

117TH CONGRESS  
1ST SESSION

# S. 3423

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

DECEMBER 16, 2021

Ms. SINEMA (for herself, Mr. HAGERTY, and Mr. LANKFORD) 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 2021”.

6 **SEC. 2. DEFINITIONS.**

7 (a) TERMS DEFINED IN SECTION 3308 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 (a) of section 3308  
 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) IN GENERAL.—Section 3308 of title 5, United  
 11 States Code, is amended—

12 (1) by striking “The Office of Personnel Man-  
 13 agement” and inserting the following:

14 “(a) DEFINITIONS.—

15 “(1) EXAMINATION DEFINED FOR PURPOSES OF  
 16 CHAPTER.—For purposes of this chapter, the term  
 17 ‘examination’, with respect to the competitive serv-  
 18 ice—

19 “(A) means an opportunity to directly  
 20 demonstrate knowledge, skills, abilities, and  
 21 competencies, through a passing score assess-  
 22 ment (unless the examining agency determines  
 23 that another method, not limited to the out-  
 24 comes of pass or fail, makes meaningful and ob-

1 jective differentiations in rating candidates);  
2 and

3 “(B) does not include a self-assessment  
4 from an automated examination, a résumé re-  
5 view (unless conducted by a subject matter ex-  
6 pert in a structured manner), or any other  
7 method of determining the experience or level of  
8 educational attainment of an individual, alone.

9 “(2) OTHER TERMS.—In this section—

10 “(A) the term ‘agency’ means an agency  
11 described in section 901(b) of title 31;

12 “(B) the term ‘Director’ means the Direc-  
13 tor of the Office;

14 “(C) the term ‘examining agency’ means—

15 “(i) the Office; or

16 “(ii) an agency to which the Director  
17 has delegated examining authority under  
18 section 1104(a)(2) of this title;

19 “(D) the term ‘Office’ means the Office of  
20 Personnel Management;

21 “(E) the term ‘passing score assessment’  
22 means an assessment that an individual can  
23 pass or fail;

24 “(F) the term ‘subject matter expert’  
25 means an employee—

1           “(i) who is determined by the employ-  
2           ee’s agency to be an expert in the subject  
3           and job field of a position in the competi-  
4           tive service; and

5           “(ii) whom the employee’s agency des-  
6           ignates to develop and conduct technical  
7           assessments; and

8           “(G) the term ‘technical assessment’  
9           means a position-specific assessment developed  
10          under subsection (b)(1)(A).

11       “(b) TECHNICAL ASSESSMENTS.—

12           “(1) IN GENERAL.—For the purpose of con-  
13          ducting an examination for a position in the com-  
14          petitive service, a subject matter expert who is deter-  
15          mined by the subject matter expert’s agency to be  
16          an expert in the subject and job field of the position,  
17          as affirmed and audited by the Chief Human Capital  
18          Officer or Human Resources Director (as applicable)  
19          of that agency, 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; and

24           “(B) conduct the assessment developed  
25          under subparagraph (A) to—

1           “(i) determine whether an applicant  
2           for the position has a passing score to be  
3           qualified for the position; or

4           “(ii) rank applicants for the position  
5           as ‘most qualified’ or ‘qualified’ for cat-  
6           egory rating purposes under section 3319.

7           “(2) TYPES OF ASSESSMENTS.—A technical as-  
8           sessment developed under paragraph (1) may in-  
9           clude—

10           “(A) a structured interview;

11           “(B) a work-related sample;

12           “(C) a custom or generic behavioral assess-  
13           ment (which, if generic, may be customized as  
14           needed); or

15           “(D) another assessment.

16           “(3) SHARING AND CUSTOMIZATION OF ASSESS-  
17           MENTS.—

18           “(A) SHARING.—An examining agency  
19           may share a technical assessment developed  
20           under paragraph (1) with another examining  
21           agency.

22           “(B) CUSTOMIZATION.—An examining  
23           agency with which a technical assessment is  
24           shared under subparagraph (A) may customize  
25           the assessment as appropriate.

1           “(C) PLATFORM FOR SHARING AND  
 2           CUSTOMIZATION.—The Director shall establish  
 3           and operate a platform on which examining  
 4           agencies can share and customize technical as-  
 5           sessments under this paragraph.

6           “(4) ADOPTION OF DETERMINATIONS BY  
 7           OTHER AGENCIES.—For purposes of sections  
 8           3318(b) and 3319(c), an appointing authority, other  
 9           than the appointing authority requesting a certifi-  
 10          cate of eligibles, that selects an individual from that  
 11          certificate in accordance with such section 3318(b)  
 12          or 3319(c) may adopt the determination described in  
 13          paragraph (1) of this subsection of a subject matter  
 14          expert employed by the requesting appointing au-  
 15          thority instead of conducting an additional technical  
 16          assessment of the individual.

17          “(c) EDUCATIONAL REQUIREMENTS.—The Office”;  
 18          and

19                 (2) in subsection (c), as so designated, in the  
 20          second sentence, by striking “this section” and in-  
 21          serting “this subsection”.

22          (b) IMPLEMENTATION OF PASSING SCORE ASSESS-  
 23          MENT REQUIREMENT.—Not later than 1 year after the  
 24          date of enactment of this Act, the Director and the head  
 25          of any other examining agency shall eliminate the use of

1 any examination for the competitive service that does not  
2 satisfy the definition of the term “examination” in sub-  
3 section (a) of section 3308 of title 5, United States Code,  
4 as added by subsection (a) of this section.

5 (c) OPM REPORTING.—

6 (1) PUBLIC DASHBOARD.—

7 (A) IN GENERAL.—The Director shall  
8 maintain and periodically update a publicly  
9 available dashboard that, with respect to each  
10 position in the competitive service for which an  
11 examining agency examined applicants during  
12 the applicable period, includes—

13 (i) the type of assessment used, such  
14 as—

15 (I) a behavioral off-the-shelf as-  
16 sessment;

17 (II) a résumé review conducted  
18 by a subject matter expert;

19 (III) an interview conducted by a  
20 subject matter expert;

21 (IV) a technical off-the-shelf as-  
22 sessment; or

23 (V) a cognitive ability test;

24 (ii) whether or not the agency selected  
25 a candidate for the position; and

1 (iii) the hiring authority used to fill  
2 the position.

3 (B) TIMING.—

4 (i) INITIAL DATA.—Not later than  
5 180 days after the date of enactment of  
6 this Act, the Director shall update the  
7 dashboard described in subparagraph (A)  
8 with data for positions in the competitive  
9 service for which an examining agency ex-  
10 amined applicants during the period begin-  
11 ning on the date of enactment of this Act  
12 and ending on the date of submission of  
13 the report.

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

23 (2) ANNUAL PROGRESS REPORT.—Each year,  
24 the Director shall make publicly available and sub-  
25 mit to Congress an overall progress report that in-



1 includes summary data of the use of examinations (as  
2 defined in subsection (a) of section 3308 of title 5,  
3 United States Code, as added by subsection (a) of  
4 this section) for the competitive service, including  
5 technical assessments, broken down by applicant de-  
6 mographic indicator, including veteran status, race,  
7 gender, disability, and any other measure the Direc-  
8 tor determines appropriate, using the data available  
9 as of October 1, 2020, as a baseline.

10 (d) GAO REPORT.—Not later than 5 years after the  
11 date of enactment of this Act, the Comptroller General  
12 of the United States shall submit to Congress a report  
13 that—

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

16 (2) assesses the impact and modifications to the  
17 hiring process for the competitive service made by  
18 this section and the amendments made by this sec-  
19 tion; and

20 (3) makes recommendations for the improve-  
21 ment of the hiring process for the competitive serv-  
22 ice.

1 **SEC. 4. AMENDMENTS TO COMPETITIVE SERVICE ACT OF**  
2 **2015.**

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

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

8 (2) by redesignating paragraph (5) as para-  
9 graph (6); and

10 (3) by inserting after paragraph (4) the fol-  
11 lowing:

12 “(5) **PLATFORM FOR SHARING RÉSUMÉS OF IN-**  
13 **DIVIDUALS ON CERTIFICATES OF ELIGIBLES.**—The  
14 Director of the Office shall establish and operate a  
15 platform on which an appointing authority can  
16 share, with other appointing authorities and the  
17 Chief Human Capital Officers Council established  
18 under section 1303 of the Chief Human Capital Of-  
19 ficers Act of 2002 (5 U.S.C. 1401 note; Public Law  
20 107–296), the résumés of individuals who are on a  
21 certificate of eligibles requested by the appointing  
22 authority.”.

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

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

3           (2) by inserting after subsection (b) the fol-  
4 lowing:

5           “(c) MAXIMIZING SHARING OF APPLICANT INFORMA-  
6 TION.—

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

8                   “(A) the terms ‘agency’, ‘Director’, and  
9 ‘Office’ have the meanings given those terms in  
10 section 3308(a) of title 5, United States Code;  
11 and

12                   “(B) the term ‘competitive service’ has the  
13 meaning given the term in section 2102 of title  
14 5, United States Code.

15           “(2) MAXIMIZING SHARING.—The Director  
16 shall maximize the sharing of information among  
17 agencies regarding qualified applicants for positions  
18 in the competitive service, including by—

19                   “(A) providing for the delegation to other  
20 agencies of the authority of the Office to host  
21 multi-agency hiring actions to increase the re-  
22 turn on investment on high-quality pooled an-  
23 nouncements; and

24                   “(B) sharing certificates of eligibles for ap-  
25 pointment.”.

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

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

7 (a) IN GENERAL.—Subsection (c) of section 3308 of  
8 title 5, United States Code, as so designated by section  
9 3(a), is amended—

10 (1) by striking “scientific, technical, or profes-  
11 sional”;

12 (2) by inserting “legally” before “performed”;  
13 and

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

17 (b) IMPLEMENTATION.—

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

23 (2) HIRING PRACTICES.—Not later than 1 year  
24 after the date of enactment of this Act, the Director  
25 and the head of any other examining agency shall

1 amend the hiring practices of the Office or the other  
2 examining agency, respectively, in accordance with  
3 the amendments made by subsection (a).

4 **SEC. 6. TALENT TEAMS.**

5 (a) **FEDERAL AGENCY TALENT TEAMS.**—

6 (1) **IN GENERAL.**—An agency may establish 1  
7 or more talent teams (referred to in this section as  
8 “agency talent teams”), including at the component  
9 level.

10 (2) **DUTIES.**—An agency talent team shall pro-  
11 vide hiring support to the agency and other agencies,  
12 including by—

13 (A) improving examinations (as defined in  
14 subsection (a) of section 3308 of title 5, United  
15 States Code, as added by section 3(a));

16 (B) facilitating writing job announcements  
17 for the competitive service;

18 (C) sharing high-quality certificates of eli-  
19 gibles; and

20 (D) facilitating hiring for the competitive  
21 service using examinations (as defined in such  
22 subsection (a)) and subject matter experts.

23 (b) **OFFICE OF PERSONNEL MANAGEMENT.**—The  
24 Director may establish a Federal talent team to support  
25 agency talent teams in facilitating pooled hiring actions

1 across the Federal Government, providing training, and  
2 creating technology platforms to facilitate hiring for the  
3 competitive service, including—

4           (1) the development of technical assessments;

5           and

6           (2) the sharing of certificates of eligibles under  
7           sections 3318(b) and 3319(c) of title 5, United  
8           States Code.

○