

118TH CONGRESS  
1ST SESSION

# S. 59

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

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## IN THE SENATE OF THE UNITED STATES

JANUARY 24 (legislative day, JANUARY 3), 2023

Ms. SINEMA (for herself, Mr. HAGERTY, Mr. LANKFORD, and Mr. CARPER) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

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

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”.

6 **SEC. 2. DEFINITIONS.**

7 (a) TERMS DEFINED IN SECTION 3304 OF TITLE 5,  
8 UNITED STATES CODE.—In this Act, the terms “agency”,  
9 “Director”, “examining agency”, “Office”, “subject mat-

1 ter expert”, and “technical assessment” have the mean-  
 2 ings given those terms in subsection (c)(1) of section 3304  
 3 of title 5, United States Code, as added by section 3(a).

4 (b) OTHER TERMS.—In this Act, the term “competi-  
 5 tive service” has the meaning given the term in section  
 6 2102 of title 5, United States Code.

7 **SEC. 3. DEFINING THE TERM “EXAMINATION” FOR PUR-**  
 8 **POSES OF HIRING IN THE COMPETITIVE**  
 9 **SERVICE.**

10 (a) EXAMINATIONS; TECHNICAL ASSESSMENTS.—

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

13 (A) by redesignating subsections (c)  
 14 through (f) as subsections (d) through (g), re-  
 15 spectively; and

16 (B) by inserting after subsection (b) the  
 17 following:

18 “(c) EXAMINATIONS.—

19 “(1) DEFINITIONS.—

20 “(A) EXAMINATION DEFINED FOR PUR-  
 21 POSES OF THIS CHAPTER.—For purposes of  
 22 this chapter, the term ‘examination’—

23 “(i) means an opportunity to directly  
 24 demonstrate knowledge, skills, abilities,

1 and competencies, through a passing score  
2 assessment;

3 “(ii) includes a résumé review that  
4 is—

5 “(I) conducted by a subject mat-  
6 ter expert; and

7 “(II) based upon indicators  
8 that—

9 “(aa) are derived from a job  
10 analysis; and

11 “(bb) bear a rational rela-  
12 tionship to performance in the  
13 position for which the examining  
14 agency is hiring; and

15 “(iii) on and after the date that is 2  
16 years after the date of enactment of the  
17 Chance to Compete Act of 2023, does not  
18 include a self-assessment from an auto-  
19 mated examination, a résumé review (ex-  
20 cept as provided in clause (ii)), or any  
21 other method of determining the experi-  
22 ence or level of educational attainment of  
23 an individual, alone.

24 “(B) OTHER TERMS.—In this subsection—

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 ‘Office’ means the Of-  
13           fice of Personnel Management;

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

17           “(vi) the term ‘subject matter expert’  
18           means an employee or selecting official—

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

1 “(II) whom the delegated exam-  
2 ining unit of the agency that employs  
3 the employee or selecting official des-  
4 ignates to assist in the development  
5 and administration of technical as-  
6 sessments under paragraph (2); and

7 “(vii) the term ‘technical assessment’  
8 means an assessment developed under  
9 paragraph (2)(A)(i) that—

10 “(I) allows for the demonstration  
11 of job-related technical skills, abilities,  
12 and knowledge;

13 “(II)(aa) is based upon a job  
14 analysis;

15 “(bb) is relevant to the position  
16 for which the assessment is developed;  
17 and

18 “(cc) does not discriminate on  
19 the basis of a protected status, as es-  
20 tablished by the Director in regula-  
21 tions implementing this subsection;  
22 and

23 “(III) may include—

24 “(aa) a structured interview;

1                   “(bb) a work-related exer-  
2                   cise;

3                   “(cc) a custom or generic  
4                   procedure used to measure an in-  
5                   dividual’s employment or career-  
6                   related qualifications and inter-  
7                   ests; or

8                   “(dd) another assessment  
9                   that meets the criteria under  
10                  subclauses (I) and (II).

11               “(2) TECHNICAL ASSESSMENTS.—

12               “(A) IN GENERAL.—For the purpose of  
13               conducting an examination for a position in the  
14               competitive service, a subject matter expert who  
15               is determined by the subject matter expert’s  
16               agency to be an expert in the subject and job  
17               field of the position, as affirmed and audited by  
18               the Chief Human Capital Officer or Human Re-  
19               sources Director (as applicable) of that agency,  
20               may—

21               “(i) develop, in partnership with  
22               human resources employees of the exam-  
23               ining agency, a position-specific assessment  
24               that is relevant to the position; and

1           “(ii) administer the assessment devel-  
2           oped under clause (i) to—

3                   “(I) determine whether an appli-  
4                   cant for the position has a passing  
5                   score to be qualified for the position;  
6                   or

7                   “(II) rank applicants for the po-  
8                   sition for category rating purposes  
9                   under section 3319.

10           “(B) SHARING AND CUSTOMIZATION OF  
11           ASSESSMENTS.—

12                   “(i) SHARING.—An examining agency  
13                   may share a technical assessment with an-  
14                   other examining agency if each agency  
15                   maintains appropriate control over exam-  
16                   ination material.

17                   “(ii) CUSTOMIZATION.—An examining  
18                   agency with which a technical assessment  
19                   is shared under clause (i) may customize  
20                   the assessment as appropriate, provided  
21                   that the resulting assessment satisfies the  
22                   requirements under part 300 of title 5,  
23                   Code of Federal Regulations (or any suc-  
24                   cessor regulation).

1                   “(iii) PLATFORM FOR SHARING AND  
2                   CUSTOMIZATION.—

3                   “(I) IN GENERAL.—The Director  
4                   shall establish and operate a platform  
5                   on which examining agencies can  
6                   share and customize technical assess-  
7                   ments under this subparagraph.

8                   “(II) GUIDANCE.—Not later than  
9                   1 year after the date of enactment of  
10                  the Chance to Compete Act of 2023,  
11                  the Director shall issue guidance to  
12                  examining agencies on how to effi-  
13                  ciently and effectively share assess-  
14                  ments using the platform established  
15                  under subclause (I).

16                  “(C) ADOPTION OF DETERMINATIONS BY  
17                  OTHER AGENCIES.—For purposes of sections  
18                  3318(b) and 3319(c), an appointing authority,  
19                  other than the appointing authority requesting  
20                  a certificate of eligibles, that selects an indi-  
21                  vidual from that certificate in accordance with  
22                  such section 3318(b) or 3319(c) may adopt the  
23                  determination described in subparagraph (A) of  
24                  this paragraph of a subject matter expert em-  
25                  ployed by the requesting appointing authority



1           instead of administering an additional technical  
2           assessment of the individual.”.

3           (2) ALTERNATIVE RANKING AND SELECTION  
4           PROCEDURES.—Section 3319(a) of title 5, United  
5           States Code, is amended by adding at the end the  
6           following: “To be placed in a quality category under  
7           the preceding sentence, an applicant shall be re-  
8           quired to have passed an examination in accordance  
9           with section 3304(b), subject to the exceptions in  
10          that section.”.

11          (3) TECHNICAL AND CONFORMING AMEND-  
12          MENT.—Section 3330a(a)(1)(B) of title 5, United  
13          States Code, is amended by striking “section  
14          3304(f)(1)” and inserting “section 3304(g)(1)”.

15          (b) IMPLEMENTATION OF PASSING SCORE ASSESS-  
16          MENT REQUIREMENT.—Not later than 2 years after the  
17          date of enactment of this Act, the Director and the head  
18          of any other examining agency shall eliminate the use of  
19          any examination for the competitive service that does not  
20          satisfy the definition of the term “examination” in sub-  
21          section (c)(1)(A) of section 3304 of title 5, United States  
22          Code, as added by subsection (a) of this section.

23          (c) OPM REPORTING.—

24                  (1) PUBLIC DASHBOARD.—

1 (A) IN GENERAL.—The Director shall  
2 maintain and periodically update a publicly  
3 available dashboard that, with respect to each  
4 position in the competitive service for which an  
5 examining agency examined applicants during  
6 the applicable period, includes—

7 (i) the type of assessment used, such  
8 as—

9 (I) a behavioral off-the-shelf as-  
10 sessment;

11 (II) a résumé review conducted  
12 by a subject matter expert;

13 (III) an interview conducted by a  
14 subject matter expert;

15 (IV) a technical off-the-shelf as-  
16 sessment; or

17 (V) a cognitive ability test;

18 (ii) whether or not the agency selected  
19 a candidate for the position; and

20 (iii) the hiring authority used to fill  
21 the position.

22 (B) TIMING.—

23 (i) INITIAL DATA.—Not later than  
24 180 days after the date of enactment of  
25 this Act, the Director shall update the

1 dashboard described in subparagraph (A)  
2 with data for positions in the competitive  
3 service for which an examining agency ex-  
4 amined applicants during the period begin-  
5 ning on the date of enactment of this Act  
6 and ending on the date of submission of  
7 the report.

8 (ii) SUBSEQUENT UPDATES.—Not  
9 later than October 1 of each fiscal year be-  
10 ginning after the date on which the dash-  
11 board is initially updated under clause (i),  
12 the Director shall update the dashboard  
13 described in subparagraph (A) with data  
14 for positions in the competitive service for  
15 which an examining agency examined ap-  
16 plicants during the preceding fiscal year.

17 (2) ANNUAL PROGRESS REPORT.—

18 (A) IN GENERAL.—Each year, the Direc-  
19 tor, in accordance with subparagraphs (B) and  
20 (C), shall make publicly available and submit to  
21 Congress an overall progress report that in-  
22 cludes summary data of the use of examinations  
23 (as defined in subsection (c)(1)(A) of section  
24 3304 of title 5, United States Code, as added

1 by subsection (a) of this section) for the com-  
2 petitive service, including technical assessments.

3 (B) CATEGORIES; BASELINE DATA.—In  
4 carrying out subparagraph (A), the Director  
5 shall—

6 (i) break the data down by applicant  
7 demographic indicator, including veteran  
8 status, race, gender, disability, and any  
9 other measure the Director determines ap-  
10 propriate; and

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

13 (C) LIMITATIONS.—In carrying out sub-  
14 subparagraph (A), the Director may only make  
15 publicly available and submit to Congress data  
16 relating to examinations for which—

17 (i) the related announcement is  
18 closed;

19 (ii) certificates have been audited; and

20 (iii) all hiring processes are com-  
21 pleted.

22 (d) GAO REPORT.—Not later than 5 years after the  
23 date of enactment of this Act, the Comptroller General  
24 of the United States shall submit to Congress a report  
25 that—

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

3 (2) assesses the impact and modifications to the  
4 hiring process for the competitive service made by  
5 this section and the amendments made by this sec-  
6 tion; and

7 (3) makes recommendations for the improve-  
8 ment of the hiring process for the competitive serv-  
9 ice.

10 **SEC. 4. AMENDMENTS TO COMPETITIVE SERVICE ACT OF**  
11 **2015.**

12 (a) **PLATFORMS FOR SHARING CERTIFICATES OF**  
13 **ELIGIBLES.**—Section 3318(b) of title 5, United States  
14 Code, is amended—

15 (1) in paragraph (1), by striking “240-day”  
16 and inserting “1-year”;

17 (2) by redesignating paragraph (5) as para-  
18 graph (6); and

19 (3) by inserting after paragraph (4) the fol-  
20 lowing:

21 “(5) **PLATFORM FOR SHARING RÉSUMÉS OF IN-**  
22 **DIVIDUALS ON CERTIFICATES OF ELIGIBLES.**—The  
23 Director of the Office shall establish and operate a  
24 platform on which an appointing authority can  
25 share, with other appointing authorities and the

1 Chief Human Capital Officers Council established  
2 under section 1303 of the Chief Human Capital Of-  
3 ficers Act of 2002 (5 U.S.C. 1401 note; Public Law  
4 107–296), the résumés of individuals who are on a  
5 certificate of eligibles requested by the appointing  
6 authority.”.

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

10 (1) by redesignating subsections (c) and (d) as  
11 subsections (d) and (e), respectively; and

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

14 “(c) MAXIMIZING SHARING OF APPLICANT INFORMA-  
15 TION.—

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

17 “(A) the terms ‘agency’, ‘Director’, and  
18 ‘Office’ have the meanings given those terms in  
19 section 3304(c)(1) of title 5, United States  
20 Code; and

21 “(B) the term ‘competitive service’ has the  
22 meaning given the term in section 2102 of title  
23 5, United States Code.

24 “(2) MAXIMIZING SHARING.—The Director  
25 shall maximize the sharing of information among

1 agencies regarding qualified applicants for positions  
 2 in the competitive service, including by—

3 “(A) providing for the delegation to other  
 4 agencies of the authority of the Office to host  
 5 multi-agency hiring actions to increase the re-  
 6 turn on investment on high-quality pooled an-  
 7 nouncements; and

8 “(B) sharing certificates of eligibles and  
 9 accompanying résumés for appointment.”.

10 (c) AMENDMENT OF IMPLEMENTING REGULA-  
 11 TIONS.—Not later than 180 days after the date of enact-  
 12 ment of this Act, the Director shall promulgate regulations  
 13 to carry out the amendments made by this section.

14 **SEC. 5. MODERNIZING AND REFORMING THE ASSESSMENT**  
 15 **AND HIRING OF FEDERAL JOB CANDIDATES.**

16 (a) IN GENERAL.—Section 3308 of title 5, United  
 17 States Code, is amended—

18 (1) by striking “scientific, technical, or profes-  
 19 sional”;

20 (2) by inserting “legally” before “performed”;  
 21 and

22 (3) by inserting “in a jurisdiction in which the  
 23 duties of the position are to be performed” after “a  
 24 prescribed minimum education”.

25 (b) IMPLEMENTATION.—

1           (1) REGULATIONS AND GUIDANCE DOCU-  
2           MENTS.—Not later than 1 year after the date of en-  
3           actment of this Act, the Director shall amend all  
4           regulations and guidance documents as necessary to  
5           implement the amendments made by subsection (a).

6           (2) HIRING PRACTICES.—Not later than 1 year  
7           after the date of enactment of this Act, the Director  
8           and the head of any other examining agency shall  
9           amend the hiring practices of the Office or the other  
10          examining agency, respectively, in accordance with  
11          the amendments made by subsection (a).

12 **SEC. 6. TALENT TEAMS.**

13          (a) FEDERAL AGENCY TALENT TEAMS.—

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

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

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

24                   (B) facilitating writing job announcements  
25                   for the competitive service;



1           (C) sharing high-quality certificates of eli-  
2 gibles; and

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

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

13           (1) the development of technical assessments;  
14       and

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

○