ISSUES OF MERIT

WHAT'S INSIDE

The 5 U.S.C. § 3304 Direct-Hire Authority: Usage and Outcomes

Direct-hire authorities (DHAs) allow the use of streamlined procedures to appoint new Federal employees without regard to some key merit system and public policy provisions, such as applicant rating and ranking and veterans' preference. DHAs tend to grow in popularity quickly because they are often easier to use than competitive service procedures, so it is important to monitor how they are used and the results achieved.

The Merit System Protection Board's (MSPB) recent research brief *Direct-Hire Authority Under 5 U.S.C. § 3304: Usage and Outcomes* looks specifically at the DHA covered by this section of the statute (herein referred to as §3304 DHA). This DHA has been in place for about 15 years, affords both Governmentwide and agency-specific DHA to all executive branch agencies, uses the same set of regulations and procedures for both, and is subject to Office of Personnel Management (OPM) oversight and reporting. The brief looks at how often agencies used it in fiscal years (FY) 2014–2018, for what types of positions it was used, the workforce demographics that resulted from its use, and what agencies report as advantages and challenges of its use.

Frequency. Although use of the §3304 DHA got off to a slow start after being introduced in 2002, its use has increased over time and accounted for almost 7,000 appointments in FY 2018. Despite its growth, it still only accounts for a small proportion of competitive hiring, averaging about 6 percent since FY 2012.

Agencies. Even though the Department of Defense has many of its own agency-specific direct-hire authorities, Defense-related agencies were still responsible for just over half of all §3304 DHA appointments made during FYs 2014–2018. Other frequent users included the Departments of Health and Human Services and Homeland Security.

Types of positions. The §3304 DHA was used largely to fill positions in professional and administrative occupations for which most would agree there is a critical need or shortage of candidates. The occupations for which §3304 DHA was used most were nursing and information technology. Furthermore, §3304 DHA was the preferred hiring authority for medical and veterinary positions when compared to all other competitive service authorities.

Resulting workforce demographics. Because §3304 DHA provides agencies the ability to hire without rating and ranking applicant qualifications and without the application of veterans' preference, it is important to monitor how the flexibility affects

workforce diversity. We found that the resulting workforce demographics were mostly comparable to those achieved through other competitive procedures in terms of race, ethnicity, gender, and age. The data suggest that veterans were hired at lower rates for administrative and technical occupations but at higher rates for professional occupations compared to other competitive procedures.

Reported advantages. Agency representatives were mostly positive about the use of §3304 DHA. A majority of chief human capital officer (CHCO) representatives indicated that, compared to other competitive procedures, §3304 DHA helped improve the quality of the applicant pool, the quality of the new hires, and the timeliness of the hiring process. The areas most cited by agencies as being helped by §3304 DHA were targeting applicants with the needed skills, hiring candidates they actively recruited, hiring the most qualified candidates, identifying the most qualified candidates, and keeping the agency more competitive with other employers. Human resources (HR) representatives also indicated that the process helped improve satisfaction rates of managers and new hires.

Reported challenges. One of the biggest hindrances reported by CHCOs was OPM limits on usage. Other hindrances included the need for public notice, the length of the hiring process even with §3304 DHA, documenting the need for the flexibility, and understanding the rules. Some HR staff expressed concerns that §3304 DHA was being used to avoid veterans' preference—which could account for disparities noted above in administrative and technical jobs—and that the focus on external recruitment disadvantaged internal candidates. Some also expressed that, anecdotally, they have seen the use of §3304 DHA increase equal employment opportunity complaints and new-hire turnover.

In addition, as discussed in the last edition of *Issues of Merit*, it appears that agencies and OPM have competing visions for the use of §3304 DHA. Specifically, OPM emphasizes that the statute restricts its use to positions where there is such a critical hiring need or severe shortage of candidates that agencies should be hiring qualified candidates in the order they are found. Agencies, however, seem to want candidate quality to factor into hiring decisions.

The brief largely tells a positive story. However, as Federal leaders and stakeholders push for the expansion of not only §3304 DHA but also other DHAs, they should consider how these authorities can best be used to support merit-based hiring. ❖

THANK YOU!

MSPB would like to thank all Federal employees, supervisors, and managers who contributed to the success of our 2021 Merit Principles Survey (MPS). The MPS is a tool that measures the "health" of Federal merit systems over time. The MPS contained core questions about merit in the Federal workforce that provide insight into how well the Federal Government is managing its workforce.

We administered the survey to almost 100,000 Federal employees and supervisors across 27 Government agencies between January and April. We are analyzing the data now and can't wait to share the results with the President, Congress, and you!

Preparing for Work after "Maximum Telework"

We are all ready for a return to normal—a time when the coronavirus is not at the forefront of our work and personal lives. But it's now clear that the post-pandemic "normal" will be different. First, the physical environment has changed. For example, local and long-distance travel may be less convenient and more costly. Second, work and expectations have changed. Paper-based processes may have become partially or fully electronic. People who once insisted on meeting face-to-face may now prefer to meet online. Managers and employees who have thrived under telework might ask why a return to the office is necessary or desirable.

The article "Our Work-from-Anywhere Future" in the November-December 2020 *Harvard Business Review* outlines some benefits that may come with a "new normal." For organizations and employees, possible benefits include:

- Scheduling flexibility, with improved work/life balance, productivity, and customer service;
- Increased job satisfaction and engagement;
- Reduced costs for workspaces, commuting, and travel; and
- A deeper and more diverse talent pool because employers can recruit from beyond their physical locations.

These benefits are not new; telework advocates have pointed them out for years. In fact, MSPB discussed them in depth in our 2011 report *Telework: Weighing the Information, Determining an Appropriate Approach*. But technological advances have made large-scale telework more achievable and accessible since then, and the real-world forced telework experiment of 2020 (and 2021) has made those benefits much more tangible while dispelling some fears about telework. Nevertheless, that experiment has also confirmed that challenges may arise when telework is widespread and long-lasting. Fortunately, it has spurred organizations to tackle those challenges through activities like the following.

Sustaining innovation and problem-solving. When people work in different places, at different times, synchronous communication may become difficult. But such communication is essential when trying to solve a complex technical or organizational issue or act on a new opportunity. New tools, such as online whiteboards, can help. So too can thoughtful use of "old-fashioned" tools such as mentoring and in-person meetings.

Information sharing and knowledge transfer. It can be hard for a teleworker to ask a coworker for assistance or an opinion. That's not only a matter of physical distance; it may also be a matter of a teleworker not knowing what their coworkers have to contribute. Common solutions include more documentation, such as web portals or wikis that provide knowledge and resources, and an explicit expectation that employees and managers will share and codify their knowledge. If your agency knowledge management system has fallen into disuse, it may be time to dust it off.

Socialization. Employees are expected to understand and advance an organization's missions and interests, not just perform a specified task or deliver a specified product. That means having a connection with coworkers and the organization that is more than purely transactional. Historically, mission knowledge and coworker relationships were developed by in-person interaction. We can supplement increasingly rare hallway discussions with post-virtual meeting chats, phone calls, tag-team email exchanges, and other tactics that build and maintain closeness at a distance.

Career development and advancement. Traditionally, the road to the top has led to a corner office in a brick-and-mortar headquarters with designated parking after establishing your reputation through in-person interaction. Even in a merit system, mentors often emphasize networking and being "visible" to leaders and the people one aspires to lead. In a telework world, organizations need to examine career paths and promotion processes from both an employee perspective (how might teleworking affect opportunities?) and a human capital perspective (how do working conditions affect the quality of the leadership talent pool?). Technology and policy changes may be needed—as well as a cultural change.

The good news is that telework may have greater promise and less peril than many believed, and the experiment of max-telework may lead to lasting improvements for employers and employees. But that potential cannot be realized through technology alone. Thinking, feeling people are the key to creating a "new normal" that balances technological connectivity and human connection. ❖

Acting Director, Policy and Evaluation

Within-Grade Increases: Measuring and Rewarding an Acceptable Level of Competence

Research shows several factors influence within-grade increase practices and decisions.

The General Schedule (GS) pay system provides for fixed salary increases at regular intervals for an employee who performs at "an acceptable level of competence." These within-grade increases (WGIs) are meant to reward continually acceptable performance over many years of service.

Results from MSPB's Merit Principles Survey 2016 indicate that more than one in four supervisors believe they have at least one employee who is not at an acceptable level of competence. In contrast, personnel action data reflect a much lower denial rate at just over 1 in 1,000. MSPB research shows that several factors play a role in WGI practices and decisions, including the following.

Rating patterns. The data show that employees in a rating system that allows a Level 2 rating of record (less than successful but better than unacceptable) are four times more likely to have a WGI denied than those whose system does not (0.21 percent of WGIs denied versus 0.05 percent, respectively). This may be a result of the Level 2 appraisal system offering a way to place an employee in the space between an acceptable level and outright failure. It may also be that agencies which choose to measure performance more precisely (using more levels for distinguishing performance) have a different cultural attitude towards performance deficiencies.

Performance measurement culture and guidance. Organizations with comparatively high rates of WGI denials tend to have policies in place to help supervisors determine how to measure and address performance. For example, an organization we spoke with that had a WGI denial rate of 3 percent also has a 5-page memorandum on WGIs that, among other things, instructs supervisors on the exact period of performance to be considered when assessing accomplishments for the purposes of granting or denying WGIs. This offers consistency across the organization, and supervisors are not left to attempt to make such decisions for themselves. Another organization with a WGI denial rate 10 times the Governmentwide average issued a detailed guide addressing what a performance deficiency means.

Nature of the work. This may be the consideration that the agency has the least control over, yet it often has the strongest relationship to the WGI denial rate. Occupations involving work that is easily measured—such as the number of cases, claims, or applications processed—tend to have much higher rates of WGI denials than other occupations. For example, one department noted that a particular occupation had work that could "be measured concretely in terms of quantity, timeliness, and accuracy of adjudication." That occupation had a WGI denial rate 10 times the average rate for the rest of the department.

Some agency practices may be tailored to their workforces and therefore difficult to replicate elsewhere. Others, however, such as clear guidance, may be more easily adopted. For more information on WGIs and what agencies may be able to do to improve their WGI practices, see our recently released research brief *Determining an Acceptable Level of Competence for Step Increases*. ❖

ATTENTION READERS!

This will be the last *Issues of Merit* edition that will be printed and mailed. Moving to a digital-only platform will help us save resources while still providing the insights and analyses you have come to expect from MSPB. To ensure you receive notifications when the online newsletter is released, please subscribe to our listserv.

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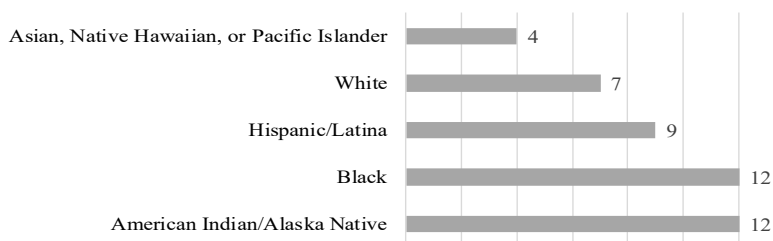If you're already subscribed to our listserv, nothing will change for you!

Pay Equity and Equal Representation: Issues for the Entire Workforce

Data indicate that pay gaps and representation are related and still need attention.

Two issues that have persisted over the years regarding the employment of women in the Federal Government are pay equity and equal representation. It may not be surprising that these two issues are related. In December 2020, the Government Accountability Office (GAO) released the report *Gender Pay Differences: The Pay Gap for Federal Workers Has Continued to Narrow, but Better Quality Data on Promotions Are Needed* regarding the pay gap between men and women in the Federal workforce. GAO found that the pay gap had narrowed between 1999 (when it was 19 cents on the dollar) and 2017 (when it was 7 cents on the dollar). GAO attributed 1 cent of the 2017 pay gap to differences between men and women in measurable factors such as occupation, education, experience, and veteran status. GAO could not explain the remaining 6 cents. This unexplained portion of the pay gap could be due to factors not captured in data that GAO analyzed, such as work experience outside the Federal Government and parental status, or factors that are harder to measure, such as discrimination or individual employee choices.

Along with the overall pay gap between men and women, GAO analyzed how the pay gap differed between specific groups of employees. It found that both the overall pay gap and the unexplained pay gap were greater for certain groups of women as compared to White men, as depicted in the chart.

Unexplained Pay Gap Between Groups of Women and White Men, Cents on the Dollar, 2017

Group	Cents
Asian, Native Hawaiian, or Pacific Islander	4
White	7
Hispanic/Latina	9
Black	12
American Indian/Alaska Native	12

Source: GAO, *Gender Pay Differences*, p. 20.

In addition to the pay gap, GAO noted that over the last 20 years, the Federal workforce has consistently included more men than women. For example, men made up 55 percent of the Federal workforce in 1999 and 57 percent in 2018. A look at the representation of women among new hires suggests this trend may continue. In the Fall 2015 edition of *Issues of Merit,* we noted that although the U.S. labor force consisted of 47 percent women, only 37 percent of Federal new hires were women. At that time we called for the competition for Federal jobs to be more fair and open and that the underrepresentation of women in new hires should be addressed. In 2019, however, while the percentage of women in the labor force remained consistent with the data from the 2015 article, only 38 percent of new hires to the Federal competitive service were women.

Another reason to be concerned about the percentages of women being hired into the Government relates directly back to the pay gap. GAO found that agencies with larger percentages of women tended to have smaller unexplained pay gaps and agencies with smaller percentages of women tended to have larger unexplained pay gaps. Although GAO did not establish a causal relationship between these factors, MSPB analysis of the data shows that there is a strong correlation ($r = -.653$, $p = .001$) between the percentages of women employed and the size of the unexplained pay gap. More analysis will be required to better understand this correlation. It could be, for example, that as the percentage of women increases in the workforce, less conscious or unconscious bias may occur against women. Or, perhaps women may more readily leave agencies where they perceive they are being paid unfairly compared to men.

Correcting the problems of unjust pay disparities and underrepresentation at all pay levels is fundamental to achieving the goals of fairness and equity that underpin the merit system principles. As noted in our 2011 report, *Women in the Federal Government: Ambitions and Achievements*, the existence of a gender pay gap is not purely, or even primarily, a women's issue. Effective, merit-based human resources practices—including outreach and recruitment, workplace fairness, and effective supervision—matter to everyone and can yield positive dividends in workforce quality and organizational performance. All employees and all segments of the American public benefit from workplaces that are representative of all segments of society and fully utilize and recognize the talents of every employee. ❖

Choosing an Online Education Program: Part 2

What kinds of questions should you ask about the program and about yourself?

In our last *Issues of Merit*, we included Part 1 of our series on choosing an online learning program, we identified questions readers should ask themselves when considering whether to pursue an online learning program and how to determine the legitimacy of online programs. Here, we continue the discussion to help readers think about who is delivering the learning opportunities and what the learner needs to bring to the program to be successful. Based on our literature review and advice from Dr. Karlease Kelly—former Provost of the U.S. Department of Agriculture's Virtual University—we present some questions prospective online learners should ask about potential training providers.

Does the program or school have a good reputation? While a name brand institution shouldn't be your only consideration, name recognition and reputation should be considered since learners will want to list the program among their accomplishments.

Who is teaching the program? Dr. Kelly advised that learners review faculty qualifications on the school's website. They can also check out instructor review websites where students evaluate, rate, and review professors and courses, such as Rate My Professors, Uloop, and Koofers. Reviews on these sites are subjective and can reflect student biases, so they should be considered carefully and in the aggregate.

How do different online course providers compare? Online learning platforms are a booming business, and it is sometimes difficult to tell which platform will best meet the learner's needs. There are a number of private evaluation services—e.g., Consumer Affairs, G2, and CourseTalk—that provide comparisons across learning platforms regarding things like courses and programs offered, costs, customer satisfaction, and pace and organization of the curriculum.

Based on your research, does the program have red flags that give you pause? Our advice is that if it seems too good to be true, it probably is. The sources we reviewed indicate that some red flags may include the following:

- The admission process relies largely on life experience and not on academic achievements or ability assessments;
- The process to obtain a degree seems too easy; for instance, transferring a significant number of earned credits or providing a large number of credits for life experience;
- Guaranteeing a degree too quickly after enrolling;
- Charging lump sums for degrees;
- Schools with faculty who only attended that school;
- Online programs with degree requirements different from other conventional degree programs; or
- Lack of online student services such as a career center, virtual orientation services, or a writing center.

Now that we have explored questions around who is delivering the training, it is helpful to also look at those who are receiving the training. One resource we looked at—Minnesota State's *CAREERwise* website—identified some key personal factors that contribute to the success of online learners, including the following.

- **Persistence**, including a tolerance for technical difficulties, comfort with seeking help, a work ethic of daily effort, and perseverance through challenges;
- **Motivation and independence** will help overcome obstacles and reach the goals essential to online learning, whether the learner is doing it for career advancement, personal satisfaction, pride, or just learning something new and interesting;
- **Good time-management skills**, which include resistance to procrastination and adherence to routine schedules without instructor reminders;
- **Effective communication skills** so that the student can express the need for assistance, choose the right communication modality, effectively communicate with others during classes, and complete assignments; and
- **Basic computer skills** to navigate the internet, create and share documents, and adapt to different learning management systems.

Finding quality online education programs will take some time, research, and a little soul-searching to ensure that learners pick the program that us right for them. ❖

GSA's Hiring Assessment and Selection Outcome Dashboard

The new dashboard emphasizes the importance of tracking how agencies assess applicants.

Recruiting and hiring for Federal positions is a long-standing challenge. MSPB's 2018 research brief *Improving Federal Hiring through Better Assessment* demonstrated that part of the problem is the way agencies assess applicants. In particular, the extensive use of occupational questionnaires in which applicants rate their own level of expertise has led to inflated ratings and the inability to make valid distinctions among applicants. In that brief, we identified a number of steps that would help agencies improve their assessment processes, including calculating the return on investment of the assessments used as well as using multiple valid assessments in succession.

The General Services Administration (GSA) Data to Decisions initiative has since been working with OPM, the Office of Management and Budget, and the U.S. Digital Service to analyze hiring data from USAJOBS and develop a dashboard that illustrates how agencies are assessing applicants. The Hiring Assessment and Selection Outcome Dashboard (screenshot below) provides data about the percentage of job announcements that use a given assessment "to certify (or determine) applicants as eligible for the job" and how often those job announcements result in a selection. The data can be filtered by year, agency, occupation, and grade, and users can see what types of assessments were used.

For instance, the FY 2020 data show that 90 percent of the jobs announced to the public used only a self-assessment questionnaire to certify that applicants' experience made them qualified to be placed on the certificate of eligibles. Only 53 percent of those announcements resulted in a selection. The dashboard further shows that agencies rarely used additional assessments, and the results from those assessments were mixed. Only .005 percent of jobs (5 total for 2020) used subject matter expert qualification assessments (or SME-QAs as OPM refers to them)—in which SMEs participate in resume reviews, structured interviews, and written assessments—but all of these announcements resulted in selection. Just over 1 percent (1,505 vacancies) combined a self-assessment questionnaire with USA Hire, a competency-based assessment available through OPM. Fifty-seven percent of those resulted in a selection, a slightly larger percentage than self-assessments only.

Given that relatively few announcements used assessments beyond the self-assessment questionnaire for purposes of certifying eligibility, it's too early to declare that the additional assessments tracked in this dashboard will or will not result in more selections. Rather, the strength of the dashboard is its emphasis on evaluating the types of assessments agencies use and identifying the results of those assessments. That is something for agencies to emulate, and they could take it a step further by adding data on the quality of their hires and how it relates to the assessment(s). As our research notes, in a world where resources are scarce, agencies often choose self-assessment questionnaires because they are inexpensive and convenient. If agencies gather data on assessment outcomes, they may find that more expensive, valid assessments provide a worthwhile return on investment. ❖

Hiring Assessment and Selection Outcome Dashboard

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