

Executive Order 13749—Providing for the Appointment in the Competitive Service of Certain Employees of the Foreign Service

November 29, 2016

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. Policy. The Federal Government benefits from a workforce that can be recruited from the broadest and deepest pools of qualified candidates for our highly competitive, merit-based positions. The recruitment and retention of workforce participants who serve in the Foreign Service of the Department of State under a Limited Non-Career Appointment under section 309 of the Foreign Service Act of 1980, Public Law 96–465 (22 U.S.C. 3949), as amended, are critical to our ability to meet consular staffing levels (now in substantial deficit) and thereby enhance our capacity to meet high national security standards and efficiently process visas in accordance with our policy of "open doors, safe borders." Program participants undergo a rigorous merit-based evaluation process, which includes a written test and an oral assessment and to which a veteran preference applies, and develop advanced- to superior-level skills in languages and in cultural competence in particular regions, skills that are essential for mission-critical positions throughout the entire Federal workforce.

Executive Order 13597 of January 19, 2012, sought to ensure that 80 percent of nonimmigrant visa applicants be interviewed within three weeks of receiving an application. The Department of State's ability to maintain this 80 percent benchmark will come under increasing pressure in the future given current and projected staffing shortfalls through 2023. These staffing gaps could adversely affect the Department of State's ability to sustain border security and immigration control at peak efficiency and effectiveness, which will have effects on tourism, job creation, and U.S. economic growth. Use of the Limited Non-Career Appointment hiring authority will provide flexibility to address, for the foreseeable future, both this increased demand and recurring institutional and national needs across the Federal Government.

Accordingly, pursuant to my authority under 5 U.S.C. 3302(1), and in order to achieve a workforce that represents all segments of society as provided in 5 U.S.C. 2301(b)(1), I find that conditions of good administration make necessary an exception to the competitive hiring rules for certain positions in the Federal civil service.

Sec. 2. The head of any agency in the executive branch may appoint in the competitive service an individual who served for at least 48 months of continuous service in the Foreign Service of the Department of State under a Limited Non-Career Appointment under section 309 of the Foreign Service Act of 1980, and who passes such examination as the Office of Personnel Management (OPM) may prescribe.

Sec. 3. In order to be eligible for noncompetitive appointment to positions under section 2 of this order, such an individual must:

(a) have received a satisfactory or better performance rating (or equivalent) for service under the qualifying Limited Non-Career Appointment; and

(b) exercise the eligibility for noncompetitive appointment within a period of 1 year after completion of the qualifying Limited Non-Career Appointment. Such period may be extended to not more than 3 years in the case of persons who, following such service, are engaged in military service, in the pursuit of studies at an institution of higher learning, or in other activities that, in the view of the appointing authority, warrant an extension of such period. Such period may also be extended to permit the adjudication of a background investigation.

Sec. 4. A person appointed under section 2 of this order shall become a career conditional employee.

Sec. 5. Any law, Executive Order, or regulation that would disqualify an applicant for appointment in the competitive service shall also disqualify a person for appointment under section 2 of this order. Examples of disqualifying criteria include restrictions on employing persons who are not U.S. citizens or nationals, who have violated the anti-nepotism provisions of the Civil Service Reform Act, 5 U.S.C. 2302(b)(7), 3110, who have knowingly and willfully failed to register for Selective Service when required to do so, 5 U.S.C. 3328(a)(2), who do not meet occupational qualifying standards prescribed by OPM, or who do not meet suitability factors prescribed by OPM.

Sec. 6. The Office of Personnel Management is authorized to issue such additional regulations as may be necessary to implement this order. Any individual who meets the terms of this order, however, is eligible for noncompetitive eligibility with or without additional regulations.

Sec. 7. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof, or the status of that department or agency within the Federal Government;
or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

The White House,
November 29, 2016.

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