers to force distinctions among equally rated candidates; and
- Retaining the number 3 as a minimum below which managers have a legal right to request referral of additional candidates (which currently is provided for in 5 U.S.C. 3317).

Two approaches which we think would serve that expressed goal are:

(a) Replace the rule of three with a requirement that selecting officials shall select from among an adequate number of well qualified candidates who are referred to them by the appropriate OPM or delegated examining office. The term "an adequate number of candidates" should be defined operationally with reference to how well each examining instrument can discriminate among candidates. When less discriminating instruments are used, larger numbers of candidates should be referred; and

(b) Authorize agencies to use a category rating system similar to that permitted by the USDA demonstration project. This system should replace the current numerical scoring system. (Such a provision is included in proposed draft legislation titled the "Federal Human Resource Management Reinvention Act of 1995.")

We also recommend the following actions:

1. OPM should provide more help to agencies in developing the skills their managers and supervisors will need in order to play an expanded role in the hiring process; specifically, OPM should develop and make available to agencies good tools and techniques for managers and supervisors to use in assessing job candidates. This assistance should include improving managers' and supervisors' ability to use OPM's written examinations as part of their candidate assessment process. Such improvements will require OPM to find ways to simplify the scheduling, administration, and scoring of the examinations so managers will use them.
2. At the same time, Federal departments and agencies should focus attention on developing managers' and supervisors' understanding of the value of using existing tests (e.g., the Administrative Careers With America tests) in new ways. Departments and agencies should cooperate with OPM in developing for managers and supervisors the tools necessary for expanding their role in hiring and the skills necessary to use the tools effectively.
3. Federal departments and agencies should emphasize to managers the importance of seeking sufficient numbers (more than one or two) of

well-qualified candidates for vacancies, and should request good assessment tools from their personnel offices and OPM to help managers and supervisors select from among relatively large numbers of candidates.

4. OPM should establish a hiring authority to permit conversion of post-doctoral candidates in scientific or research organizations. This authority should be similar to the former Co-operative Education Program conversion authority (now authorized by the Student Career Experience Program, a component of the new Student Educational Employment Program).

APPENDIX 1:
PLACING THE "RULE OF THREE" IN HISTORICAL PERSPECTIVE[21]

The "rule of three" is a provision of Federal personnel law that requires managers who are hiring new employees to select from among the top three candidates available. (Hiring for the Federal civil service is competitive. Applicants are examined through any of several methods; those who are judged most qualified are referred for employment consideration on a "certificate of eligibles." Placement on the certificate is determined by the candidates' relative qualifications. Numeric scores are usually used, and people are referred for employment consideration in descending score order. Additional points are added to the scores of people eligible for veterans preference, which is discussed more fully in appendix 2.)

It's called a "rule" because, before it was made part of Federal personnel law, it was established administratively as a civil service rule by the Government's central personnel authority, the Civil Service Commission. (These rules have been administrative underpinnings of the Federal civil service from its beginnings.)

The rule of three in Federal hiring is even older than the U.S. Civil Service. While the civil service dates to passage of the Pendleton Act in 1883, the rule of three has its origins in an August 1871 decision of the Attorney General of the United States. President Grant strongly supported national civil service reform, and in 1871 succeeded in gaining passage of a civil service law. He then appointed a 7-member "Advisory Board of the Civil Service" which was charged with establishing rules to implement the law. President Grant's reform of Federal hiring lasted only 2 years, dying in 1873 when Congress refused to continue funding for it.

President Grant's short-lived civil service experiment was an important first step. It led the way in reforming Federal employment practices by requiring: (a) competitive examinations for appointments within the lowest grades in each occupational group; (b) competitive promotion for advancement to grades above the lowest; (c) a 6-month probationary period following appointment; and (d) establishment of a Board of Examiners in each department to actually examine candidates and to maintain lists of qualified applicants. And for the purposes of this study, it first established the rule of three.

The members of the popularly styled Grant Commission proposed a rule that would require man-

[21] Unless otherwise noted, the information in this appendix was extracted from "Biography of an Ideal: A History of the Federal Civil Service," U.S. Civil Service Commission, Washington, DC, 1974, pp. 31-34 and 46-48.

agers receiving lists of candidates to select and appoint those candidates in accordance with their standing on the list prepared by the examiners. In other words, the person listed first by the examiners would have to be given first opportunity to accept or decline appointment. This proposal raised a constitutional issue because the power of appointment is vested, in article II, sections 2 and 3, in certain specific civil officers. The concern was: " * * * that the designation of a single person for appointment by a board not established by the constitutional appointing power would virtually vest the appointment in a body unknown to the Constitution."[22]

The issue was referred to the Attorney General, who submitted an opinion challenging that approach. He wrote that the power of appointment conferred by the Constitution was substantial and not merely a nominal function. He further wrote that requiring appointing officials to make appointments according to the judgments of an examining board would virtually place the power of appointment in that board, which would be at variance with the Constitution. However, he further opined, the judgment of the examining board could be used to "inform the conscious" of the person holding the power to appoint, and the President or Congress could prescribe qualifications and require that selection shall be from among persons determined by proper tests to have those qualifications.[23]

Members of the Grant Commission subsequently proposed permitting managers to select from among the top three scoring individuals—and the rule of three was born. This rule lasted as long as the Grant Commission.

The Civil Service Commission established by the Pendleton Act took office on March 9, 1883. The commissioners' first task was to establish rules to give an operational framework to the civil service law when it went into effect on July 16, 1883. Mindful of the experiences of the Grant Commission, these commissioners initially established a rule of four, which in 1888 they changed to the rule of three. This provision to assure selection choice remained a civil service rule (a requirement established by administrative authority instead of law) until it was incorporated into civil service law as a provision of the Veterans Preference Act of 1944.

Perhaps the most important thing to remember is that this rule was intended to ensure that managers had choices, real meaningful choices, when selecting from among candidates for Federal employment. It was an alternative to the originally proposed rule of one that early proponents of civil service reform believed was both fair and appropriate.

[22] Opinions Of The Attorney General: 516, Washington, DC, August 31, 1871, p. 517.

[23] Ibid., p. 516.

APPENDIX 2:
PLACING VETERANS PREFERENCE HIRING PROVISIONS IN HISTORICAL PERSPECTIVE[24]

From the beginning of the government, army officers had been appointed to such positions as collectors of customs, naval officers and surveyors, internal revenue officers, and commissioners of loans, but the rank and file carried no preference with them. As the Revolutionary patriots grew old, their places were taken by officers serving in the War of 1812. This policy was, however, not written into statute. Pensions, not offices, were the means of testifying to the gratitude of the country for military service.[25]

In 1865 Congress passed the first law granting preference in appointment to Federal civilian jobs based on past military service. Since then the Federal Government has had laws granting at least some veterans some form of preference in hiring. Until 1919, the laws granting this hiring preference focused only on "persons honorably discharged from military or naval service by reason of disability resulting from wounds or sickness incurred in the line of duty."[26] As a result of two laws passed in 1919, employment preference was extended to include nondisabled veterans, the widows of veterans, and the spouses of injured veterans. These provisions remained in effect until June 27, 1944, when the Veterans' Preference Act of 1944 was enacted. That law, with subsequent amendments, remains the statutory basis for granting preference in hiring to veterans and other preference eligibles today.

The 1944 act was approved by a record vote of 375 to 1 in the House of Representatives and by unanimous vote in the Senate. The mood of the country in 1944, with respect to veterans, can be judged by the following statement, contained in President Roosevelt's letter endorsing the bill as it was submitted in the House of Representatives:

I believe that the Federal Government, functioning in its capacity as an employer, should take the lead in assuring those who are in the armed forces that when they return special consideration will be given to them in their efforts to obtain employment. It is absolutely impossible to take millions of our young men out of their normal pursuits for the purpose of fighting to preserve the nation, and then expect them to resume their normal activities without having any special consideration shown to them.[27]

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[24] The information in this appendix was extracted from an undated U.S. Civil Service Commission booklet titled "History of Veteran Preference in Federal Employment, 1865-1955."

[25] Ibid., p. 1. (The Civil Service Commission booklet attributes this quote to Leonard D. White in "The Jeffersonians."

[26] Ibid., p. 1.

[27] Ibid., p. 15.

Appendix 2

As originally enacted, preference was extended to veterans and other preference eligibles by augmenting their examination scores with either 5 (for nondisabled veterans) or 10 points (for disabled veterans and the preference eligible wives, widows, and mothers of veterans). The augmenting points were added to the individual's score *before* determining whether the person had achieved the minimum passing score of 70. Ten-point eligibles were placed at the top of the appropriate eligible list, except for lists for scientific and professional jobs paid more than a certain dollar amount annually. Five-point veterans were placed on the appropriate list of eligibles according to their augmented score and ahead of nonveterans with equal scores.

Amendments enacted in 1953 changed the operations of veterans preference in several important ways. First, eligible individuals had to receive a passing score on the appropriate exam before receiving augmenting points. Second, automatic placement at the top of the list of eligibles was reserved to veterans with a compensable service-connected disability of 10 percent or more. (Other 10-point eligibles still received their 10 points, but were placed on the list ahead of nonveterans or 5-point veterans with equal scores.) Finally, the restriction against automatic placement at the top of the list was redefined so that this "floating" no longer applied to professional or scientific jobs at grade GS-9 or higher. These revisions had two clear effects: (1) they eliminated a major point of criticism by requiring a passing score before granting the augmenting points; and (2) they clearly established the policy of granting certain disabled veterans (those with a disability great enough to warrant disability compensation) the extra hiring advantage of "floating" to the top of registers for most jobs.

The law contains other hiring provisions, as well as provisions concerning special preference granted to veterans in removal and certain other adverse actions. While these provisions are important to veterans, they are not germane to this study and thus aren't discussed here.

For the purposes of this study, the key hiring provisions of the current preference law are as follows:

- Veterans and other preference eligibles are defined as follows:[28]
  - (a) Veterans are individuals who served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized, or who served during time periods and under conditions specified by law or executive order, and who were separated from the armed forces under honorable conditions (if separated through retirement, generally these individuals may not have retired at or above pay grade O-4 (major or equivalent) unless they are disabled veterans);
  - (b) Disabled veterans are individuals who have served on active duty in the armed forces, have been separated therefrom under honorable conditions, and have established the present existence of a service-connected disability or are receiving compensation, disability retirement benefits, or pensions because of a public law administered by the Department of Veterans Affairs or a military department;
  - (c) Preference eligibles include: (1) all qualifying veterans; (2) the unmarried widows or widowers of veterans; (3) under certain circumstances (a) the spouses of service-connected disabled veterans; or (b) the mothers of either *(i)* individuals who lost their lives while serving in the armed services or *(ii)*

[28] 5 U.S.C. 2108.

veterans with a permanent and total service-connected disability.

- Eligibles have 5 or 10 points added to their passing score on the appropriate examination;
  (a) 5 points for nondisabled veterans.
  (b) 10 points for disabled veterans or preference eligibles.
- The names of persons eligible for veterans preference are always entered on registers or lists of eligibles ahead of persons who lack veterans preference who have the same rating.
- Disabled veterans with compensable service-connected disabilities of 10 percent or more who pass the appropriate qualifying examination are listed first on the register or list of eligibles. This practice is commonly known as "floating to the top." These disabled veterans appear at the top of list in augmented score order, and are followed by all other qualified candidates. "Floating to the top" does not apply to scientific or professional positions at or above GS grade 9.
- Excepted as noted below, when selecting from a certificate a manager must always select veterans listed ahead of nonveterans. This is true whether a veteran's score is equal to a nonveteran's or, as may occur as a result of the "float to the top" provision, a veteran's score is lower than a nonveteran's. If several veterans are listed together at the top of a certificate, a manager is not required to select the one named first. Instead, the manager is permitted to select from among the top three available veteran candidates.
- A manager may challenge the requirement to select a veteran through a procedure called a "pass over." Passing over a veteran must be sustained by OPM. The affected veteran is informed of this action and under certain circumstances will be given a chance to respond to the manager's proposed pass over. A successful pass over may allow a manager to select a nonveteran with a score equal to, or lower than, that of the challenged veteran.

APPENDIX 3:
INFORMATION ABOUT THE STUDY DATA SAMPLE

This appendix provides additional information about the sample of certificates and supporting records reviewed for this study.

Item of Interest	Certificate Source: Refer From Register		Case Examining		USDA Demonstration		All	
1. Number of certificates	**246**		**633**		**190**		**1,069**	
2. Pay plan distribution of certificates:								
GS	227	92%	591	93%	172	91%	990	93%
Wage System	19	8%	42	7%	18	9%	79	7%
3. PATCOB distribution of certificates:								
Professional	118	48%	178	28%	56	30%	352	33%
Administrative	71	29%	282	45%	6	3%	359	34%
Technical	21	8%	107	17%	87	46%	215	20%
Clerical	14	6%	15	2%	23	12%	52	5%
Other	4	2%	9	1%	0	0%	15	1%
Blue-collar	18	7%	42	7%	18	9%	76	7%

continued ▶

Item of Interest	Certificate Source: Refer From Register		Case Examining		USDA Demonstration		All	
4. Distribution of certificates by examining office:*								
OPM Baltimore, MD, Service Center	80	33%	117	19%	0	0%	97	18%
OPM Washington, DC, Service Center	1	*	200	32%	0	0%	201	19%
OPM Macon, GA, Service Center	160	65%	0	0%	0	0%	160	15%
OPM other examining offices	3	1%	7	1%	0	0%	0	1%
ASCS Kansas City, MO, delegated exam office	0	0%	200	32%	0	0%	200	19%
ARS Greenbelt, MD, delegated exam office	2	1%	109	17%	0	0%	111	10%
ARS Greenbelt, MD, demonstration project office	0	*0%*	0	*0%*	190	*100%*	190	*18%*

* Percentages in columns may not equal 100 because of rounding.
** Less than one-half of 1 percent.