

Legal Authorities

[TITLE 5](#) > [PART II](#) > [CHAPTER 11](#) > **Sec. 1104.**

[Prev](#) |
[Next](#)

Sec. 1104. - Delegation of authority for personnel management

(a)

Subject to subsection (b)(3) of this section -

(1)

the President may delegate, in whole or in part, authority for personnel management functions, including authority for competitive examinations, to the Director of the Office of Personnel Management; and

(2)

the Director may delegate, in whole or in part, any function vested in or delegated to the Director, including authority for competitive examinations (except competitive examinations for administrative law judges appointed under section [3105](#) of this title, the cost of which examinations shall be reimbursed by payments from the agencies employing such judges to the revolving fund established under section 1304(e)), to the heads of agencies in the executive branch and other agencies employing persons in the competitive service.

(b)

(1)

The Office shall establish standards which shall apply to the activities of the Office or any other agency under authority delegated under subsection (a) of this section.

(2)

The Office shall establish and maintain an oversight program to ensure that activities under any authority delegated under subsection (a) of this section are in accordance with the merit system principles and the standards established under paragraph (1) of this subsection.

(3)

Nothing in subsection (a) of this section shall be construed as affecting the responsibility of the Director to prescribe regulations and to ensure compliance with the civil service laws, rules, and regulations.

(4)

At the request of the head of an agency to whom a function has been delegated under subsection (a)(2), the Office may provide assistance to the agency in performing such function. Such assistance shall, to the extent determined appropriate by the Director of the Office, be performed on a reimbursable basis through the revolving fund established under section 1304(e).

(c)

If the Office makes a written finding, on the basis of information obtained under the program established under subsection (b)(2) of this section or otherwise, that any action taken by an agency pursuant to authority delegated under subsection (a)(2) of this section is contrary to any law, rule, or regulation, or is contrary to any standard established under subsection (b)(1) of this section, the agency involved shall take any corrective action the Office may require

Sec. 1302. - Regulations

(a)

The Office of Personnel Management, subject to the rules prescribed by the President under this title for the administration of the competitive service, shall prescribe regulations for, control, supervise, and preserve the records of, examinations for the competitive service.

(b)

The Office shall prescribe and enforce regulations for the administration of the provisions of this title, and Executive orders issued in furtherance thereof, that implement the Congressional policy that preference shall be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment, and retention, in the competitive service in Executive agencies, permanent or temporary, and in the government of the District of Columbia.

(c)

The Office shall prescribe regulations for the administration of the provisions of this title that implement the Congressional policy that preference shall be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment, and retention, in the excepted service in Executive agencies, permanent or temporary, and in the government of the District of Columbia.

(d)

The Office may prescribe reasonable procedure and regulations for the administration of its functions under chapter [15](#) of this title

Sec. 3301. - Civil service; generally

The President may -

(1)

prescribe such regulations for the admission of individuals into the civil service in the executive branch as will best promote the efficiency of that service;

(2)

ascertain the fitness of applicants as to age, health, character, knowledge, and ability for the employment sought; and

(3)

appoint and prescribe the duties of individuals to make inquiries for the purpose of this section

Sec. 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 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 cause on charges of misconduct or delinquency;

(B)

passes a suitable noncompetitive examination;
and

(C)

transfers to the competitive service within 1 year after separating from service as a technician.

(d)

The Office of Personnel Management shall promulgate regulations on the manner and extent that experience of an individual in a position other than the competitive service, such as the excepted service (as defined under section 2103) in the legislative or judicial branch, or in any private or nonprofit enterprise, may be considered in making appointments to a position in the competitive service (as defined under section 2102). In promulgating such regulations OPM shall not grant any preference based on the fact of service in the legislative or judicial branch. The regulations shall be consistent with the principles of equitable competition and merit based appointments.

(e)

Employees at any place outside the District of Columbia where the President or the Office of Personnel Management directs that examinations be held shall allow the reasonable use of public buildings for, and in all proper ways facilitate, holding the examinations.

(f)

(1)

Preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of active service may not be denied the opportunity to compete for vacant positions for which the agency making the announcement will accept applications from individuals outside its own workforce under merit promotion procedures.

(2)

If selected, a preference eligible or veteran described in paragraph (1) shall receive a career or career-conditional appointment, as appropriate.

(3)

This subsection shall not be construed to confer an entitlement to veterans' preference that is not otherwise required by law.

(4)

The area of consideration for all merit promotion announcements which include consideration of individuals of the Federal workforce shall indicate that preference eligibles and veterans who have been separated from the armed forces under honorable conditions after 3 years or more of active service are eligible to apply. The announcements shall be publicized in accordance with section 3327.

(5)

The Office of Personnel Management shall prescribe regulations necessary for the administration of this subsection. The regulations shall ensure that an individual who has completed an initial tour of active duty is not excluded from the application of this subsection because of having been released from such tour of duty shortly before

completing 3 years of active service, having been honorably
released from such duty

Sec. 3320. - Excepted service; government of the District of Columbia; selection

The nominating or appointing authority shall select for appointment to each vacancy in the excepted service in the executive branch and in the government of the District of Columbia from the qualified applicants in the same manner and under the same conditions required for the competitive service by sections [3308-3318](#) of this title. This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate

§ **3324.** Appointments to positions classified above GS-15

[How Current is This?](#)

(a) An appointment to a position classified above GS-15 pursuant to section [5108](#) may be made only on approval of the qualifications of the proposed appointee by the Office of Personnel Management. This section does not apply to a position—

(1) to which appointment is made by the Chief Judge of the United States Tax Court;

(2) to which appointment is made by the President;

(3) to which appointment is made by the Librarian of Congress; or

(4) the incumbent of which is paid from—

(A) appropriations for the Executive Office of the President under the heading “The White House Office”, “Special Projects”, “Council of Economic Advisers”, or “National Security Council”; or

(B) funds appropriated to the President under the heading “Emergency Fund for the President” by the Treasury, Post Office, and Executive Office Appropriation Act, 1966, or a later statute making appropriations for the same purpose.

(b) The Office may prescribe regulations necessary for the administration of this section.

[TITLE 5](#) > [PART III](#) > [Subpart B](#) > [CHAPTER 33](#) > [SUBCHAPTER V](#) > **Sec. 3361.**

[Next](#)

Sec. 3361. - Promotion; competitive service; examination

An individual may be promoted in the competitive service only if he has passed an examination or is specifically excepted from examination under section [3302](#) of this title. This section 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

Sec. 3394. - Noncareer and limited appointments

(a)

Each noncareer appointee, limited term appointee, and limited emergency appointee shall meet the qualifications of the position to which appointed, as determined in writing by the appointing authority.

(b)

An individual may not be appointed as a limited term appointee or as a limited emergency appointee without the prior approval of the exercise of such appointing authority by the Office of Personnel Management

U.S.C. 22

§ 3926. Regulations; delegation of functions

(a) The Secretary may prescribe such regulations as the Secretary deems appropriate to carry out functions under this chapter.

(b) The Secretary may delegate functions under this chapter which are vested in the Secretary to any employee of the Department or any member of the Service.

§ 3941. General provisions

(a) Citizenship requirement

Only citizens of the United States may be appointed to the Service, other than for service abroad as a consular agent or as a foreign national employee.

(b) Examinations

The Secretary shall prescribe, as appropriate, written, oral, physical, foreign language, and other examinations for appointment to the Service (other than as a chief of mission or ambassador at large).

(c) Veteran or disabled veteran

The fact that an applicant for appointment as a Foreign Service officer candidate is a veteran or disabled veteran shall be considered an affirmative factor in making such appointments. As used in this subsection, the term “veteran or disabled veteran” means an individual who is a preference eligible under subparagraph (A), (B), or (C) of section [2108 \(3\)](#) of title [5](#).

(d) Career and noncareer appointments

(1) Members of the Service serving under career appointments are career members of the Service. Members of the Service serving under limited appointments are either career candidates or noncareer members of the Service.

(2) Chiefs of mission, ambassadors at large, and ministers serve at the pleasure of the President.

(3) An appointment as a Foreign Service officer is a career appointment. Foreign Service employees serving as career candidates or career members of the Service shall not represent to the income tax authorities of the District of Columbia or any other State or locality that they are exempt from income taxation on the basis of holding a Presidential appointment subject to Senate confirmation or that they are exempt on the basis of serving in an appointment whose tenure is at the pleasure of the President.