

U.S. Office of Special Counsel (OSC) Information Sheet



Improper Recommendations – 5 U.S.C. § 2302(b)(2)

PURPOSE

This information sheet provides general guidance and background information on **5 U.S.C. § 2302(b)(2)**. This document does not serve as legal advice and should not be cited as legal authority. Rather, the statute and current case law control with respect to matters discussed here.

WHAT IS (b)(2)?

Section 2302(b)(2) prohibits an official with the authority to take or influence a personnel action from soliciting or considering any employment recommendation from a senator or congressperson unless the recommendation is based on personal knowledge or records and consists of an evaluation of the work performance, ability, aptitude, general qualifications or character/suitability of the candidate. Although the language of section 2302(b)(2) appears to cover any recommendation or statement, including those from agency officials or coworkers, the Merit Systems Protection Board has interpreted the law more narrowly, holding that the legislative intent is to prevent the use of political influence to secure positions or promotions.

WHAT IS PROHIBITED?

Examples of section 2302(b)(2) violations include:

- A hiring official receiving and considering a recommendation from a senator to promote a specific individual to a senior position and, the recommendation is not based on personal knowledge. The recommendation is based on the individual's political affiliation, family connections, or political contributions to the senator's campaign, rather than on the individual's qualifications or job performance.
- A hiring official receiving and considering a recommendation from a congressperson for a veteran where the congressperson has no personal knowledge of the veteran's qualifications. Instead, the recommendation is based solely on the veteran's military service and the congressperson's desire to help veterans secure employment.

TIPS AND RECOMMENDATIONS

1. Agencies should establish and strictly enforce merit-based hiring processes that focus on evaluating candidates' qualifications, experience, and ability to perform the job. Recommendations, whether from a senator, congressperson, or other source, should be considered only to the extent that they align with the merit-based selection criteria.
2. Implement clear criteria and transparent processes for all hiring, promotions, and other personnel decisions, ensuring they are based on merit, qualifications, and job-related factors, not personal biases or political connections.
3. Use objective standards and standardized performance evaluations. Require decision-makers to document their rationale for hiring, promotion, or disciplinary actions to ensure that they are consistent with the agency's policies and merit-based principles.

For more information on filing a complaint or making a disclosure: 202-804-7000, 800-872-9855 or submit a question at info@osc.gov. Please note that OSC may not provide advice regarding the merits of a complaint or whether the allegation meets the statutory definitions.

Updated and detailed information on OSC and its procedures can be found on OSC's website at <https://osc.gov>.

For information about training and the 2302c Certification Program please contact OSC's Outreach Unit via email at certification@osc.gov.