

Competitive Service Act – Shared Certificates

Questions & Answers

Introduction and Background

On March 18, 2016, the Competitive Service Act of 2015 was enacted as Public Law 114-137. The Act allows an appointing authority (i.e., the head of a Federal agency or department) to share a competitive certificate issued under delegated examining procedures with one or more appointing authorities (at different departments or agencies) to make an appointment to a position that is in the same occupational series, grade level (or equivalent), full performance level, and duty location during the 240-day period beginning on the date of issuance of the certificate of eligibles.

The questions and answers listed here are meant to provide guidance to this law, and the U.S. Office of Personnel Management's (OPM) implementing regulations published on January 18, 2017.

Throughout this document and consistent with the interim rule, these questions and answers use the term “original hiring agency” and “receiving agency” to refer to the agency that first initiated the hiring action (i.e., the sharing agency) and the agency using a shared certificate of eligibles, generated by another agency, respectively.

General Provisions

1. What is the purpose of the Competitive Service Act (the Act) of 2015?

Answer: The purpose of the Act is to facilitate faster hiring through the sharing of talent across the Government by permitting agencies to share resumes and select from among candidates who have competed for similar positions at other hiring agencies. These provisions will benefit agencies that may make selections from among the top-rated applicants readily available, as well as applicants who through one job application may now be considered for more public service opportunities in their desired Federal occupation.

2. How do the provisions of the Act differ from what is currently permissible under delegated examining procedures?

Answer: Under current practice, an appointing authority may share a certificate within the bureaus and components of his or her department or agency. This rule expands that practice to allow an appointing authority to share his or her certificates with an appointing authority in another department or agency, not just within the same agency. For example, the Department of Treasury will be able to share certificates with the

Department of Energy; Treasury is not limited in sharing its certificates among just the bureaus and components within Treasury.

3. Where are the Act's implementing regulations found?

Answer: OPM has issued regulations at 5 Code of Federal Regulations (CFR) 332.408, and 5 CFR 330.104 effective February 17, 2017.

4. Can an original hiring agency share any type of certificate with other Federal agencies?

Answer: The Act only authorizes the sharing of certificates issued under delegated examining procedures for permanent and term positions.

5. Can an original hiring agency share any certificate it generates following public notice requirements on www.USAJOBS.gov and filled under delegated examining procedures?

Answer: No. The original hiring agency seeking to share the certificate may share the certificate with one or more hiring agencies only if the announcement of the original position stated that the resulting certificate may be used by one or more Federal agencies, and applicants "opt-in" to having their application material shared.

6. Can a receiving agency use a shared certificate immediately upon receipt of the certificate, or are other steps involved?

Answer: The receiving agency must first consider its own employees for the position being filled before selecting an individual from a shared certificate.

7. Can certificates of eligibles for temporary positions be shared with another appointing authority?

Answer: No. Temporary positions are excluded from these provisions because of the requirement for the receiving agency to consider individuals from within its own workforce prior to making a selection from a shared certificate. Because consideration of agency employees will be done under merit promotion procedures, jobs originally advertised as temporary are not compatible with filling jobs under merit promotion.

8. Can a hiring agency share a certificate of eligibles issued under direct hire authority?

Answer: No. Direct hire authority certificates may not be shared with another appointing authority as the law specifically amends sections 3318 and 3319 of title 5, United States Code (U.S.C.), which address issuing certificates of eligibles under delegated examining procedures.

9. Can a hiring agency share a certificate of eligibles issued under merit promotion procedures?

Answer: No. The Act specifically amends sections 3318 and 3319 of title 5, U.S.C., which addresses issuing certificates of eligibles under delegated examining procedures only.

10. What is meant by the term ‘grade level or equivalent’?

Answer: Equivalent means a corresponding rate or level of pay under an alternative pay system for a position excluded from the General Schedule.

11. Who is responsible for tracking the expiration of the shared certificate?

Answer: A receiving agency is responsible for ensuring its selection occurs within 240 days of the date the certificate was created, i.e., originally issued to the hiring manager in the original agency.

12. What is the time period during which an agency can share a certificate of eligibles?

Answer: The Act allows agencies to make selections during the 240-day period beginning on the date of issuance of a certificate of eligibles.

13. How will the 240-day time period (during which an original agency may share a certificate) affect the 80-day hiring model?

Answer: The 240-day window is a period during which a certificate can be shared and used by other Federal agencies. The 240-day window is a requirement established in the Act and, therefore, is separate and independent from the 80-day hiring model, which is a goal or guideline. Using a shared certificate, in fact, may speed up a receiving agency’s time-to-hire as much of the front-end work may already be completed by the original agency at the time a vacancy is identified by the receiving agency (which triggers the start of the 80-day model).

14. Are agencies required to report on their use of shared certificates?

Answer: No. There are no reporting requirements. However, agencies must keep records of the instances of sharing or using shared certificates and be prepared to provide this information to OPM upon request.

Definitions

15. What is meant by the term ‘appointing authority’?

Answer: An appointing authority is a person, empowered by law, or delegated the authority from a person empowered by law, to make appointments. Generally, this is the head of the agency or department. While the Act does not define “appointing authority” for the purpose of shared certificates, in the interim rule, OPM refers to the “original hiring agency” and the “receiving agency,” rather than using the more generic term “appointing authority.”

16. How is ‘duty location’ defined for these purposes?

Answer: This is not a defined term and may have different connotations for different agencies. Duty location has generally been interpreted by OPM to mean a designation that provides reasonably meaningful information to an applicant about where he or she is expected to perform his or her duties. A job opportunity announcement (JOA) can provide for selections at multiple duty locations but generally a separate certificate will be issued for each duty location, and accordingly, if shared, will be shared only for the same duty location.

There could be a scenario where the receiving agency has a narrower or more specific definition of the duty location (e.g., Arlington, VA) than the original hiring agency (e.g., Washington, DC, metro area). This may be acceptable under the rule, because it would not be inconsistent with applicants’ geographic availability.

How it works for the Original Agency (i.e., The Agency Sharing a Certificate)

17. What does the original agency need to do in order to be able to share a certificate of eligibles?

Answer: In order to share a certificate of eligibles, the original agency must provide notice within the JOA for the original vacancy that the resulting list of eligible candidates may be used by one or more hiring agencies and allow an opportunity for applicants to “opt-in” to having their names shared.

18. Can the original agency make additional selections from a certificate after the certificate has been shared?

Answer: Yes. Once a certificate of eligibles is shared, the original agency is not prohibited from making additional selections from its certificate. Each agency considers candidates on a shared certificate independently of the actions of any other agency with which the certificate is shared, including the original agency. Agencies may want to coordinate the use of shared certificates to avoid candidates receiving multiple offers of employment.

19. Can the original agency share a certificate of eligibles as soon as it is issued?

Answer: No. The original agency may share a certificate once it has completed its audit, including the resolution of any objections or pass overs to preference eligibles. The intent of this provision is to allow time for the original agency to complete its working of a certificate of eligibles including the audit and any internal quality control/quality assurance activities that typically occur at the end of the case examining process. Although the timing of quality assurance activities varies by agency, waiting until the end of the case process helps reduce the risk of errors being identified after a certificate is shared with one or more agencies.

20. Is there a limit on the number of agencies with which an original agency may share a certificate?

Answer: No. There is no limit on the number of agencies to which a certificate of eligibles may be shared. Agencies may want to coordinate use of shared certificates to avoid candidates receiving multiple offers of employment.

21. Can the original agency limit the amount of time within which a receiving agency has to make a selection, i.e., limit the receiving agency to a time period shorter than the full 240 days?

Answer: No. The Act allows agencies to make selections during the 240-day period beginning on the date of issuance of a certificate of eligibles.

22. How does an agency determine if applicants want to opt-in to have their name shared with another hiring agency?

Answer: OPM is exploring options to potentially collect this information in USAJOBS. In the meantime, agencies have the flexibility to determine the best method for collecting this information from applicants. This may be through the occupational questionnaire or any other means the agency deems effective. Please note agencies may not share the personal information of applicants who have not expressly opted-in to having their personal information shared.

23. Does the act of sharing applicants' names violate any privacy matters for those applicants who do not want their current employers to know that they have applied to vacancies outside their agency?

Answer: Applicants have the discretion to opt-in to have their applications and other personal information shared with one or more other hiring agencies. Opting-in allows applicants to provide advance written consent for disclosure of their information. If an applicant is not comfortable with having his or her name shared, he or she does not have to opt in.

24. What information does the original agency sharing a certificate provide to the receiving agency?

Answer: The original agency must provide a receiving agency with a copy of all documentation pertaining to the creation of that certificate (e.g., the job analysis, JOA, rating schedule/crediting plan, application materials of those certified and opting-in to having their information shared, etc.). The original agency must share the certificate of eligibles in its original form in order to retain the original ordering of the certificate. In doing so, the original agency must safeguard any personally identifiable information (PII) from unauthorized access during the transmission process and must redact the names of those applicants who have not opted-in to the shared certificate.

25. What constitutes personally identifiable information (PII)?

Answer: The U.S. Office of Management and Budget defines personally identifiable information, or PII, as information which can be used to distinguish or trace an individual's identity such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.

26. How does the original agency share a certificate of eligibles?

Answer: The original agency decides with which agencies and in what sequence (if any) it will share a competitive certificate. The original agency can specify in the JOA which will produce the certificate that it may be shared with specific agencies, or just that it may be shared with one or more Federal agencies. The original agency must share the certificate of eligibles in its original form in order to retain the original ordering of the certificate; must safeguard any PII from unauthorized access during the transmission process; and must redact the names of those applicants who have not opted-in to the shared certificate. The original agency also redacts the names of any eligibles it selected from the certificate.

27. Can the original agency redact the names of eligibles who have not opted-in for each receiving agency on a case-by-case basis, or should the original agency do a 'one-time opt-in/opt-out' redaction before sharing the certificate with all agencies?

Answer: It is a one-time opt-in/opt-out. The original agency must redact the names of all applicants who do not opt-in to the original agency's JOA before the certificate can be shared with another agency.

28. Should the original agency redact the names of applicants who declined or failed to reply before sharing the certificate of eligibles?

Answer: No. The original agency does not redact the names of those who decline or fail to respond as long as there is a separate record that the applicant affirmatively opted-in. An applicant may decline an opportunity at one agency and still be interested in an opportunity at another.

29. What determines the order in which the original agency may share a certificate with multiple agencies?

Answer: The original agency determines when and how best to share certificates of eligibles with other agencies.

30. What is the mechanism that an original (i.e., sharing) agency will use to transmit certificates and supporting documentation that may include PII (e.g., transcripts, SF-50s, DD 214s, etc.) when agencies have different talent acquisition systems?

Answer: Agencies have the flexibility to determine the best way to transmit certificates and accompanying documents based on the talent acquisition systems in use. Agencies must safeguard any PII from unauthorized access during the transmission process.

31. Is the original agency required to create a numbering/naming convention for the certificates it shares?

Answer: No. The original agency is not required to create a numbering or naming convention for the certificates that it shares. The certificate retains its original number and issue date in order for the receiving agency to track the 240-day time period from within which a selection may be made.

32. Does the original hiring agency have to make a selection in order to share a certificate of eligibles?

Answer: No. The original hiring agency does not need to make a selection in order to share a certificate of eligible with another agency. OPM notes in this regard that when an agency announces a position, examines and rates applicants, and issues a certificate of eligibles, it must do so for its own hiring needs in the first instance (notwithstanding worked performed by a shared service provider on behalf of another agency). An agency cannot generate a certificate solely for the purpose of sharing it with another agency. That would be misleading to applicants and contrary to competitive principles.

33. Is the original agency responsible for ensuring that receiving agencies using a shared certificate do not violate veterans' preference rules or otherwise make illegal appointments?

Answer: No. Each receiving agency works the certificate independently and is responsible for the proper selection, audit, recordkeeping, etc., of its delegated examining activities. Receiving agencies must follow competitive examining procedures (e.g., laws, regulations, and *Delegated Examining Operations Handbook* (DEOH) guidance) when using a shared certificate in the same manner they would if they had advertised the job under their own delegated examining agreements. All actions taken on competitive certificates must be documented in accordance with the DEOH and all applicable regulations.

34. What does the original agency do if it discovers an error in the original case of a certificate that was shared with one or more agencies?

Answer: If the original hiring agency, at any time, determines that it has made an error that may affect selections by a receiving agency or agencies, it must notify each receiving agency of the details of the error.

35. Is a hiring agency required to share any certificates of eligibles it generates through the competitive examining process?

Answer: No. Sharing of certificates of eligibles is up to the discretion of each agency.

36. Is there a time limitation within which an original hiring agency can share a certificate?

Answer: All actions taken on a shared certificate must be made within the 240-day period beginning on the date the original hiring agency issued the certificate of eligibles.

How it works for the Receiving Agency (i.e., The Agency Receiving a Shared Certificate)

37. Are there any general conditions that apply to the types of positions that can be filled by an agency using a shared certificate generated by another agency?

Answer: A receiving agency can use a shared certificate to make an appointment to a position that is in the same occupational series, grade level (or equivalent), full performance level, and duty location of the position the original hiring agency was seeking to fill.

38. If an agency wants to use a shared certificate, from whom does the agency request the use of a certificate?

Answer: Agencies seeking to use this flexibility should submit their request to share a certificate to the original agency's delegated examining unit. OPM is exploring options in both USAJOBS and USA Staffing to help support the sharing of certificates across agencies.

39. Is a receiving agency required to meet public notice requirements (i.e., post a job announcement on USAJOBS) before using a shared certificate of eligibles?

Answer: No. The original hiring agency has already met public notice requirements. However, the receiving agency must provide consideration to its own employees before using a shared certificate. This includes considering individuals covered under the agency's Career Transition Assistance Plan (CTAP) and Reemployment Priority List

(RPL), as well as other individuals for which consideration is required when filling a vacancy.

40. Which groups of individuals must be given internal consideration before a receiving agency can make a selection from a shared certificate?

Answer: In addition to agency employees, other individuals may include employees on the agency's RPL, and CTAP eligibles.

41. Is a receiving agency required to re-clear or advertise for Interagency Career Transition Assistance Plan (ICTAP) eligibles before using a shared certificate?

Answer: No. The receiving agency is not required to re-advertise the position for ICTAP eligibles as the original agency has already afforded an opportunity for ICTAP eligibles to apply and be considered. This allows the receiving agency to use a ready-made certificate of eligibles while still adhering to the provisions of 5 CFR 330 subpart G.

42. Is the agency receiving the shared certificate of eligibles required to consider its own employees first before selecting from the shared certificate?

Answer: Yes. The Act, amending sections 3318 and 3319 of title 5 U.S.C., specifically includes a requirement that before selecting from a shared certificate a receiving agency provides notice of the available position to its employees and allows them an opportunity to apply.

43. When during the 240-day window during which a receiving agency can use a shared certificate, should a receiving agency check the RPL?

Answer: The RPL should be checked any time before or during the 10-day notice period and before consideration of current agency employees. Prior to making a selection from a shared certificate, a receiving agency must consider its own employees for the position. This includes considering individuals covered under the agency's CTAP and the agency's RPL as well as other individuals for which consideration is required.

44. Is there a specific time frame for issuance of an internal announcement or notification to the receiving agency's employees to be used in conjunction with a shared certificate?

Answer: A receiving agency must document that it provided notice to internal candidates of the available position and up to 10 business days to apply. This time limit cannot be waived or extended. A receiving agency will need to determine if a prior JOA meets this requirement.

45. Is a receiving agency required to consider internal candidates prior to using a shared certificate to fill a position on a term basis?

Answer: Yes. The Act requires the notification and consideration of employees prior to selecting from a shared certificate. Agencies are encouraged to notify permanent employees of the implications of moving to a term position if selected.

46. Is a receiving agency required to open the JOA up to individuals outside the agency's workforce before using a shared certificate?

Answer: No. The Act requires a receiving agency to consider its own employees for the position before making a selection from a shared certificate. The agency needs to decide how the notification will take place.

47. Is a receiving agency required to conduct a job analysis before using a shared certificate?

Answer: Yes. Each employment practice must be based on a job analysis to identify the basic duties and responsibilities of the position; the competencies/knowledge, skills, and abilities (KSAs) required to perform the duties and responsibilities of the position; and the factors that are important in evaluating candidates (5 CFR 300.103). Therefore, it is necessary for the receiving agency to have a current job analysis of the position being filled to verify that the minimum qualifications (including any selective placement factors) and the KSAs identified and assessed by the original agency are appropriate (job-related and relevant) for its position before selecting from a shared certificate.

48. Can the notice to eligibles on the shared certificate include other requirements such as travel requirements, the need to obtain a clearance, or attend specific training?

Answer: Yes. A receiving agency is encouraged to include any additional information about the position it is filling that would be helpful to the candidates on the shared certificate.

49. Can the receiving agency administer additional assessments to the eligibles on the shared certificate?

Answer: Generally, no. A receiving agency cannot assess, or further assess the candidates on a shared certificate or otherwise affect an eligible's placement on the certificate. That is, the certificate may not be reordered based on additional information reviewed after a certificate of eligibles is issued. However, additional methods or resources (such as informational interviews or a review of applicant writing samples) may be used to help make selection decisions.

50. How will a receiving agency know whether an applicant has been selected by another receiving agency (if more than one receiving agency is using the certificate at the same time)?

Answer: Each receiving agency works the shared certificate independently of any other agency using the certificate. There is no requirement to share selection information among agencies. This is no different than under current hiring procedures when an applicant applies to two or more JOAs and receives concurrent consideration.

51. What if there are insufficient names on a shared certificate to be considered for a receiving agency's vacancies?

Answer: There is no requirement for the original agency to issue a new certificate of eligibles with additional names for a receiving agency to consider. The Act allows for sharing with another agency a ready-made certificate of eligibles available for consideration.

52. If OPM sustains a pass-over of a preference eligible, why does it not transfer to receiving agencies? That is, why would OPM have to review and decide on an applicant more than once, if that applicant is being considered from the same certificate?

Answer: Each objection and pass over is adjudicated based on its own merits consistent with 5 U.S.C. 3317 and 3318, because the reasons why an agency might want to object to an eligible or pass over a preference eligible may vary.

53. Can the 240-day time limit for making selections from shared certificates be extended?

Answer: No. Selections from shared certificates must be made within 240 days of the date the original certificate was issued. Extensions beyond 240 days are not permitted.

54. Is the 240-day period counted in calendar or business days?

Answer: The 240-day period is counted in calendar days.

55. How does a receiving agency document an appointment made from a shared certificate?

Answer: Documentation of appointments can be found in the Guide to Processing Personnel Actions, chapter 9 (permanent appointments) and chapter 10 (term appointments). The Guide is available on the OPM website at: <http://www.opm.gov/feddata/gppa/gppa.asp>.

56. How would a receiving agency know of another agency's announcement for a position/certificate they are willing to share and vice versa?

Answer: Agencies can learn of opportunities to receive certificates in a variety of ways. For example, an agency could review job announcements on www.USAJOBS.gov and contact an original agency which indicated that it would share its certificates. Or,

agencies could conduct regular check-ins with each other at venues such as the Chief Human Capital Officers Council meetings to hear of opportunities (or potential opportunities) to share certificates, or make inquiries within a community of agencies which employ individuals in similar occupations (e.g., agencies in the financial community).

Miscellaneous Provisions

57. Can a receiving agency use a shared certificate to fill a vacancy with very different duties and specialized experience than the position that was originally being filled?

Answer: No. The rule makes clear that a receiving agency must verify through job analysis the minimum qualifications (including any selective placement factors) and the competencies/KSAs identified and assessed by the original agency are appropriate (job-related and relevant) for its position before selecting from a shared certificate.

58. Is a receiving agency required to synchronize its position descriptions (PDs) with the one used by the original agency, or use the PD from the original agency in order to use a shared certificate?

Answer: No. Using a shared certificate does not require a standardized PD or using the original agency's PD. Each agency must use its own PDs for the positions it is filling. The receiving agency must verify through job analysis that its position is equivalent to the 'shared' position. Use of a shared certificate may not be appropriate in all cases. If, based on the job analysis, the receiving agency's position has different specialized experience requirements or critical competencies/KSAs than the original agency's position, then using a shared certificate would not be appropriate.

59. Are receiving agencies required to authorize flexibilities such as paid relocation, travel or training requirements, etc., if the original agency mentioned these flexibilities in its job opportunity announcement in order to use a shared certificate?

Answer: No. Items such as these are dependent upon the original agency's position. The items advertised by the original agency may be considerations for the receiving agency in determining whether or not using a shared certificate is appropriate for its position.

60. Is there a grade-level limitation on positions that may be filled under these provisions?

Answer: No. There is no grade-level limitation on positions that may be filled using these provisions.

61. The Act says a shared certificate may be used to fill positions at a similar grade level as the position the original agency was seeking to fill. Can a receiving agency use a

shared certificate to fill a position at a higher or lower grade level than the grade originally advertised?

Answer: No. A receiving agency cannot use a shared certificate to select an individual for a lower-graded or higher-graded position than that of the position originally advertised. Doing so could discriminate against applicants who may have otherwise applied for the position if they had been aware that the vacancy could be filled at a lower or higher level than advertised.

62. Can a receiving agency use a shared certificate to fill a vacancy in a duty location other than the one specified in the original job announcement?

Answer: No. A receiving agency cannot use a shared certificate to fill a position in a duty location other than the duty location specified in the original job announcement. Otherwise, a violation of merit system principles may occur if, for example, a job advertised in the Washington, DC, area is later filled in Portland, OR. This would not be consistent with the notion of fair and open competition.

Documentation

63. What documentation must the original or receiving agency keep when sharing or using a shared certificate of eligibles?

Answer: The agency sharing the certificate and the agencies receiving the certificate are each responsible for maintaining complete case file documentation sufficient to reconstruct all hiring actions in accordance with the DEOH. Each time a certificate is shared, each receiving agency is responsible for creating a new instance of a case file to document its use.

When sharing a certificate, the original agency will provide a receiving agency with a copy of all documentation pertaining to the creation of that certificate (e.g., the job analysis, JOA, rating schedule/crediting plan, applications of those certified, etc.).