

Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual
collections.

Collection: Hauser, Richard
Folder Title: Nepotism
Box: OA 10254

To see more digitized collections
visit: <https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories
visit: <https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

Chapter 310

Employment of Relatives

Contents

SUBCHAPTER 1. RESTRICTIONS ON THE EMPLOYMENT OF RELATIVES

- 1-1. Coverage
- 1-2. Definitions
- 1-3. Restrictions

SUBCHAPTER 2. EMERGENCY EXCEPTIONS

- 2-1. Coverage
- 2-2. Exceptions

SUBCHAPTER 3. MISCELLANEOUS PROVISIONS

- 3-1. Saving Provision
- 3-2. Penalties

<i>For related information on—</i>	<i>See—</i>
Text of pertinent laws, rules, and regulations.....	Supplement 990-1
Members-of-family requirement.....	Chapter 338
Employment of sons and daughters of agency personnel....	Chapter 332, Appendix J Chapter 213 Chapter 338

Subchapter 1. Restrictions on the Employment of Relatives

1-1. COVERAGE

a. **Statutory.** Section 3110 of title 5, United States Code, restricts the employment of relatives of a public official in the official's own agency or in an agency over which he exercises jurisdiction or control. The restrictions apply throughout all three branches of the Federal Government and in the government of the District of Columbia. The restrictions apply to positions whose pay is derived from non-appropriated as well as appropriated funds.

b. **Regulatory.** In general, part 310 of the Commission's regulations, Employment of Relatives, parallels the statutory restrictions. Except as specified in subchapter 2, part 310 applies throughout the executive branch and in those portions of the legislative and judicial branches and of the government of the District of Columbia which are in the competitive service.

1-2. DEFINITIONS

a. **Agency.** In 5 U.S.C. 3110, "agency" is defined as an executive agency (i.e., an executive department, a Government corporation, or an independent establishment); an office, agency, or other establishment in the legislative branch; an office, agency, or other establishment in the judicial branch; and the government of the District of Columbia.

b. **Public official.** A public official is anyone who by law, rule, regulation, or delegation has appointment or promotion authority within his organization, or authority to recommend employees for appointment or promotion. Thus, any supervisor, regardless of his grade level, who has authority to appoint or promote, or to recommend the appointment or promotion of employees supervised by him, is a public official. Similarly, a personnel or placement officer who

has authority to appoint or promote or to recommend the appointment or promotion of employees is a public official. However, making a determination that a person is eligible for appointment under applicable laws, regulations, or standards does not by itself constitute a recommendation.

c. **Relative.** The term "relative" includes the specific relationships stated in 5 U.S.C. 3110; i.e., father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. When popular and legal usage differ, the strict or legal definition is applied to all these terms. Specifically:

Nephew means the son of a public official's brother or sister.

Niece means the daughter of a public official's brother or sister.

Uncle means the brother of a public official's father or mother.

Aunt means the sister of a public official's father or mother.

Brother-in-law means the brother of a public official's spouse, or the spouse of his sister.

Sister-in-law means the sister of a public official's spouse, or the spouse of his brother.

d. **Appointment, employment, promotion, or advancement.** (1) *Appointment and employment.* The terms "appointment" and "employment" are essentially synonymous and include personnel actions, other than promotions, which are discretionary with an appointing official and are not based on a statutory requirement. Examples of appointment and employment subject to the restrictions are initial hires from a register or other source, reinstatements,

reassignments, and transfers. However, a non-discretionary action such as restoration after military service is not an appointment or employment for this purpose. Likewise, a conversion to career employment based on three years of indefinite or TAPER employment (section 7-6 of chapter 315) is not appointment or employment for this purpose.

(2) *Promotion and advancement.* The terms "promotion" and "advancement" are also essentially synonymous. In general, they include personnel actions which increase an employee's grade, pay, or rank, provided the action is discretionary with the appointing official and is not based on a statutory requirement. A within-grade increase is not a promotion or advancement for this purpose. An action which increases an employee's relative standing in the agency's organizational structure is subject to the restriction, even though no increase in grade or pay is involved.

e. *Chain of command.* The chain of command is the line of supervisory personnel that runs from a public official to the head of his agency.

f. *Jurisdiction or control.* An official exercises jurisdiction or control over an agency only if he exercises direct control over some or all of the agency's operations. Thus, Members of Congress serving on an agency's appropriations committee or officials of such central agencies as the Bureau of the Budget or the Civil Service Commission are not considered to exercise jurisdiction or control over an agency in the sense contemplated here.

1-3. RESTRICTIONS

a. *On advocacy.* (1) *Basic restriction.* A public official may not advocate a relative's appointment, employment, promotion, or advancement anywhere in his agency or in an agency over which he exercises jurisdiction or control. A public official advocates a relative's appointment if he recommends the action either orally or in writing.

(2) *Referral for consideration.* Because of the special relationship between a supervisor and his

subordinates, the regulations provide that an official is considered to advocate a relative's appointment if he simply refers the relative for consideration to one of his subordinates (i.e., to someone standing lower in the chain of command). A referral for consideration, in this context, is any action, even though short of an actual recommendation, that reveals an interest in securing or facilitating a person's consideration for appointment, employment, promotion, or advancement. Examples of referrals for consideration are the transmittal of an application to a personnel or line official, providing a letter of introduction to an appointing official, or the like.

(3) *Employment inquiries.* A public official may properly reply to a written or oral employment inquiry (voucher) about the qualifications and suitability of a relative who has applied for employment in the public official's agency, provided he refrains from advocating employment of the relative. Completion of a voucher used to verify past experience and determine suitability is not in itself an advocacy or a recommendation within the prohibitions of the statute and the regulations. On the other hand, an affirmative answer to the question, "Would you recommend this person for appointment in _____ agency?" constitutes advocacy. The official should state in reply to such a question that in view of the restrictions on employment of relatives he must refrain from answering any questions or making any statements that could be construed as advocacy on his part of his relative's appointment.

b. *On personnel actions.* (1) *Basic restrictions.* A public official may not appoint, employ, promote, or advance in his agency or in an agency over which he exercises jurisdiction or control (a) one of his own relatives or (b) the relative of any other public official in the agency if that official has advocated the action. These restrictions apply through the entire agency; for example, a public official in the Department of the Army may not advocate

employment of a relative in the Department of the Navy or elsewhere in the Department of Defense, and a public official in the Agency for International Development may not advocate employment of a relative in the Peace Corps or elsewhere in the Department of State.

(2) *Employment of subordinates.* The relative of a public official may be employed by a subordinate of the official if the official himself is in no way involved in the action and if the agency concerned has no regulations prohibiting such employment. However, when a person officially charged with approving personnel actions delegates this responsibility to appointing officials, one of his relatives can be appointed by a subordinate official only if there is full and continuing delegation of authority. If the action is taken in the name of the public official, or the public official is required to review or approve the action, it is still officially the public official's action, and the employment restrictions apply.

(3) *Specific applications.* (a) A supervisory position classification specialist is not precluded from determining that the position of one of his own relatives is classifiable at a higher level, as far as 5 U.S.C. 3110 or part 310 is concerned; although he is a public official, this action involves the position rather than the incumbent. However, as agency conduct regulations require employees to avoid any action which might result in or create the appearance of preferential treatment to any person, a classification specialist in this situation should disqualify himself.

(b) A public official may not promote a relative whose position is reclassified at a higher grade if the action is discretionary with the public official. However, he may promote the relative when failure to do so is an adverse

action under the Commission's regulations and instructions; i.e., when the position is upgraded without significant change in duties either on the basis of a new classification standard or as the result of correction of an original classification error.

(c) A relative of a public official may not be promoted if the public official was a member of the promotion panel that selected the relative for promotion unless the public official disqualified himself and did not participate in the decision affecting the relative.

c. On selections from certificates of eligibles.

(1) *Preference eligibles.* (a) The restrictions in this subchapter do not prevent the appointment of a relative who is a preference eligible if (1) his name is within reach for selection from an appropriate certificate of eligibles and (2) an alternative selection cannot be made from the certificate without passing over the preference eligible and selecting a person who is not a preference eligible. This will occur only when the preference eligible is first on a certificate of three and both lower-ranking eligibles are nonpreference eligibles.

(b) A public official cannot later promote or advocate the promotion of a relative who is appointed under the above provision. The provision applies only to appointments.

(2) *Consideration of eligibles.* An appointing official need not consider an eligible on a certificate if appointment of the eligible is prohibited by the restrictions in this subchapter; he may consider the next available eligible instead. Advance approval need not be obtained from the Commission in order to eliminate the eligible from consideration, but an explanatory statement must be furnished on or with the certificate report.

Subchapter 2. Emergency Exceptions

2-1. COVERAGE

The provisions of this subchapter apply to all offices which are subject to the restrictions of section 3110 of title 5, United States Code; i.e., to an office, agency, or other establishment in the executive, legislative, or judicial branch of the Federal Government, and in the government of the District of Columbia.

2-2. EXCEPTIONS

When necessary to meet urgent needs resulting from an emergency posing an immediate

threat to life or property, an agency may employ relatives to meet these needs without regard to the restrictions in section 3110 of title 5, United States Code, or part 310 of the Commission's regulations. Appointments under these conditions are temporary not to exceed one month, but may be extended for a second month if the emergency still exists. In the competitive service, the initial appointment is a special needs appointment, which may be extended only with the prior approval of the appropriate Commission office. (See Chapter 316, Subchapter 4, Temporary and Indefinite Employment.)

Subchapter 3. Miscellaneous Provisions

3-1. SAVING PROVISION

Section 3110 of title 5, United States Code, was enacted by section 221 of Public Law 90-206. Section 221(c) included a saving provision, reading as follows:

"(c) The amendments made by this section do not apply to an appointment, employment, advancement, or promotion made or advocated by a public official of any individual who is a relative of the public official if, prior to the effective date of this section, the individual was appointed by the public official, or received an appointment advocated by the public official, and is serving under the appointment on such effective date."

It is to be noted that the saving provision in section 221(c) does not apply to all relatives employed when the law becomes effective. It applies only in a situation in which a public official, after December 15, 1967, undertakes

to appoint, employ, advance, or promote a relative or recommends for appointment, employment, advancement, or promotion a relative *whom he himself had appointed* prior to December 16, 1967, or *whose appointment was advocated by him* before that date (see 47 Comp. Gen. 636).

3-2. PENALTIES

Section 3110(c) of title 5, United States Code, provides:

"(c) An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced."

Payments made in violation of section 3110 are subject to recovery. In addition, public officials who violate the civil service regulations governing employment of relatives are subject to applicable penalties on this account.

THE WHITE HOUSE

WASHINGTON

June 29, 1983

MEMORANDUM FOR JOHN S. HERRINGTON
ASSISTANT TO THE PRESIDENT
FOR PRESIDENTIAL PERSONNEL

FROM: RICHARD A. HAUSER *15/*
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Under Secretary of Commerce
for Travel and Tourism

We have been advised that Donna Tuttle, wife of Bob Tuttle, is being considered for appointment to the above-referenced position. The process by which Mrs. Tuttle first came to be considered for this position raises concerns under the anti-nepotism statute, 5 U.S.C. § 3110. It is our understanding that Bob Tuttle made inquiries concerning the suitability of his wife for this position with Joe Ryan and yourself. The anti-nepotism statute prohibits a "public official" -- defined as an officer with authority "to recommend individuals for appointment, employment, promotion, or advancement" in an agency -- from advocating the appointment of a relative for a position in any agency "over which he exercises jurisdiction or control." 5 U.S.C. § 3110(b). Under 5 U.S.C. § 3110(c), an individual who benefits from a recommendation prohibited by § 3110(b) is not entitled to pay.

It is not clear whether a technical violation of the anti-nepotism statute occurred in this case. It is of course Mr. Tuttle's job to recommend individuals for Presidential appointment, and while his portfolio does not specifically include the Commerce Department, nor is that area strictly off limits. He may thus be considered to fit the definition of "public official" in the statute. The critical question so far as actual violation of the statute is concerned would thus appear to be whether Mr. Tuttle exercises jurisdiction or control over the Commerce Department. While he obviously does not with respect to the operations of the Department, the Office of Presidential Personnel does exercise jurisdiction with respect to Presidential appointments at Commerce, and such authority may be considered sufficient under the statute.

Quite apart from the question of compliance with the anti-nepotism statute -- on which no definitive answer is possible -- this appointment raises serious appearance problems. The media has focused considerable attention on similar appearance problems in the recent past, and can be expected to do so in this case. While we understand Mrs. Tuttle to be eminently qualified for the position in question, her qualifications are likely to be overlooked by those in the media and on the Hill who are interested in embarrassing the Administration with renewed charges of nepotism. All of the individuals involved have been forthright in raising this question with our office, and we do not mean to suggest the existence of any willful or actual "nepotism." Appearance problems do, however, exist, and at a minimum they should be raised with Messrs. Meese, Baker and Deaver.

RAH:JGR:aw 6/29/83

cc: RAHauser
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

April 18, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Charges of Nepotism at USIA

On April 17 The Washington Post ran an article focusing on the hiring at USIA of relatives and friends of Administration officials. On April 18 both AP and UPI reported that Senator Zorinsky had directed inquiries to USIA Director Wick concerning nepotism at USIA. (Articles attached at Tab A.)

The basic prohibition against nepotism is found at 5 U.S.C. § 3110, with accompanying regulations at 5 C.F.R. § 310 (Tab B). These provisions prohibit a "public official" -- defined as an officer with legal authority to appoint individuals in an agency -- from appointing or advocating the appointment of a relative to an agency in which he serves or over which he exercises jurisdiction or control. Under the regulations referring a relative to a subordinate official in the chain of command for a position is deemed to constitute advocating appointment of the relative. 5 C.F.R. § 310.103(c).

Two of the individuals named in the articles -- Anne Collins and Catherine Smyth -- are described as friends, not relatives, of public officials. Neither the statute nor the regulations prohibit any practices involving mere friends. With respect to the other persons the pertinent questions are whether their relatives (1) had legal authority to appoint individuals in USIA (an often-overlooked requirement contained in the definition of "public official") and (2) served in or exercised jurisdiction or control over USIA. USIA is an independent agency within the executive branch. The Director reports to the President and the Secretary of State, and carries out his functions "[u]nder the direction of the Secretary of State." Reorg. Plan No. 2 of 1977, § 2, 91 Stat. 1636.

It would thus seem that the only appointments of even possible concern under 5 U.S.C. § 3110 are those of Barbara Haig and Lorette Conkling, the former because the Secretary of State exercises jurisdiction over USIA and the latter because former VOA director Conkling served in USIA. I have

Pass - down file

not yet determined if the young Haig and Conkling were hired before or after their fathers left government service. If after, there would be no 5 U.S.C. § 3110 problem.

Outside of the specific nepotism provisions, the broader rules governing the conduct of government officials may also be pertinent. These rules prohibit, inter alia, "giving preferential treatment to any organization or person" and "making a government decision outside official channels." Whether these broad rules have been violated hinges on the particular facts of each appointment.

I have not yet talked with Jon Sloat, since he has been on the Hill all day. I will report back as soon as I hear from him.

THE WHITE HOUSE

WASHINGTON

September 27, 1982

MEMORANDUM FOR CAROL McCAIN
DIRECTOR, VISITORS OFFICE

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Cindy Herrick

You have asked me whether there is any restriction or legal prohibition which would preclude you from hiring Cindy Herrick to work in the Visitors Office. You advise that you have known Ms. Herrick for a number of years and that she has heretofore done work in your office as a volunteer. You further advise that she is the niece of Ursula Meese.

The relevant statute, the so-called "anti-nepotism" law, provides in part:

A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official.

The term "relative" is defined as "with respect to a public official, an individual who is related to the public official as...niece..."

Based upon my review, it is my opinion that there is no legal restriction on the employment of Ms. Herrick. I base this on the following reasons:

- Ms. Herrick is not the niece of a public official, Ed Meese, but rather is the niece of Mrs. Meese; accordingly she is not within the statutory definition of proscribed relatives.
- Ms. Herrick will not be employed by the White House Office, as I understand that all of those in your office are U.S. Park Service employees.

- As a practical matter, it is you who seeks to hire Ms. Herrick; although I'm sure Mr. Meese would not oppose this employment, we do not need to reach that issue based upon the factual setting described above.

Mr. Meese has not raised this matter with me, but I am sending a copy of this memorandum to him in the event he has any questions or comments.

cc: Edwin Meese, III

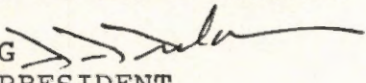
RAH Negotiation

THE WHITE HOUSE

WASHINGTON

October 8, 1981

MEMORANDUM FOR FRANK S.M. HODSOLL
DEPUTY ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING 
COUNSEL TO THE PRESIDENT

SUBJECT: Legal Restrictions on Appointing the
First Lady to the Federal Council on
the Arts and the Humanities

Our office has examined whether, as you propose, the President may legally appoint the First Lady to the Federal Council on the Arts and the Humanities, and then designate her as Chairman of the Council.

Assuming the present structure of the Council is altered in a manner that provides for Presidential appointment of some members, the President would nonetheless be prohibited from appointing Mrs. Reagan by 5 U.S.C. § 3110, a copy of which is attached. This statute was enacted in 1967, probably as a reaction to President Kennedy's appointment of his brother as Attorney General. The relevant prohibitory language is set forth in 5 U.S.C. § 3110(b), which provides in part:

A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official.

The President is expressly included in the statutory definition of "public official," 5 U.S.C. § 3110(a)(2); "relative" is defined to include "wife," id. § 3110(a)(3); "agency" includes any "Executive agency," id. § 3110(a)(1)(A), which in turn includes any "establishment" in the Executive Branch, see 5 U.S.C. §§ 104-05. The Council would thus be considered an agency within the meaning of the statute, and the President would, by virtue of any appointment power or authority to designate the Chairman, be exercising "jurisdiction or control" for the purposes of the statutory prohibition.

You should also know that the Office of Legal Counsel of the Department of Justice concluded, in a formal memorandum in 1977, that this statute prohibited President Carter from appointing Mrs. Carter as Chairman of the Commission on Mental Health. In that memorandum, the Office of Legal Counsel expressly

noted that "the legislative history of the statute shows that the prohibition . . . applies whether or not the appointee will receive compensation."

This situation is complicated by the fact that, as you know, the statute establishing the Council, 20 U.S.C. § 958, does not provide for appointment of any member by the President, although it does authorize the President to designate the Chairman from among the members. The statute also permits the President "to change the membership of the Council from time to time as he deems necessary to meet changes in Federal programs or executive branch organization." As I advised you in an earlier memorandum, we believe that this language would probably permit the President to provide some private membership positions on the Council, although this provision has been used in the past only to designate additional public officials as members of the Council. However, it is at least doubtful whether the statutory authorization "to meet changes in Federal programs or executive branch organization" would encompass appointment of the First Lady, even aside from the direct prohibition on appointment of relatives discussed above.

Although my earlier memorandum discussed the President's general authority to alter the membership of the Council, it is important to emphasize that any specific proposals for doing so would have to be reviewed and approved, including review and approval by our office. Further, assuming a decision is made to add private membership positions to this Council, proposals for appointment of any particular individuals -- including specifically persons who are members of the White House staff -- would also have to be approved under the normal procedures for Presidential appointees. No public announcement of any plans of this sort should be made prior to that time.

Attachment

Explanatory Notes

In subsection (a), the definitions of "agency" and "appropriation" are added on authority of the Act of Aug. 2, 1946, ch. 744, § 18, 60 Stat. 811.

In subsection (b), the words "the provisions of this title governing appointment in the competitive service" are substituted for "the civil-service laws". The words "chapter 51 and subchapter III of chapter 53 of this title" are substituted for the reference to the classification

laws which originally meant the Classification Act of 1923, as amended. Exception from the Classification Act of 1949 is based on sections 202(27), and 1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 956, 972.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Cross References

Community Relations Service, Department of Commerce, authority of Director to procure services as authorized by this section at \$75 per diem limitation, see section 2000g of Title 42, The Public Health and Welfare.

Education professions development grants and contracts, see section 1001f of Title 20, Education.

Employment of experts or consultants by Director of Administrative Office of United States Courts, see note set out under section 602 of Title 28, Judiciary and Judicial Procedure.

General Accounting Office authorized to credit accounts of special disbursing agent of Saint Elizabeths Hospital with certain amounts, notwithstanding this section, see section 168 of Title 24, Hospitals, Asylums, and Cemeteries.

International Health Research Act of 1960, application of section to, see sections 2102, 2103 of Title 22, Foreign Relations and Intercourse; section 2421 of Title 42, The Public Health and Welfare.

Travel expenses of consultants or experts, see section 5703 of this title.

Notes of Decisions

Evidence 2

Temporary legal services 1

1. Temporary legal services

Government agency was vested with authority to secure temporary or intermittent services of attorney by contract or appointment and authorized it to enter into independent contractor relationship with attorney as distinguished from employment status. *Boyle v. U. S.*, 1962, 309 F.2d 399, 159 Ct.Cl. 230.

2. Evidence

In action by temporary appointee against the Secretary of the Army and

others for mandatory injunction commanding reinstatement of temporary appointee to position as astronomer in Army Map Service, evidence established that appointing officer accorded to temporary appointee all procedural prerogatives required to be extended in case of temporary appointees, and that valid regulations of the Civil Service Commission authorized separation of temporary appointee from the service. *Kameny v. Brucker*, 1960, 282 F.2d 823, 108 U.S.App. D.C. 340, certiorari dismissed 81 S.Ct. 802, 365 U.S. 843, 5 L.Ed.2d 809.

§ 3110. Employment of relatives; restrictions

(a) For the purpose of this section—

(1) "agency" means—

(A) an Executive agency;

(B) an office, agency, or other establishment in the leg-

(C) an office, agency, or other establishment in the judicial branch; and

(D) the government of the District of Columbia;

(2) "public official" means an officer (including the President and a Member of Congress), a member of the uniformed service, an employee and any other individual, in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement, in connection with employment in an agency; and

(3) "relative" means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b) A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

(c) An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced.

(d) The Civil Service Commission may prescribe regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited by this section.

(e) This section shall not be construed to prohibit the appointment of an individual who is a preference eligible in any case in which the passing over of that individual on a certificate of eligibles furnished under section 3317(a) of this title will result in the selection for appointment of an individual who is not a preference eligible.

Added Pub.L. 90-206, Title II, § 221(a), Dec. 16, 1967, 81 Stat. 640.

Chapter 310

Employment of Relatives

Contents

SUBCHAPTER 1. RESTRICTIONS ON THE EMPLOYMENT OF RELATIVES

- 1-1. Coverage
- 1-2. Definitions
- 1-3. Restrictions

SUBCHAPTER 2. EMERGENCY EXCEPTIONS

- 2-1. Coverage
- 2-2. Exceptions

SUBCHAPTER 3. MISCELLANEOUS PROVISIONS

- 3-1. Saving Provision
- 3-2. Penalties

<i>For related information on—</i>	<i>See—</i>
Text of pertinent laws, rules, and regulations.....	Supplement 990-1
Members-of-family requirement.....	Chapter 338
Employment of sons and daughters of agency personnel....	Chapter 332, Appendix J Chapter 213 Chapter 338

Subchapter 1. Restrictions on the Employment of Relatives

1-1. COVERAGE

a. **Statutory.** Section 3110 of title 5, United States Code, restricts the employment of relatives of a public official in the official's own agency or in an agency over which he exercises jurisdiction or control. The restrictions apply throughout all three branches of the Federal Government and in the government of the District of Columbia. The restrictions apply to positions whose pay is derived from non-appropriated as well as appropriated funds.

b. **Regulatory.** In general, part 310 of the Commission's regulations, Employment of Relatives, parallels the statutory restrictions. Except as specified in subchapter 2, part 310 applies throughout the executive branch and in those portions of the legislative and judicial branches and of the government of the District of Columbia which are in the competitive service.

1-2. DEFINITIONS

a. **Agency.** In 5 U.S.C. 3110, "agency" is defined as an executive agency (i.e., an executive department, a Government corporation, or an independent establishment); an office, agency, or other establishment in the legislative branch; an office, agency, or other establishment in the judicial branch; and the government of the District of Columbia.

b. **Public official.** A public official is anyone who by law, rule, regulation, or delegation has appointment or promotion authority within his organization, or authority to recommend employees for appointment or promotion. Thus, any supervisor, regardless of his grade level, who has authority to appoint or promote, or to recommend the appointment or promotion of employees supervised by him, is a public official. Similarly, a personnel or placement officer who

has authority to appoint or promote or to recommend the appointment or promotion of employees is a public official. However, making a determination that a person is eligible for appointment under applicable laws, regulations, or standards does not by itself constitute a recommendation.

c. **Relative.** The term "relative" includes the specific relationships stated in 5 U.S.C. 3110; i.e., father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. When popular and legal usage differ, the strict or legal definition is applied to all these terms. Specifically:

Nephew means the son of a public official's brother or sister.

Niece means the daughter of a public official's brother or sister.

Uncle means the brother of a public official's father or mother.

Aunt means the sister of a public official's father or mother.

Brother-in-law means the brother of a public official's spouse, or the spouse of his sister.

Sister-in-law means the sister of a public official's spouse, or the spouse of his brother.

d. **Appointment, employment, promotion, or advancement.** (1) *Appointment and employment.* The terms "appointment" and "employment" are essentially synonymous and include personnel actions, other than promotions, which are discretionary with an appointing official and are not based on a statutory requirement. Examples of appointment and employment subject to the restrictions are initial hires from a register or other source, reinstatements,

reassignments, and transfers. However, a non-discretionary action such as restoration after military service is not an appointment or employment for this purpose. Likewise, a conversion to career employment based on three years of indefinite or TAPER employment (section 7-6 of chapter 315) is not appointment or employment for this purpose.

(2) *Promotion and advancement.* The terms "promotion" and "advancement" are also essentially synonymous. In general, they include personnel actions which increase an employee's grade, pay, or rank, provided the action is discretionary with the appointing official and is not based on a statutory requirement. A within-grade increase is not a promotion or advancement for this purpose. An action which increases an employee's relative standing in the agency's organizational structure is subject to the restriction, even though no increase in grade or pay is involved.

e. *Chain of command.* The chain of command is the line of supervisory personnel that runs from a public official to the head of his agency.

f. *Jurisdiction or control.* An official exercises jurisdiction or control over an agency only if he exercises direct control over some or all of the agency's operations. Thus, Members of Congress serving on an agency's appropriations committee or officials of such central agencies as the Bureau of the Budget or the Civil Service Commission are not considered to exercise jurisdiction or control over an agency in the sense contemplated here.

1-3. RESTRICTIONS

a. *On advocacy.* (1) *Basic restriction.* A public official may not advocate a relative's appointment, employment, promotion, or advancement anywhere in his agency or in an agency over which he exercises jurisdiction or control. A public official advocates a relative's appointment if he recommends the action either orally or in writing.

(2) *Referral for consideration.* Because of the special relationship between a supervisor and his

subordinates, the regulations provide that an official is considered to advocate a relative's appointment if he simply refers the relative for consideration to one of his subordinates (i.e., to someone standing lower in the chain of command). A referral for consideration, in this context, is any action, even though short of an actual recommendation, that reveals an interest in securing or facilitating a person's consideration for appointment, employment, promotion, or advancement. Examples of referrals for consideration are the transmittal of an application to a personnel or line official, providing a letter of introduction to an appointing official, or the like.

(3) *Employment inquiries.* A public official may properly reply to a written or oral employment inquiry (voucher) about the qualifications and suitability of a relative who has applied for employment in the public official's agency, provided he refrains from advocating employment of the relative. Completion of a voucher used to verify past experience and determine suitability is not in itself an advocacy or a recommendation within the prohibitions of the statute and the regulations. On the other hand, an affirmative answer to the question, "Would you recommend this person for appointment in _____ agency?" constitutes advocacy. The official should state in reply to such a question that in view of the restrictions on employment of relatives he must refrain from answering any questions or making any statements that could be construed as advocacy on his part of his relative's appointment.

b. *On personnel actions.* (1) *Basic restrictions.* A public official may not appoint, employ, promote, or advance in his agency or in an agency over which he exercises jurisdiction or control (a) one of his own relatives or (b) the relative of any other public official in the agency if that official has advocated the action. These restrictions apply through the entire agency; for example, a public official in the Department of the Army may not advocate

employment of a relative in the Department of the Navy or elsewhere in the Department of Defense, and a public official in the Agency for International Development may not advocate employment of a relative in the Peace Corps or elsewhere in the Department of State.

(2) *Employment of subordinates.* The relative of a public official may be employed by a subordinate of the official if the official himself is in no way involved in the action and if the agency concerned has no regulations prohibiting such employment. However, when a person officially charged with approving personnel actions delegates this responsibility to appointing officials, one of his relatives can be appointed by a subordinate official only if there is full and continuing delegation of authority. If the action is taken in the name of the public official, or the public official is required to review or approve the action, it is still officially the public official's action, and the employment restrictions apply.

(3) *Specific applications.* (a) A supervisory position classification specialist is not precluded from determining that the position of one of his own relatives is classifiable at a higher level, as far as 5 U.S.C. 3110 or part 310 is concerned; although he is a public official, this action involves the position rather than the incumbent. However, as agency conduct regulations require employees to avoid any action which might result in or create the appearance of preferential treatment to any person, a classification specialist in this situation should disqualify himself.

(b) A public official may not promote a relative whose position is reclassified at a higher grade if the action is discretionary with the public official. However, he may promote the relative when failure to do so is an adverse

action under the Commission's regulations and instructions; i.e., when the position is upgraded without significant change in duties either on the basis of a new classification standard or as the result of correction of an original classification error.

(c) A relative of a public official may not be promoted if the public official was a member of the promotion panel that selected the relative for promotion unless the public official disqualified himself and did not participate in the decision affecting the relative.

c. *On selections from certificates of eligibles.*

(1) *Preference eligibles.* (a) The restrictions in this subchapter do not prevent the appointment of a relative who is a preference eligible if (1) his name is within reach for selection from an appropriate certificate of eligibles and (2) an alternative selection cannot be made from the certificate without passing over the preference eligible and selecting a person who is not a preference eligible. This will occur only when the preference eligible is first on a certificate of three and both lower-ranking eligibles are nonpreference eligibles.

(b) A public official cannot later promote or advocate the promotion of a relative who is appointed under the above provision. The provision applies only to appointments.

(2) *Consideration of eligibles.* An appointing official need not consider an eligible on a certificate if appointment of the eligible is prohibited by the restrictions in this subchapter; he may consider the next available eligible instead. Advance approval need not be obtained from the Commission in order to eliminate the eligible from consideration, but an explanatory statement must be furnished on or with the certificate report.

Subchapter 2. Emergency Exceptions

2-1. COVERAGE

The provisions of this subchapter apply to all offices which are subject to the restrictions of section 3110 of title 5, United States Code; i.e., to an office, agency, or other establishment in the executive, legislative, or judicial branch of the Federal Government, and in the government of the District of Columbia.

2-2. EXCEPTIONS

When necessary to meet urgent needs resulting from an emergency posing an immediate

threat to life or property, an agency may employ relatives to meet these needs without regard to the restrictions in section 3110 of title 5, United States Code, or part 310 of the Commission's regulations. Appointments under these conditions are temporary not to exceed one month, but may be extended for a second month if the emergency still exists. In the competitive service, the initial appointment is a special needs appointment, which may be extended only with the prior approval of the appropriate Commission office. (See Chapter 316, Subchapter 4, Temporary and Indefinite Employment.)

Subchapter 3. Miscellaneous Provisions

3-1. SAVING PROVISION

Section 3110 of title 5, United States Code, was enacted by section 221 of Public Law 90-206. Section 221(c) included a saving provision, reading as follows:

“(c) The amendments made by this section do not apply to an appointment, employment, advancement, or promotion made or advocated by a public official of any individual who is a relative of the public official if, prior to the effective date of this section, the individual was appointed by the public official, or received an appointment advocated by the public official, and is serving under the appointment on such effective date.”

It is to be noted that the saving provision in section 221(c) does not apply to all relatives employed when the law becomes effective. It applies only in a situation in which a public official, after December 15, 1967, undertakes

to appoint, employ, advance, or promote a relative or recommends for appointment, employment, advancement, or promotion a relative *whom he himself had appointed* prior to December 16, 1967, or *whose appointment was advocated by him* before that date (see 47 Comp. Gen. 636).

3-2. PENALTIES

Section 3110(c) of title 5, United States Code, provides:

“(c) An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced.”

Payments made in violation of section 3110 are subject to recovery. In addition, public officials who violate the civil service regulations governing employment of relatives are subject to applicable penalties on this account.

Ronald Reagan Presidential Library
Digital Library Collections

This is the end of a folder from our textual
collections.

Collection: Hauser, Richard
Folder Title: Nepotism
Box: OA 10254

To see more digitized collections
visit: <https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories
visit: <https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives

Catalogue: <https://catalog.archives.gov/>