

COMPETITIVE SERVICE ACT OF 2015

DECEMBER 3, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CHAFFETZ, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany S. 1580]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (S. 1580) to allow additional appointing authorities to select individuals from competitive service certificates, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

The Competitive Service Act of 2015, S. 1580, allows federal agencies to share information on qualified applicants when filling similar positions.

BACKGROUND AND NEED FOR LEGISLATION

Under current law, agencies operate as separate entities with regard to agency hiring. Due to the lengthy amount of time it takes some agencies to fill job announcements, many applicants are reluctant to apply for jobs with the federal government. S. 1580 provides agencies with a method to streamline the hiring process.

S. 1580 provides federal agencies additional appointing authorities to select individuals for competitive service positions by allowing federal agencies to share their lists of best-qualified candidates with other agencies.

S. 1580 allows an agency to hire an individual from another agency's certificate of eligible candidates within 240 days of issuance as long as the job announcement provided notice that the list of eligible candidates may be used by another agency, the position is in the same occupational category, and the position is at a similar grade level.

The bill also requires that before a selection is made the other agency must provide notice of the available position to its internal employees, give up to ten business days for its employees to submit applications, and consider those applications. As long as those requirements are met, the other agency does not need to make any additional postings and may hire from the list of certified applicants.

LEGISLATIVE HISTORY

S. 1580, the Competitive Service Act of 2015, was introduced on June 16, 2015 by Senator Jon Tester (D-MT), and referred to the Senate Committee on Homeland Security and Governmental Affairs. On June 24, 2015, the Senate Committee on Homeland Security and Governmental Affairs considered S. 1580 and ordered the bill reported favorably by voice vote. On September 17, 2015, S. 1580 passed the Senate without amendment by unanimous consent and was referred to the House Committee on Oversight and Government Reform. Senators Rob Portman (R-OH), Benjamin Cardin (D-MD), Jerry Moran (R-KS) and Heidi Heitkamp (D-ND) are original cosponsors. Representative Gerald E. Connolly (D-VA) introduced similar legislation, H.R. 2827, on June 18, 2015 with Representative Robert J. Wittman (R-VA) as an original cosponsor. H.R. 2827 was referred to the House Committee on Oversight and Government Reform.

In the 113th Congress, the Competitive Service Act of 2014, S. 2541, was introduced by Senator Jon Tester (D-MT) on June 26, 2014 and referred to the Senate Committee on Homeland Security and Governmental Affairs. Senator Mark Begich (D-AK) was an original cosponsor. Similar legislation, H.R. 5174, was introduced by Representative Gerald E. Connolly, with Representative Robert J. Wittman as an original cosponsor, on July 23, 2014. H.R. 5174

was referred to the House Committee on Oversight and Government Reform. Both bills saw no further action.

SECTION-BY-SECTION

Section 1. Short title

Designates the short title of the bill as the Competitive Service Act of 2015.

Section 2. Additional appointing authorities for competitive service

This section amends sections 3318 and 3319 of title 5, United States Code, to provide additional appointing authorities for agencies selecting individuals for competitive service positions under the Rule of Three and Category Ranking rating and selection procedures.

The additional appointing authorities allow an appointing authority other than the appointing authority requesting the certificate of eligibles (referred to as the other appointing authority) to select an individual from that certificate within 240 days of issuance of the certificate provided certain conditions are met. First, the position must be in the same occupational series and grade level for which the certificate of eligibles was issued. Second, the job announcement must have provided notice that the list of eligible candidates may be used by another appointing authority.

This section also requires the other appointing authority to provide internal notice of the available position to its employees for up to ten business days. The other appointing authority must review the qualifications of employees who submitted applications and consider those applications before making a selection from the original certificate of eligibles. If these requirements are met, the other appointing authority does not need to make an additional job posting under section 3327.

EXPLANATION OF AMENDMENTS

No amendments were offered during Full Committee consideration of S. 1580.

COMMITTEE CONSIDERATION

On October 9, 2015, the Committee met in open session and ordered S. 1580 reported favorably, by unanimous consent, a quorum being present.

ROLL CALL VOTES

No recorded votes were requested or conducted during Full Committee consideration of S. 1580.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill provides federal agencies with additional appointing authorities to select individuals from competitive service certificates. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of the bill is to amend section 3318 and 3319 of title 5, United States Code, to provide additional appointing authorities for competitive service.

DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

S. 1580 requires the Office of Personnel Management to issue regulations related to the alternative ranking and selection procedures established by the bill. S. 1580 requires an interim final rule with comment to be published no later than one year after the date of enactment of the bill.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement, the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this require-

ment does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST
ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of Congressional Budget Office:

S. 1580—Competitive Service Act of 2015

S. 1580 would amend federal law with the goal of expediting the federal hiring process by allowing agencies to share their assessments of job applicants with one another. Under this legislation, an agency that has compiled a list of candidates based on a rating system to fill a vacancy could share that information with other agencies.

Based on information from the Office of Personnel Management, CBO expects that without a formal and structured human resources process to share assessments between agencies few managers would use this authority. Because the bill would not establish such a mechanism, CBO estimates that any implementation costs or savings would be insignificant.

Enacting S. 1580 could affect direct spending by some agencies (such as the Tennessee Valley Authority) because they are authorized to use receipts from the sale of goods, fees, and other collections to cover their operating costs. Therefore, pay-as-you-go procedures apply. Because most of those agencies can make adjustments to the amounts collected as operating costs change, CBO estimates that any net changes in direct spending by those agencies would be negligible. Enacting the bill would not affect revenues.

CBO estimates that enacting S. 1580 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2026.

S. 1580 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On July 13, 2015, CBO transmitted a cost estimate for S. 1580 as ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on June 24, 2015. The two versions of the legislation are identical, and the estimated budgetary effects are the same.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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SUBPART B—EMPLOYMENT AND RETENTION

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CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

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SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

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§ 3318. Competitive service; selection from certificates

(a) The nominating or appointing authority shall select for appointment to each vacancy from the highest three eligibles available for appointment on the certificate furnished under section 3317(a) of this title, unless objection to one or more of the individuals certified is made to, and sustained by, the Office of Personnel Management for proper and adequate reason under regulations prescribed by the Office.

(b) *OTHER APPOINTING AUTHORITIES.*—

(1) *IN GENERAL.*—*During the 240-day period beginning on the date of issuance of a certificate of eligibles under section 3317(a), an appointing authority other than the appointing authority requesting the certificate (in this subsection referred to as the “other appointing authority”) may select an individual from that certificate in accordance with this subsection for an appointment to a position that is—*

(A) in the same occupational series as the position for which the certification of eligibles was issued (in this subsection referred to as the “original position”); and

(B) at a similar grade level as the original position.

(2) *APPLICABILITY.*—*An appointing authority requesting a certificate of eligibles may share the certificate with another appointing authority only if the announcement of the original position provided notice that the resulting list of eligible candidates may be used by another appointing authority.*

(3) *REQUIREMENTS.*—*The selection of an individual under paragraph (1)—*

(A) shall be made in accordance with subsection (a); and

(B) subject to paragraph (4), may be made without any additional posting under section 3327.

(4) INTERNAL NOTICE.—Before selecting an individual under paragraph (1), and subject to the requirements of any collective bargaining obligation of the other appointing authority, the other appointing authority shall—

(A) provide notice of the available position to employees of the other appointing authority;

(B) provide up to 10 business days for employees of the other appointing authority to apply for the position; and

(C) review the qualifications of employees submitting an application.

(5) COLLECTIVE BARGAINING OBLIGATIONS.—Nothing in this subsection limits any collective bargaining obligation of an agency under chapter 71.

[(b)] (c)(1) If an appointing authority proposes to pass over a preference eligible on a certificate in order to select an individual who is not a preference eligible, such authority shall file written reasons with the Office for passing over the preference eligible. The Office shall make the reasons presented by the appointing authority part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority in support of the passing over of the preference eligible. The Office shall determine the sufficiency or insufficiency of the reasons submitted by the appointing authority, taking into account any response received from the preference eligible under paragraph (2) of this subsection. When the Office has completed its review of the proposed passover, it shall send its findings to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings of the Office.

(2) In the case of a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more, the appointing authority shall at the same time it notifies the Office under paragraph (1) of this subsection, notify the preference eligible of the proposed passover, of the reasons therefor, and of his right to respond to such reasons to the Office within 15 days of the date of such notification. The Office shall, before completing its review under paragraph (1) of this subsection, require a demonstration by the appointing authority that the passover notification was timely sent to the preference eligible's last known address.

(3) A preference eligible not described in paragraph (2) of this subsection, or his representative, shall be entitled, on request, to a copy of—

(A) the reasons submitted by the appointing authority in support of the proposed passover, and

(B) the findings of the Office.

(4) In the case of a preference eligible described in paragraph (2) of this subsection, the functions of the Office under this subsection may not be delegated.

[(c)] (d) When three or more names of preference eligibles are on a reemployment list appropriate for the position to be filled, a nominating or appointing authority may appoint from a register of eligibles established after examination only an individual who

qualifies as a preference eligible under section 2108(3)(C)-(G) of this title.

§ 3319. Alternative ranking and selection procedures

(a) The Office, in exercising its authority under section 3304, or an agency to which the Office has delegated examining authority under section 1104(a)(2), may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS-9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

[(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

[(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.]

(c) *SELECTION.*—

(1) *IN GENERAL.*—*An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.*

(2) *USE BY OTHER APPOINTING OFFICIALS.*—*Under regulations prescribed by the Office of Personnel Management, appointing officials other than the appointing official described in paragraph (1) (in this subsection referred to as the “other appointing official”) may select an applicant for an appointment to a position that is—*

(A) *in the same occupational series as the position for which the certification of eligibles was issued (in this subsection referred to as the “original position”); and*

(B) *at a similar grade level as the original position.*

(3) *APPLICABILITY.*—*An appointing authority requesting a certificate of eligibles may share the certificate with another appointing authority only if the announcement of the original position provided notice that the resulting list of eligible candidates may be used by another appointing authority.*

(4) *REQUIREMENTS.*—*The selection of an individual under paragraph (2)—*

(A) *shall be made in accordance with this subsection; and*

(B) *subject to paragraph (5), may be made without any additional posting under section 3327.*

(5) *INTERNAL NOTICE.*—*Before selecting an individual under paragraph (2), and subject to the requirements of any collective*

bargaining obligation of the other appointing authority (within the meaning given that term in section 3318(b)(1)), the other appointing official shall—

(A) provide notice of the available position to employees of the appointing authority employing the other appointing official;

(B) provide up to 10 business days for employees of the other appointing authority to apply for the position; and

(C) review the qualifications of employees submitting an application.

(6) COLLECTIVE BARGAINING OBLIGATIONS.—Nothing in this subsection limits any collective bargaining obligation of an agency under chapter 71.

(7) PREFERENCE ELIGIBLES.—Notwithstanding paragraphs (1) and (2), an appointing official may not pass over a preference eligible in the same category from which selection is made, unless the requirements of section 3317(b) and 3318(c), as applicable, are satisfied.

(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

(1) the number of employees hired under that system;

(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islanders; and

(3) the way in which managers were trained in the administration of that system.

(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.

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SUBPART I—MISCELLANEOUS

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CHAPTER 95—PERSONNEL FLEXIBILITIES RELATING TO THE INTERNAL REVENUE SERVICE

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§ 9510. General workforce staffing

(a)(1) Except as otherwise provided by this section, an employee of the Internal Revenue Service may be selected for a permanent appointment in the competitive service in the Internal Revenue Service through internal competitive promotion procedures if—

(A) the employee has completed, in the competitive service, 2 years of current continuous service under a term appointment or any combination of term appointments;

(B) such term appointment or appointments were made under competitive procedures prescribed for permanent appointments;

(C) the employee's performance under such term appointment or appointments met established retention standards, or, if not covered by a performance management system established under section 9508, was rated at the fully successful level or higher (or equivalent thereof); and

(D) the vacancy announcement for the term appointment from which the conversion is made stated that there was a potential for subsequent conversion to a permanent appointment.

(2) An appointment under this section may be made only to a position in the same line of work as a position to which the employee received a term appointment under competitive procedures.

(b)(1) Notwithstanding subchapter I of chapter 33, the Secretary of the Treasury may establish category rating systems for evaluating applicants for Internal Revenue Service positions in the competitive service under which qualified candidates are divided into two or more quality categories on the basis of relative degrees of merit, rather than assigned individual numerical ratings.

(2) Each applicant who meets the minimum qualification requirements for the position to be filled shall be assigned to an appropriate category based on an evaluation of the applicant's knowledge, skills, and abilities relative to those needed for successful performance in the position to be filled.

(3) Within each quality category established under paragraph (1), preference eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at or higher than GS-9 (or equivalent), preference eligibles who have a compensable service-connected disability of 10 percent or more, and who meet the minimum qualification standards, shall be listed in the highest quality category.

(4) An appointing authority may select any applicant from the highest quality category or, if fewer than three candidates have been assigned to the highest quality category, from a merged category consisting of the highest and second highest quality categories.

(5) Notwithstanding paragraph (4), the appointing authority may not pass over a preference eligible in the same or higher category from which selection is made unless the requirements of section 3317(b) or ~~3318(b)~~ 3318(c), as applicable, are satisfied.

(c) The Secretary of the Treasury may detail employees among the offices of the Internal Revenue Service without regard to the 120-day limitation in section 3341(b).

(d) Notwithstanding any other provision of law, the Secretary of the Treasury may establish a probationary period under section 3321 of up to 3 years for Internal Revenue Service positions if the Secretary of the Treasury determines that the nature of the work is such that a shorter period is insufficient to demonstrate complete proficiency in the position.

(e) Nothing in this section exempts the Secretary of the Treasury from—

(1) any employment priority established under direction of the President for the placement of surplus or displaced employees; or

(2) any obligation under a court order or decree relating to the employment practices of the Internal Revenue Service or the Department of the Treasury.

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