

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.

S. 59

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Ms. SINEMA (for herself and Mr. LANKFORD)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Chance to Compete
5 Act of 2024”.

6 **SEC. 2. DEFINITIONS.**

7 (a) AMENDATORY DEFINITIONS.—

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

1 (A) by redesignating subsections (b)
2 through (g) as subsections (i) through (n), re-
3 spectively;

4 (B) by redesignating subsection (a) as sub-
5 section (b); and

6 (C) by inserting before subsection (b), as
7 so redesignated, the following:

8 “(a) DEFINITIONS.—In this section:

9 “(1) AGENCY.—The term ‘agency’ means an
10 Executive agency.

11 “(2) DIRECTOR.—The term ‘Director’ means
12 the Director of the Office.

13 “(3) EXAMINATION.—The term ‘examination’
14 means the process by which an applicant dem-
15 onstrates knowledge, skills, abilities, and com-
16 petencies.

17 “(4) EXAMINING AGENCY.—The term ‘exam-
18 ining agency’ means—

19 “(A) the Office; or

20 “(B) an agency to which the Director has
21 delegated examining authority under section
22 1104(a)(2).

23 “(5) OCCUPATIONAL QUESTIONNAIRE.—The
24 term ‘occupational questionnaire’ means a rating

1 and experience evaluation or assessment question-
2 naire that—

3 “(A) is used to screen, rate, and rank an
4 applicant;

5 “(B) is commonly delivered through auto-
6 mated staffing systems used for Federal hiring;
7 and

8 “(C) consists of self-ratings of training and
9 experience.

10 “(6) OFFICE.—The term ‘Office’ means the Of-
11 fice of Personnel Management.

12 “(7) PASSING SCORE.—The term ‘passing
13 score’ means a minimum acceptable score or rating,
14 consistent with applicable law, that may include a
15 quantitative or qualitative assessment that an appli-
16 cant can pass or fail.

17 “(8) RELEVANT COMMITTEES.—The term ‘rel-
18 evant committees’ means—

19 “(A) the Committee on Homeland Security
20 and Governmental Affairs of the Senate; and

21 “(B) the Committee on Oversight and Ac-
22 countability of the House of Representatives.

23 “(9) RESUME REVIEW.—The term ‘resume re-
24 view’ means an evaluation of an applicant’s resume
25 that is conducted by a subject matter expert.

1 “(10) SUBJECT MATTER EXPERT.—The term
2 ‘subject matter expert’ means an employee or select-
3 ing official—

4 “(A) who possesses an understanding of
5 the duties of, and knowledge, skills, and abili-
6 ties required for, the position for which the em-
7 ployee or selecting official is developing or ad-
8 ministering an examination; and

9 “(B) whom the delegated examining unit
10 of the examining agency that employs the em-
11 ployee or selecting official designates to assist
12 in the development and administration of tech-
13 nical assessments.

14 “(11) TECHNICAL ASSESSMENT.—The term
15 ‘technical assessment’ means a position-specific tool
16 that is relevant to the position for which the tool is
17 developed that—

18 “(A) allows for the demonstration of job-
19 related skills, abilities, knowledge, and com-
20 petencies;

21 “(B) is based upon a job analysis; and

22 “(C) does not include an occupational
23 questionnaire.”.

24 (2) TECHNICAL AND CONFORMING AMEND-
25 MENTS.—

1 (A) TITLE 5, UNITED STATES CODE.—Part
2 III of title 5, United States Code, is amended—

3 (i) in chapter 33—

4 (I) in section 3302(2), by strik-
5 ing “3304(a)” and inserting
6 “3304(b)”; and

7 (II) in section 3330a(a)(1)(B),
8 by striking “3304(f)(1)” and inserting
9 “3304(m)(1)”; and

10 (ii) in section 9810(b), by striking
11 “3304(b)” and inserting “3304(i)”.

12 (B) ACT TO ESTABLISH A COMMISSION ON
13 SECURITY AND COOPERATION IN EUROPE.—
14 Section 8(d)(2) of the Act entitled, “An Act to
15 establish a Commission on Security and Co-
16 operation in Europe”, approved June 3, 1976
17 (22 U.S.C. 3008(d)(2)) is amended by striking
18 “3304(c)(1)” and inserting “3304(j)(1)”.

19 (C) U.S.-CHINA RELATIONS ACT OF 2000.—
20 Section 308(e)(2) of the U.S.-China Relations
21 Act of 2000 (22 U.S.C. 6918(e)(2)) is amended
22 by striking “3304(c)(1)” and inserting
23 “3304(j)(1)”.

24 (D) ENERGY INDEPENDENCE AND SECUR-
25 ITY ACT OF 2007.—Section 136(i)(1) of the

1 Energy Independence and Security Act of 2007
2 (42 U.S.C. 17013(i)(1)) is amended by striking
3 “3304(a)(3)” and inserting “3304(b)(3)”.

4 (E) SUBSECTION HEADINGS.—Section
5 3304 of title 5, United States Code, as amend-
6 ed by paragraph (1) of this subsection, is
7 amended—

8 (i) in subsection (b), by striking “The
9 President” and inserting “RULES.—The
10 President”;

11 (ii) in subsection (i), by striking “An
12 individual” and inserting “EXAMINATION
13 OR EXCEPTION REQUIRED.—An indi-
14 vidual”;

15 (iii) in subsection (j), by striking “(1)
16 For the purpose” and inserting “TECHNI-
17 CIANS.—(1) For the purpose”;

18 (iv) in subsection (k), by striking
19 “The Office” and inserting “CONSIDER-
20 ATION OF EXPERIENCE.—The office”;

21 (v) in subsection (l), by striking “Em-
22 ployees” and inserting “USE OF PUBLIC
23 BUILDINGS.—Employees”; and

24 (vi) in subsection (m), by striking
25 “(1) Preference eligibles or veterans” and

1 inserting “PREFERENCE ELIGIBLES AND
2 VETERANS.—(1) Preference eligibles or
3 veterans”.

4 (b) FREESTANDING DEFINITIONS.—In this Act—

5 (1) each term that is defined in section 3304(a)
6 of title 5, United States Code, as added by sub-
7 section (a) of this section, shall have the meaning
8 given the term in such section 3304(a); and

9 (2) the term “competitive service” has the
10 meaning given the term in section 2102 of title 5,
11 United States Code.

12 **SEC. 3. MODERNIZING FEDERAL HIRING.**

13 Section 3304 of title 5, United States Code, is
14 amended by inserting after subsection (b), as redesignated
15 by section 2, the following:

16 “(c) EXAMINATIONS.—

17 “(1) IN GENERAL.—For the purpose of testing
18 applicants for appointment for a position, or class of
19 positions, in the competitive service, an examining
20 agency shall conduct an examination pursuant to
21 subsection (b).

22 “(2) INTERIM EXAMINATION PERIOD.—

23 “(A) PREFERENCE FOR TECHNICAL AS-
24 SESSMENT.—During the 3-year period begin-
25 ning on the date of enactment of the Chance to

1 Compete Act of 2024, an examining agency
2 shall preference the use of a technical assess-
3 ment, to the maximum extent practicable, to as-
4 sess the job-related skills, abilities, knowledge,
5 and competencies of an applicant for a position
6 in the competitive service.

7 “(B) USE OF OCCUPATIONAL QUESTION-
8 NAIRE.—During the 3-year period beginning on
9 the date of enactment of the Chance to Com-
10 pete Act of 2024, if an examining agency deter-
11 mines that the use of a technical assessment to
12 assess the job-related skills, abilities, knowl-
13 edge, and competencies of an applicant for a
14 position in the competitive service is not prac-
15 ticable, the examining agency may use an occu-
16 pational questionnaire for that purpose if the
17 examining agency—

18 “(i) includes a brief description of the
19 rationale for the use of the occupational
20 questionnaire in the job posting; and

21 “(ii) adheres to the process under
22 subsection (e).

23 “(3) TRANSITION PLANNING.—

24 “(A) IN GENERAL.—Not later 18 months
25 after the date of enactment of the Chance to

1 Compete Act of 2024, the Director shall submit
2 to the relevant committees a plan to transition
3 Federal hiring practices to adopt technical as-
4 sessments in accordance with subsection (d),
5 which shall include—

6 “(i) the prioritization of—

7 “(I) job classifications; and

8 “(II) resource requirements; and

9 “(ii) a timeline for full implementa-
10 tion of the transition.

11 “(B) ADDITIONAL CONSULTATION.—In de-
12 veloping the plan under subparagraph (A), the
13 Director shall consult with, at minimum—

14 “(i) the Director of the Office of Man-
15 agement and Budget;

16 “(ii) the Chair of the Chief Human
17 Capital Officers Council;

18 “(iii) employee representatives; and

19 “(iv) relevant external stakeholders.

20 “(4) IMPLEMENTATION OF TECHNICAL ASSESS-
21 MENTS.—

22 “(A) IMPLEMENTATION OF PLAN.—Not
23 later than 3 years after the date of enactment
24 of the Chance to Compete Act of 2024, the Di-

1 rector shall implement the plan submitted
2 under paragraph (3).

3 “(B) ADOPTION OF TECHNICAL ASSESS-
4 MENTS.—On and after the date that is 3 years
5 after the date of enactment of the Chance to
6 Compete Act of 2024, an examining agency
7 shall use a technical assessment to examine ap-
8 plicants for positions in the competitive service
9 in accordance with subsection (d).

10 “(C) WAIVER.—

11 “(i) IN GENERAL.—The requirement
12 under subparagraph (B) shall not apply to
13 an examining agency with respect to a par-
14 ticular job series if—

15 “(I) the examining agency deter-
16 mines that use of a technical assess-
17 ment is impracticable for the job se-
18 ries;

19 “(II) the head of the examining
20 agency submits to the Director and
21 the relevant committees a certification
22 that use of the technical assessment is
23 impracticable, which certification shall
24 include—

1 “(aa) identification of the
2 job series;

3 “(bb) identification of the
4 number of positions that are in-
5 cluded in the job series within
6 the agency for which the exam-
7 ining agency is conducting exami-
8 nations; and

9 “(cc) a description of the ra-
10 tionale for the determination; and

11 “(III) the examining agency ad-
12 heres to the process under subsection
13 (e).

14 “(ii) EFFECTIVENESS OF WAIVER.—A
15 waiver under this subparagraph shall be
16 effective for the period—

17 “(I) beginning on the date that is
18 1 day after the date on which the ap-
19 plicable certification is submitted
20 under clause (i)(II); and

21 “(II) ending on the date that is
22 3 years after the date on which the
23 applicable certification is submitted
24 under clause (i)(II).

1 “(iii) RENEWAL OF WAIVER.—The
2 head of an examining agency may renew a
3 waiver under this subparagraph by submit-
4 ting a new certification under clause (i)(II)
5 not more than 30 days before the date that
6 is 3 years after the date on which the pre-
7 vious certification was submitted under
8 that clause.

9 “(iv) NO DELEGATION OF CERTIFI-
10 CATION AUTHORITY.—The head of an ex-
11 amining agency may not delegate the au-
12 thority to submit a certification under
13 clause (i)(II).

14 “(d) TECHNICAL ASSESSMENT.—

15 “(1) IN GENERAL.—For the purpose of con-
16 ducting an examination for a position in the com-
17 petitive service, an individual who is determined by
18 an examining agency to be a subject matter expert
19 in the subject and job field of the position may—

20 “(A) develop, in partnership with human
21 resources employees of the examining agency, a
22 position-specific assessment that is relevant to
23 the position, based on job analysis, which may
24 include—

25 “(i) a structured interview;

1 “(ii) a work-related exercise;

2 “(iii) a custom or generic procedure
3 used to measure an applicant’s employ-
4 ment or career-related qualifications and
5 interests; or

6 “(iv) another assessment that—

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

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

13 “(B) administer the assessment developed
14 under subparagraph (A) to—

15 “(i) determine whether an applicant
16 for the position has a passing score to be
17 qualified for the position; or

18 “(ii) rank applicants for the position
19 for category rating purposes under section
20 3319.

21 “(2) FEASIBILITY STUDY ON SHARING AND
22 CUSTOMIZATION OF ASSESSMENT.—Not later than 1
23 year after the date of enactment of the Chance to
24 Compete Act of 2024, the Director shall—

1 “(A) conduct a feasibility study that exam-
2 ines the practicability, including a cost benefit
3 analysis, of—

4 “(i) the sharing of technical assess-
5 ments by an examining agency with an-
6 other examining agency;

7 “(ii) mechanisms for each examining
8 agency to maintain appropriate control
9 over examination material that is shared
10 by the examining agency as described in
11 clause (i);

12 “(iii) limits on customization of a
13 technical assessment that is shared as de-
14 scribed in clause (i) and mechanisms to en-
15 sure that the resulting technical assess-
16 ment satisfies the requirements under part
17 300 of title 5, Code of Federal Regulations
18 (or any successor regulation); and

19 “(iv) the development of an online
20 platform on which examining agencies can
21 share and customize technical assessments
22 as described in this subparagraph; and

23 “(B) submit to the relevant committees a
24 report on the study conducted under subpara-
25 graph (A).

1 “(e) OCCUPATIONAL QUESTIONNAIRE.—For the pur-
2 pose of conducting an examination for a position in the
3 competitive service for which an examining agency has de-
4 termined that a technical assessment is impracticable
5 under paragraph (2)(B) or (4)(C) of subsection (c), the
6 examining agency shall—

7 “(1) develop an occupational questionnaire in
8 accordance with guidance or regulations of the Of-
9 fice; and

10 “(2) undertake a resume review for each can-
11 didate who is referred for additional consideration
12 after analysis of the results of the occupational ques-
13 tionnaire is complete.

14 “(f) FEDERAL AGENCY TALENT TEAMS.—

15 “(1) IN GENERAL.—An agency may establish 1
16 or more agency talent teams, including at the com-
17 ponent level.

18 “(2) DUTIES.—An agency talent team shall
19 provide hiring support to the agency, including by—

20 “(A) improving examinations;

21 “(B) facilitating the writing of job an-
22 nouncements for the competitive service;

23 “(C) sharing high-quality certificates of eli-
24 gible applicants; and

1 “(D) facilitating hiring for the competitive
2 service using examinations.

3 “(g) OFFICE OF PERSONNEL MANAGEMENT TALENT
4 TEAM.—The Director may establish a Federal talent team
5 to support agency talent teams by—

6 “(1) facilitating hiring actions across the Fed-
7 eral Government;

8 “(2) providing training;

9 “(3) creating tools and guides to facilitate hir-
10 ing for the competitive service; and

11 “(4) developing technical assessments.

12 “(h) RULEMAKING.—The Director shall promulgate
13 such regulations as are necessary to implement and inter-
14 pret this section.”.

15 **SEC. 4. COMPETITIVE SERVICE CANDIDATE HIRING AND**
16 **REFORM.**

17 (a) REVIEW.—

18 (1) IN GENERAL.—The Director shall conduct a
19 review of examinations for hiring for each position
20 in the competitive service that an examining agency
21 has determined requires a minimum educational re-
22 quirement because the position is of a scientific,
23 technical, or professional nature pursuant to section
24 3308 of title 5, United States Code, to determine
25 whether data, evidence, or other information justifies

1 the need for educational requirements for the posi-
2 tion.

3 (2) CONSULTATION.—In carrying out para-
4 graph (1), the Director shall consult with, at min-
5 imum—

6 (A) agencies, as deemed appropriate by the
7 Director;

8 (B) employee representatives;

9 (C) external experts; and

10 (D) relevant stakeholders.

11 (b) REPORT ON HIRING PRACTICES.—Not later than
12 1 year after the date of enactment of this Act, the Director
13 shall submit to the relevant committees recommendations
14 to amend the hiring practices of examining agencies in ac-
15 cordance with the findings of the review conducted under
16 subsection (a)(1).

17 **SEC. 5. REPORTS.**

18 (a) IMPLEMENTATION REPORTS.—

19 (1) IN GENERAL.—Not later than 1 year after
20 the date of enactment of this Act, and each year
21 thereafter ending with the fifth publication and sub-
22 mission of the report, the Director shall publish on
23 a public-facing website, and submit to the relevant
24 committees, a report that—

1 (A) examines the progress of examining
2 agencies in implementing the requirements of
3 this Act and the amendments made by this Act;
4 and

5 (B) identifies any significant difficulties
6 encountered in the implementation described in
7 subparagraph (A).

8 (2) INCLUSION IN ANNUAL REPORT.—The Di-
9 rector may include the report required under para-
10 graph (1) as an addendum to the report required
11 under subsection (b).

12 (3) DELAYED REPORTING.—If the Director is
13 unable to publish and submit the report within the
14 timeline required under paragraph (1), the Director
15 shall publish on a public-facing website, and submit
16 to the relevant committees, a notification of the
17 delay that—

18 (A) provides a reason for the delay; and

19 (B) advises the public and the relevant
20 committees of the anticipated date of publica-
21 tion and submission of the report.

22 (b) ANNUAL REPORT.—

23 (1) IN GENERAL.—Not later than 1 year after
24 the date of enactment of this Act, and each year
25 thereafter, the Director shall publish on a public-fac-

1 ing website and submit to the relevant committees a
2 report that, with respect to categories of positions in
3 the competitive service for which an examining agen-
4 cy examined applicants during the applicable period,
5 includes—

6 (A) the type of examination used; and

7 (B) summary data from examinations that
8 are closed, audited, and anonymous on the use
9 of examinations for the competitive service, in-
10 cluding technical assessments.

11 (2) DEMOGRAPHIC INDICATORS.—In carrying
12 out paragraph (1), the Director shall break the data
13 down by applicant demographic indicators to facili-
14 tate direct comparability and trendline comparisons
15 to data available as of October 1, 2020, as a base-
16 line.

17 (3) LIMITATIONS.—In carrying out this sub-
18 section, the Director may only publish and submit to
19 the relevant committees data relating to examina-
20 tions for which—

21 (A) the related announcement is closed;

22 (B) certificates have been audited; and

23 (C) all hiring processes are completed.

24 (4) DELAYED REPORTING.—If the Director is
25 unable to publish and submit the report within the

1 timeline required under paragraph (1), the Director
2 shall publish on a public-facing website, and submit
3 to the relevant committees, a notification of the
4 delay that—

5 (A) provides a reason for the delay; and

6 (B) advises the public and the relevant
7 committees of the anticipated date of publica-
8 tion and submission of the report.

9 (c) PROVISION OF DATA BY AGENCIES.—

10 (1) IN GENERAL.—Not later than 180 days
11 after the date of enactment of this Act, the Director
12 shall issue guidance to examining agencies regarding
13 the data that the Director needs from the examining
14 agencies in order to comply with subsections (a) and
15 (b).

16 (2) REPORTING TIMELINES.—Each examining
17 agency shall provide the data outlined in the guid-
18 ance issued by the Director under paragraph (1) on
19 a quarterly basis.

20 **SEC. 6. GAO REPORT.**

21 Not later than 3 years after the date of enactment
22 of this Act, the Comptroller General of the United States
23 shall submit to Congress a report that—

24 (1) assesses the implementation of this Act and
25 the amendments made by this Act;

1 (2) assesses the impact of modifications made
2 by this Act to the hiring process for the competitive
3 service under section 3304 of title 5, United States
4 Code; and

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

8 **SEC. 7. EVALUATION FOR POTENTIAL UPDATES OR REVI-**
9 **SIONS TO GOVERNMENT-WIDE SYSTEMS OF**
10 **RECORDS AT THE OFFICE OF PERSONNEL**
11 **MANAGEMENT.**

12 (a) IN GENERAL.—Not later than 1 year after the
13 date of enactment of this Act, the Director shall evaluate
14 whether the Government-wide system of records notices,
15 the OPM/GOVT–5 Recruiting, Examining, and Placement
16 Records, and the OPM/GOVT–6 Personnel Research and
17 Test Validation Records, or any successor materials there-
18 to, require updating or revision in order to support the
19 implementation of this Act and the amendments made by
20 this Act.

21 (b) ISSUANCE OF UPDATES OR REVISIONS; NOTICE
22 TO CONGRESS.—If the Director determines under sub-
23 section (a) that any updates or revisions are necessary,
24 the Director, in accordance with section 552a of title 5,

1 United States Code (commonly known as the “Privacy
2 Act”), shall promptly—

- 3 (1) issue the updates or revisions; and
- 4 (2) notify the relevant committees.