

Merit Promotion

Section I. Purpose

- A. The Parties will comply with 5 U.S.C. Chapter 23. This article applies only to competitive service bargaining unit positions that the Agency chooses to fill through merit promotion vacancy announcements unless explicitly noted. As required by 5 U.S.C. 2301(b) (1) through (9), the Merit System Principles apply to all bargaining unit employees.

This Article shall be interpreted and applied in a manner consistent with the provisions of the most recent EPA Merit Promotion Plan, Order 3115, as well as with law, rule, and regulations. The Parties agree that changes to Order 3115 will be negotiated to the extent required by law. All procedures and regulations contained in the Agency's Merit Promotion Order 3115 which are not covered in this Article will apply to the extent they are not inconsistent with this Article.

Section II. Coverage. This Program applies to all competitive service AFGE bargaining unit positions.

- A. Competitive Actions. The following placement actions can be taken only by applying the competitive procedures discussed in the Agency's Merit Promotion Order 3115:
1. A permanent promotion or transfer to a higher graded position or to a position with higher promotion potential than previously held on a permanent basis in the competitive service.
 2. A time-limited promotion for more than 120 calendar days to a higher graded position.
 3. A detail of more than 120 calendar days to a higher graded position or to a position with higher promotion potential.
 4. A selection for training as part of an authorized training agreement, part of a promotion program or required before an employee may be considered for a promotion;
 5. A reassignment or change to a lower grade, to a position with more promotion potential than a position previously held on a permanent basis in the competitive service (except as permitted by RIF regulations).
 6. A transfer to a position at a higher grade or with more promotion potential than in a position previously held on a permanent basis; in the competitive service. A 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.

B. Non-Competitive Actions. The following non-competitive placement actions can be taken without using the competitive procedures described in the Agency's Merit Promotion Order 3115:

1. Career Ladder Promotions. Career ladder promotions are permitted when an employee is appointed or assigned to any grade level below the established full performance level of the position (i.e., the position has a documented career ladder and promotion potential). Career ladder promotions are not automatic, and all qualifications and eligibility must be met prior to making the action effective.
2. Promotion Based on Reclassification When:
 - a. No significant change occurs in the duties or responsibilities and the position is upgraded due to issuance of a new classification standard, an updated Agency-wide classification policy or the correction of a classification error; or
 - b. The position is upgraded due to accretion of additional duties and responsibilities and all of the following provisions are met:
 - i. The employee continues to perform the same basic functions in the same organization, working for the same supervisor (the duties of the former position are administratively absorbed into the new position, and the former position is abolished);
 - ii. The new position has no known (i.e., career ladder) promotion potential beyond the grade of the proposed non-competitive promotion (i.e., accretion action);
 - iii. The additional duties and responsibilities assigned to or accrued by the incumbent do not adversely affect or impact the grade-controlling duties and responsibilities of other positions in the unit; and
 - iv. The accretion is supported by a written analysis of the position (which may involve an audit with the employee and/or employee's supervisor, or other fact-gathering method).
3. A temporary promotion may be made permanent without further competition provided the temporary promotion was originally made under competitive procedures and the job announcement stated the temporary promotion could lead to a permanent position.
4. Temporary Promotion of an employee for 120 days or less, or for more than 120 days to a grade level held previously on a permanent basis in the competitive service or in another merit system which OPM has an interchange agreement, and the employee was separated or demoted for reasons other than performance or conduct.
5. Placement as the result of Priority Consideration as a remedy for candidates not given proper consideration in a competitive promotion action;

6. In accordance with 5 CFR 351 and the RIF Article of this MCBA, Reduction in Force Placements which result in an employee receiving a position with higher promotion potential;
7. Promotion, Reassignment, Demotion, Transfer, Reinstatement, or Detail to a Position Having No Greater Promotion Potential than the 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) and did not lose because of performance or conduct reasons.
8. Promotion resulting from successful completion of a Training Program for which the employee was competitively selected;
9. Selection from the Re-employment Priority List at the same or lower grade level than the position from which selected;
10. Reinstatement to any Position of a career or career-conditional employee who served under a career SES appointment consistent with 5 CFR 335.103(c)(3);
11. Promotion as a Legal Remedy as ordered or agreed upon in a legal or administrative proceeding; and
12. Details to a position with the same promotion potential.

C. Area of Consideration (AOC). Since the AOC targets the group of candidates who will be considered for competitive selection, it is important that it be sufficiently broad to uphold the basic merit principles of open competition, including that all employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition. When establishing the AOC, selecting officials shall consider appropriate sources which are likely to help the Agency meet its mission. The minimum area of consideration is the organizational unit, no less than a Division or Office, which may produce at least two minimally qualified candidates for consideration. Applicants from outside of the area of consideration are ineligible for referral under the job announcement. This includes current agency employees who are outside the advertised area of consideration. When the stated area of consideration yields less than two minimally qualified candidates, the area of consideration may be extended, and the vacancy may be re-announced.

1. Selecting Officials have the option of establishing an AOC larger than the minimum described above, especially if experience shows that those minimum areas fail to provide enough qualified candidates
2. An AOC will be established for each vacancy;
3. In accordance with 5 USC 3327, OPM must be notified of job opportunities in the competitive service.

D. Posting Vacancy Announcements

1. The announcement will be posted on USAJOBS for a minimum of ten calendar days.
 2. Applications submitted electronically on or before the closing date will be accepted.
 3. At a minimum, the vacancy announcement will contain:
 - a. Title, series and grade(s) of the positions advertised and job announcement number;
 - b. Geographic and organizational locations;
 - c. Summary statement of the major duties and responsibilities;
 - d. Minimum OPM qualification requirements plus any Quality-ranking factors and selective factors, if applicable;
 - e. Knowledge, skills and abilities and/or competencies required. Vacancy Questions included in vacancy announcements will be based on the position. It is understood that vacancy questions and any relevant weighting factors will be developed and identified prior to announcing the vacancy.
 - f. A Human Resources representative;
 - g. Application procedures (where, how, and what to submit);
 - h. Opening and closing dates, including any cut-off conditions;
 - i. Promotion potential of the positions;
 - j. A statement of EEO;
 - k. Evaluation method for rating applicants;
 - l. Special conditions of employment (e.g., frequent travel or geographic mobility requirements);.
 - m. Area of consideration;
 - n. Whether the position is eligible for telework and/or an alternative work schedule;
 - o. If the position location is advertised as "remote" the job announcement will indicate so under the location section of the job announcement; and
 - p. Number of positions expected to be filled at the time if more than one.
- E. Methods of Locating Merit Promotion Candidates. All recruitments where the agency chooses to use the Merit Promotion hiring authority will be posted at a minimum on USAJOBS.
- F. Priority Consideration involves the referral of individuals who must be considered before other candidates. If the priority consideration candidate is not selected, upon request the Agency will inform the person why they were not selected. Types of Priority Consideration include:
1. Repromotion Consideration Eligibles. Employees demoted in the Agency without personal cause or given grade/pay retention are entitled to priority consideration for any vacancies for which they qualify where the planned area of consideration includes their local commuting area. Repromotion eligibles are entitled to priority

consideration for 2 years unless they attained the grade from which they were demoted or decline a position of equal grade, whichever occurs first. Candidates may receive consideration only at the grade level in which consideration was lost and having no higher promotion potential than the position previously held.

2. Candidates Who Did Not Receive Proper Consideration In A Previous Merit Promotion Action Due To A Procedural, Regulatory Or Program Violation. These candidates will receive priority consideration for the next appropriate vacancy in the geographic location where proper consideration was denied. The following conditions must be met before priority consideration under this provision may be granted:
 - a. It is a similar type position in the same pay system as the position for which the employee failed to receive proper consideration;
 - b. The employee is qualified for and would have been in the best qualified group; and
 - c. The vacancy is at the same grade level with no higher potential than the position for which consideration was lost.
3. Employees Who Receive Priority Consideration Based on An EEO Complaint. These employees must be given priority consideration if it is either the agreed upon resolution to settle the complaint or the remedial action ordered in the final decision of a discrimination complaint.
4. Displaced Applicants. The Agency will provide special selection priority to eligible displaced applicants who are determined to be well-qualified, in accordance with the regulatory requirements (i.e., under the Career Transition Assistance Plan or the Interagency Career Assistance Program).

Section III. Application Procedures.

- A. Employees who wish to apply to jobs posted on USAJOBS should follow the instructions in the USAJOBS vacancy announcement.
- B. Accepting Applications.
 1. Unless otherwise specified, applications must be submitted to USAJOBS by all candidates by the closing date and time specified in the vacancy announcement. For assistance in applying for a vacancy, applicants may contact the human resources representative listed on the vacancy announcement. EPA will provide reasonable accommodation to applicants with disabilities. Employees who require reasonable accommodation for any part of the application process, should follow the instructions in the vacancy announcement for requesting an accommodation.

Section IV. Eligibility Requirements.

- A. General. Applicants must meet all requirements of the vacancy announcement, including OPM qualification requirements and any selective factors. Selective factors are

knowledge, skills and abilities in addition to the minimum qualification standards set by OPM and constitute part of the minimum eligibility requirements for the vacancy. Selective factors are determined by appropriate management officials. Selective factors must be clearly stated in the vacancy announcement. Time-in-grade requirements must be clearly set forth in the vacancy announcement. Applicants responding to open continuous announcements must meet the eligibility requirements as stated in the open continuous vacancy announcement.

- B. Minimum Qualification Requirements. Minimum qualification requirements (for example, educational, medical, experience, etc.) are determined by OPM for each occupational series. Qualification standards are available on the OPM website.
- C. Distinguishing Between Candidates. Candidates who meet eligibility requirements will be divided into two categories:
 - 1. Promotion Eligibles - those applicants who must compete in order to be placed in the position (applicants in the promotion eligible category will be evaluated in accordance with the provisions below); and
 - 2. Noncompetitive Eligibles - those applicants with or without competitive status who are eligible for reinstatement, reassignment, change to lower grade, special appointing authority (e.g., persons with disabilities, disabled veterans, etc.) or other action where competition is not required for placement in the position. Noncompetitive eligibles will be referred alphabetically without being rated and ranked. Such referrals may be made up until the time that the certificate of eligibles is sent to the selecting official.
- D. Evaluation of Candidates
 - 1. Applications may be evaluated by an SME, a rating panel or a human resources representative. Regardless of the evaluator, ratings must be based solely on the application material submitted by the applicant. If an automated staffing system is used to qualify, rate and/or rank applicants, then an HR representative will conduct a quality review before the rating is finalized. When a quality review is conducted for an automated rating, an adjustment will only be made in the event that an applicant's answer(s) to the automated question(s) are not consistent with the applicant's resume or other documentation provided in the promotion package.
 - 2. All candidates who meet the minimum (basic) qualification requirements must be evaluated on job-related criteria (e.g., work experience, education and training).
 - 3. Evaluation methods must include an analysis of the job to determine pertinent knowledge, skills and abilities (KSA's) or competencies that are important for successful job performance. Based on the job analysis, the KSA's/competencies to be used as Mandatory KSA's/competencies and rating factors for the vacancy

announcement will be identified. In an automated staffing system, the identified KSA's/competencies will be elicited in the form of questions or requests for information that the applicant must answer.

4. A rating plan must be developed by the subject matter expert or human resources representative. The rating plan is the list of questions which are derived from the KSAs that an applicant will answer. The application of the rating plan will provide a self-assessment of each applicant.
5. All candidates meeting the minimum qualifications for the position will be rated and ranked, regardless of the number of applicants.
6. Contents of rating and ranking worksheets of candidates, deliberations concerning the candidates, and the numerical scores assigned to the candidates from the hiring process are confidential and only provided to those with a need to know.

E. Ranking and Referral of Candidates.

1. In those cases where the Agency finds that the review of qualifications would benefit from direct involvement of subject matter experts (SMEs), one or more SMEs may be utilized to help to evaluate the candidates. Normally the SMEs will be from the same Office/Region as the vacancy.
2. Responses by candidates to the questionnaire may be verified with information contained in the applicant's resume and the applicant's submitted documentation by Human Resources or one or more subject matter experts (SMEs).
3. The assessment of each candidate by SMEs will be based solely on the documentation before the SMEs and not on the personal knowledge about the candidate.
4. The SMEs will be of the same or higher grade than the position to be filled. In exceptional circumstances, the SME may be of a lower grade than the position to be filled.
5. Determining Best-Qualified. Promotion eligible candidates will be rated against the questions set forth in the rating plan. Candidates will be identified as either "best-qualified" or "qualified" based on the scores received in the evaluation process. Candidates are given a numeric rating based on self-assessment and the HR Specialist evaluates each applicant's background to determine the degree to which they meet the qualifications of the position. Based on this review, an overall rating is ultimately assigned to each applicant.
6. When there are ten (10) or fewer qualified candidates for a vacancy, candidates who meet basic eligibility requirements may be referred to the selecting official.
7. All referred candidates will be listed alphabetically on a certificate to the selecting official, except on VRA and Schedule A certificates where they are referred in preference order.
8. Duration of Merit Promotion Certificate. Normally, certificates are issued with a 30-day due date and a 90-day expiration date. Certificates may be extended for a

total of 180 days with a written request from the selecting official to the servicing HRO.

9. Use of Certificates for Additional Positions. Certificates may be used to fill additional vacancies for similar positions up to 180 days. A similar position is one that is located in the same commuting area, has the same title, series and grade (and promotion potential, if applicable,) and requires the same KSA's or competencies.
10. When ranking candidates for vacancies at multiple grades, each candidate will be ranked separately by each grade for which the candidate applied.

F. Interviews and Selections

1. Interviews may be conducted at the discretion of the selecting official or interview panel.
2. If the selecting official chooses to interview and/or convene an interview panel, the selecting official/interview panel should select interview candidates based on (at a minimum), a review of the applicants' resumes. Other appropriate sources for the review may include: the employment application, reference checks, performance appraisal, work samples, etc. When choosing to interview some of the candidates, the selecting official and/or interview panel will offer interviews to at least the top three candidates (if there are three) as determined from the review above.
3. Selecting officials should select the best candidate for their position(s) based on information obtained from appropriate source(s): employment application, resume, reference checks, interviews, performance appraisal, work samples, etc.
4. The Agency provides selecting officials with training and guidance on interviewing and DEIA, which supports unbiased interviewing and hiring.

G. Release and Notification of Applicants.

1. The human resources representative will work with program officials to establish mutually agreeable release dates based on mission and program requirements. Normally, an employee will be released no later than one complete pay period for promotion, following the selectee clearing all requirements for the new position. When local workforce and program conditions permit, an employee will be released no later than two complete pay periods for reassignments, following the selectee clearing all requirements for the new position. When an employee is nearing the end of a within-grade increase waiting period, consideration should be given to releasing an employee at the beginning of a pay period on or after the effective date of the within-grade increase, provided such an action would benefit the employee.
2. All internal EPA interviewees (first and second interviews) will be notified of the outcome of the vacancy including the name of the person who was appointed to

the position. If this does not occur, candidates have the option to contact the selecting official or their local HRO/PMO to receive the name of the appointee.

H. Disclosure of Information

1. The Agency's merit promotion plan will be posted on the intranet.
2. Applicants will be notified of:
 - a. Whether they were found eligible;
 - b. Whether they were referred to the selecting official;
 - c. Whether or not they were selected; and
 - d. Upon request to the selecting official, who was selected.
3. In addition, applicants may request and receive information concerning:
 - a. Whether the vacancy announcement was canceled;
 - b. Areas, if any, in which they should improve to increase their chance for future promotion; and
 - c. The applicant's own rating assigned in the ranking process.
- I. The fact that an employee is the subject of a conduct investigation will not prevent or delay their proper consideration for promotion, unless the Agency determines that such is necessary to protect the integrity of the Agency.
- J. An employee's accumulation or balance of annual or sick leave may not be considered by ranking officials and/or selection officials as a basis for selection or non-selection. However, this does not preclude the consideration of leave balances if there is abuse of leave or resultant effect on the employee's dependability or work performance.
- K. Employees may be entitled to retroactive pay in connection with improper personnel actions in accordance with laws and regulations.
- L. In the event that two (2) or more employees are entitled to priority consideration for the same vacancy, the name of all such employees shall be submitted on a Certificate of Eligibles for priority consideration to the selecting official in alphabetical order.

Section V. Within Grade Increases

- A. An employee paid on an annual basis, and occupying a permanent position within the scope of the General Schedule, who has not reached the maximum rate of pay for the grade in which their position is placed, shall be advanced in pay successively to the next higher rate within the grade at the beginning of the next pay period following the completion of:
 1. each 52 calendar weeks of service in pay rates 1, 2, and 3;

2. each 104 calendar weeks of service in pay rates 4, 5, and 6; or
 3. each 156 calendar weeks of service in pay rates 7, 8, and 9;
- B. Subject to the following conditions:
1. the employee did not receive an equivalent increase in pay from any cause during that period; and
 2. the work of the employee is of an acceptable level of competence.
- C. Supervisors are responsible for keeping employees informed of the acceptability of their work on a regular basis as it pertains to within grade increases.
- D. Employees may be entitled to retroactive pay in connection with delayed within grade increases subject to laws and regulations.
- E. An acceptable level of competence shall be based on a current rating of record of "Effective" or its equivalent or higher. If an employee has been reduced in grade because of unacceptable performance and has served in one position at the lower grade for at least 90 days, a rating of record at the lower grade shall be used as the basis for an acceptable level of competence determination.
- F. An acceptable level of competence determination shall be delayed when either of the following applies:
1. An employee has not had the minimum period of 90 days on their PARS and the employee has not been given a performance rating in any position before the end of the waiting period; or
 2. An employee is reduced in grade because of unacceptable performance to a position in which they are eligible for a within-grade increase or will become eligible within a 90-day period.
- G. Where employees have been assigned to their present supervisor for less than ninety (90) days, the supervisor shall secure the views of the employee's previous supervisor or appropriate sources of input. In such situations, appropriate sources of input for the rating typically include current and past members who were part of the employee's supervisory chain during the rating period before making a determination.
- H. Denial of Within-Grade Increase. When it is determined that an employee's performance is not at an acceptable level of competence (effective), within five days of indicating unacceptable performance to the Shared Service Center (SCC), the negative determination shall be communicated to the employee in writing. This communication shall set forth the reasons for any negative determination and the

respects in which the employee must improve their performance in order to be granted a within-grade increase.

- I. Employee Complaints: Employees wishing to raise a complaint of discrimination regarding non-selection in a particular promotion action may do so through either the Agency's discrimination complaint process or the negotiated grievance procedure. Employees must follow appropriate time frames provided for in the negotiated grievance procedure or the discrimination complaint process. Employees may not file a grievance based solely on non-selection.
- J. Appeal of Denial of Within-Grade Increase. An employee may request reconsideration of a denial of a within-grade increase by filing, with their supervisor, not more than 15 calendar days after receiving notice of determination, a written response to the denial. This request for reconsideration shall set forth the reasons that the employee is requesting reconsideration. Upon request, the employee may meet with the supervisor. The employee may have a Union representative present for this meeting.
- K. The Agency shall provide the employee with a written decision within 15 workdays of receipt of the request for reconsideration. Where an employee is denied their request for reconsideration, the letter transmitting the decision shall include a statement which informs the employee about their right to appeal the decision through the grievance procedure.

Section VI. Non-Supervisory Attorney Promotion Process to the GS-15 level. The parties agree that this section applies to AFGE bargaining unit attorney positions, which are in the excepted service.

- A. Excepted service positions are excepted from competitive rules, but are subject to Merit System Principles, including the principle that advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition. Except for desk audits, classification appeals, non-competitive promotion to the next higher grade within an established career ladder, honors fellows/law clerks, settlements, and judgments, management will advertise permanent non-supervisory GS-15 attorney promotions under any method (e.g., USAJobs, TalentHub, email solicitation).
 - 1. Management reserves its right not to fill vacant positions and its right to reassign attorneys to vacant positions.
- B. Procedures. When management advertises a vacant permanent non-supervisory AFGE bargaining unit GS-15 attorney promotion position the posting will include:

1. A description of the job duties.
 2. Who is eligible to apply;
 3. Instructions for applying;
 4. How long applications will be accepted;
 5. The area of consideration (AOC) (e.g., within the region only, or to include other EPA legal offices);
 6. How long the announcement will be open (no less than **10** calendar days);
 7. An explanation of what documents need to be submitted as part of the application (e.g., resume, writing sample, summary of experience,) and in what format;
 8. Whether the position is subject to background investigation or security clearance (only for postings on USAJobs); and
 9. Other requirements mandated by law (only for postings on USAJobs).
- C. Assessment criteria used to evaluate candidates must be fair, job-related and applied in accordance with merit system principles.
- D. Amended USAJobs announcements will identify changes that were made to the original announcement.
- E. If an announcement is cancelled, applicants shall be notified.
- F. When an employee applies for more than one announced position, the employee will receive full consideration for each position for which they have applied and for which they meet the required qualifications.
- G. After the announcement closes:
1. If the selecting official chooses to interview and/or convene an interview panel, the selecting official/interview panel should select interview candidates based on (at a minimum), a review of the applicants' resumes. Other appropriate sources for the review may include: the employment application, reference checks, performance appraisal, work samples, etc. When choosing to interview some of the candidates, the selecting official and/or interview panel will offer interviews to at least the top three candidates (if there are three) as determined from the review above.
 2. Selecting officials should select the best candidate for their position(s) based on information obtained from appropriate source(s): employment applications, resumes, reference checks, interviews, performance appraisal, work samples, etc.
 3. The Selecting Official has the right to select or not select any of the applicants recommended by a panel.
- H. Setting the Effective Promotion Date: Management will work with the appropriate Shared Service Center to establish a mutually agreeable promotion date based on mission and program requirements. When a selectee is nearing the end of a waiting

period for a within-grade increase, consideration should be given to effectuating the promotion at the beginning of a pay period on or after the effective date of the within-grade increase, provided such an action would benefit the employee.

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