**ARTICLE 22 – CAREER OPPORTUNTIES AND ADVANCEMENT**

**Section 1 – Purpose of Article**

1. It is the policy of the Office to generally promote internal applicants into vacant positions to the extent consistent with the abilities of the employees and the needs of the Office. However, the Office reserves the right to make a selection from any appropriate source.
2. The purpose of this Article is to ensure that all competitive actions for bargaining unit positions and career ladder promotions are made in a systematic and equitable manner according to merit, in order that employees are given the opportunity to develop and advance to their full potential.
3. The Office will continue to post and maintain information about career and developmental opportunities on the Counsel intranet.
4. **The use of direct hire authority will not abridge the rights bargaining unit employees have under this Article.**

**Section 2 – Competitive Promotions**

It is agreed that management retains the right to assign work and determine who will perform the function discussed; therefore, whenever language in this Section specifies that a particular individual or office perform a certain task it is intended only to identify the individual or office that is responsible for handling the situation in question.

1. First Consideration –
   1. The Office agrees to grant first consideration to Office bargaining unit employees when filling bargaining unit positions.
   2. To **ensure** ~~assure~~ first consideration for Office bargaining unit employees, the Office shall consider all Office bargaining unit employee applicants for any unit position covered by this Section before the selecting official for a position may consider applications from any other sources.
   3. No external applicant from another source may be considered until after the Office has considered bargaining unit employee applicants under this Section. Nothing in this Section prohibits the Office from simultaneously, soliciting, rating, and ranking external applicants.
   4. Notwithstanding Section 2(B)(2) of this Article, “first consideration” (as defined in this Subsection) will be given to any current employee who applies to a posted attorney announcement.
2. Actions Covered –
3. The procedures described in this Section apply to the following actions for competitive service employees only:
4. Filling a position by promotion;
5. Filling a position by temporary promotion for more than one hundred-twenty (120) days;
6. Selection for training when training is given primarily to prepare employees for advancement and the training is required for promotion;
7. Filling bargaining unit positions with non-bargaining unit employees; however, if bargaining unit employees are first considered through the procedures in this Article, and/or Article 23 as applicable, then filling vacancies with non-bargaining unit employees shall be excluded from these competitive procedures~~.~~
8. Filling a position by reassignment if a vacancy announcement has been posted, unless the Office uses any of the reassignment procedures described in Article 23.
9. Other placement actions described in 5 CFR § 335.103(c).
10. Excepted Service –

The procedures described in this Section apply to excepted service positions only in the following two situations:

1. A competitive promotion to a permanent bargaining unit GS-15 attorney position; or
2. A formal temporary promotion to a bargaining unit GS-15 attorney position of more than one hundred-twenty (120) days;
   1. The procedures described in this Article will not apply to the following:
3. Promotions to positions that have been upgraded without significant change in duties and responsibilities on the basis of either the issuance of a new classification standard or the correction of a classification error;
4. Re-promotion to grades or positions from which an employee was demoted within the Office without personal cause; that is, without misconduct or inefficiency on the part of the employee and not at the employee’s request;
5. Promotion to a higher-graded position, a requirement of which is specific training, provided selection for such training was made in accordance with this Agreement;
6. Promotion of occupants of career ladder positions up to the full performance level;
7. Government-wide special emphasis programs (for example, Veterans Readjustment Act, Disabled Worker trainee, and Cooperative Education programs) up to and including conversion into the competitive service;
8. Any other mandatory exceptions provided for in OPM regulations or law;
9. A position change within a division from a position having known promotion potential to a position having no higher promotion potential;
10. A temporary promotion of one hundred-twenty (120) days or less;
11. An action taken as a remedy for failure to receive proper consideration in a competitive action;
12. Positions with career ladder potential to GS-4 or below; and
13. Any other position change identified in 5 CFR § 335.103(c)(2).
    1. Vacancy Announcements –
14. Vacancy announcements will be published before filling any position by the competitive actions covered by this Section.To ensure that both bargaining unit employees and NTEU have access to vacancy announcements, all Office vacancy announcements will be posted on the Office's intranet for as long as the vacancy is open. Additionally, if a posted vacancy announcement is cancelled, the cancellation will be promptly posted on the Office’s intranet for as long as the vacancy was originally to be open.
15. The vacancy announcements will be posted at least fourteen (14) days prior to the closing date and at a minimum will contain the following:
16. Announcement number;
17. Opening and closing dates;
18. Title, series, grade and number of position(s), and organizational location(s) of the position(s) to be filled, including worksite;
19. Any unusual conditions of employment (for example, shift work, frequent travel, etc.);
20. Minimum qualifications required;
21. Brief summary of the duties of the position together with an indication of where additional information may be obtained;
22. Selective placement factors, if any;
23. Evaluative methods to be used, including all the specific forms to be considered, the optional use of interviews, etc. No evaluative methods may be used unless listed in the vacancy announcement;
24. Statement of equal employment opportunity;
25. Where **and how** to submit applications;
26. Career ladder and promotion potential, when appropriate;
27. Time-in-grade requirements; and
28. Statement indicating that the position is in the NTEU bargaining unit.

Changes to a vacancy announcement of a non-substantive nature [for example, announcement number, or the number of vacancies where the increase is less than four (4)], will not require extension of the posting time.

1. Selective placement factors will only be used in determining eligibility when they are essential to successful performance in the position to be filled. In such cases, they will constitute a part of the minimum requirements of the position in question.
2. Employees must submit an application for each vacancy for which they wish to be considered via the Treasury automated staffing system as specified in the vacancy announcement. The Office will not withdraw an employee’s application for a position unless the employee requests in writing that the application be withdrawn.
3. An employee who applies for a position and is not found eligible will be notified before the establishment of a "best qualified" list.
4. Applicants must meet all time-in-grade requirements on the date the announcement closes.
5. If a vacancy announcement is cancel~~l~~ed, the reason for the cancellation will be noted on the promotion certificate and/or made part of the promotion file. Upon request by NTEU, a copy of the document showing the reason will be provided.
6. Ranking and Application Procedures-
   * + 1. Treasury’s automated staffing system will be used to rank actions described in Section 2(B)(1) and there will be no separate ranking panel. A ranking panel will be used for actions described in Section 2(B)(2). Any use of the term “ranking panel” herein refers to the actions described in Section 2(B)(2). **For the purposes of this Article, the Office may designate the Executive Resources Board as the ranking panel for actions covered by Section 2(B)(2).**
       2. In order to compete for a position under this Article, applicants must be rated at least “Fully Successful” in any critical element that is the same or similar to the critical elements of the announced position.
       3. Performance appraisals may be used for a period of one (1) year from the date of the supervisor's signature.
       4. **Crediting Plans.** ~~The Office will consider the performance appraisal, relevant experience and training, relevant incentive awards, and such other relevant material or evaluative methods deemed necessary.~~ ~~The crediting plan will be applied uniformly to each applicant~~**~~.~~** ~~For the purposes of this Article, the Office may designate the Executive Resources Board as the ranking panel for actions covered by Section 2(B)(2).~~
          1. **The Office will use a crediting plan to rate and rank applicants.**
          2. **A crediting plan is defined as a systematic and reliable means for assigning rating levels (i.e., scores) when evaluating applicants. The goal of a crediting plan is to provide consistency in the rating techniques used for all applicants and to avoid arbitrary assessments of evaluation criteria.**
          3. **The crediting plan will identify how to rank applicants based on the evaluation criteria, and how to weight those criteria.**
          4. The Office will consider the performance appraisal, relevant experience and training, relevant incentive awards, and such other relevant material or evaluative methods deemed necessary.
          5. **The crediting plan will be applied uniformly to each applicant covered by Section 2(B)(1)&(2).**
          6. **The ranking of applicants by the Treasury automated staffing system will be based on the critical job elements (CJEs) for the position to be filled using responses to job-related questions completed during the automated application process. The applicant’s responses to the questions will determine their potential to perform in the vacant position. CJE questions will be developed in accordance with 5 C.F.R § 300, Subpart A.**
       5. The type and quality of experience will be evaluated in terms of the knowledge, skills and abilities (KSA) required for successful performance on the job. Length of experience or service is only appropriate to the extent it can be shown to be a valid, job-related factor for the position being filled.

6. (a) For positions described in Section 2(B)(1), each KSA will be rated for each applicant using the ranking questions in the Treasury automated staffing system.

* 1. For positions described in Section 2(B)(2),the ranking panel will prepare one written narrative or statement concerning each applicant considered for each KSA of the position to be filled. If the immediate supervisor of any applicant is a member of the ranking panel, then each panel member will prepare a separate narrative. Relevant awards and training will be considered in assigning individual KSA scores. Applicants are also rated on their specialized knowledge and specialized experience.

1. Applicants will be rated and ranked on their potential to perform in the announced position. The applicant’s education, training, experience, awards and performance appraisal that are related to the vacancy to be filled and the KSAs described above, will be considered. The rating and ranking process the Office uses will be in accordance with this Agreement, law, rule and regulation.
   1. **In promotion actions, the employee’s most recent annual rating of record will be used as the employee’s performance appraisal. In the event the employee has no previous annual rating of record, the supervisor or designee will prepare a merit promotion appraisal for the employee in accordance with Article 21 (Performance Appraisals).**
   2. **If a revalidated appraisal under Article 21 (Performance Appraisal) is to be used for merit promotion, the supervisor or designee must prepare a narrative for each critical element that does not have a narrative describing the performance in the appraisal period covered by the rating.**
2. When performance appraisals have similar critical elements to the position being filled, credit will be given for those elements.
3. In accordance with applicable law, rules and regulation, the four applicants who rank at the top will be designated as "best qualified." The selecting official will receive the top four applicants on the "best qualified" list, plus one additional applicant for each additional vacancy. In the event of tied scores, the selecting official will receive all applicants with the top four scores on the "best qualified" list.
4. Applicants certified as "best qualified" will be submitted to the selecting official in alphabetical order.
5. Employees entitled to priority consideration under Section 2(F)(9)(a) will be considered by the selecting official prior to any first consideration process.
6. The selecting official shall make a decision to select or not select as soon as possible, but not later than thirty (30) days after issuance of the best qualified list.
7. Any ranking or selection technique utilized by the ranking panel or selecting official will be uniformly applied to all groups of applicants (for example, if one "best qualified" applicant is interviewed, all "best qualified" applicants must be interviewed).
8. Areas of general inquiry raised in the interview process will be recorded and kept in the promotion file**.** Where appropriate, all candidates will be asked questions concerning the same area of general inquiry. This provision does not require the Office to ask identical questions of each applicant.
9. In the case of interviews, the selecting official may participate in the interview process or delegate interviews to another individual or interview panel.
10. Miscellaneous –
11. Upon request, and consistent with the Privacy Act, NTEU shall receive the following information for any promotion package (i.e., the promotion certificate) covered by this Section:
12. Name(s) of all eligible applicants;
13. Name(s) of applicant(s) identified as "best qualified;"
14. Name(s) of selected applicant(s);
15. Name(s) of ranking official or panel members, where applicable; and
16. Name of selecting official.

This information will be provided via the LR–NTEU Sharepoint site.

1. An employee’s accumulation or balance of earned annual or sick leave, credit hours, compensatory time, or advanced leave may not be considered by the ranking panel, a selecting official, or supervisor as a basis for selection or promotion.
2. The fact that an employee is the subject of a conduct investigation will not prevent or delay the promotion that would otherwise be made, unless the Office judges that such delay is necessary to protect the integrity of the Office.
3. The Office will make a reasonable effort to return to their former or like positions employees who, within the last year, were promoted and subsequently demoted for inability to perform at the higher level.
4. An employee who is selected for promotion will have the promotion become effective no later than one (1) complete pay period following selection.
5. Any applicant who is not selected will, upon request, be entitled to counseling by the applicant's immediate supervisor and/or the selecting official, or their designees. **The counseling will include, but is not limited to, the reasons for their non-selection (e.g., a higher-rated candidate was selected), as well as feedback concerning what the employee can do to improve their chances for selection when applying for similar vacancies in the future.** Employee applicants will, upon request, be provided the following information about a position for which he or she applied:
6. Whether or not he or she made the best qualified list, his or her score, and the best qualified cutoff scores;
7. The ranking panel's written narrative statement (if applicable), and score assigned to the applicant;
8. The name of the individual who was selected; and
9. The names of the ranking officials or panel members, if applicable.

Such requests will be made through the applicant's immediate supervisor. Employees who apply for a position for which the vacancy announcement is cancelled will, upon request, be entitled to receive an explanation of why the vacancy announcement was cancelled. Such requests will be made through the Human Resources Division.

1. If, within fifteen (15) days of notification of non-selection, the employee makes such a request in accordance with Subsection 6 above, the time limits under Article 33 (Employee Grievance Procedure) will not begin until the employee is provided with the information and counseling.
2. (a) In resolving grievances related to actions taken under the terms of this Section, a NTEU representative representing an employee will, upon request, be furnished the "evaluative material" utilized by the Office in assessing the qualifications of the eligible applicants (including non-unit applicants) in regard to a grievance, subject to the following:
3. The aforementioned material consisting of the ranking documents,supervisors' appraisals, and records related to experience, training and awards will be provided to the employee's NTEU representative subject to the Office’s legal responsibility and obligations to protect the crediting plan, and the privacy of eligible applicant(s) involved in the promotion in question;
4. If the grievance is confined to "best qualified" applicants, only the evaluative material of such applicants will be provided; and
5. If the grievance involves questions of eligibility, evaluative material of all applicants will be provided.
6. Challenges to the Office's action in the implementation of Subsection 8(a) above may be grievedunder Article 33 (Employee Grievance Procedure) or Article 34 (Institutional Grievance Procedure and National and Consolidated Grievance Procedures) and finally resolved by an arbitrator making an "in camera" inspection of the entire promotion file to either confirm the disclosure or denial of material, or to amend same, subject to the same legal obligations and responsibilities cited in Subsection 8(a) above.
7. Employees may not grieve their non-selection from among a group of properly ranked and certified candidates, but may grieve procedures used to identify and rank qualified candidates.
8. (a) Unless otherwise agreed, any violation of the provisions of this Section that has the effect of denying an employee proper consideration in an action under this Section will entitle the employee to the following relief:
9. If an applicant was improperly or erroneously omitted from a "best qualified" list, the applicant will receive priority consideration for the next appropriate vacancy for which the applicant is qualified; and
10. Remedies, including priority consideration, may be granted as appropriate for other violations.
11. An appropriate vacancy for purposes of priority consideration is linked to the actual vacancy announcement from which consideration was lost and includes positions with no higher promotion potential and the same:
12. Associate Office/Division;
13. Commuting area of original vacancy;
14. Title/series/grade; and
15. Position type (e.g. permanent, temporary)

(b) The Office will promptly provide employees entitled to priority consideration with a certificate or letter notifying them that they are entitled to priority consideration and stating the position(s), consistent with Subsection 9(a)(iii) above, to which they are entitled to consideration. In order to exercise their priority consideration rights, employees must identify that they are exercising those rights (this may be done by submitting the priority consideration certificate/letter), along with their application materials, when applying for an announced vacancy.

1. Priority consideration consists of a promotion certificate that contains an employee's name alone being sent to a selecting official before the official considers other applicants for a position. Priority consideration does not mean that the applicant must be selected. When the Office considers employees who have priority consideration pursuant to this Agreement and does not select from among the priority consideration applicants, the Office will put the reasons for non-selection in writing and serve a copy simultaneously on the employee(s).
2. An employee may exercise his or her priority consideration rights one time only. An applicant, however, will be entitled to a separate priority consideration for each vacancy announcement for which that applicant was improperly considered.
3. If more than one applicant is entitled to priority consideration, the names of only those employees will be submitted on a single certificate to the selecting official for the next appropriate vacancy.
   1. If the appropriate vacancy already has been announced, the employee(s) due the priority consideration will be considered by the selecting official before other applicants are referred for selection, if the employee identifies that they are exercising their priority consideration right.
   2. Wherean appropriate vacancy does not occur within two (2) years of the employee’s receipt of the priority consideration certificate/letter, the employee will be permitted to apply for and exercise his or her priority consideration rights for any announced appropriate vacancy, as defined in Subsection 9(a)(iii), except that the post of duty of the vacancy can be expanded to include any post of duty within a 250 mile-radius of the post of duty of the original vacancy.

**Section 3 – Competitive Service Career Ladder Promotions**

1. Employees in competitive service career ladder positions will be promoted on the first day of the first pay period after:
2. The employee becomes eligible to be promoted (after the last workday of the 52nd week in their positions or whatever lesser period satisfies regulatory requirements); and
3. The employee is capable of satisfactorily performing at the next higher level.
4. For employees whose elements and standards are no different from those of the next higher grade level in the career ladder, an overall annual rating of "Fully Successful" at the current grade will satisfy the performance requirements for a career promotion.
5. However, employees may not receive career ladder promotions if they have a rating below “Fully Successful” on a critical element that is also critical to performance at the next higher grade of the career ladder;
6. Additionally, as an exception to Subsection 3(A)(1) and 3(B)above, if the employee is on a performance improvement plan (PIP) or has received an intent to deny a within grade increase letter, the Office will delay the career ladder promotion until the employee receives notice that they are performing at a fully successful level, and such determinations by the Office will be promptly provided to the employee.
7. The Office will provide competitive service employees who may noncompetitively advance in grade upon completion of applicable performance and time-in-grade criteria with notice if promotions are being delayed or withheld.

**Section 4 – Special Designations or Appointments**

1. When the Office determines that it is necessary to formally designate or appoint a bargaining unit employee to one of the following positions, the Office will first solicit and consider interested employees within the appropriate office or post of duty before making any such designation or appointment. The Office will provide an explanation, upon request, to any non-selected interested employee or any involuntarily reassigned employee. This Subsection applies to the following positions:
2. Industry Program Counsel;
3. International Field Counsel; and
4. SAUSA (Special Assistant United States Attorney).
5. If a bargaining unit employee no longer wishes to serve in one of the special designations or appointments set forth in Subsection (A), the employee is encouraged to discuss this issue with his or her manager at any appropriate time. Management will then consider whether to use the procedures set forth in Subsection (A) to formally designate or appoint another bargaining unit employee to this position. Upon request, the Office will provide a written explanation to an employee for any denial of the employee’s request made under this Section.

**Section 5 – Notice Regarding Attorney Honors Program**

The procedures of this Article do not apply to the Attorney Honors Program. To ensure that bargaining unit employees are aware when the Office is seeking candidates for bargaining unit positions via the Attorney Honors Program, notice will be posted on the Office’s intranet.