

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

(c) This memorandum 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.

(d) The Director of the OPM, in consultation with the OMB, may grant an exception to any of the requirements set forth in section 1 of this memorandum to an agency that demonstrates that exceptional circumstances prevent it from complying with that requirement.

SEC. 6. *Publication.* The Director of the OPM is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

ENHANCING SAFEGUARDS TO PREVENT THE UNDUE DENIAL OF FEDERAL EMPLOYMENT OPPORTUNITIES TO THE UNEMPLOYED AND THOSE FACING FINANCIAL DIFFICULTY THROUGH NO FAULT OF THEIR OWN

Memorandum of President of the United States, Jan. 31, 2014, 79 F.R. 7045, provided:

Memorandum for the Heads of Executive Departments and Agencies

The Federal Government is America’s largest employer. While seeking to employ a talented and productive workforce, it has a responsibility to lead by example. Although executive departments and agencies (agencies) generally can, and do, take job applicants’ employment history and other factors into account when making hiring decisions, it is the policy of my Administration that applicants should not face undue obstacles to Federal employment because they are unemployed or face financial difficulties. The Government must continue to take steps to ensure the fair treatment of applicants, as well as incumbent Federal employees, who face financial difficulties through no fault of their own and make good faith efforts to meet those obligations. Therefore, I hereby direct as follows:

SECTION 1. *Individuals Who Are Unemployed or Facing Financial Difficulty.* (a) Agencies shall not make an unfavorable determination with respect to the suitability, fitness, or qualifications of an applicant for Federal employment because that applicant:

- (i) is or was unemployed; or
(ii) has experienced or is experiencing financial difficulty through no fault of the applicant, if the applicant has undertaken a good-faith effort to meet his or her financial obligations.

(b) Consistent with existing law, agencies shall not remove, suspend, or demote a current Federal employee if the basis of the action is that the employee has experienced, or is experiencing, financial difficulty through no fault of the employee, and the employee has undertaken a good-faith effort to meet his or her financial obligations.

(c) Agencies shall review their recruiting and hiring practices to determine whether such processes intentionally or inadvertently place applicants at an undue disadvantage because of the factors set forth in subsection (a) of this section and report the results to the Director of the Office of Personnel Management (OPM) within 90 days of the date of this memorandum. Taking into account the results, the Director of OPM shall issue guidance to Chief Human Capital Officers to assist agencies with implementation of this memorandum.

SEC. 2. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

- (i) the authority granted by law to a department or agency, or the head thereof;
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals;

(iii) the authority granted by law, Executive Order, or regulation to a department or agency, or the head thereof, to determine eligibility for access to classified information or to occupy a sensitive position; or

(iv) the authority granted by law or Executive Order to a department or agency, or the head thereof, to take adverse actions against Federal employees for their failure to comply with any law, rule, or regulation imposing upon them an obligation to satisfy in good faith their just financial obligations, including Federal, State, or local taxes.

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

(c) This memorandum 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.

(d) The Director of OPM is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 3302. Competitive service; rules

The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

- (1) necessary exceptions of positions from the competitive service; and
(2) necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7202, and 7203 of this title.

Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 417; Pub. L. 95-228, §2(b), Feb. 10, 1978, 92 Stat. 25; Pub. L. 95-454, title VII, §703(c)(1), Oct. 13, 1978, 92 Stat. 1217; Pub. L. 96-54, §2(a)(16), Aug. 14, 1979, 93 Stat. 382; Pub. L. 103-94, §2(b)(1), Oct. 6, 1993, 107 Stat. 1004.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: | 5 U.S.C. 633(1) (less function of Civil Service Commission), (2)8 (last sentence). | Jan. 16, 1883, ch. 27, §2(1) (less function of Civil Service Commission), (2) 8 (last sentence), 22 Stat. 403, 404.

The reference to the competitive service is substituted for the reference to the Act creating that service. The reference to reasons for the exceptions is omitted as covered by section 1308 of this title. The words “provide for” are substituted for “provide and declare”. Paragraph (1) is supplied to preserve the President’s power to except positions from the competitive service, previously implied from the power to except from the first rule in former section 633(2). Authority to make exceptions to so much of former section 633(2) as is restated in this section and section 1302(a) is omitted as meaningless. Authority to make exceptions to so much of former section 633(2) as is restated in section 3318(a) is omitted as superseded by former section 857, which is carried into section 3318(a). In the last sentence, the words “Each officer and individual employed in an agency” are substituted for “officers of the United States in the departments and offices” because of the restrictive definition of “officer” in section 2104.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Editorial Notes**AMENDMENTS**

1993—Par. (2). Pub. L. 103-94 substituted “and 7203” for “7203, 7321, and 7322”.

1979—Par. (2). Pub. L. 96-54 amended par. (2) in same manner as amendment by section 703(c)(1) of Pub. L. 95-454. See 1978 Amendment note below.

1978—Par. (2). Pub. L. 95-454 substituted “7202, 7203” for “7152, 7153”.

Pub. L. 95-228 struck out reference to section 3306(a)(1) of this title. Amendments by section 703(c)(1) and (c)(2) of Pub. L. 95-454 appear to have been inadvertently reversed. Subsec. (c)(1) purported to amend subsec. (c)(1) of section 2105 of this title, and subsec. (c)(2) purported to amend par. (2) of this section. However, the amendments specified by Pub. L. 95-454, § 703(c)(1) and (2), were impossible to execute literally. Thus, amendment by Pub. L. 95-454, § 703(c)(2) was executed to section 2105 of this title, and amendment by section 703(c)(1) was executed to this section as the probable intent of Congress.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION**

Amendment by Pub. L. 103-94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any penalty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purpose of sustaining any proper proceeding or action for enforcement of that penalty, forfeiture, or liability, and no provision of Pub. L. 103-94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103-94 had not been enacted, see section 12 of Pub. L. 103-94, set out as an Effective Date; Savings Provision note under section 7321 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

Executive Documents**EX. ORD. NO. 11521. VETERANS READJUSTMENT APPOINTMENT FOR VETERANS OF VIETNAM ERA**

Ex. Ord. No. 11521, Mar. 26, 1970, 35 F.R. 5311, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

WHEREAS this Nation has an obligation to assist veterans of the armed forces in readjusting to civilian life;

WHEREAS the Federal Government, as an employer, should reflect its recognition of this obligation in its personnel policies and practices;

WHEREAS veterans, by virtue of their military service, have lost opportunities to pursue education and training oriented toward civilian careers;

WHEREAS the Federal Government is continuously concerned with building an effective workforce, and veterans constitute a major recruiting source; and

WHEREAS the development of skills is most effectively achieved through a program combining employment with education or training;

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution of the United States, by sections 3301 and 3302 of title 5, United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. (a) Subject to paragraph (b) of this section, the head of an agency may make an excepted appoint-

ment, to be known as a “veterans readjustment appointment”, to any position in the competitive service up to and including GS-5 or the equivalent thereof, of a veteran or disabled veteran as defined in section 2108(1), (2), of title 5, United States Code, who:

(1) served on active duty in the armed forces of the United States during the Vietnam era;

(2) at the time of his appointment has completed not more than fourteen years of education; and

(3) is found qualified to perform the duties of the position.

(b) Employment under paragraph (a) of this section is authorized only under a training or educational program developed by an agency in accordance with guidelines established by the Office of Personnel Management.

(c) An employee given a veterans readjustment appointment under paragraph (a) of this section shall serve subject to:

(1) the satisfactory performance of assigned duties; and

(2) participation in the training or educational program under which he is appointed.

(d) An employee who does not satisfactorily meet the conditions set forth in paragraph (c) of this section shall be removed in accordance with appropriate procedures.

(e) An employee serving under a veterans readjustment appointment may be promoted, reassigned, or transferred.

(f) An employee who completes the training or educational program and who has satisfactorily completed two years of substantially continuous service under a veterans readjustment appointment shall be converted to career-conditional or career employment. An employee converted under this paragraph shall automatically acquire a competitive status.

(g) In selecting an applicant for appointment under this section, an agency shall not discriminate because of race, color, religion, sex, national origin, or political affiliation.

SEC. 2. (a) A person eligible for appointment under section 1 of this order may be appointed only within one year after his separation from the armed forces, or one year following his release from hospitalization or treatment immediately following his separation from the armed forces, or one year after involuntary separation without cause from (i) a veterans readjustment appointment or (ii) a transitional appointment, or one year after the effective date of this order if he is serving under a transitional appointment.

(b) The Office of Personnel Management may determine the circumstances under which service under a transitional appointment may be deemed service under a veterans readjustment appointment for the purpose of paragraph (f) of section 1 of this order.

SEC. 3. Any law, Executive order, or regulation which would disqualify an applicant for appointment in the competitive service shall also disqualify a person otherwise eligible for appointment under section 1 of this order.

SEC. 4. For the purpose of this order:

(a) “agency” means a military department as defined in section 102 of title 5, United States Code, an executive agency (other than the General Accounting Office [now Government Accountability Office]) as defined in section 105 of title 5, United States Code, and those portions of the legislative and judicial branches of the Federal Government and of the government of the District of Columbia having positions in the competitive service; and

(b) “Vietnam era” means the period beginning August 5, 1964, and ending on such date thereafter as may be determined by Presidential proclamation or concurrent resolution of the Congress.

SEC. 5. The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the provisions of this order.

SEC. 6. Executive Order No. 11397 of February 9, 1968, is revoked. Such revocation shall not affect the right of

an employee to be converted to career-conditional or career employment if he meets the requirements of section 1(d) of Executive Order No. 11397 after the effective date of this order.

SEC. 7. This order is effective 14 days after its date.

§ 3303. Competitive service; recommendations of Senators or Representatives

An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 418; Pub. L. 103-94, §8(a), Oct. 6, 1993, 107 Stat. 1006; Pub. L. 104-197, title III, §315(a), Sept. 16, 1996, 110 Stat. 2416.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 642.	Jan. 16, 1883, ch. 27, §10, 22 Stat. 406.

The prohibition is restated in positive form. The words "An individual concerned in examining an applicant for or appointing him in the competitive service" are substituted for "any person concerned in making any examination or appointment under this act". The word "applicant" is substituted for "person who shall apply for office or place under the provisions of this act". The word "Representative" is substituted for "Member of the House of Representatives".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Editorial Notes

AMENDMENTS

1996—Pub. L. 104-197 substituted "Competitive service; recommendations of Senators or Representatives" for "Political recommendations" in section catchline and amended text generally, substituting provisions prohibiting receipt or consideration of recommendations of applicants in competitive service made by Senators or Representatives for provisions which directed that personnel actions be taken without solicitation of or regard to such recommendations from Members of Congress, congressional employees, any elected official of the government of any State (including D.C. and Puerto Rico) or subdivision thereof, or political party official, prohibited such persons from making such recommendations, prohibited employees or applicants from soliciting such recommendations and required notification of such prohibition, but allowed for certain exceptions regarding solicitation and consideration of recommendations if subject of recommendation was limited to factors pertinent to work performance, ability, aptitude, general qualifications, related to suitability or security standards, or furnished pursuant to law or regulation.

1993—Pub. L. 103-94 substituted "Political recommendations" for "Competitive service; recommendations of Senators or Representatives" as section catchline and amended text generally. Prior to amendment, text read as follows: "An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant."

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-197 effective 30 days after Sept. 16, 1996, see section 315(c) of Pub. L. 104-197, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 103-94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any penalty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purpose of sustaining any proper proceeding or action for enforcement of that penalty, forfeiture, or liability, and no provision of Pub. L. 103-94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103-94 had not been enacted, see section 12 of Pub. L. 103-94, set out as an Effective Date; Savings Provision note under section 7321 of this title.

§ 3304. Competitive service; examinations

(a) The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, for—

(1) open, competitive examinations for testing applicants for appointment in the competitive service which are practical in character and as far as possible relate to matters that fairly test the relative capacity and fitness of the applicants for the appointment sought;

(2) noncompetitive examinations when competent applicants do not compete after notice has been given of the existence of the vacancy; and

(3) authority for agencies to appoint, without regard to the provision of sections 3309 through 3318, candidates directly to positions for which—

(A) public notice has been given; and

(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates (or, with respect to the Department of Veterans Affairs, that there exists a severe shortage of highly qualified candidates) or that there is a critical hiring need.

The Office shall prescribe, by regulation, criteria for identifying such positions and may delegate authority to make determinations under such criteria.

(b) An individual may be appointed in the competitive service only if he has passed an examination or is specifically excepted from examination under section 3302 of this title. This subsection does not take from the President any authority conferred by section 3301 of this title that is consistent with the provisions of this title governing the competitive service.

(c)(1) For the purpose of this subsection, the term "technician" has the meaning given such term by section 8337(h)(1) of this title.

(2) Notwithstanding a contrary provision of this title or of the rules and regulations prescribed under this title for the administration of the competitive service, an individual who served for at least 3 years as a technician acquires a competitive status for transfer to the competitive service if such individual—

(A) is involuntarily separated from service as a technician other than by removal for