

## Office of Personnel Management

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membership in political parties or organizations as constitutes by law a disqualification for Government employment. No discrimination shall be exercised, threatened, or promised by any person in the executive branch of the Federal Government against or in favor of any employee in the competitive service, or any eligible or applicant for a position in the competitive service because of his race, political affiliation, or religious beliefs, except as may be authorized or required by law.

[28 FR 10024, Sept. 14, 1963]

### § 4.3 Prohibition against securing withdrawal from competition.

No person shall influence another person to withdraw from competition for any position in the competitive service for the purpose of either improving or injuring the prospects of any applicant for appointment.

[28 FR 10024, Sept. 14, 1963, as amended at 45 FR 4337, Jan. 22, 1980]

## PART 5—REGULATIONS, INVESTIGATION, AND ENFORCEMENT (RULE V)

Sec.

- 5.1 Civil Service regulations.
- 5.2 Investigation and evaluations.
- 5.3 Enforcement.
- 5.4 Information and testimony.

AUTHORITY: 5 U.S.C. 3301, 3302; E.O. 12107.

SOURCE: 45 FR 4337, Jan. 22, 1980, unless otherwise noted.

### § 5.1 Civil Service regulations.

The Director, Office of Personnel Management, shall promulgate and enforce regulations necessary to carry out the provisions of the Civil Service Act and the Veterans' Preference Act, as reenacted in title 5, United States Code, the Civil Service Rules, and all other statutes and Executive orders imposing responsibilities on the Office. The Director is authorized, whenever there are practical difficulties and unnecessary hardships in complying with the strict letter of the regulation, to grant a variation from the strict letter of the regulation if such a variation is within the spirit of the regulations, and the efficiency of the Government and the integrity of the competitive

service are protected and promoted. Whenever a variation is granted the Director shall note the official record to show:

(a) The particular practical difficulty or hardship involved, (b) what is permitted in place of what is required by regulations, (c) the circumstances which protect or promote the efficiency of the Government and the integrity of the competitive service, and (d) a statement limiting the application of the variation to the continuation of the conditions which gave rise to it. Like variations shall be granted whenever like conditions exist. All such decisions and information concerning variations noted in the official record shall be published promptly in a Federal Personnel Manual Letter or Bulletin and in the Director's next annual report.

### § 5.2 Investigation and evaluations.

The Director may secure effective implementation of the civil service laws, rules, and regulations, and all Executive orders imposing responsibilities on the Office by:

(a) Investigating the qualifications, suitability, and fitness of applicants for positions in the competitive service, positions in the excepted service where the incumbent can be non-competitively converted to the competitive service, career appointments to positions in the Senior Executive Service, and any other positions in the excepted service of the executive branch for which the Director has standard-setting responsibility under Civil Service Rule II.

(i) The Director may require appointments to be made subject to investigation to enable the Director to determine, after appointment, that the requirements of law or the Civil Service Rules and Regulations have been met.

(ii) The Director may cause positions to be designated based on risk to determine the appropriate level of investigation, and may prescribe investigative standards, policies, and procedures.

(iii) The Director may prescribe standards for reciprocal acceptance by agencies of investigations and adjudications of suitability and fitness, except to the extent authority to apply

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additional fitness standards is vested by statute in an agency.

(b) Evaluating the effectiveness of: (1) Personnel policies, programs, and operations of Executive and other Federal agencies subject to the jurisdiction of the Office, including their effectiveness with regard to merit selection and employee development; (2) agency compliance with and enforcement of applicable laws, rules, regulations and office directives; and (3) agency personnel management evaluation systems.

(c) Investigating, or directing an agency to investigate and report on, apparent violations of applicable laws, rules, regulations, or directives requiring corrective action, found in the course of an evaluation.

[45 FR 4337, Jan. 22, 1980, as amended by E.O. 13197, 66 FR 7853, Jan. 25, 2001; E.O. 13764, 82 FR 8115, Jan. 23, 2017]

#### § 5.3 Enforcement.

(a) The Director is authorized to ensure enforcement of the civil service laws, rules, and regulations, and all applicable Executive orders, by:

(1) Instructing an agency to separate or take other action against an employee serving an appointment subject to investigation when the Director finds that the employee is disqualified or unsuitable for Federal employment. Where the employee or the agency appeals the Director's finding that a separation or other action is necessary, the Director may instruct the agency as to whether or not the employee should remain on duty and continue to receive pay pending adjudication of the appeal: *Provided*, That when an agency separates or takes other action against an employee pursuant to the Director's instructions, and the Director, on the basis of new evidence, subsequently reverses the initial decision as to the employee's qualifications and suitability, the agency shall, upon request of the Director, restore the employee to duty or otherwise reverse any action taken.

(2) Reporting the results of evaluation or investigations to the head of the agency concerned with instructions for any corrective action necessary, including cancellation of personnel actions where appropriate. The Director's findings resulting from evaluations or

investigations are binding unless changed as a result of agency evidence and arguments against them. If, during the course of any evaluation or investigation under this section, the Director finds evidence of matters which come within the investigative and prosecutorial jurisdiction of the Special Counsel of the Merit Systems Protection Board, the Director shall refer this evidence to the Special Counsel for appropriate disposition.

(b) Whenever the Director issues specific instructions as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the head of the agency concerned shall comply with the Director's instructions.

(c) If the agency head fails to comply with the specific instructions of the Director as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the Director may certify to the Comptroller General of the United States the agency's failure to act together with such additional information as the Comptroller General may require, and shall furnish a copy of such certification to the head of the agency concerned. The individual with respect to whom such separation or other corrective action was instructed shall be entitled thereafter to no pay or only to such pay as appropriate to effectuate the Director's instructions.

[45 FR 4337, Jan. 22, 1980, as amended by E.O. 13764, 82 FR 8115, Jan. 23, 2017]

#### § 5.4 Information and testimony.

When required by the Office, the Merit Systems Protection Board, or the Special Counsel of the Merit Systems Protection Board, or by authorized representatives of these bodies, agencies shall make available to them, or to their authorized representatives, employees to testify in regard to matters inquired of under the civil service laws, rules, and regulations, and records pertinent to these matters. All such employees, and all applicants or eligibles for positions covered by these rules, shall give to the Office, the Merit Systems Protection Board, the Special

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Counsel, or to their authorized representatives, all information, testimony, documents, and material in regard to the above matters, the disclosure of which is not otherwise prohibited by law or regulation. These employees, applicants, and eligibles shall sign testimony given under oath or affirmation before an officer authorized by law to administer oaths. Employees are performing official duty when testifying or providing evidence pursuant to this section.

### PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE (RULE VI)

#### Sec.

- 6.1 Authority to except positions from the competitive service.
- 6.2 Schedules of excepted positions.
- 6.3 Method of filling excepted positions and status of incumbents.
- 6.4 Removal of incumbents of excepted positions.
- 6.5 Assignment of excepted employees.
- 6.6 Revocation of exceptions.
- 6.7 Movement of persons between the civil service system and other merit systems.
- 6.8 Specified exceptions.

AUTHORITY: 5 U.S.C. 3301, 3302.

SOURCE: 28 FR 10025, Sept. 14, 1963, unless otherwise noted.

#### § 6.1 Authority to except positions from the competitive service.

(a) OPM may except positions from the competitive service when it determines that (A) appointments thereto through competitive examination are not practicable, or (B) recruitment from among students attending qualifying educational institutions or individuals who have recently completed qualifying educational programs can better be achieved by devising additional means for recruiting and assessing candidates that diverge from the processes generally applicable to the competitive service. These positions shall be listed in OPM's annual report for the fiscal year in which the exceptions are made.

(b) OPM shall decide whether the duties of any particular position are such that it may be filled as an excepted position under the appropriate schedule.

(c) Notice of OPM's decision granting authority to make appointments to an excepted position under the appro-

priate schedule shall be published in the FEDERAL REGISTER.

[28 FR 10025, Sept. 14, 1963, as amended by E.O. 11315, 3 CFR, 1966-1970 Comp., p. 597; E.O. 12043, 43 FR 9773, Mar. 10, 1978; E.O. 13562, 75 FR 82587, Dec. 30, 2010]

#### § 6.2 Schedules of excepted positions.

OPM shall list positions that it excepts from the competitive service in Schedules A, B, C, and D, and it shall list the position of administrative law judge in Schedule E, which schedules shall constitute parts of this rule, as follows:

Schedule A. Positions other than those of a confidential or policy-determining character for which it is not practicable to examine shall be listed in Schedule A.

Schedule B. Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination shall be listed in Schedule B. Appointments to these positions shall be subject to such noncompetitive examination as may be prescribed by OPM.

Schedule C. Positions of a confidential or policy-determining character shall be listed in Schedule C.

Schedule D. Positions other than those of a confidential or policy-determining character for which the competitive service requirements make impracticable the adequate recruitment of sufficient numbers of students attending qualifying educational institutions or individuals who have recently completed qualifying educational programs shall be listed in Schedule D. These positions are temporarily placed in the excepted service to enable more effective recruitment from all segments of society by using means of recruiting and assessing candidates that diverge from the rules generally applicable to the competitive service.

Schedule E. Positions of administrative law judge appointed under 5 U.S.C. 3105 shall be listed in Schedule E. Conditions of good administration warrant placing the position of administrative law judge in the excepted service and exempting appointment to this position from the requirements of 5 CFR, part 302, including examination and rating requirements, though each agency shall follow the principle of veteran preference as far as administratively feasible.

[E.O. 14029, 86 FR 27025, May 19, 2021]

#### § 6.3 Method of filling excepted positions and status of incumbents.

(a) The head of an agency may fill excepted positions by the appointment of