

Immigration and Customs Enforcement/Office of Human Capital
ICE MERIT PROMOTION PROCEDURES

Effective Date: August 30, 2021

Superseded: These Immigration and Customs Enforcement (ICE), Office of Human Capital (OHC) Merit Promotion Procedures supersede the Tri-Bureau Merit Promotion Plan issued February 25, 2005.

1. Purpose.

The ICE Merit Promotion Procedures are consistent with the Department of Homeland Security (DHS) Merit Promotion Directive 255-05 issued April 27, 2015, and the DHS Merit Promotion Instruction 255-05-001 issued June 3, 2015. The ICE Merit Promotion Procedures serve to ensure consistency, fairness, and equity in merit promotion programs throughout ICE. They are designed to:

- a. Provide for open, systematic, and equitable processes that ensure positions are filled according to merit factors and are given appropriate consideration to Equal Employment Opportunity objectives.
- b. Ensure that actions taken in the identification, qualification, evaluation, or selection of candidates, are made without regard to race, color, religion, sex (including pregnancy and gender identity), nepotism, national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, labor organization affiliation or non-affiliation, retaliation, parental status, military service, or other non-merit factor.
- c. Establish requirements for implementing fair and equitable merit promotion procedures throughout ICE to fill competitive service positions.
- d. Assign accountability for merit promotion activities.

2. Scope.

- a. These procedures apply throughout ICE, unless exempted by statutory or Federal regulatory authority, or as otherwise indicated herein.
- b. These procedures are applicable to all positions in the competitive service.
- c. These procedures do not supersede any negotiated merit promotion procedures between ICE and its Unions.

3. Authorities and References.

- a. Public Law (P.L.) 105-339, "Veterans Employment Opportunities Act (VEOA) of 1998"
- b. P.L. 106-117, Veterans Millennium Health Care Act of November 30, 1999
- c. 5 United States Code (U.S.C.) § 2301, "Merit System Principles" (MSP)
- d. 5 U.S.C. § 2302, "Prohibited Personnel Practices" (PPP)
- e. 5 U.S.C. Chapter 33, "Examination, Selection and Placement"
- f. 5 U.S.C. § 7106, "Management Rights"
- g. 38 U.S.C. § 4301-4335, "The Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994," as amended.
- h. Title 5 Code of Federal Regulations (CFR) Part 6, "Exceptions from the Competitive Service (Rule VI)"
- i. 5 CFR Part 300, "Employment (General)"
- j. 5 CFR Part 315, "Career and Career-Conditional Employment"
- k. 5 CFR Part 330, "Recruitment, Selection, and Placement (General)"
- l. 5 CFR Part 335, "Promotion and Internal Placement"
- m. 29 CFR Part 1607, "Uniform Guidelines on Employee Selection Procedures (1978)"
- n. 29 CFR Part 1635, "Genetic Information Nondiscrimination Act of 2008"
- o. DHS Merit Promotion Directive 255-05 and Merit Promotion Instruction 255-05-001
- p. Collective Bargaining Agreement applicable to the position being filled

4. Definitions.

- a. **Area of Consideration (AOC).** The AOC describes the individuals from whom ICE will accept applications to compete for the position. The AOC is the organizational and/or geographic limit within which a search is made on USA JOBS for eligible candidates to be considered for a specific merit promotion action. It may be a broad or a limited group of individuals. The AOC is

identified in the JOA as “Hiring Path” and “Who May Apply”.

- b. **Best-Qualified Candidates.** Applicants who are rated above the established “cut-off” score and who, in comparison to other well-qualified applicants, demonstrate better overall key competencies, knowledge, skills, and abilities. The “cut-off” score must be set prior to posting the announcement.
- c. **Career Transition Assistance Plan (CTAP).** A process by which employees who have been involuntarily separated may receive selection priority for jobs in agencies other than the one in which they were previously employed.
- d. **CTAP Selection Priority Candidate.** A CTAP eligible who applied for and was determined to be well-qualified by the agency and whom the agency must select over any other applicant for the vacancy, unless the action to be taken is listed as an exception under 5 CFR § 330.609. Well-qualified for the purpose of CTAP selection priority means an applicant having knowledge, skills, abilities, and/or competencies clearly exceeding the minimum qualification requirements.
- e. **Competency.** A competency is a measurable pattern of knowledge, skills, abilities, behaviors, and other characteristics that an individual needs to perform work roles or occupational functions successfully. Competencies specify the “how” of performing job tasks, or what the person needs to do the job successfully.
- f. **Competitive Service.** All positions in which appointments are subject to the provisions of Chapter 33 of title 5, United States Code. Positions in the executive branch of the Federal Government are in the competitive service unless they are specifically excluded from it. Positions in the legislative and judicial branches are outside of the competitive service unless they are specifically included in it.
- g. **Detail.** A temporary assignment of an employee to a different position or duties for a specific period, with the employee returning to his/her regular duties at the end of the detail.
- h. **Displaced Employee.** A current career or career-conditional competitive service employee at grade GS-15 (or equivalent) or below who received a reduction in force (RIF) separation notice and has not declined an offer to a position with the same type of work schedule and a representative rate at least as high as that of the position from which the employee will be separated, or received a notice of proposed removal (under chapter 752) for declining a directed geographic relocation outside of the local commuting area (e.g., a directed reassignment or change in duty station).

- i. **Interagency Career Transition Plan (ICTAP).** A process that provides eligible displaced Federal employees with interagency selection priority for vacancies in agencies that are filling positions from outside their respective permanent competitive service workforces. The ICTAP selection priority does not apply in the eligible's current or former agency and it does not prohibit movement of permanent competitive service employees within an agency.
- j. **Job Analysis.** A systemic procedure for gathering, documenting, and analyzing information about the content, context, and requirements of a position. This process identifies the competencies and knowledge, skills, and abilities required to perform job tasks.
- k. **Knowledge, Skills, and Abilities (KSAs).** The attributes required to perform a job and are generally demonstrated through qualifying experience, education, or training. Knowledge is a body of information applied directly to the performance of a function. Skill is an observable competence to perform a learned psychomotor act. Ability is competence to perform an observable behavior or a behavior that results in an observable product.
- l. **Local Commuting Area.** Any population center, or two or more neighboring commuting areas and the surrounding localities in which people live and may reasonably be expected to travel back and forth daily to their place of work.
- m. **Priority Consideration.** A special placement consideration given to an applicant who was previously denied consideration due to an administrative error or law or regulatory violation. The applicant must be considered before any other applicant. Priority consideration may apply to actions in the competitive and excepted service.
- n. **Noncompetitive Candidates.** Applicants who are eligible and qualified but are not required to be rated and ranked under merit promotion procedures contained herein. These applicants are referred to the selecting official on a separate list that distinguishes them from competitive applicants referred on a certificate.
- o. **Quality Ranking Factor (QRF).** A KSA that is expected to enhance significant performance in a position, but which is not essential for satisfactory performance. Applicants who meet a quality ranking factor may be ranked above those who do not, but no one may be rated ineligible solely for failure to meet a quality ranking factor.
- p. **Reemployment Priority List (RPL).** A list of individuals who have been separated from permanent DHS positions because of reduction in force and those who have fully recovered from compensable injuries after more than one year. A RPL eligible must meet OPM or an agency's qualification requirements, including selective placement factors.

- q. **Selective Placement Factor (SPF).** A specific knowledge, skill, or ability (KSA) that is not required by the OPM Qualification Standards but is determined to be essential for successful job performance. An SPF must be job related and its validity documented through job analysis. An SPF is in addition to the minimum qualifications outlined in the OPM Qualification Standards Handbook. Applicants who do not meet the SPF are not considered qualified for further consideration.
- r. **Surplus Employee.** Employees who are in the competitive service and are in tenure group I (career) or tenure group II (career-conditional). The employee must have an official notice from their agency indicating their position is no longer needed. The official notice may be a Certificate of Expected Separation, an agency certification that they are in a surplus organization or occupation, a notice indicating the abolishment of their position, or a letter designating their eligibility for discontinued service retirement.
- s. **Well-Qualified Candidates.** Applicants who possess the key competencies, knowledge, skills, and abilities that clearly exceed the minimum qualification requirements for a position as prescribed by the Office of Personnel Management (OPM).

5. Responsibilities.

- a. **ICE Chief Human Capital Officer (CHCO):**
 - i. Ensures the ICE Merit Promotion Procedures are based on the Merit System Principles as outlined in 5 U.S.C. § 2301;
 - ii. Develops, promulgates, implements, and evaluates the merit promotion procedures and activities;
 - iii. Oversees the establishment of ICE's Merit Promotion goals and objectives; and
 - iv. Ensures the periodic reviews of Office of Human Capital's (OHC) policies and guidance for compliance with the requirements outlined in these procedures.
- b. **Deputy Chief Human Capital Officer for Operations** assumes executive oversight of the Chief, Human Resources Operations Center.
- c. **Chief, Human Resources Operation Center (HROC):**
 - i. Complies with the procedures set forth herein, the associated DHS Merit Promotion Directive 255-05 and Instruction 255-05-001, and any applicable federal laws, rules, and regulations;

- ii. Provides open, systematic, and equitable processes that ensure positions filled are merit based in accordance with Merit System Principles as outlined in 5 U.S.C. § 2301;
- iii. Ensures there are no instances of Prohibited Personnel Practices as outlined in 5 U.S.C. § 2302;
- iv. Ensures compliance with existing labor agreement(s) and bargaining obligations; and
- v. Ensures HROC staff are well-trained and their performance is evaluated on a regular basis to ensure compliance with these procedures.

d. HROC Servicing Human Resources Specialist:

- i. Assists the Hiring Manager or designated Subject Matter Expert (SME) to develop job analyses for positions prior to posting a job opportunity announcement (JOA);
- ii. Develops the occupational assessment questions and creates the JOA content in accordance with these procedures and ICE/DHS template guidance;
- iii. Evaluates resumes and supporting documentation of applicants whose self-certification meets the eligibility and qualifications to confirm eligibility, qualifications, licensure, and certification(s) are met prior to creating/issuing a certificate of best-qualified candidates;
- iv. Ensures applicants are notified at required touch points during the hiring process, such as when: application is received, application is assessed for qualifications, applicant is referred to selecting official (or not); and applicant is selected (or not); and
- v. Ensures Merit System Principles are upheld and there are no instances of Prohibited Personnel Practices.

e. Hiring Managers:

- i. Follow the guidelines prescribed in these procedures;
- ii. Ensure Merit System Principles are upheld and there are no instances of Prohibited Personnel Practices;
- iii. Fully participate in the job analysis, evaluation, and selection processes;

- iv. Act on candidate certificate lists by responding with a selection or an explanation of the alternative action desired on the vacancy in a timely manner, but no later than the certificate expiration date; and
- v. Preserve the confidentiality of candidates' records.

6. Covered Personnel Actions.

- a. Time-limited promotions under 5 CFR § 335.102(f) for more than 120 days to higher graded positions (prior service during the preceding 12 months under noncompetitive time-limited promotions and noncompetitive details to higher graded positions count toward the 120-day total). A temporary promotion may be made permanent without further competition provided:
 - i. The temporary promotion was originally made under competitive procedures; and
 - ii. The fact that the temporary promotion might lead to a permanent promotion was made known to all potential candidates in the job announcement.
- b. Details for more than 120 days to a higher graded position or to a position with higher promotion potential (prior service during the preceding 12 months under noncompetitive details to higher graded positions and noncompetitive time-limited promotions counts toward the 120-day total). Service while on detail is creditable for time-in-grade purposes at the grade of the position the employee officially holds.
- c. Selection for training, which is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for a promotion as specified in 5 CFR Part 410.
- d. Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in the competitive service.
- e. Transfer from another agency to a position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service.
- f. Reinstatement to a permanent or temporary position at a higher grade or with more potential than a position previously held on a permanent basis in the competitive service.
- g. Appointment of preference eligibles under the Veterans Employment Opportunities Act (VEOA) of 1998 as amended by Section 511 of the Veterans Millennium Health Care Act (Pub. Law 106-117) of November 30, 1999.

- h. Appointment of a current or former employee of a land management agency who is considered a land management eligible under the Land Management Workforce Flexibility Act, Public Law 114-47.

7. Exceptions to Competitive Procedures.

- a. A promotion resulting from the upgrading of a position without significant change in the duties and responsibilities due to issuance of a new classification standard or the correction of an initial classification error.
- b. A position change permitted by the reduction-in-force procedures outlined in 5 CFR Part 351.
- c. A promotion within a career ladder when prior competition established eligibility for promotion when an employee was appointed in the competitive service from a civil service register, by direct hire, by noncompetitive appointment or noncompetitive conversion, or under competitive promotion procedures for an assignment intended to prepare the employee for the full performance level of the position being filled. The intent is made a matter of record and the career ladder is documented in the merit promotion case file. Promotions are not entitlements nor guaranteed. Individuals may be noncompetitively promoted under career ladder procedures when:
 - i. The employee's current rating of record is "fully successful" or higher;
 - ii. The individual meets the requisite time-in-grade for advancement to the next higher-grade level;
 - iii. The employee has demonstrated that he/she has the ability to perform at the higher-grade level; and
 - iv. There is sufficient work readily available at the higher-grade level to support the promotion.
- d. An accretion of duties promotion resulting from an employee's position being classified at a higher grade because of additional duties and responsibilities that are regular and recurring. In some instances, positions evolve with mission requirements and the incumbent performs the higher-level duties over a period of time (e.g., over the past year). All of the following provisions are required for accretion of duties:
 - i. There are no other employees at the same grade in the unit performing duties substantially the same as those performed by the employee prior to the addition of the new duties and responsibilities;

- ii. The employee continues to perform the duties of the former position in addition to the new duties and the former duties are absorbed into the new position;
 - iii. The new position has no further promotion potential;
 - iv. The addition of the new duties and responsibilities does not result in an adverse impact on another encumbered position, such as abolishing the position or reducing the known promotion potential of another position;
 - v. The accretion is supported by a written analysis of the new position (which involves an audit by the Classification Unit with the employee and/or the employee's supervisor, or other fact gathering method); and
 - vi. The employee meets all eligibility to include OPM and agency-specific qualification requirements (e.g., time-in-grade) for the new position.
- e. A temporary promotion, or detail for 120 days or less, to a position with a higher grade with known potential. Prior service during the preceding 12 months under noncompetitive time-limited promotion or detail counts toward the 120-day total.
 - f. Promotion to a grade previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement approved under 5 CFR § 6.7) from which an employee was separated or demoted for other than performance or conduct reasons.
 - g. Promotion, reassignment, demotion, transfer, reinstatement, or detail to a position having promotion potential no greater than the promotion potential of a position an employee currently holds or previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement approved under 5 CFR § 6.7) and which the employee did not lose because of performance or conduct reasons.
 - h. Priority placement eligible for special priority selection based on law or regulation (e.g., surplus and/or displaced employees eligible under the CTAP, ICTAP, or the Reemployment Priority List (RPL)).
 - i. Consideration of a candidate not given proper consideration in a competitive promotion action.
 - j. Appointments of career Senior Executive Service (SES) appointees with competitive service reinstatement eligibility to any position for which they qualify in the competitive service at any grade or salary level, including Senior-Level positions established under 5 CFR Part 319.

- k. The appointment or promotion of disabled veterans with 30 percent or more compensable disability, Veterans Recruitment Appointment, appointment of disabled persons under 5 CFR 213.3102(u), Vista volunteers under 5 CFR 315.605, and former Peace Corps personnel under 5 CFR 315.607.
- l. Non-competitive conversion of Pathways Program students to career or career- conditional appointments, as appropriate.
- m. Promotion to a target or full performance level position from an apprentice, trainee, or understudy position (e.g., Upward Mobility).
- n. Any promotion required by law, regulation, or remedy ordered or approved by a court or administrative agency, or pursuant to appropriate authority.
- o. Appointment of Certain Military Spouses under 5 CFR. 315.6112.

8. Merit Promotion Notice of JOAs.

- a. Vacancies filled under these procedures must be publicized on OPM's USA JOBS website.
- b. JOAs are open for a minimum of five workdays, to receive sufficient publicity, so that eligible applicants within the area of consideration (AOC) have an opportunity to learn of the vacancy and apply for consideration.
- c. JOAs notify applicants of their eligibility for consideration under the *Veterans Employment Opportunity Act* (VEOA) for all merit promotion positions when soliciting applications from outside the DHS workforce.
- d. JOAs notify applicants of their eligibility for selection priority consideration under CTAP when soliciting outside of ICE/DHS; and ICTAP when soliciting applications from outside of DHS.
- e. JOAs notify applicants of their eligibility for consideration under the *Land Management Workforce Flexibility Act*, Public Law 114-47 when soliciting applications from outside of DHS.
- f. JOAs include instructions that provide a clear distinction of how the applicant responses are assessed and the evaluation methods used to determine applicant's qualifications for each grade level announced. A JOA is limited to soliciting applications for a maximum of three grade levels.

- g. JOAs with an AOC of ICE-only, DHS-wide, or those soliciting applicants from outside the DHS workforce are posted on the OPM USA JOBS website.
- h. JOAs must include the mandatory ICE and DHS branding statements, benefits language, and the link to the common definitions. All JOAs must meet the requirements outlined in 5 CFR Part 330 and the OPM and DHS templates.
- i. JOAs may be posted as open continuous with a closing date up to one year from the date the JOA opened. Certificates may be issued up to one year from the closing date of the announcement to allow time to complete the evaluation process (e.g., written test, structured interview, etc.). A JOA must specify the intent to establish long-term use and indicate how long certificates may be used.
- j. JOAs must clearly state when a writing sample is required to be part of the selection process. The interviewee should be advised to provide writing samples that are closely aligned with the types of actual writing work required in the position being filled. A writing sample is not scored; it is merely used to inform the hiring manager of the candidate's writing ability. The interviewer should inform the interviewee of what types of samples to provide either at the interview, or by email or other delivery method by an agreed upon time to do so.

Note. Some labor agreements may have items identified as required for inclusion on JOAs that are not addressed in these procedures. Review existing labor agreement(s) and ensure compliance with any bargaining obligations.

9. Area of Consideration (AOC) or Who May Apply.

The AOC is the organizational and/or geographic limit within which a search is made for eligible candidates to be considered for a specific merit promotion action. The AOC:

- a. May be a broad or limited group but should be sufficiently broad to ensure the availability of high-quality candidates, taking into consideration the nature and level of the positions covered;
- b. Must be identified in the JOA and may not be changed while the JOA is open;
- c. Is established in a manner to promote fair and open competition, and to attract a diverse applicant pool in accordance with Merit System Principles, 5 USC § 2301(b);
- d. Is determined through consultation between the HR Specialist and the selecting official or other appropriate management official (for all vacant positions, the selecting official, in consultation with the HR

Specialist, should determine the appropriate AOC to ensure a diverse pool of qualified applicants); and

- e. The minimum AOC is current ICE employees on a career or career-conditional appointment, and within the local commuting area where the vacancy exists or as specified in an applicable collective bargaining agreement.

10. AOC Designations for JOAs

- a. The categories of individuals from whom ICE will accept applications to compete for the position must be specified in the JOA. The term “local commuting area” is defined as any population center (or two or more neighboring ones) and the surrounding localities in which people live and may reasonably be expected to travel back and forth daily to their usual employment. The areas of consideration are as follows:
 - i. “ICE-wide local commuting area” means applications will be considered only from ICE employees on career or career-conditional appointments within the commuting area where the vacancy exists.
 - ii. “ICE-wide” means applications will be only from ICE employees on career or career-conditional appointments.
 - iii. “DHS-wide local commuting area” means applications will be only from status employees within DHS and CTAP eligible applicants within the commuting area where the vacancy exists.
 - iv. “DHS-wide” means applications will be only from status employees within DHS and CTAP eligible applicants.
 - v. “Government-wide local commuting area” means applications will be from status candidates in the competitive service throughout the Federal government, reinstatement eligible applicants, CTAP and ICTAP eligible applicants, VEOA eligible applicant, Land Management eligible applicants, interchange agreement eligible applicants, and individuals eligible for career or career conditional appointments under a special appointing authority within the commuting area where the vacancy exists.
 - vi. “Government-wide” means applications will be from status candidates in the competitive service throughout the Federal government, reinstatement eligible applicants, CTAP and ICTAP eligible applicants, VEOA eligible applicants, Land Management eligible applicants, interchange agreement eligible applicants, and individuals eligible for career or career conditional appointments under a special appointing

authority.

11. Expanding the Area of Consideration. Normally, the selecting official should be able to select from among at least three best qualified candidates. If less than three candidates are certified, and the selecting official is willing to select one of them, then expanding the area of consideration is not necessary. However, if the selecting official does not wish to make a selection, he or she may make a request to repost the JOA and extend the area of consideration.

12. Exceptions to a Minimum Area of Consideration.

Certain exceptions are allowed when it is not possible to follow guidance under area of consideration, including:

- a. Positions to be filled under any ICE upward mobility program. The area of consideration may not extend beyond DHS and may be limited to the specific ICE organization in which the position exists.
- b. Positions that are in a particular occupation and/or grade and subject to adherence to a court order or other formal decision (e.g., Merit Systems Protection Board (MSPB), etc.) that makes it unnecessary to follow or prohibits the normal area of consideration practice. In these instances, the formal decision/order prevails. Supporting documentation must be placed in the merit promotion case file.

13. Reasonable Accommodations.

- a. Candidates wishing to be considered for positions announced under these procedures must apply online (via the Internet) through OPM's USA JOBS, or other automated referral system, in accordance with the application procedures explained in the vacancy announcement. All application materials must be received by the closing date of the announcement. Failure to submit the required forms (including a resume, transcript, or licensure, if requested) will result in loss of consideration.
- b. Exceptions may be granted to employees who are unable to apply to an announcement by the closing date due to a unique circumstance, such as, on detail, on leave, at training courses, in the military service, or serving in public international organizations or on an Intergovernmental Personnel Act assignment. In these situations, an applicant may be allowed to apply and receive consideration after the closing date of an announcement provided that no selection has been made.
- c. Other applicants within the stated area of consideration who may need additional assistance in applying online (e.g., those without reasonable access to the Internet), may contact the servicing HR Specialist before the

closing date for assistance. HR Specialists may suggest sources for applying online and options for submitting the required information.

- d. Positions filled using occupational tests, specific instructions regarding testing times, locations and any other administrative information will be determined on a case-by-case basis by OHC. Factors considered in determining test administration may be based on such factors as applicant location, response volume, hiring needs, etc.

14. Applicant Eligibility for Merit Promotion Consideration.

- a. Applicants are eligible for consideration under merit promotion procedures when they meet at least one of the requirements specified below:
 - i. Is currently serving on a career or career-conditional appointment in the competitive service or have reinstatement eligibility;
 - ii. Is eligible under an OPM interchange agreement as prescribed in 5 CFR § 6.7;
 - iii. Is eligible under CTAP/ICTAP rules as prescribed in 5 CFR § Part 330;
 - iv. Is eligible under the Land Management Workforce Flexibility Act, Public Law 114-47;
 - v. Is a VEOA eligible; or
 - vi. Is a non-competitive military spouse.
- b. Completed the 90-day time-after-competitive period when his/her initial appointment was under competitive examining (i.e., delegated examining) or competitive procedures (i.e., direct hire authority).

15. Evaluation of Candidates.

- a. Candidates will be evaluated for positions and receive a rating based on their responses to the assessment developed through appropriate job analysis procedures.
- b. The same criteria are applied uniformly in the rating and ranking process during which determinations of best-qualified candidates to be referred to selecting officials are made. The uniform criteria are based on the degree to which each minimally qualified applicant possesses the competencies, knowledge, skills, and abilities for the position.

- c. When a JOA is announced at multiple grade levels evaluation criteria used reflects the appropriate progression of competencies needed for progressive grade levels. Candidates considered for the same grade levels are evaluated against the criteria established for each grade.
- d. The basic eligibility requirements prescribed by OPM or agency-specific qualification standards for the position are applied.
- e. Concurrent with the review of basic eligibility requirements, each application is reviewed to determine if the candidate meets the minimum or basic job-related qualification requirements and competencies necessary to perform satisfactorily on the job. This includes any SPFs that have been identified and are required for the position. Minimum qualification requirements are intended to reduce the processing of unqualified applicants by screening out those who are unlikely to succeed in the job.
- f. Applicants are subject to time-in-grade requirements for actions taken in accordance with these procedures.
- g. Due weight is given to performance appraisals and incentive awards.
- h. A hiring manager may be afforded a second level review of an applicant's qualification by a higher-level HROC staffing official (i.e., Team Lead, Supervisor, or Unit Chief).

16. Evaluation Tools.

- a. Job-related assessment questions. Applicants may be evaluated under USA Staffing, USA Hire or any other automated system based on responses to job-related questions, using a rating method determined through an appropriate job analysis.
- b. Job-related or occupational tests. Only tests approved by OPM and/or ICE as part of a comprehensive set of assessment procedures may be used. ICE must obtain OPM approval before using a written test to determine basic eligibility (i.e., on a pass/fail basis), or as the single evaluation instrument in assessing in-service applicants.
- c. Structured interviews. Applicants may be evaluated based on responses to standard questions asked using a structured interview method. This assessment may be used in conjunction with other assessments. The results of the interview may be scored and applied to an applicant's overall rating or used on a pass/fail basis.
- d. Other approved assessment instruments. Any other approved assessment method or process (e.g., a resume-based evaluation of key general and

technical competencies) may be used, provided it is based on a relevant job analysis that may measure an applicant's job-related KSA requirements and may be fairly and consistently applied to all candidates.

- e. A Subject Matter Expert (SME) may be identified by the Program Office to evaluate candidates' qualifications for positions. Persons who participate as SMEs in an SME review must have comprehensive knowledge of the duties, responsibilities, and competencies necessary to perform the specific job. The SME who participates in this type of review must not participate in both a pre-certificate review and post-certificate review; not act as an SME if he/she is considering competing for the position being advertised; not act as an SME if he/she is a subordinate or direct report to the position in inquiry; and not act as an SME in a pre-certificate review if he/she is the selecting/hiring official. The servicing HR Specialist will arrange the time and logistics for the SME review and provide the necessary documents for review which must be completed by the SME in writing. Such documents include the resumes, responses to the USA Staffing assessment questions, and other documentation to help facilitate with the review of candidates. Such documentation must be treated as personally identifiable information (PII).

17. Rating and Ranking of Applicants.

- a. Candidates are rated and ranked against an automated system-generated assessment tool (e.g., crediting plan, assessment questionnaires, etc.). Each tool clearly identifies levels of proficiency and corresponding numeric or grouping values for each grade level. Assessment tools are developed prior to announcing the JOA and maintained in merit promotion case files.
- b. The HR Specialist, in conjunction with the selecting official, determines whether a rating or assessment panel is needed to assess the applicant's experience with the job requirements. The assessment panel consists of two or more SMEs or individuals familiar with the position who are at or above the full performance level of the position.
- c. Assessment tools and related rating information may not be released to applicants as a means of providing information about job requirements. Such release would undermine the fairness and validity of the selection process.
- d. Performance appraisals and awards documented in the application package during the evaluation/rating review and/or at time of final selection consideration are considered as additional sources of information only. Mere possession of a specific number of awards or appraisal levels are not factors in the evaluation process and are not used to mechanically increase ratings.

18. Certificate Referral of Applicants.

- a. Employees entitled to, and eligible for, selection priority consideration or placement will be referred to the selecting official prior to other candidates, and if possible, before a vacancy announcement is issued. Selection priority consideration occurs whenever employees and/or applicants are entitled to, and eligible for, priority consideration or placement due to a decision affecting their rights based on administrative error or actions resulting from downgrade or displacement due to reduction in force or grade retention provisions.
- b. Referrals will be issued in the following order:
 - i. Well-qualified CTAP eligible;
 - ii. Well-qualified employees eligible under the Reemployment Priority List;
 - iii. Grade retention eligible;
 - iv. Priority consideration eligibles (e.g., employees who failed to receive proper consideration in a previous promotion plan action);
 - v. Well-qualified ICTAP eligibles; and
 - vi. Placement of any other deemed best-qualified candidates.
- c. Individual competitive certificates are issued for each grade level advertised and include the date of issuance, announcement number, position title, series, grade, certificate, candidates listed in alphabetical order, and name of issuing officer. Scores are not included on the promotion certificates.
- d. A separate noncompetitive list of eligibles is provided to the selecting official for individuals exempt from competitive procedures and may be appointed noncompetitively.
- e. A separate certificate/ referral list of eligibles is provided for selection consideration under Veterans Recruitment Appointment hiring authority in which absolute veteran's preference is documented. Candidates are listed in Absolute Veterans' Preference Order.
- f. A separate certificate/referral list of eligibles is provided for the remaining special hiring authorities (30% or More Disabled Veteran, Military Spouses, Certain Former Overseas Employees, National Service (Peace Corps and VISTA), People with Disabilities, Schedule A, Postal Career Service/Postal Regulator Commission, etc.).

- g. Certificates should be issued within 15 days of the closing date in accordance with the Hiring Process Model SOP unless exigencies of the public service, e.g., sequestration, etc., affect such issuance.
- h. Certificates are valid for 30 days from the date of issuance. Requests to extend the certificate(s) must be submitted in writing to the HR Specialist prior to the expiration date and approved by the Chief of HROC (or designee). Extensions may not result in a total certificate life span exceeding 240 calendar days.
- i. A certificate will be canceled by HROC if the selecting official does not take action by the expiration date of the certificate after receiving the certificate list(s) of best-qualified candidates.
- j. A certificate list of best-qualified candidates from another JOA with same title, series, grade, and type of appointment, may be used to fill similar vacant positions within 240 days from the date of the original certificate issuance.
- k. If the certificate is closed and an additional vacancy occurs within 90 days after the vacancy announcement closes, for a similar position, same series, grade, geographical location, and employing organization: the original closed vacancy announcement can be used to document the clearance of ICTAP and CTAP.
- l. Exceptions occur when it is determined that corrective actions (e.g., variations, selective service system registration requests, etc.) are needed to ensure compliance with Merit System Principles (MSPs), civil service laws, and regulations. Under these conditions, or in other rare extenuating circumstances, expired or inactive certificates may be reactivated when the ICE CHCO submits a written request and receives approval from the DHS CHCO.
- m. Certificates extended beyond 240 calendar days, or expired certificates that are reactivated as a result of a corrective action or third-party review/audit in order to reconstruct and/or correct errors, expire only after all corrective actions are completed; this includes actions required by others (e.g., OPM, Office of Special Counsel, National Finance Center, etc.).

19. Selection Process.

- a. To ensure diversity and meet affirmative action goals, a sufficient number of best-qualified applicants will be referred. Within the applicant referral ranges, all applicants with tied scores at or above the cut-off score will be referred.

- b. A selecting official should be able to select from among at least three best qualified candidates. He/she is not prohibited from making a selection if less than three best qualified candidates are certified. Also, when this circumstance occurs, the servicing HR Specialist should ensure the selecting official is aware that the JOA may be closed, and a new job announcement may be opened with an extended or broader area of consideration.
- c. Selecting officials may select from those referred as best qualified and/or non competitive.
- d. The selecting official has the right to select or not select any candidate referred on a merit promotion certificate or noncompetitive list. Non-competitive candidates, or candidates from any other appropriate source, may be selected at any time in the process of filling a position. However, the selecting official is required to provide written justification if no selection is made when it is the selecting official's intent to re-advertise or cancel the position.
- e. No selection commitment or offer of employment, including the title, series, grade, pay, benefits, or location may be made by the selecting official to any candidate. All commitments (tentative and final) are made by the Appointment Official, or designee, in the OHC after all necessary approvals and clearances are obtained.

20. Re-issuance of Certificate.

- a. A certificate may be re-issued when an applicant is unable to clear security, declines the position, or other unusual circumstances.
- b. The manager, if possible, should make a second, and third or even fourth alternate selection(s) by annotating the certificate with alternate 1 (ALT1), ALT2, and ALT3 with the understanding that it is not multiple selections but a first selection, second selection, and a third alternate selection. Alternate candidates are those candidates who are selected in the event the principal or previous alternate could not be, or is not, selected for the position.
- c. A certificate may be re-issued if, within 240 days of initial certificate issuance, there are additional vacancies covered by the same position description (title, series, grade, location, organization, and type of appointment).

21. Re-advertisement of Vacant Position.

Re-advertisement of the same position requires the lapse of 90 calendar days from the original certificate issuance date. However, there are two exceptions:

- a. If the position requirements changed significantly (e.g., the ranking criteria knowledge, skills, and abilities (KSAs), the qualifications requirements (SPFs), or the grade level), the position is re-advertised without automatically considering the original applicants. In this instance, notice must be sent directly to applicants who previously applied, and the re-advertisement must include an annotation similar to the following: *"This position is being re-advertised to reflect a change in the (specify the change). As such, all previous applicants must reapply to receive consideration."*
- b. The same position may not be re-advertised utilizing the **same** AOC as the original announcement until 90 days from the original certificate issuance date has elapsed. If there are less than three eligible, qualified applicants and there is no change to the position requirements, it is possible to re-advertise within the 90-calendar day period. In this instance, notice must be sent directly to applicants who previously applied, and the re-advertisement must include an annotation similar to the following: *"This position is being re-advertised. All previous applicants must reapply to receive consideration."*

22. Complaints and Grievances. Employees have the right to file a grievance relating to a merit promotion action. Such grievances are resolved under appropriate grievance procedures. OHC shall respond promptly to questions or complaints related to the program or a specific selection action. If an employee contests a negative qualifications decision, a review will be completed by the HR Specialist who made the initial determination and his/her first level supervisor. A second and final review will be completed by the HR Staffing Unit Chief.

23. Selection for Supervisory Positions and Probationary Period. In accordance with 5 U.S.C. § 3321 and 5 CFR Part 315, Subpart I, a probationary period is required before initial appointment as a supervisor or manager becomes final. ICE provides all persons newly selected for first-level supervisory positions with supervisory and equal employment opportunity (EEO) training immediately after entering on duty in the new position, or as soon as possible thereafter. All persons selected who have not previously served as a supervisor or manager for a period of one year are required to complete a probationary period. The one-year period commences as of the date of initial appointment to a supervisory or managerial position.

24. Discrimination in Hiring and Selection. It is ICE policy to assure equal employment opportunity for all employees and applicants. ICE seeks to eliminate discriminatory hiring practices based on race, color, religion, sex (including pregnancy and gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, labor organization affiliation or non-affiliation, retaliation, parental status, military service, or other non-merit factor. Selections are based on merit system principles and engagement in any prohibited personnel practice is strictly prohibited.

25. Accountability. OHC is responsible for conducting an annual review of ICE's merit promotion programs to assess the extent to which HROC is meeting the requirements of these procedures and the objectives of management and employees.

26. Confidentiality and Non-release of Information.

An employee's promotion eligibility, application, rating, or performance appraisal is not available for review by other employees. However, such records are available to promotion rating panels, selecting officials, HR Specialists, and in the case of a grievance concerning a promotion action, to appropriate officials connected with, advising on, or adjudicating the grievance. In most circumstances, the following information may not be released to applicants; however, HR Specialists should always coordinate with the ICE Information and Governance Privacy (IGP) Office on any such requests:

- a. Confidential examining materials
- b. Any information that may intrude upon the privacy of other individuals; and
- c. Any other materials that would compromise the objectivity or fairness of the examination and evaluation process.

27. Record Retention. Records associated with personnel actions including all documentation sufficient for third party reconstruction purposes are retained according to the record disposition schedule. All records created in a given year are retained for a total of three full years. For example, records created between Oct. 1, 2014 - Sept. 30, 2015, or Fiscal Year (FY) 2015, may not be destroyed until FY 2019, provided the records retained are not involved in litigation or grievance processes. Records involved in litigation and grievance processes may be destroyed only after official notification is received from the Office of Personnel Management, Department of Justice, courts, etc. or if the time limits associated with grievance processes have passed e.g., before the anniversary date.

28. Effective Date of Position Changes.

- a. Effective dates involving position changes (e.g., promotions, voluntary demotions, reassignments from or to positions subject to special salary rates to positions not subject to special salary rates or vice versa, etc.) are effective on the first day of the FIRST pay period after the HROC Chief or designee gives final administrative approval of the action.
- b. Position changes not involving change in pay are effective at the discretion of the HROC Chief or designee with practices outlined in OHC policies and guidance.

29. Release Date. An employee will be released for promotion no later than one complete pay period following an official request by OHC to the losing organization for a release date. In the event the employee is being reassigned, changed to a lower grade, or is being relocated, the employee will be released as of the effective date established through agreement between the losing and receiving offices and the employee. This should normally be no later than two complete pay periods following an official request to the losing office for a release date.

Susan C. Dunbar

Susan C. Dunbar
Chief Human Capital Officer
U.S. Immigration and Customs Enforcement

Appendix A – Competitive Personnel Actions Coverage

Proposed Action	Proposed Position	And	Competition Required
Promotion, Reassignment, Change to Lower Grade	Is one with known promotion potential greater than the potential of a position an employee currently holds or previously held on permanent basis in the competitive service		Yes
	Is not one with known promotion potential or promotion potential is no greater than the potential of a position previously held on a permanent basis	Employee was not separated or demoted because of performance or conduct reasons	No
Promotion	To a grade previously held on a permanent basis in the competitive service	Employee was separated or demoted for other than performance or conduct reasons	No
	To position to which employee was detailed for training or evaluation	Employee was selected for detail under competitive procedures and all competitors were informed that the detail could lead to promotion without further competition	No
	To a higher grade in the employee's career ladder position*		No
Promotion based on job accretion and re-classified position at higher grade due to additional duties/responsibilities			No
Temporary Promotion	Is for more than 120 days	Position is one with known promotion potential greater than potential of a position an employee currently holds or previously held on permanent basis in the competitive service	Yes

Appendix A – Competitive Personnel Actions Coverage

Proposed Action	Proposed Position	And	Competition Required
Temporary Promotion	Is for more than 120 days	Position is one with known promotion potential greater than the potential of a position an employee currently holds or previously held on permanent basis in the competitive service	Yes
Temporary Promotion	Is for 120 days or less	Employee has not served on a noncompetitive temporary promotion for an aggregate of 120 days in the last 12 months	No
Reinstatement	Is a higher grade than previously held on a permanent basis or is one with known promotion potential greater than potential of the position an employee currently holds or previously held on permanent basis in competitive service		Yes
	Is same or lower grade than previously held on permanent basis		No
Transfer	Is a higher grade than previously held on a permanent basis or is one with known promotion potential greater than potential of the position an employee currently holds or previously held on permanent basis in competitive service		Yes

Transfer	Is same or lower grade than previously held on permanent basis or is one with no known promotion potential of the position an employee currently holds or previously held on a permanent basis in the competitive service		No
Detail	Same grade as employee's current position	Detail is for any length and the position is one with no known promotion potential greater than the potential of a position employee currently holds or previously held on permanent basis in the competitive service	No
	Is to a higher-graded position	Detail is for more than 120 days (including extensions) and the position is one with known promotion potential greater than the potential of a position employee currently holds or previously held on permanent basis in the competitive service	Yes

Appendix A – Competitive Personnel Actions Coverage

Proposed Action	Proposed Position	And	Competition Required
Detail	Is to a higher-graded position	The position is one with known promotion potential no greater than the potential of a position employee currently holds or previously held on permanent basis in the competitive service	No
	Is to a higher-graded position	Detail is for 120 days or less (including extensions) and the employee has not served an aggregate of 120 days on a noncompetitive temporary promotion or detail to such a position in the last 12 months	No
Selection for training leading to promotion		Successful completion of training is a condition of eligibility	Yes
Conversion of temporary promotion to permanent promotion		Employee selected for temporary promotion under full competitive procedures and competitors informed temporary could lead to permanent promotion without further competition	No

Note. Promotions for employees in career ladder positions will be processed as follows:

All employees in career ladder positions will normally be promoted on the first pay period after a period of 52 weeks. This is conditional upon a determination by the supervisor that the employee has demonstrated the ability to perform at the higher-grade level, all qualification and administrative requirements have been met, the employee's current rating of record is at least fully successful (or equivalent), and there is sufficient higher-level work to be performed.