

# ARTICLE 36

## MERIT PROMOTION

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### SECTION 1

It is agreed that all promotions to bargaining unit positions, and all other personnel actions set forth in Section 2 below, will be made using systematic and equitable procedures on the basis of merit and from among properly ranked and certified candidates or from other appropriate sources without regard to race, color, sex, national origin, marital status, age, religion, sexual orientation, labor organization affiliation or non-affiliation, or non-disqualifying physical handicap. This Agreement takes precedence in promotions to bargaining unit positions over any conflicting document, policy or plan.

### SECTION 2

A. When merit promotion procedures are to be used, it is understood that this Article applies to all promotion actions to bargaining unit positions not specifically excluded in Section 2.B. below. Examples of personnel actions covered are:

1. Filling a position by promotion;
2. Temporary promotions in excess of 120 days;
3. Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in the competitive service;
4. Transfer to a higher-graded position or a position with more promotion potential than a position previously held on a permanent basis in the competitive service ("a position with more promotion potential" is one in which the Employer may make promotions, without further competition, to the highest grade in the career ladder);
5. Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service;
6. Selection for training which employees are required to take before they may become eligible for promotion to a specific higher-graded position; and
7. Selection for a detail to a higher grade or position with higher promotion potential for more than 120 days.

B. The competitive procedures set forth in this Article will not apply to the following:

1. A temporary promotion for 120 days or less;
2. A detail to a higher-graded position or one with known promotion potential for 120 days or

less;

3. Promotion resulting from upgrading of a position without significant change in duties and responsibilities due to issuance of a new classification or the correction of a classification error;
4. A position change permitted by reduction-in-force regulations;
5. Promotion within a career ladder or from a trainee position for which competition was held at an earlier date;
6. Promotion of the incumbent of a position that is reclassified at a higher grade due to the accretion of additional duties and responsibilities;
7. A career ladder promotion following the non-competitive conversion of a student participating in the Student Career Experience Program;
8. Promotion, through exercise of his/her priority consideration right, of a candidate who was not given proper consideration in a prior competitive promotion action;
9. Reassignment, demotion, reinstatement or transfer to a position having no higher promotion potential than the potential of the position the employee currently holds or previously held on a non-temporary basis;
10. Promotion of an employee to a grade previously held on a permanent basis, provided that the employee was not demoted or removed for personal cause; and
11. Selection from the re-employment priority list;

### **SECTION 3A**

In the initial search for qualified applicants the minimum area for consideration will be sufficiently broad enough to ensure the availability of at least three high quality candidates, taking into account the nature and level of the position being announced.

### **SECTION 3B**

The area of consideration may be restricted where circumstances necessitate the selection from a particular organizational element within the unit due to budgetary, staffing, or other constraints.

### **SECTION 4A**

All positions which are filled through the competitive promotion procedures of this Article will be publicized through vacancy announcements issued under the authority of the servicing Human Resources Center (HRC). All vacancy announcements, depending upon the area of consideration, will be posted on the servicing Intranet and the Internet at (<http://www.usajobs.opm.gov>) via mandatory

posting of vacancies through the Office of Personnel Management (OPM) Federal Job Opportunities Bulletin (FJOB). A copy of any announcement may be obtained by contacting the servicing HRC. Employees will also have the option of being notified via email of future vacancies posted through the automated staffing system.

#### **SECTION 4B**

Vacancy announcements will be open for a minimum of ten (10) workdays for bargaining unit positions which must be filled in accordance with the competitive procedures covered in this Article.

#### **SECTION 4C**

At a minimum, every vacancy announcement will contain:

1. Announcement number;
2. Opening and closing dates;
3. Position title, series, grade, and the number of positions to be filled;
4. Organizational and geographic location;
5. Any known promotion/career-ladder potential;
6. Applicable area of consideration;
7. Summary of major duties, including an estimate of the amount of travel, if applicable;
8. Summary of minimum qualification standards to be applied, along with any selective placement factors;
9. Evaluation methods and criteria to the extent appropriate;
10. Procedures for applying;
11. Statement of equal employment opportunity; and
12. Bargaining unit status.

#### **SECTION 4D**

Vacancy announcements will be posted in all locations within the same commuting area where computer access is not available. The Employer agrees to address concerns raised by the Union regarding computer access.

## **SECTION 5A**

Employees who wish to be considered for a posted vacancy must apply by submitting information and/or documents required in the vacancy announcement. If an appraisal is required by the vacancy announcement, an employee may submit a statement that s/he is challenging the appraisal. An employee may also include a rebuttal statement regarding the most current performance appraisal.

## **SECTION 5B**

To be considered for a vacancy, candidates must submit all required application material in such a way that the information provided is complete, accurate, legible, and timely. The automated staffing system will send an email confirming receipt of an employee's application.

## **SECTION 5C**

In order to be considered under the automated staffing system, applicants must transmit an electronic application and all required supplemental materials via the automated staffing system website before midnight Eastern Standard Time (i.e., by 11:59 P.M. Eastern Standard Time) on the closing date stated in the vacancy announcement. If sending an electronic application poses a hardship, applicants may contact the issuing HRC prior to the closing date for assistance. Reasonable accommodations will be made for good cause. Employees may request, and be granted, assistance with automated staffing system. Such assistance will be on duty time.

## **SECTION 5D**

Employees on extended periods of absence (i.e., on detail, travel, military, leave) will be given automatic consideration for specific kinds of jobs during that period of extended absence provided the employee:

1. Submits written notification to the HRC prior to departure which specifies the anticipated duration of the absence and specific series, grade level(s), program or office, and tour of duty for which consideration is sought; and
2. Submits a current SF-171, OF-612, or resume and performance appraisal in triplicate for HRC.

## **SECTION 6A**

The Employer agrees that selective placement factors will only be used when they are essential to the successful performance of the position. In such cases they will constitute a part of the minimum

requirements of the position and must be stated in writing. A copy of any selective placement factors will be retained in the merit promotion file.

## **SECTION 6B**

Candidates will be evaluated against basic eligibility requirements, selective placement factors, and other appropriate criteria established for the position.

## **SECTION 6C**

The servicing HRC will determine which applicants meet the established minimum qualifications for the position at each announced grade.

## **SECTION 7A**

Rating and ranking of applicants will normally be accomplished by use of the automated staffing system.

The initial screening of candidates to determine eligibility (i.e., "minimally qualified") will be accomplished through the automated self-certification process in which the applicant will respond to a series of ranking questions included in the vacancy announcement. A score based on those responses will determine eligibility for further consideration. Applicant scores are subject to adjustment based on an evaluation by a Human Resources Center representative or designated management official that the applicant's self-rating is not appropriate. Any representative or official that makes adjustments must have knowledge of the position being filled and must not be a supervisor over the position, including selecting and recommending officials. A complete record of any adjustments, including the date of an adjustment, the reasons therefore, and the name/title of the individual making the adjustment(s), will be maintained in the automated staffing system data base, a copy of which is available for the affected employee's review.

In the event that the automated staffing system is not available or for other business reasons it is not used, all applicants found to be minimally-qualified will then be rated and ranked by an HRC representative or a panel that will consist of at least two individuals, one of whom may be designated as the chairperson. Insofar as practicable, panel membership will include representation of women, minorities, and/or handicapped employees. A representative of the servicing HRC will be available to provide advice and assistance to the panel. At least one panel member must have knowledge of the position being filled. All panel members will hold positions at or above the full performance level of the vacant position. Supervisors over the position, including selecting and recommending officials, will not serve as panel members.

## **SECTION 7B**

An employee who applies for a position and is not found eligible will be notified after the establishment of a roster or a BQ list if the employee supplied an email address during the application process.

## **SECTION 7C**

Candidates using the automated staffing system will be evaluated on the basis of their responses to assessment questions relating to the job analysis and crediting plan that are needed for successful job performance in the position. Automated staffing system questions must be closely related to the principal duties of the position. It is understood that automated staffing system questions will be developed and selected for every position prior to announcing the vacancy.

In the event that the automated staffing system is not available or for other business reasons, it is not used, candidates will be evaluated based upon the KSAs developed from the job analysis and crediting plan their which are needed for successful job performance in the position. KSAs must be closely related to the principal duties of the position. It is understood that KSAs for every position will be developed prior to announcing the vacancy.

## **SECTION 8A**

Under the automated staffing system, all applications will be rated by the system and the servicing HRC representative will evaluate all job-related information submitted by the highest ranking candidates (a) to ensure that the applicants meet the minimum qualifications requirements and, (b) support their responses to the automated staffing system questions in their resumes and narrative responses.

## **SECTION 8B**

All candidates for promotion will be rated and ranked consistent with law, rule, regulation and this agreement.

## **SECTION 8C**

Performance appraisals of record may be used as a supporting document to demonstrate ability to perform the KSAs.

## **SECTION 8D**

Under the automated staffing system, applicants will be tentatively rated and ranked on the basis of

their own responses to the ranking questions contained in the vacancy announcement. These initial scores may be subject to adjustment pursuant to the procedures outlined in Section 7.A. Scores may also be adjusted on the basis of information arising from an interview with the applicant. A complete record of any adjustments made on the basis of an interview, including the date of an adjustment, the reasons therefore, and the name/title of the individual making the adjustment(s), will be maintained in the automated staffing system database, a copy of which is available for the affected employee's review.

## **SECTION 8E**

In the event the automated staffing system is not available or, for other business reasons, is not used, candidates will be ranked according to their rating scores assigned by the panel or HRC representative. When a panel is used, the total scores assigned by individual panel members will be averaged to arrive at the final rating for each candidate. Where possible, rating and ranking officials will document the basis for their various assessments, and this documentation will be maintained by the servicing HRC in the merit promotion file for the position.

## **SECTION 8F**

Anyone present during QRB deliberations is prohibited from divulging to any unauthorized person, including the selecting official, any of the following: contents of rating and ranking worksheets, QRB deliberations, and the numerical scores assigned to candidates. If any QRB member violates this provision, the Employer will take appropriate action.

## **SECTION 9A1**

### **Selection Process**

Priority Consideration. Candidates will be referred to the selecting official as described below:

If an employee was erroneously omitted from the "best-qualified" list or otherwise was not given proper consideration, he/she will receive one priority consideration for the next appropriate vacancy. Priority consideration provides for referral of the employee's name and application to the selecting official before referring other candidates. Further, retained employees are also referred as Priority Consideration candidates, but these employees do not "lose" the entitlement if they are not selected. Priority consideration does not provide a selection entitlement. It means that the employee is not required to compete with other employees for promotion; her/his selection may be processed as an exception to this Article's requirements.

In the event that two (2) or more employees are entitled to priority consideration for the same vacancy, they shall each receive priority consideration, as follows:

- a. If the employees became entitled to priority consideration as a result of separate promotion actions, the employee first entitled shall receive the first priority consideration.

- b. If the two (2) or more employees entitled to priority consideration became entitled as a result of the same promotion action, the employee with the highest score will receive the first priority consideration. If there is a tie, management will give consideration to each employee.
- c. If two (2) or more employees are referred for priority consideration, and one (1) is selected before the selecting official reviews the application(s) of the other(s), then the employee(s) who was/were not considered will retain the right to a single priority consideration for the next appropriate vacancy.

The next appropriate vacancy for purposes of priority consideration is the next vacant position requiring the same or similar qualifications, at the same grade and with comparable promotion opportunities as the position for which the employee failed to receive proper consideration.

- d. An employee who received priority consideration and is not selected will be given, upon request, a written explanation of why he/she was not selected for the position.

## **SECTION 9A2**

### **CTAP/ICTAP Procedures**

If the position remains open after any priority consideration candidates are referred and considered, the HRC will issue the certificate of eligibles and follow the procedures in this Article. After all required steps have been taken, the HRC will identify any applicants who are entitled to placement under the HHS Career Transition Assistance Plan (CTAP) or the Interagency Career Transition Assistance Plan (ICTAP). If any such applicant exists, the HRC will determine if s/he is "well-qualified" as defined in 5 C.F.R. § 330.604(k). Any "well-qualified" CTAP or ICTAP applicant will be selected for and offered the position before any other best-qualified candidates are referred to the selecting official. For purposes of this Article, a CTAP/ICTAP-eligible employee will be considered "well-qualified" if s/he attains a score at or above the cut-off for placement on the best-qualified list.

## **SECTION 9A3a**

If the vacancy is not filled using priority consideration or CTAP/ICTAP procedures, the HRC will furnish the selecting official with the names of candidates available for selection, as follows:

Based upon the results of the evaluation of the candidates by the QRP or HRC, the top five (5) bargaining unit candidates will be submitted to the selecting official. The list of bargaining unit employees will be before the selecting official for at least two (2) workdays prior to forwarding any non-unit applicants.



### **SECTION 9A3b**

The full best-qualified list will be referred to the selecting official with applicants' names listed in alphabetical order.

### **SECTION 9A3c**

Notwithstanding the above, the employees whose point score would place them in a tie for the final position on the "best qualified list" will also be referred to the selecting official.

### **SECTION 9A3d**

Other qualified applicants, not rated and ranked, who wish to be considered for either reassignment, voluntary change to lower grade or re-promotion will be referred separately from the best-qualified candidates, as well as other non-competitive candidates eligible under various other appointing authorities.

### **SECTION 9A3e**

When any bargaining unit candidate identified on the "best qualified" list is given the opportunity to be interviewed by the selecting official, then all "best qualified" candidates identified on that list who are members of the bargaining unit will have an opportunity to be interviewed.

### **SECTION 9B**

The selecting official will make a selection without personal favoritism, without discrimination, and without consideration of non-merit factors. An employee's balance of annual or sick leave may not be used by a selecting official as a reason for selection or non-selection of that candidate. This does not preclude the consideration of existing abuse of leave and its effect on the employee's ability to perform the requirements of the position.

### **SECTION 9C**

The selecting official will make the decision to select or not to select as soon as possible.

### **SECTION 9D**

Alternate or additional selections may be made from a properly-issued best-qualified list within ninety (90) days from the issue date of the promotion certificate if:

1. the original selectee declined or vacated the position; or
2. additional positions are established or become vacant with the same title, series, and grade, which are in the same geographic location (commuting area) as the position announced and are to be evaluated under the same rating schedule or crediting plan criteria.

## **SECTION 10**

Selected employees within HHS will normally be released for promotion to the new position at the beginning of the first pay period that occurs two (2) full weeks after the releasing official has been notified of the selectee's official offer and acceptance of the position. Compelling reasons may delay the reporting date; in such a situation, the promotion will be effected on the earliest feasible date.

## **SECTION 11A**

To the maximum extent possible, applicants applying for bargaining unit positions through the automated staffing system will be notified via email of the results of their application after a selection is made.

## **SECTION 11B**

Unsuccessful applicants may consult and/or obtain advice from, their servicing HRC specialists concerning specific qualifications needed for desired positions and/or a first-line supervisor concerning ways to enhance one's qualifications for positions under his/her supervision. This does not bar the use of the HHS Work Life Center where available to employees.

## **SECTION 11C**

Following completion of the selection process and upon written request to the servicing HRC, employee- applicants will be provided the following information about a position announced under this Article for which they applied in a timely manner:

1. Whether or not they met the minimum qualification requirements for consideration;
2. Whether or not they ranked in the group from which final selection was made (the "best-qualified" list); and
3. The name(s) of the selectee(s) for the position.

If an employee is promoted to a position in the bargaining unit and subsequently, within a year, is demoted for inability to perform at the higher level, the Employer agrees to make reasonable efforts to return the employee to a position equivalent to the one he/she held before the promotion occurred, whenever practical.

## **SECTION 12**

The Employer will maintain required records in merit promotion files for at least two (2) years.

Upon completion of the selection process and submission of a written request to the appropriate management official, a Union representative will be allowed to review any necessary and relevant information concerning the promotion, (except crediting plans) including the merit promotion file, in accordance with applicable law, rule, regulation and this Agreement.

The Union agrees to respect the confidentiality of merit promotion action information and to divulge it only to the extent necessary to fulfill its representational duties properly. If a grievance is filed concerning a merit promotion action, the Employer will provide the Union, upon its written request, with a copy of relevant and necessary documents in the merit promotion file, in accordance with applicable law, rule, regulation, and this Agreement.

Crediting plans and rating schedules are considered highly sensitive documents by the Federal government, release of which is likely to give candidates an unfair advantage in, and/ or significantly compromise the purpose and utility of, the competitive selection process. For that reason, they are generally not released to anyone except those individuals who perform a direct role in a specific selection process. Notwithstanding the above, the Employer agrees to make a case-by-case determination as to whether releasing a given crediting plan or rating schedule to the Union, upon its request, would be appropriate, regardless of the basic policy against releasing such documents. If the Employer decides not to provide access to a crediting plan or rating schedule upon the Union's request, that decision will be sent to the Union in writing, specifying the reasons for denying access.

## **SECTION 13**

If the Employer decides to release a crediting plan or rating schedule to the Union upon its request, the Union agrees not to disclose the content of the crediting plan or rating schedule to any other bargaining unit employees.

## **SECTION 14**

Although career advancement is the intent and expectation in the career-ladder system, promotions within career ladders are neither automatic nor mandatory. However, career ladder promotions will be made when:

- an employee's performance demonstrates the potential or ability, as determined by the supervisor, to perform the duties at the next higher grade level;
- The current performance appraisal rating is at the "fully successful" level or higher.
- The employee meets minimum time in grade and qualification requirements;

- there is available work of the higher grade level; and
- The promotion is not precluded due to budgetary constraints.

Career ladder promotions will be effective at the beginning of the first full pay period following a determination by the Employer that the employee has met the above criteria.

#### Grade Retention

Employees who are downgraded as the result of a position classification review will be afforded consideration for re-promotion in accordance with 5 CFR 536.101. Regulations provide that when an employee is placed in a lower graded position as a result of a reclassification, the employee is entitled to grade retention if the position from which he or she is placed had been classified at a higher grade for a continuous period of at least 52 weeks immediately before the placement.

(Grade retention may last for two (2) years).

#### Pay Retention

1. Pay retention must be granted to an employee whose basic pay would otherwise be reduced as a result of re-classification when the employee does not meet the eligibility requirements for grade retention.
2. An employee's entitlement to pay retention will not terminate if he/she does not apply for a vacancy announcement. However, in accordance with 5 CFR 536.308, if the employee declines a reasonable offer of a position, he/she will lose pay retention entitlement. The requirement for the automatic rating and ranking of retained-pay employees extends for one (1) year.