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## APPENDIX C

### Prohibited Personnel Practices Under 5 U.S.C. 2302

- (a) (1) For the purpose of this title, “prohibited personnel practice” means any action described in subsection (b) of this section.
- (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, or 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; and
  - (x) any other significant change in duties or responsibilities which is inconsistent with the employee’s salary or grade level; with respect to an employee in, or applicant for, a covered position in an agency;
- (B) “covered position” means 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 –
- (i) a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

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- (ii) any position 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.
- (C) “agency” means an Executive agency, and the Government Printing Office, but does not include –
- (i) a Government corporation;
  - (ii) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense 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 General Accounting Office.
- (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 –

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- (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) a 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

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- (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 of the Merit Systems Protection Board, 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;
    - (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,

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of the District of Columbia, or the United States; or (11) 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. This subsection shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to the Congress.

- (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. 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.

(Added Pub.L. 95-454, Title I, §101(a), Oct. 13, 1978, 92 Stat. 1114, and amended Pub.L. 101-12, §4, Apr. 10, 1989, 103 Stat. 32; Pub.L. 101-474, §5(d), Oct. 30, 1990, 104 Stat. 1099.)