

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



Obstructing Right to Compete – 5 U.S.C. § 2302(b)(4)

PURPOSE

This information sheet provides general guidance and background information on **5 U.S.C. § 2302(b)(4)**. 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)(4)?

Section 2302(b)(4) prohibits an official with the authority to take or influence a personnel action from deceiving or willfully obstructing any person's right to compete for employment. There must be evidence of a deliberate effort to prevent someone from competing. This right to compete also extends to details that are competed, temporary promotional opportunities, and permanent promotional opportunities.

WHAT IS PROHIBITED?

Examples of section 2302(b)(4) violations include:

- Intentionally and falsely lowering an employee's performance rating to make them a less desirable candidate for an open promotional opportunity.
- Giving a candidate false information about the application process or job requirements, such as telling them that they are ineligible or that the position has been filled when it has not.
- Intentionally failing to contact a candidate with a job offer and falsely telling the selecting official that the candidate was no longer interested in the position.
- Modifying or adding qualifications that were not included in the original job posting to prevent certain candidates from applying or qualifying, such as requiring a specific certification after the application period has already started.
- Intentionally deleting a candidate's application materials to prevent them from being considered for an opportunity.

TIPS AND RECOMMENDATIONS

1. 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.
2. Ensure that vacancy announcements clearly outline the required qualifications, skills, and experience needed for a position. Avoid adding qualifications after the position is posted.
3. Implement fair interview practices by ensuring that interviews are structured and based on job-related questions.
4. Monitor and audit hiring practices periodically to ensure that candidates are not unlawfully obstructed.

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.