

118TH CONGRESS
1ST SESSION

H. R. 159

To implement merit-based reforms to the civil service hiring system that replace degree-based hiring with skills- and competency-based hiring, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2023

Ms. FOXX (for herself, Mr. CONNOLLY, Mr. COMER, and Mr. KHANNA) introduced the following bill; which was referred to the Committee on Oversight and Accountability, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To implement merit-based reforms to the civil service hiring system that replace degree-based hiring with skills- and competency-based hiring, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Chance to Compete
5 Act of 2023”.

1 **SEC. 2. DEFINITIONS.**

2 (a) TERMS DEFINED IN SECTION 3304 OF TITLE 5,
 3 UNITED STATES CODE.—In this Act, the terms “agency”,
 4 “Director”, “examining agency”, “Office”, “subject mat-
 5 ter expert”, and “technical assessment” have the mean-
 6 ings given those terms in subsection (c)(1) of section 3304
 7 of title 5, United States Code, as added by section 3(a).

8 (b) OTHER TERMS.—In this Act, the term “competi-
 9 tive service” has the meaning given the term in section
 10 2102 of title 5, United States Code.

11 **SEC. 3. DEFINING THE TERM “EXAMINATION” FOR PUR-**
 12 **POSES OF HIRING IN THE COMPETITIVE**
 13 **SERVICE.**

14 (a) EXAMINATIONS; TECHNICAL ASSESSMENTS.—

15 (1) IN GENERAL.—Section 3304 of title 5,
 16 United States Code, is amended—

17 (A) by redesignating subsections (c)
 18 through (f) as subsections (d) through (g), re-
 19 spectively; and

20 (B) by inserting after subsection (b) the
 21 following:

22 “(c) EXAMINATIONS.—

23 “(1) DEFINITIONS.—

24 “(A) EXAMINATION.—

25 “(i) In this chapter, the term ‘exam-
 26 ination’—

1 “(I) means an opportunity to di-
2 rectly demonstrate knowledge, skills,
3 abilities, and competencies, through a
4 passing score assessment;

5 “(II) includes a résumé review
6 that is—

7 “(aa) conducted by a subject
8 matter expert; and

9 “(bb) based upon indicators
10 that—

11 “(AA) are derived from
12 a job analysis; and

13 “(BB) bear a rational
14 relationship to performance
15 in the position for which the
16 examining agency is hiring;
17 and

18 “(III) on and after the date that
19 is 2 years after the date of enactment
20 of the Chance to Compete Act of 2023
21 does not include a self-assessment
22 from an automated examination, a
23 résumé review (except as provided in
24 subclause (II)), or any other method
25 of determining the experience or level

1 of educational attainment of an indi-
2 vidual, alone.

3 “(ii)(I) An agency’s Chief Human
4 Capital Officer may waive clause (i)(III)
5 when needed to enable the filling of a posi-
6 tion or class of positions.

7 “(II) Not later than 180 days after
8 the date of enactment of the Chance to
9 Compete Act of 2023, the Director shall
10 provide agencies guidance and instruction
11 on the data, evidence, and circumstances
12 that Chief Human Capital Officers of
13 agencies should consider in determining
14 whether to grant a waiver under subclause
15 (I).

16 “(III)(aa) An agency shall post any
17 waiver granted under subclause (I) on a
18 public website within 30 days of the grant-
19 ing of the waiver.

20 “(bb) A waiver shall not be considered
21 in effect until it is posted on the public
22 website pursuant to item (aa).

23 “(IV)(aa) Each agency shall submit to
24 the Director on a semiannual basis a re-
25 port summarizing the number of waivers

1 granted by the Chief Human Capital Offi-
2 cer of the agency under subclause (I) dur-
3 ing the preceding 6-month period and the
4 reasons therefor.

5 “(bb) The Director shall submit annu-
6 ally to the Committee on Homeland Secu-
7 rity and Governmental Affairs of the Sen-
8 ate and the Committee on Oversight and
9 Accountability of the House of Representa-
10 tives a report summarizing the number of
11 waivers granted by the Chief Human Cap-
12 ital Officers of all agencies under subclause
13 (I) during the preceding year and the rea-
14 sons therefor provided by the agencies.

15 “(V) Not more than 10 percent of an
16 agency’s positions filled through competi-
17 tive hiring procedures during a fiscal year
18 may be filled under the authority of a
19 waiver granted under clause (I), and an
20 agency shall obtain the Director’s approval
21 to fill more than 5 percent of such posi-
22 tions under such authority.

23 “(B) OTHER DEFINITIONS.—In this sub-
24 section—

1 “(i) the term ‘agency’ means an agen-
2 cy described in section 901(b) of title 31;

3 “(ii) the term ‘Director’ means the
4 Director of the Office;

5 “(iii) the term ‘examining agency’
6 means—

7 “(I) the Office; or

8 “(II) an agency to which the Di-
9 rector has delegated examining au-
10 thority under section 1104(a)(2) of
11 this title;

12 “(iv) the term ‘passing score assess-
13 ment’ means an assessment that an indi-
14 vidual can pass or fail;

15 “(v) the term ‘subject matter expert’
16 means an employee or selecting official—

17 “(I) who possesses understanding
18 of the duties of, and knowledge, skills,
19 and abilities required for, the position
20 for which the employee or selecting of-
21 ficial is developing or administering
22 an assessment; and

23 “(II) whom the agency that em-
24 ploys the employee or selecting official
25 designates to assist in the develop-

1 ment and administration of technical
2 assessments under paragraph (2); and
3 “(vi) the term ‘technical assessment’
4 means an assessment developed under
5 paragraph (2)(A)(i) that—

6 “(I) allows for the demonstration
7 of job-related technical skills, abilities,
8 and knowledge;

9 “(II)(aa) is based upon a job
10 analysis; and

11 “(bb) is relevant to the position
12 for which the assessment is developed;
13 and

14 “(III) may include—

15 “(aa) a structured interview;

16 “(bb) a work-related exer-
17 cise;

18 “(cc) a custom or generic
19 procedure used to measure an in-
20 dividual’s employment or career-
21 related qualifications and inter-
22 ests; or

23 “(dd) another assessment
24 that meets the criteria under
25 subclauses (I) and (II).

1 “(2) TECHNICAL ASSESSMENTS.—

2 “(A) IN GENERAL.—For the purpose of
3 conducting an examination for a position in the
4 competitive service, an individual or individuals
5 whom an agency determines to have an exper-
6 tise in the subject and job field of the position,
7 as affirmed and audited by the Chief Human
8 Capital Officer or Human Resources Director
9 (as applicable) of that agency, may—

10 “(i) develop, in partnership with
11 human resources employees of the exam-
12 ining agency, a position-specific assessment
13 that is relevant to the position; and

14 “(ii) administer the assessment devel-
15 oped under clause (i) to—

16 “(I) determine whether an appli-
17 cant for the position has a passing
18 score to be qualified for the position;
19 or

20 “(II) rank applicants for the po-
21 sition for category rating purposes
22 under section 3319.

23 “(B) SHARING AND CUSTOMIZATION OF
24 ASSESSMENTS.—

1 “(i) SHARING.—An examining agency
2 may share a technical assessment with an-
3 other examining agency if each agency
4 maintains appropriate control over exam-
5 ination material.

6 “(ii) CUSTOMIZATION.—An examining
7 agency with which a technical assessment
8 is shared under clause (i) may customize
9 the assessment as appropriate, provided
10 that the resulting assessment satisfies the
11 requirements under part 300 of title 5,
12 Code of Federal Regulations (or any suc-
13 cessor regulation).

14 “(iii) PLATFORM FOR SHARING AND
15 CUSTOMIZATION.—

16 “(I) IN GENERAL.—The Director
17 shall establish and operate an online
18 platform on which examining agencies
19 can share and customize technical as-
20 sessments under this subparagraph.

21 “(II) ONLINE PLATFORM.—The
22 Director shall ensure that the online
23 platform described in subclause (I) in-
24 cludes the ability of its users to rate
25 the utility of the content and technical

1 assessments shared in the online plat-
2 form to allow for a ranking of such
3 contents.

4 “(3) REGULATIONS.—Not later than one year
5 after the date of enactment of the Chance to Com-
6 pete Act of 2023, the Office of Personnel Manage-
7 ment shall prescribe regulations necessary for the
8 administration of this subsection with respect to em-
9 ployees in each agency.”.

10 (2) ALTERNATIVE RANKING AND SELECTION
11 PROCEDURES.—Section 3319(a) of title 5, United
12 States Code, is amended by adding at the end the
13 following: “To be placed in a quality category under
14 the preceding sentence, an applicant shall be re-
15 quired to have passed an examination in accordance
16 with section 3304(b).”.

17 (3) TECHNICAL AND CONFORMING AMEND-
18 MENT.—Section 3330a(a)(1)(B) of title 5, United
19 States Code, is amended by striking “section
20 3304(f)(1)” and inserting “section 3304(g)(1)”.

21 (b) IMPLEMENTATION OF PASSING SCORE ASSESS-
22 MENT REQUIREMENT.—

23 (1) IN GENERAL.—Not later than 2 years after
24 the date of enactment of this Act, the Director and
25 the head of any other examining agency shall elimi-

1 nate the use of any examination for the competitive
2 service that does not satisfy the definition of the
3 term “examination” in subsection (c)(1)(A) of sec-
4 tion 3304 of title 5, United States Code (as amend-
5 ed by subsection (a)(1)(B)).

6 (2) REPORT REQUIRED.—One year following
7 the date of enactment of this Act, the Director shall
8 submit to the Committee on Oversight and Account-
9 ability of the House of Representatives and the
10 Committee on Homeland Security and Governmental
11 Affairs of the Senate a report examining agencies’
12 progress in implementing the requirement specified
13 in paragraph (1), identifying any significant difficul-
14 ties encountered in such implementation.

15 (c) OPM REPORTING.—

16 (1) PUBLIC ONLINE TOOL.—

17 (A) IN GENERAL.—The Director of the Of-
18 fice of Personnel Management shall maintain
19 and periodically update a publicly available on-
20 line tool that, with respect to each position in
21 the competitive service for which an examining
22 agency examined applicants during the applica-
23 ble period, includes—

24 (i) the type of assessment used, such
25 as—

1 (I) a behavioral off-the-shelf as-
2 sessment;

3 (II) a résumé review conducted
4 by a subject matter expert;

5 (III) an interview conducted by a
6 subject matter expert;

7 (IV) a technical off-the-shelf as-
8 sessment; or

9 (V) a cognitive ability test;

10 (ii) whether or not the agency selected
11 a candidate for the position; and

12 (iii) the hiring authority used to fill
13 the position.

14 (B) TIMING.—

15 (i) INITIAL DATA.—Not later than
16 180 days after the date of enactment of
17 this Act, the Director shall update the on-
18 line tool described in subparagraph (A)
19 with data for positions in the competitive
20 service for which an examining agency ex-
21 amined applicants during the period begin-
22 ning on the date of enactment of this Act
23 and ending on the date of submission of
24 the report.

1 (ii) SUBSEQUENT UPDATES.—Not
2 later than October 1 of each fiscal year be-
3 ginning after the date on which the online
4 tool is initially updated under clause (i),
5 the Director shall update the online tool
6 described in subparagraph (A) with data
7 for positions in the competitive service for
8 which an examining agency examined ap-
9 plicants during the preceding fiscal year.

10 (2) ANNUAL PROGRESS REPORT.—

11 (A) IN GENERAL.—Each year, the Direc-
12 tor, in accordance with subparagraphs (B) and
13 (C), shall make publicly available and submit to
14 Congress an overall progress report that in-
15 cludes summary data from examinations that
16 are closed, audited, and anonymous on the use
17 of examinations (as defined in subsection
18 (c)(1)(A) of section 3304 of title 5, United
19 States Code, as added by subsection (a) of this
20 section) for the competitive service, including
21 technical assessments.

22 (B) CATEGORIES; BASELINE DATA.—In
23 carrying out subparagraph (A), the Director
24 shall—

1 (i) break the data down by applicant
2 demographic indicator, including veteran
3 status, race, gender, disability, and any
4 other measure the Director determines ap-
5 propriate; and

6 (ii) use the data available as of Octo-
7 ber 1, 2020, as a baseline.

8 (C) LIMITATIONS.—In carrying out sub-
9 paragraph (A), the Director may only make
10 publicly available and submit to Congress data
11 relating to examinations for which—

12 (i) the related announcement is
13 closed;

14 (ii) certificates have been audited; and

15 (iii) all hiring processes are com-
16 pleted.

17 (d) GAO REPORT.—Not later than 5 years after the
18 date of enactment of this Act, the Comptroller General
19 of the United States shall submit to Congress a report
20 that—

21 (1) assesses the implementation of this section
22 and the amendments made by this section;

23 (2) assesses the impact and modifications to the
24 hiring process for the competitive service made by

1 this section and the amendments made by this sec-
2 tion; and

3 (3) makes recommendations for the improve-
4 ment of the hiring process for the competitive serv-
5 ice.

6 **SEC. 4. AMENDMENTS TO COMPETITIVE SERVICE ACT OF**
7 **2015.**

8 (a) **PLATFORMS FOR SHARING CERTIFICATES OF**
9 **ELIGIBLES.—**

10 (1) **IN GENERAL.—**Section 3318(b) of title 5,
11 United States Code, is amended—

12 (A) in paragraph (1), by striking “240-
13 day” and inserting “1-year”;

14 (B) by redesignating paragraph (5) as
15 paragraph (6); and

16 (C) by inserting after paragraph (4) the
17 following:

18 “(5) **ONLINE TOOL FOR SHARING RÉSUMÉS OF**
19 **INDIVIDUALS ON CERTIFICATES OF ELIGIBLES.—**Not
20 later than one year after the date of enactment of
21 the Chance to Compete Act of 2023, the Director of
22 the Office of Personnel Management shall establish
23 and operate an online tool on which an appointing
24 authority can share, with other appointing authori-
25 ties and the Chief Human Capital Officers Council

1 established under section 1303 of the Chief Human
2 Capital Officers Act of 2002 (5 U.S.C. 1401 note;
3 Public Law 107–296), the résumés of individuals
4 who are on a certificate of eligibles requested by the
5 appointing authority. In carrying out this para-
6 graph, the Director shall consult with the Chief
7 Human Capital Officers Counsel and its membership
8 to develop a plan to establish such online tool.”.

9 (2) PLAN.—Not later than 270 days after the
10 date of enactment of this Act, the Director shall pro-
11 vide to Congress a plan to develop the online tool re-
12 quired in paragraph (5) of section 3318(b) of title
13 5, United States Code, as added by paragraph (1)
14 of this subsection. Such plan shall—

15 (A) incorporate the input and feedback col-
16 lected during the required consultation under
17 such paragraph; and

18 (B) include estimated costs for building
19 and operating the online tool.

20 (b) MAXIMIZING SHARING OF APPLICANT INFORMA-
21 TION.—Section 2 of the Competitive Service Act of 2015
22 (Public Law 114–137; 130 Stat. 310) is amended—

23 (1) by redesignating subsections (c) and (d) as
24 subsections (d) and (e), respectively; and

1 (2) by inserting after subsection (b) the fol-
2 lowing:

3 “(c) EXPLORING THE BENEFITS OF MAXIMIZING
4 SHARING OF APPLICANT INFORMATION.—

5 “(1) DEFINITIONS.—In this subsection—

6 “(A) the terms ‘agency’, ‘Director’, and
7 ‘Office’ have the meanings given those terms in
8 section 3304(c)(1) of title 5, United States
9 Code; and

10 “(B) the term ‘competitive service’ has the
11 meaning given the term in section 2102 of title
12 5, United States Code.

13 “(2) MAXIMIZING SHARING.—The Director
14 shall maximize the sharing of information among
15 agencies regarding qualified applicants for positions
16 in the competitive service, including by—

17 “(A) providing for the delegation to other
18 agencies of the authority of the Office to host
19 multi-agency hiring actions to increase the re-
20 turn on investment on high-quality pooled an-
21 nouncements; and

22 “(B) sharing certificates of eligibles and
23 accompanying résumés for appointment.”.

1 **SEC. 5. MODERNIZING AND REFORMING THE ASSESSMENT**
2 **AND HIRING OF FEDERAL JOB CANDIDATES.**

3 (a) OPM REVIEW.—The Director shall conduct a re-
4 view of all examinations for hiring for a position that the
5 Office or any other examining agency has determined re-
6 quires a minimum educational requirement because the
7 nature of the duties of such position is of a scientific, tech-
8 nical, or professional position pursuant to section 3308 of
9 title 5, United States Code, to determine whether there
10 are data, evidence, or other information that justifies the
11 need for educational requirements for such position. The
12 Director shall consult with appropriate agencies, employee
13 representatives, external experts, and other stakeholders
14 when making any such determinations.

15 (b) ONLINE TOOL REGARDING POSITION DUTIES.—

16 (1) IN GENERAL.—Not later than two years
17 after the date of enactment of this Act, the Director
18 shall create and maintain an online tool that lists
19 each of the duties determined to require minimum
20 educational requirements and the data, evidence, or
21 other information that justifies the need for these
22 educational requirements. This online tool shall in-
23 clude a mechanism to receive feedback regarding
24 data, evidence, or information that could affect the
25 determination that a duty requires a minimum edu-
26 cational requirement.

1 (2) **HIRING PRACTICES.**—Not later than one
2 year after the creation of the online tool under para-
3 graph (1), the Director and the head of any other
4 examining agency shall amend the hiring practices
5 of the Office or the other examining agency, respec-
6 tively, in accordance with the findings of the review
7 made by subsection (a).

8 (c) **ONLINE TOOL REGARDING RECRUITING.**—Upon
9 the date of enactment of this Act, the Director shall estab-
10 lish and maintain an online tool that provides Federal
11 agencies guidance on, and information about, all programs
12 and authorities that help agencies attract, recruit, hire,
13 and retain individuals.

14 **SEC. 6. TALENT TEAMS.**

15 (a) **FEDERAL AGENCY TALENT TEAMS.**—

16 (1) **IN GENERAL.**—An agency may establish one
17 or more talent teams (referred to in this section as
18 “agency talent teams”), including at the component
19 level.

20 (2) **DUTIES.**—An agency talent team shall pro-
21 vide hiring support to the agency and other agencies,
22 including by—

23 (A) improving examinations (as defined in
24 subsection (c)(1)(A) of section 3304 of title 5,
25 United States Code, as added by section 3(a));

1 (B) facilitating writing job announcements
2 for the competitive service;

3 (C) sharing high-quality certificates of eli-
4 gibles; and

5 (D) facilitating hiring for the competitive
6 service using examinations (as defined in such
7 subsection (c)(1)(A)) and subject matter ex-
8 perts.

9 (b) OFFICE OF PERSONNEL MANAGEMENT.—The
10 Director may establish a Federal talent team to support
11 agency talent teams in facilitating pooled hiring actions
12 across the Federal Government, providing training, and
13 creating technology platforms to facilitate hiring for the
14 competitive service, including—

15 (1) the development of technical assessments;

16 and

17 (2) the sharing of certificates of eligibles and
18 accompanying résumés under sections 3318(b) and
19 3319(e) of title 5, United States Code.

20 **SEC. 7. UPDATES TO SYSTEM OF RECORDS FOR HIRING AC-**
21 **TIONS IN THE CIVIL SERVICE.**

22 (a) UPDATE TO SELECT SYSTEM OF RECORDS.—Not
23 later than 180 days after the date of enactment of this
24 Act, and on a regular basis thereafter, the Director of the
25 Office of Management and Budget shall provide guidance

1 to all Federal departments and agencies to ensure appro-
2 priate use of a system of records, including any govern-
3 mentwide systems of records, to meet the requirements of
4 section 552a of title 5, United States Code (commonly
5 known as the “Privacy Act”), in hiring actions in the civil
6 service.

7 (b) GOVERNMENTWIDE SYSTEMS OF RECORDS AT
8 THE OFFICE.—

9 (1) IN GENERAL.—The Director of the Office of
10 Personnel Management, in consultation with the Di-
11 rector of the Office of Management and Budget,
12 shall ensure that any system of records notice up-
13 dates required pursuant to the guidance provided
14 under subsection (a) account for any use of newer
15 technologies that capture records (as defined in sec-
16 tion 552a(a)(4) of title 5, United States Code) in
17 video, audio, and video/audio combination formats
18 and accommodate maintenance of such video, audio,
19 and video/audio combination records.

20 (2) EVALUATION FOR POTENTIAL UPDATES OR
21 REVISIONS.—

22 (A) IN GENERAL.—Not later than 1 year
23 after the date of enactment of this Act, the Di-
24 rector of the Office of Personnel Management
25 shall evaluate whether the governmentwide Sys-

1 tem of Records Notices (referred to in this
2 paragraph as “SORNs”) “OPM/GOVT–5 Re-
3 cruiting, Examining, and Placement Records”
4 and “OPM/GOVT–6 Personnel Research and
5 Test Validation Records”, or any successor ma-
6 terials thereto, require updating or revision to
7 implement the purposes of this Act.

8 (B) ISSUANCE OF UPDATES OR REVISIONS;
9 NOTICE TO CONGRESS.—If the Director, after
10 the evaluation under subparagraph (A), finds
11 that any updates or revisions to the SORNs
12 identified in that subparagraph are necessary
13 and appropriate to support implementation of
14 this Act, the Director shall promptly—

15 (i) issue the updates or revisions; and

16 (ii) notify the Committee on Home-
17 land Security and Governmental Affairs of
18 the Senate and the Committee on Over-
19 sight and Accountability of the House of
20 Representatives.

21 **SEC. 8. DETERMINATION OF BUDGETARY EFFECTS.**

22 The budgetary effects of this Act, for the purpose of
23 complying with the Statutory Pay-As-You-Go Act of 2010,
24 shall be determined by reference to the latest statement
25 titled “Budgetary Effects of PAYGO Legislation” for this

1 Act, submitted for printing in the Congressional Record
2 by the Chairman of the House Budget Committee, pro-
3 vided that such statement has been submitted prior to the
4 vote on passage.

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