



# ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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## Information Interchange Bulletin No. 006

# Agency Attorney Hiring Requirements

### To which attorney positions does this bulletin apply?

This bulletin applies to those positions in Title 5 agencies designated by Office of Personnel Management (OPM) occupational code 0905, exclusive of those in the senior-executive service (which is to say, the vast majority of agency attorneys).

### How is hiring career attorneys different from other career positions?

These agency attorneys are in the excepted service, one of three categories of federal employees (along with the competitive and senior-executive services). 5 U.S.C. §§ 2101a–2103; 5 C.F.R. § 213.3102(d). Agencies may hire into the excepted service without adhering to several procedural requirements that govern hiring competitive service positions. 5 U.S.C. § 3320. Further, agencies hiring attorneys need not adhere to many excepted service requirements when hiring attorneys. 5 C.F.R. § 302.101(c).

### Do these requirements apply every time a lawyer is hired?

No. Excepted service hiring rules apply to the *position*, not the *applicant*. If an agency wishes to hire a licensed attorney into a competitive service position, the full suite of competitive service hiring requirements would apply.

### Can agencies fill attorney positions with those not admitted to a bar?

An agency wishing to hire an applicant as an attorney before he or she has been admitted to a bar may hire him or her as a “law clerk trainee,” an appointment which cannot last more than 14 months. 5 C.F.R. § 213.3102(e).

### Select federal employee hiring laws that generally *do* apply to filling career attorney positions

Merit Systems Principles (recruitment from “qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society;” selection should be based solely on “relative ability, knowledge, and skills”)	5 U.S.C. § 2301
Prohibited Personnel Practices (agencies may not “grant any preference or advantage not authorized by law, rule, or regulation” to particular applicants)	5 U.S.C. § 2302
Veterans Preference (“as far as administratively feasible”)	5 U.S.C. § 2108 (caveated by 5 C.F.R. § 302.101(c))

### Select federal employee hiring laws that generally *do not* apply to career attorney positions

Competitive service examination procedures	5 U.S.C. § 3304
Competitive service examination timing	5 U.S.C. § 3305
Prohibition on maximum-age requirements	5 U.S.C. § 3307
Prohibition on minimum-education requirements	5 U.S.C. § 3308
Specific credits for service in the armed forces	5 U.S.C. §§ 3309-3312, 3316
Creation and ranking order on the certification of eligible candidates	5 U.S.C. §§ 3313-3315, 3317, 3319
Selection from the OPM or agency-created (if delegated such authority) register of eligible candidates	5 U.S.C. §§ 3318-3319
Regulations governing the recruitment, selection, and placement of candidates	5 C.F.R. Parts 330 and 332

#### Additional Resources

ACUS Rec. [2019-9](#), *Recruiting and Hiring Agency Attorneys*  
ACUS Rec. [2019-2](#), *Agency Recruitment and Selection of Administrative Law Judges*  
Todd Phillips & Todd Rubin, [Recruiting and Hiring Agency Attorneys](#) (Dec. 2019)  
Jack Beermann & Jenn Mascott, [Research Report on Federal Agency ALJ Hiring after Lucia and Executive Order 13843](#) (May 2019)  
Office of Personnel Management, Policy, <https://www.opm.gov/policy-data-oversight/>.  
Office of Personnel Management, [Position Classification Standard for General Attorney Series, GS-0905](#) (May 1978)