



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Monday, January 11, 2016

MEMORANDUM FOR: HEADS OF DEPARTMENTS AND AGENCIES

FROM: BETH F. COBERT, ACTING DIRECTOR

Subject: Appointments and Awards During the 2016 Presidential Election Period

During this Presidential election year, I would like to remind agency heads of the need to ensure all personnel actions remain free of political influence or other improprieties and meet all relevant civil service laws, rules, and regulations. All official personnel records should clearly document continued adherence to Federal merit principles and remain free of any prohibited personnel practices. In particular, any appointments of political appointees, Schedule C employees, and Noncareer Senior Executive Service (SES) members to competitive or non-political excepted service positions or to career SES positions require careful attention to ensure they comply with merit principles regarding fair and open competition.

The U.S. Office of Personnel Management's (OPM's) current policy requires the pre-appointment review of all competitive and non-political excepted service appointment actions that involve the appointment or conversion of a current or former political appointee, Schedule C employee, or Noncareer SES member. OPM will continue to conduct merit staffing reviews of proposed career SES selections of political, Schedule C, and Noncareer SES appointees **before** those selections are presented to a Qualifications Review Board (QRB) for certification of executive qualifications. As it has in the past, OPM will suspend the processing of QRB cases during agency head transitions.

I have attached additional guidance concerning these appointments, incentive awards, and other employment matters, as well as instructions for submitting requests for pre-appointment review. If you have questions or need further information regarding pre-appointment reviews, contact Ana A. Mazzi, Deputy Associate Director for Merit System Accountability and Compliance, at (202) 606-4309 or PoliticalConversions@opm.gov. For questions concerning executive resources management or incentive awards, contact Steve Shih, Deputy Associate Director for Senior Executive Services and Performance Management, at (202) 606-8046 or Performance-Management@opm.gov.

Attachments

1. Guidelines on Processing Certain Appointments and Awards during the 2016 Election Period, including OPM's Memo on Political Appointees and Career Civil Service Positions, Pre-Appointment Review Checklists, and Q&As
2. Merit System Principles, Prohibited Personnel Practices, and Civil Service Rules
3. Do's and Don'ts for Converting Schedule C and Noncareer SES Employees to the Competitive Service

cc: Chief Human Capital Officers and Human Resources Directors

GUIDELINES ON PROCESSING CERTAIN APPOINTMENTS AND AWARDS DURING THE 2016 ELECTION PERIOD

OPM and Federal agencies share basic responsibility for ensuring all personnel actions adhere to the Federal merit principles at 5 U.S.C. 2301 and remain free of any prohibited personnel practices set forth at 5 U.S.C. 2302. During an election period, these requirements demand particularly close attention to ensure all agency personnel actions adhere faithfully to these principles.

I. Appointment of Current or Former Political Appointees to Career Civil Service Positions

Agencies must seek prior approval from OPM before appointing a current or recent political appointee to a competitive or non-political excepted service position at any level under the provisions of title 5, United States Code. A former or recent political appointee is someone who held a political appointment covered by OPM's policy within the previous five-year period. OPM reviews these proposed appointments to ensure they comply with merit system principles and applicable civil service laws. OPM's memo and instructions regarding political appointees and career civil service positions is available at <https://www.chcoc.gov/content/political-appointees-and-career-civil-service-positions>. The memo includes pre-appointment review checklists to assist agencies in preparing their submissions for review.

Note: Schedule C employees may not be detailed to competitive service positions without prior OPM approval [see 5 CFR 300.301(c)], and no competitive service vacancy should be created for the sole purpose of selecting a Schedule C or Noncareer SES employee.

OPM prepared a series of questions and answers (Q&As) to respond to agency inquiries about its policy for pre-appointment reviews and to provide additional details that will help agencies meet the policy's requirements. These Q&As, which follow, are also available at <http://www.opm.gov/FAQs/topic/ppa/index.aspx?page=1>.

II. Appointing Employees to the Senior Executive Service

OPM will continue to conduct merit staffing reviews of proposed career SES selections that involve a current or former political, Schedule C, or Noncareer SES appointee before such cases are formally presented to a Qualifications Review Board (QRB). Agencies should carefully review all actions that would result in the career SES appointment of a political, Schedule C, or Noncareer SES before forwarding such cases to OPM.

Note: All SES vacancies to be filled by initial career appointment must be publicly announced (5 CFR 317.501). Only a career SES or career-type non-SES appointee may be detailed to a Career-Reserved position (5 CFR 317.903(c)).

In addition, OPM will suspend the processing of QRB cases when an agency head leaves office or announces his or her intention to leave office, or if the President has nominated a new agency head. OPM imposes a moratorium on QRB cases as a courtesy to a new agency head when it learns of an agency head's planned departure. However, OPM will consider requests for

exceptions to such a moratorium on a case-by-case basis. When a presidential transition occurs, OPM will determine the disposition of QRB cases based upon the policy of the new administration.

III. Prohibition on Awards to Certain Appointees

Under 5 U.S.C 4508, an incentive award may not be given during the period beginning June 1, 2016, through January 20, 2017, to a senior politically appointed officer, defined as:

1. An individual who serves in an SES position and is not a career appointee as defined in 5 U.S.C. 3132(a)(4), or
2. An individual who serves in a position of a confidential or policy determining character as a Schedule C employee.

Because Limited Term/Limited Emergency appointees are not “career appointees,” they meet this definition of senior politically appointed officer and cannot receive incentive awards during the 2016 election period.

In addition, all political appointees continue to be covered by a freeze on discretionary awards, bonuses, and similar payments. This freeze was established by Presidential Memorandum on August 3, 2010 (<https://obamawhitehouse.archives.gov/the-press-office/presidential-memorandum-freeze-discretionary-awards-bonuses-and-similar-payments>) and continues to remain in effect until further notice (<https://www.chcoc.gov/content/guidance-awards-fiscal-year-2014>). Agencies should continue to apply this freeze in accordance with OPM’s guidance at <https://www.chcoc.gov/content/guidance-freeze-discretionary-awards-bonuses-and-similar-payments-federal-employees-serving>.

For additional guidance regarding appointments of current or former political appointees to competitive service, non-political excepted service, or career SES position, contact Ana A. Mazzi, Deputy Associate Director for Merit System Accountability and Compliance, at (202) 606-4309 or PoliticalConversions@opm.gov. For guidance on awards during the 2016 Presidential election period, contact Steve Shih, Deputy Associate Director for Senior Executive Services and Performance Management, by calling (202) 606-8046 or Performance-Management@opm.gov.

OPM Policy on Political Appointees and Career Civil Service Positions Questions and Answers

Q: Is this the first time OPM has put a policy in place covering the hiring of current or former political appointees for career civil service positions?

A: No. It has been OPM policy since the Carter Administration and under every President since to ensure that politics play no role when agencies hire political appointees for career Federal jobs. In the past, OPM conducted a pre-hiring review of proposed appointments to the career competitive service during the year leading up to a Presidential election. Effective January 1, 2010, OPM's pre-hiring oversight expanded beyond the Presidential election year to ensure that, going forward, hiring of current or former political appointees—whenever it occurs—is fair, open, and free from political influence.

Q: What is different about the policy effective January 1, 2010, compared with previous OPM policy?

A: There were two changes in OPM's policy. First, as noted above, OPM now conducts pre-hiring reviews on a continuing basis, not just during the year leading up to a Presidential election. Second, we expanded the scope of our review for future hiring decisions. In the past OPM only reviewed an agency's proposed hiring of a current or former political appointee when the career Federal job was in the competitive service. Under our revised policy, OPM reviews proposed hiring of current or former political appointees for jobs in the excepted service as well. OPM's responsibility to ensure merit-based hiring for Federal jobs includes both the excepted and competitive service.

Q: Why did OPM revise its policy in this way?

A: One of OPM's most important roles by law is to ensure that agencies comply with merit system principles and conduct fair and open competition for Federal jobs. OPM leadership is committed to upholding these principles every day of every year. So, OPM expanded its oversight to safeguard Federal hiring from political influence. The revised policy is also in line with recommendations from the Government Accountability Office.

Q: Why does OPM review the proposed hiring of individuals who held political positions as long as five years ago?

A: Consistent with past OPM policy, our review looks back five years to ensure we safeguard merit principles in consecutive administrations.

Q: How will OPM determine the five-year period for former political appointees?

A: We determine this period by looking back five years from the closing date of the vacancy announcement. If an applicant for a career Federal job held a political appointment covered by OPM's policy during that five-year period, OPM will review the proposed selection to ensure it meets merit system principles. We recognize that vacancy announcements are not always used for excepted service positions. In such cases, the five-year period will be determined by looking back five years from the date an agency submits its request for pre-hiring review to OPM.

Q: Will the policy change the way OPM conducts merit staffing reviews and the Qualifications Review Board for SES applications?

A: No. OPM will continue to conduct merit staffing reviews first followed by the Qualifications Review Board.

Q: How long will it take OPM to complete its pre-hiring review?

A: OPM will complete its review and notify the agency of our decision within 15 business days from the date we receive all of the information needed from the agency.

Q: What will OPM look for during its pre-hiring review?

A: OPM's objective is to safeguard fair and open competition and protect against political influence in the hiring for career Federal jobs. With this in mind, the two most common reasons for OPM not to approve a proposed selection are (1) when the career job appears to have been created or tailored solely for the benefit of the current or former political appointee, or (2) when competition for the career job has been limited inappropriately.

Q: Will OPM go back and review the hiring of former political appointees who are currently serving in career appointments?

A: No. The policy only applies prospectively to hiring on or after January 1, 2010.

Q: Does OPM's pre-hiring review apply to a current political appointee who held a career Federal job in the past and is eligible for reinstatement?

A: It depends. OPM will not conduct a pre-hiring review if an agency wants to non-competitively select a current or former political appointee for reinstatement to a Federal job at the same or lower grade than previously held. However, OPM will review the proposed selection of a current or former political appointee who is competing for a career Federal job at a higher grade or with greater promotion potential than the career job previously held.

Q: Does OPM's pre-hiring review apply to proposed selections for Senior Level (SL) and Scientific or Professional (ST) positions?

A: Yes.

Q: Will OPM review proposed appointments under the Pathways for Students and Recent Graduates?

A: Yes. OPM will review initial appointments that may lead to non-competitive conversion.

Q: Which Schedule A political appointees are subject to OPM's pre-appointment review?

A: Consistent with past OPM policy, appointments made under the following Schedule A authorities are subject to pre-hiring review:

- Appointments made by the President without confirmation by the Senate [5 CFR 213.3102(c)].
- Assistants to top-level Federal officials if the position is being filled by a person designated by the President as a White House Fellow [5 CFR 213.3102(z)].

Q: Does OPM's policy apply to a former political appointee who is a current career Federal employee and who applies for another Federal job?

A: No. For example, if a person was a political appointee in 2007, was hired for a career Federal job in 2008, and then applies for and is selected for another career Federal job, OPM would not review the selection under the revised policy.

Q: Will OPM conduct a pre-hiring review when an agency wants to select a current or former political appointee for a temporary or term position?

A: No. We will not review temporary or term appointments.

Q: Are there other circumstances under which OPM will not review the proposed hiring of a current or former political appointee for a career position?

A: Yes. We will not review hiring under 5 CFR 315, subpart F, and 5 CFR 337, subpart B. These regulations allow for non-competitive appointments to the Federal civil service under certain conditions (e.g., direct-hire, the appointment of 30 percent or more disabled veterans, the appointment of Peace Corps personnel and certain former overseas employees).

Merit System Principles, Prohibited Personnel Practices, and Civil Service Rules

§ 2301. Merit system principles

- (a) This section shall apply to—
 - (1) an Executive agency; and
 - (2) the Government Printing Office.
- (b) Federal personnel management should be implemented consistent with the following merit system principles:
 - (1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge and skills, after fair and open competition which assures that all receive equal opportunity.
 - (2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.
 - (3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.
 - (4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.
 - (5) The Federal work force should be used efficiently and effectively.
 - (6) Employees should be retained on the basis of adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.
 - (7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.
 - (8) Employees should be—
 - (A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
 - (B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.
 - (9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—
 - (A) a violation of any law, rule, or regulation, or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) In administering the provisions of this chapter—

- (1) with respect to any agency (as defined in section 2302(a)(2)(C) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action including the issuance of rules, regulations, or directives; and
- (2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives;

which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the merit system principles.

§ 2302. Prohibited personnel practices

(a)

(1) For the purpose of this title, “prohibited personnel practice” means any action described in subsection (b).

(2) For the purpose of this section—

(A) “personnel action” means—

- (i) an appointment;
- (ii) a promotion;
- (iii) an action under chapter 75 of this title or other disciplinary or corrective action;
- (iv) a detail, transfer, or reassignment;
- (v) a reinstatement;
- (vi) a restoration;
- (vii) a reemployment;
- (viii) a performance evaluation under chapter 43 of this title;
- (ix) a decision concerning pay, benefits, or awards concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph;
- (x) a decision to order psychiatric testing or examination;
- (xi) the implementation or enforcement of any nondisclosure policy, form, or agreement; and

- (xii) any other significant change in duties, responsibilities, or working conditions; with respect to an employee in, or applicant for, a covered position in an agency, and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31;
- (B) “covered position” means, with respect to any personnel action, any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include any position which is, prior to the personnel action—
- (i) excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or
 - (ii) excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration; and
- (C) “agency” means an Executive agency and the Government Printing Office, but does not include—
- (i) a Government corporation, except in the case of an alleged prohibited personnel practice described under subsection (b)(8);
 - (ii) Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or
 - (iii) the Government Accountability Office.
- (D) “disclosure” means a formal or informal communication or transmission, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee or applicant providing the disclosure reasonably believes that the disclosure evidences—
- (i) any violation of any law, rule, or regulation; or
 - (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
- (b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—
- (1) discriminate for or against any employee or applicant for employment—

- (A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);
 - (B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);
 - (C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));
 - (D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or
 - (E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;
- (2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—
- (A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or
 - (B) an evaluation of the character, loyalty, or suitability of such individual;
- (3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;
- (4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;
- (5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;
- (6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;
- (7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;

- (8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—
- (A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—
 - (i) a violation of any law, rule or regulation, or
 - (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs;
or
 - (B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—
 - (i) a violation of any law, rule, or regulation, or
 - (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
- (9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—
- (A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation—
 - (i) with regard to remedying a violation of paragraph (8); or
 - (ii) other than with regard to remedying a violation of paragraph (8);
 - (B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);
 - (C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or
 - (D) for refusing to obey an order that would require the individual to violate a law;

- (10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;
- (11)
- (A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement;
 - (B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement; or
- (12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title; or
- (13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."

This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress. For purposes of paragraph (8), (i) any presumption relating to the performance of a duty by an employee whose conduct is the subject of a disclosure as defined under subsection (a)(2)(D) may be rebutted by substantial evidence, and (ii) a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.

- (c) The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring (in consultation with the Office of Special Counsel) that agency employees are informed of the rights and remedies available to them under this chapter and chapter 12 of this title. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.
- (d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—
- (1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
 - (2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;
 - (3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 (d)), prohibiting discrimination on the basis of sex;
 - (4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or
 - (5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.
- (e)
- (1) For the purpose of this section, the term “veterans’ preference requirement” means any of the following provisions of law;
 - (A) Sections 2108, 3305(b), 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317(b), 3318, 3320, 3351, 3352, 3363, 3501, 3502(b), 3504, and 4303(e) and (with respect to a preference eligible referred to in section 7511(a)(1)(B)) subchapter II of chapter 75 and section 7701.
 - (B) Sections 943(c)(2) and 1784(c) of title 10.
 - (C) Section 1308(b) of the Alaska National Interest Lands Conservation Act.
 - (D) Section 301(c) of the Foreign Service Act of 1980.
 - (E) Sections 106(f), 7281(e), and 7802(e) of title 38.
 - (F) Section 1005(a) of title 39.

- (G) Any other provision of law that the Director of the Office of Personnel Management designates in regulations as being a veterans' preference requirement for the purposes of this subsection.
 - (H) Any regulation prescribed under subsection (b) or (c) of section 1302 and any other regulation that implements a provision of law referred to in any of the preceding subparagraphs.
- (2) Notwithstanding any other provision of this title, no authority to order corrective action shall be available in connection with a prohibited personnel practice described in subsection (b)(11). Nothing in this paragraph shall be considered to affect any authority under section 1215 (relating to disciplinary action).
- (f)
- (1) A disclosure shall not be excluded from subsection (b)(8) because—
 - (A) the disclosure was made to a supervisor or to a person who participated in an activity that the employee or applicant reasonably believed to be covered by subsection (b)(8)(A)(i) and (ii);
 - (B) the disclosure revealed information that had been previously disclosed;
 - (C) of the employee's or applicant's motive for making the disclosure;
 - (D) the disclosure was not made in writing;
 - (E) the disclosure was made while the employee was off duty; or
 - (F) of the amount of time which has passed since the occurrence of the events described in the disclosure.
 - (2) If a disclosure is made during the normal course of duties of an employee, the disclosure shall not be excluded from subsection (b)(8) if any employee who has authority to take, direct others to take, recommend, or approve any personnel action with respect to the employee making the disclosure, took, failed to take, or threatened to take or fail to take a personnel action with respect to that employee in reprisal for the disclosure.

Civil Service Rule 4.2

Prohibition against racial, political or religious discrimination. No person employed in the executive branch of the Federal Government who has authority to take or recommend any personnel action with respect to any person who is an employee in the competitive service or any eligible or applicant for a position in the competitive service shall make any inquiry concerning the race, political affiliation, or religious beliefs of any such employee, eligible, or applicant. All disclosures concerning such matters shall be ignored, except as to such membership in political parties or organizations as constitutes by law a disqualification for Government employment. No discrimination shall be exercised, threatened, or promised by any person in the executive branch

of the Federal Government against or in favor of any employee in the competitive service, or any eligible or applicant for a position in the competitive service because of his race, political affiliation, or religious beliefs, except as may be authorized or required by law.

Civil Service Rule 7.1

Discretion in filling vacancies. In his discretion, an appointing officer may fill any position in the competitive service either by competitive appointment from a civil service register or by noncompetitive selection of a present or former Federal employee, in accordance with the Civil Service Regulations. He shall exercise his discretion in all personnel actions solely on the basis of merit and fitness and without regard to political or religious affiliations, marital status, or race.

Do's and Don'ts for Converting Political Appointees, Schedule C, and Noncareer SES Employees to the Competitive or Non-Political Exceptive Service

Effective January 1, 2010, OPM conducts on-going pre-appointment reviews of current or former political appointee, Schedule C employee, and Noncareer SES member appointments to the competitive or exceptive service. OPM seeks to ensure that the merit system principle of fair and open competition is protected. With this in mind, these are the two most common reasons for OPM **not** to approve an appointment or a conversion:

1. the new position appears to have been designed solely for the individual who is being converted, and/or
2. competition has been limited inappropriately.

Below are “Do’s” that will help agencies with the conversion approval process:

- **Do** make a public announcement through OPM’s USAJOBS when filling competitive or excepted service vacancies from candidates outside your own agency’s workforce.
- **Do** carefully consider the Interagency Career Transition Assistance Plan for Displaced Employees regulations (5 CFR 330, Subpart G) before making selections.
- **Do** ensure the Chief Human Capital Officer and Human Resources Director closely review all such proposed actions to determine if they meet the test of merit.
- **Do** ensure the Chief Human Capital Officer and Human Resources Director gather all necessary internal agency approvals before presenting a case to OPM for review.

And “Don’ts”:

- **Don’t** create or announce a competitive or excepted service vacancy for the sole purpose of selecting a current or former political appointee, Schedule C employee, or Noncareer SES member.
- **Don’t** remove the Schedule C or Noncareer SES elements of a position solely to appoint the incumbent into the competitive or excepted service.