

Calendar No. 228

114TH CONGRESS }
1st Session }

SENATE

{ REPORT
114-143

COMPETITIVE SERVICE ACT OF 2015

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1580

TO ALLOW ADDITIONAL APPOINTING AUTHORITIES TO SELECT
INDIVIDUALS FROM COMPETITIVE SERVICE CERTIFICATES



SEPTEMBER 15, 2015.—Ordered to be printed

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Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1580]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1580), to allow additional appointing authorities to select individuals from competitive service certificates, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

	Page
I. Purpose and Summary	1
II. Background and Need for the Legislation	1
III. Legislative History	3
IV. Section-by-Section Analysis	3
V. Evaluation of Regulatory Impact	4
VI. Congressional Budget Office Cost Estimate	4
VII. Changes in Existing Law Made by the Bill, as Reported	5

I. PURPOSE AND SUMMARY

The purpose of S. 1580, the Competitive Service Act of 2015, is to allow federal agencies to share their vetted lists of best-qualified candidates with other agencies who are looking to hire for a similar position. Allowing agencies to share these lists and use them to hire for similar positions will help reduce the duplicative work that agencies are forced to undertake by making a new job announcement and starting the hiring process from scratch.

II. BACKGROUND AND THE NEED FOR LEGISLATION

At the start of the 114th Congress, Chairman Ron Johnson and Ranking Member Tom Carper announced a mission statement for the Committee to “identify/reduce/eliminate duplication . . . within

government” and “[i]dentify opportunities to modernize and increase the efficiency and effectiveness of federal agencies.”¹

S. 1580 addresses one such inefficiency in the federal hiring process. Under current law, agencies operate as separate and distinct entities, including with regard to agency hiring. For example, if an agency is hiring for a vacancy, it must issue a job vacancy announcement and follow the hiring process requirements set out in Chapter 33 of title 5, United States Code. These requirements include creating a certified list of the most qualified candidates from which the agency selects the person it will hire.

If, shortly after the agency has hired an individual from the certified list of eligibles, another agency is also hiring for a similar position, the second agency may not use the certificate of eligibles created for the first agency by OPM. This is true despite the fact that there may be numerous qualified individuals that were not chosen by the first hiring agency, and thus are still available. Because agencies hiring for similar positions may not share their assessments of applicants with each other, the result is duplicative work, as other hiring agencies must start the application process from scratch.

On May 6, 2014, the Senate Committee on Homeland Security and Governmental Affairs Subcommittee on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce held a hearing entitled “A More Efficient and Effective Government: Cultivating the Federal Workforce.”² Partnership for Public Service President and Chief Executive Officer Max Stier testified about the need for federal agencies to be authorized to share their lists of best qualified candidates with each other, which he referred to as a “common-sense, cost-effective reform to help agencies find top talent, particularly for hard-to-fill positions.”³

S. 1580 would streamline the hiring process for federal agencies by allowing agencies to share their certified list of eligibles, in other words, their list of best qualified applicants who have already undergone a competitive service assessment process by the agency for a similar position. Under S. 1580, the agency can hire an individual from the other agency’s certified list of eligibles if they meet the following requirements: the original job vacancy announcement that resulted in the list of certified eligibles provided notice that the list could be used by another agency; the vacancy is within 240-days of the issuance of the list of certified eligibles; the position is in the same occupational series and at a similar grade as the position for which the certification of eligibles was issued; and the agency provides notice of the available position to its employees, provides up to ten business days for its employees to apply, and considers those applications. If those requirements are met, the other appointing authority need not make any additional posting, and may simply hire an individual from the list of certified eligibles.

¹Senate Homeland Security and Government Affairs Committee (HSGAC) Mission, Vision, Values & Priorities, copy on file with Committee Staff.

²*A More Efficient and Effective Government: Cultivating the Federal Workforce: Hearing before the S. Comm. on Homeland Security and Governmental Affairs, Sub. Comm. on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce*, 113th Cong. (2014).

³Written testimony of Max Stier, President and CEO Partnership for Public Service, *id.* at 7.

The proposal is also supported by OPM. In 2010, then-OPM Director John Berry sent a letter to then-House Speaker Nancy Pelosi outlining proposed hiring reforms, including the authority for agencies to share their lists of best qualified talent with one another and hire from that list, without having to post a new job announcement and start from scratch.⁴ Director Berry estimated that this change could result in a reduction of 30–90 days’ worth of duplicative work performed by agencies that are hiring for similar positions.⁵

III. LEGISLATIVE HISTORY

Senator Jon Tester (D–MT) introduced S. 1580 on June 16, 2015, with Senators Rob Portman (R–OH), Benjamin L. Cardin (D–MD), Jerry Moran (R–KS), and Heidi Heitkamp (D–ND) as original cosponsors. Senators Michael B. Enzi (R–WY) and Ron Johnson (R–WI) joined as cosponsors on June 17, 2015, and June 25, 2015, respectively. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

Rep. Gerald E. Connolly (D–VA–11) introduced a companion to S. 1580, H.R. 2827, on June 18, 2015, with Rep. Robert J. Wittman (R–VA–1) as an original cosponsor. H.R. 2827 was referred to the House Committee on Oversight and Government Reform.

The Committee considered S. 1580 at a business meeting on June 24, 2015, and ordered the bill reported favorably en bloc by voice vote. Senators present for the vote on the bill were Johnson, McCain, Lankford, Ayotte, Ernst, Sasse, Carper, Tester, Baldwin, and Heitkamp.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

Section 1 designates the short title of the bill as the “Competitive Service Act of 2015.”

Section 2. Additional appointing authorities for competitive service

Section 2 of the bill amends Section 3318 and 3319 of title 5, United States Code, to provide additional appointing authorities for agencies selecting individuals for competitive service positions.

First, this section amends Section 3318 to allow an appointing authority other than the appointing authority requesting a certificate of eligibles (the “other appointing authority”) to select an individual from that certificate within 240 days of issuance of the certificate provided that: the position within the other appointing authority is in the same occupational series as the position for which the certification of eligibles was issued and at a similar grade level; the announcement of the original position provided notice that the resulting list of eligible candidates could be used by another appointing authority; and the other appointing authority provides notice of the available position to its employees, up to ten business days for its employees to apply, and considers those applications. If those requirements are met, the other appointing authority need not make any additional posting under Section 3327.

⁴Letter from John Berry, Director of the Office of Personnel and Management to Nancy Pelosi, Speaker of the House of Representatives (2010), copy on file with Committee Staff.

⁵*Id.* at 1.

Second, this section amends Section 3319 to provide that an appointing authority requesting a certificate of eligible may share the certificate with another appointing authority, provided that: the appointing authority provided notice that the resulting list of eligible candidates may be used by another appointing authority; and the other appointing authority provided notice of the available position to its employees, up to ten business days for its employees to apply, and considered those applications.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

JULY 13, 2015.

Hon. RON JOHNSON, *Chairman,*
Committee on Homeland Security and Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1580, the Competitive Service Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL.

Enclosure.

S. 1580—Competitive Service Act of 2015

S. 1580 would amend federal law with an aim to expediting the federal hiring process by allowing agencies to share their assessments of job applicants with one another. If an agency has compiled a list of candidates based on a rating system to fill a vacancy, under this legislation the agency could share that information with other agencies.

Based on information from the Office of Personnel Management about the number of job openings and agencies that would most likely use this authority, CBO expects that agencies would not share many assessments. CBO estimates that any implementation cost, or savings would be insignificant.

Enacting S. 1580 could affect direct spending by some agencies (such as the Tennessee Valley Authority) because they are authorized to use receipts from the sale of goods, fees, and other collections to cover their operating costs. Therefore, pay-as-you-go procedures apply. Because most of those agencies can make adjustments to the amounts collected, CBO estimates that any net changes in direct spending by those agencies would not be significant. Enacting the bill would not affect revenues.

S. 1580 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1580 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

PART III—EMPLOYEES

* * * * *

Subpart B—Employment and Retention

* * * * *

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

* * * * *

SEC. 3318. COMPETITIVE SERVICE; SELECTION FROM CERTIFICATES

(a) * * *

(b) *OTHER APPOINTING AUTHORITIES.*—

(1) *IN GENERAL.*—*During the 240-day period beginning on the date of issuance of a certificate of eligible under section 3317(a), an appointing authority other than the appointing authority requesting the certificate (in this subsection referred to as the ‘other appointing authority’) may select an individual from that certificate in accordance with this subsection for an appointment to a position that is—*

(A) in the same occupational series as the position for which the certification of eligible was issued (in this subsection referred to as the ‘original position’); and

(B) at a similar grade level as the original position.

(2) *APPLICABILITY.*—*An appointing authority requesting a certificate of eligible may share the certificate with another appointing authority only if the announcement of the original position provided notice that the resulting list of eligible candidates may be used by another appointing authority.*

(3) *REQUIREMENTS.*—*The selection of an individual under paragraph (1)—*

(A) shall be made in accordance with subsection (a); and

(B) subject to paragraph (4), may be made without any additional posting under section 3327.

(4) *INTERNAL NOTICE.*—Before selecting an individual under paragraph (1), and subject to the requirements of any collective bargaining obligation of the other appointing authority, the other appointing authority shall—

(A) provide notice of the available position to employees of the other appointing authority;

(B) provide up to 10 business days for employees of the other appointing authority to apply for the position; and

(C) review the qualifications of employees submitting an application.

(5) *COLLECTIVE BARGAINING OBLIGATIONS.*—Nothing in this subsection limits any collective bargaining obligation of an agency under chapter 71.

[(b)] (c)

(1) If an appointing authority proposes to pass over a preference eligible on a certificate in order to select an individual who is not a preference eligible, such authority shall file written reasons with the Office for passing over the preference eligible. The Office shall make the reasons presented by the appointing authority part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority in support of the passing over of the preference eligible. The Office shall determine the sufficiency or insufficiency of the reasons submitted by the appointing authority, taking into account any response received from the preference eligible under paragraph (2) of this subsection. When the Office has completed its review of the proposed passover, it shall send its findings to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings of the Office.

(2) In the case of a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more, the appointing authority shall at the same time it notifies the Office under paragraph (1) of this subsection, notify the preference eligible of the proposed passover, of the reasons therefor, and of his right to respond to such reasons to the Office within 15 days of the date of such notification. The Office shall, before completing its review under paragraph (1) of this subsection, require a demonstration by the appointing authority that the passover notification was timely sent to the preference eligible's last known address.

(3) A preference eligible not described in paragraph (2) of this subsection, or his representative, shall be entitled, on request, to a copy of—

(A) the reasons submitted by the appointing authority in support of the proposed passover, and

(B) the findings of the Office.

(4) In the case of a preference eligible described in paragraph (2) of this subsection, the functions of the Office under this subsection may not be delegated.

[(c)] (d) When three or more names of preference eligibles are on a reemployment list appropriate for the position to be filled, a nominating or appointing authority may appoint from a register of eligibles established after examination only an individual who

qualifies as a preference eligible under section 2108(3)(C)–(G) of this title.

SEC. 3319. ALTERNATIVE RANKING AND SELECTION PROCEDURES

(a) * * *

(b) * * *

[(c)

(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.】

(c) *SELECTION.*—

(1) *IN GENERAL.*—*An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.*

(2) *USE BY OTHER APPOINTING OFFICIALS.*—*Under regulations prescribed by the Office of Personnel Management, appointing officials other than the appointing official described in paragraph (1) (in this subsection referred to as the ‘other appointing official’) may select an applicant for an appointment to a position that is*

(A) *in the same occupational series as the position for which the certification of eligible was issued (in this subsection referred to as the ‘original position’); and*

(B) *at a similar grade level as the original position.*

(3) *APPLICABILITY.*—*An appointing authority requesting a certificate of eligible may share the certificate with another appointing authority only if the announcement of the original position provided notice that the resulting list of eligible candidates may be used by another appointing authority.*

(4) *REQUIREMENTS.*—*The selection of an individual under paragraph (2)—*

(A) *shall be made in accordance with this subsection; and*

(B) *subject to paragraph (5), may be made without any additional posting under section 3327.*

(5) *INTERNAL NOTICE.*—*Before selecting an individual under paragraph (2), and subject to the requirements of any collective bargaining obligation of the other appointing authority (within the meaning given that term in section 3318(b)(1), the other appointing official shall—*

(A) *provide notice of the available position to employees of the appointing authority employing the other appointing official;*

(B) *provide up to 10 business days for employees of the other appointing authority to apply for the position; and*

(C) *review the qualifications of employees submitting an application.*

(6) *COLLECTIVE BARGAINING OBLIGATIONS.*—Nothing in this subsection limits any collective bargaining obligation of an agency under chapter 71.

(7) *PREFERENCE ELIGIBLES.*—Notwithstanding paragraph (1) and (2), an appointing official may not pass over a preference eligible in the same category from which selection is made, unless the requirements of section 3317(b) and 3318(c), as applicable, are satisfied.

* * * * *

