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**DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT**

HUMAN RESOURCES (HR) BULLETIN #221, FY21

SUBJECT: Delegated Examining (DE) Operations

EFFECTIVE DATE: Upon release of this HR Bulletin

EXPIRATION DATE: Effective until canceled or superseded

SUPERSEDES: HR Bulletin #221, FY20, "Delegated Examining (DE) Operations," dated October 8, 2019

BACKGROUND: Under Title 5, United States Code (U.S.C.) § 1104, the Office of Personnel Management (OPM) delegated to the Department of Commerce (Department) the authority to conduct full delegated examining for Title 5 competitive service positions for all series and grade levels nationwide, except for Administrative Law Judges. (This authority was delegated under the Interagency Delegated Examining Agreement, DOC-1.)

The Department does not have authority to use the examining instruments developed by OPM for positions covered by Administrative Careers with America.

The memorandum from the Director for Human Resources Management and Deputy Chief Human Capital Officer (Director) dated February 4, 2011, grants all Principal Human Resources Managers (PHRMs) the authority to carry out the Department's Delegated Examining (DE) authority under the Interagency Delegated Examining Agreement, DOC-1 (DOC-1). Although the Director may decide which bureau or Servicing Human Resources Office (SHRO) carries out this authority and the extent to which the activity exercises it, the authority itself may not be re-delegated. All individuals involved in DE activities must comply with the requirements described in the current DOC-1 as well as the current installment of the OPM Delegated Examining Operations Handbook (DEOH), "A Guide for Federal Agency Examining Offices." DOC-1 and the DEOH serve as the foundation for the delegated examining unit (DEU) evaluation program in the Department.

PURPOSE: This HR Bulletin provides DE policy and procedural guidance to SHROs and designated staff trained and certified to conduct DE operations authorized under DOC-1.

COVERAGE: The following bureaus and operating units are authorized to conduct DE activities for the Department under DOC-1:

- Human Capital Client Services (HCCS), Washington, D.C.
- Bureau of the Census (Census)
Census Headquarters, Suitland, Maryland
Census, National Processing Center, Jeffersonville, Indiana
- National Oceanic and Atmospheric Administration (NOAA)
Office of Human Capital Services (OHCS), Silver Spring, Maryland
- National Institute of Standards and Technology (NIST), Gaithersburg, Maryland
- Department of Commerce Office of Inspector General (OIG), Washington, D.C.
- U.S. Patent and Trademark Office (USPTO), Alexandria, Virginia
- First Responder Network Authority (FirstNet), Reston, Virginia
- Enterprise Services Center, Human Resources Services, Washington, D.C.

POLICY:

1. OPM DE Certification and Recertification – All individuals responsible for conducting DE activities, including those conducting policy, oversight, and annual audits, must have completed initial OPM DE certification training and be currently certified to perform this work. The bureaus are responsible for ensuring all individuals conducting DE activities meet all prerequisites for DE certification. This includes registration through the OPM DE certification website, paying for the assessment/exam, and additional attempts at certification. Registration instructions are included on the OPM DE website, <https://de.usalearning.gov>. The bureaus are also responsible for ensuring individuals conducting DE activities complete the recertification assessment before the existing certification expires. If a gap in certification does occur, the bureau is responsible for immediately notifying the Office of Human Resources Management (OHRM), Office of Accountability (OA). Bureaus must use the OPM website to register for the recertification assessment and additional attempts, if applicable. Upon completion of the initial certification or recertification, the bureaus are responsible for forwarding a copy of the DE certificate to OHRM/OA. Failure to maintain DE certification can jeopardize a bureau/operating unit’s authority to conduct DE operations under DOC-1.
2. DEU Updates and Changes – The SHRO may submit requests for changes in offices authorized to conduct DE activities (including new DE offices, suspensions, terminations, etc.) to the Director, OHRM. The OA Director will subsequently notify OPM of any approved changes.
3. DE Program Manager Responsibilities – Each bureau and office authorized to conduct DE activities must have an individual designated as its DE Program Manager. It is recommended primary and backup DE Program Managers be designated. Responsibilities of the DE Program Manager include, but are not limited to:
 - Overseeing DE operations;
 - Monitoring and taking appropriate action on DE staffs’ certification expirations, including any contractors performing DE activities;
 - Ensuring oversight of DE staff performing DE activities without certification is documented;

- Providing subject matter expert advice and guidance to staff on DE operations;
- Ensuring DE staff receive appropriate training (e.g., adjudicating veterans' preference) as needed;
- Participating in DE audits including those led by the SHRO, DOC, and OPM;
- Collaborating with other DOC DE Program Managers; and
- Analyzing bureau or office DE activity and conducting trend analysis, as needed.

Appropriate performance activities and evaluation criteria related to DE responsibilities should be incorporated in the DE program manager's performance plan, as applicable.

4. Employee Conflict of Interest – When an employee, a subject matter expert (SME), an employee's family members (see Title 5, U.S.C. § 3110(a)(3)), a member of an employee's household, or someone of close relation applies for a position that is being handled by the employee's office, the employee/SME may not be involved in examining and certifying applicants for that position. Each SHRO conducting DE activities under DOC-1 must include in its policy or standard operating procedure (SOP) instructions for employees involved in DE activities, including SMEs who intend to compete for an open announcement or participate in the development of assessment or ranking of candidates under DE. At a minimum, the policy/SOP should state that an employee must provide written notice to the SHRO designee when:
 - The employee or SME intends to apply for a position that is being handled by the DE unit/office in which they work, or
 - The employee knows that a relative or a member of his or her household intends to apply for such a position.
5. Career Transition Assistance Plan (CTAP) and Interagency Career Transition Assistance Plan (ICTAP) – Ensure clearances of CTAP and ICTAP procedures are compliant with the Departmental policy from HR Bulletin #153, FY12 "Career Transition Assistance Plan (CTAP) and Interagency Career Transition Plan (ICTAP) Evaluation and Clearance Process." Retain written documentation to verify that CTAP and ICTAP clearance is conducted consistently and can be reconstructed by a third party.
6. Veterans Preference Adjudication – Apply veterans' preference provisions of Title 5, U.S.C. including, but not limited to:
 - a. 5 U.S.C. § 3305 (competitive service; examinations; when held);
 - b. 5 U.S.C. § 3309 (preference eligibles; examinations; additional points for);
 - c. 5 U.S.C. § 3310 (preference eligibles; examinations; guards; elevator operators; messengers and custodians);
 - d. 5 U.S.C. § 3311 (preference eligibles; examinations; crediting experience);
 - e. 5 U.S.C. § 3312 (preference eligibles; physical qualifications; waivers);
 - f. 5 U.S.C. § 3313 (competitive service; registers of eligibles);
 - g. 5 U.S.C. § 3314 (registers; preference eligibles who resigned);
 - h. 5 U.S.C. § 3315 (registers; preference eligibles furloughed or separated);

- i. 5 U.S.C. § 3316 (preference eligibles; reinstatement);
 - j. 5 U.S.C. § 3317 (competitive service; certification from registers);
 - k. 5 U.S.C. § 3318 (competitive service; selection from certificates); and
 - l. 5 U.S.C. § 3319 (preference eligibles; ranking under category rating procedures).
7. Non-Competitive Appointment of Certain Military Spouses – Refer to Departmental policy in HR Bulletin #220, FY18 “Non-Competitive Appointment of Certain Military Spouses.”
8. Request to Pass Over CPS Preference Eligibles – Requests to pass over a **30 percent or more compensable disabled veteran** must be submitted to the Director, OHRM, for preliminary approval; if approved, the Director must forward to OPM for final approval. The SHRO must receive final approval from OPM before passing over the 30 percent or more compensable disabled veteran. Please refer to Departmental policy in HR Bulletin #245, FY20 “Process for Requests to Pass Over All Preference for Competitive Service Positions and Excepted Service Positions Covered Under Title 5, United States Code (U.S.C.).”
9. Crediting Plan – Crediting plans must be based on reliable rating criteria that are fully documented by the appropriate job analyses and show a direct link to the competencies required for successful performance of the duties in the position description, NOT the performance plan. Each crediting plan should provide clear qualitative distinctions among the competency levels evaluated. To promote open and fair competition, please avoid restrictive certification requirements.
10. Advertising of Vacancies – Merit System Principles state that recruitment should be from qualified individuals after fair and open competition. In support of this, it is the Department’s policy that DE Job Opportunity Announcements (JOAs) must remain open for a minimum of 7 calendar days. Waivers to the minimum posting requirement will not be granted. The SHRO may also define the open period in terms of a specific number of applications received, with 50 being the minimum. This minimum posting period does not apply to positions filled under the Pathways Program authority, or for CTAP/ICTAP eligible only announcements. Please refer to HR Bulletin #153, FY12 “Career Transition Assistance Plan (CTAP) and Interagency Career Transition Assistance Plan (ICTAP) Evaluation and Clearance Process” and HR Bulletin #160, FY12 “Pathways Programs.”
11. Acceptance of Applications – A 10-point preference eligible may file a job application with an SHRO at any time. If the applicant is qualified for positions filled from a register (i.e., competitor inventory), the SHRO must add the candidate to the register even if the register is closed to other applicants. If the applicant is qualified for positions filled through DE, the application will be accepted and processed up until the time that the certificate is issued. Once the certificate is issued, it may only be amended at the request of the selecting official to include applications from persons entitled to file late. If there is no immediate opening, the SHRO must retain the application in a special file (i.e., 10-point file) for referral on future certificates for up to 3 years. These

scenarios are not all encompassing. Refer to OPM's Delegated Examining Operations Handbook for more detailed instructions.

It is the policy of the Department to employ only U.S. citizens or persons owing permanent allegiance to the United States, except when qualified citizens are not available or when the services of a particular non-citizen are desired for a brief period because of his or her unusual qualifications or background. A non-citizen may only be employed after he or she has been determined not to be a risk to the Department, and only after the Department's Office of Security (OSY) has conducted a risk assessment. A request to employ a non-citizen must be submitted to the Director, OHRM, for approval. Once approved by the Director, the request must be vetted and approved by the OSY. Please refer to Department Administrative Order 202-300 for additional guidance.

12. Four Points of Notification – SHROs must send notifications to all applicants who apply through *USAJOBS* at the following points during the application process:
 - a. Application received or application incomplete;
 - b. Minimum qualification requirement met, or minimum qualification requirement not met;
 - c. Referred or not referred; and
 - d. Selected or not selected.

If an applicant received notification that he/she was not qualified, no further notifications are required for the applicant. Notifications for qualified applicants may be combined into two or three notices only if all four points are included in the combined notices. SHROs wishing to combine notifications must have a documented SOP in place that describes the permitted combination(s). After all actions and determinations have been entered into the Hiring Management System, each applicant's status should no longer be reflected as "New" in the staging area. Also, SHROs must have a documented SOP in place that describes the process for meeting notification requirements for those applicants who apply using alternative methods.

13. Reconsideration of Ratings – SHROs should include in their SOP an applicant rating appeals' process. Please reference HR Bulletin #131, FY11, "Application Acceptance and Processing."

Applicant Responsibility: The applicant's request should be made in writing and should indicate why the applicant believes the original decision was inaccurate. The SHRO must maintain the request in the case file.

SHRO Responsibilities:

- a. The office that made the original decision will conduct the review.

- b. A staff member other than the person who made the original decision must conduct the review.
 - c. The office that made the original decision must develop a written response to the request with a full explanation of the reasons for the decision, without compromising the rating schedule.
 - d. The office that made the original decision must issue a response to the applicant as soon as practicable (e.g., bureaus might consider establishing policy to respond within 30 days).
14. Approval of Objections – All requests to object to an eligible must be submitted to the PHRM or the Director, Human Resources Services, Enterprise Services, who will review the supporting documentation and decide whether or not to sustain the objection based on proper and adequate reasons. The authority to decide to sustain or not sustain an objection request may be re-delegated to the DE Program Manager. No subsequent re-delegations are permitted. Documentation of the decision to sustain or not sustain must be included in the case file.
15. Issuing Certificates – A DE Certificate of Eligibles is only valid for 30 calendar days from the date of issuance. A certificate may be extended for 30 additional calendar days only with the approval of the PHRM or his/her designee or the Director, Human Resources Services, Enterprise Services or his/her designee. An additional extension (beyond 60 days) must be approved by the Director, OHRM. Documentation of approval(s) must be included in the case file.
16. Auditing Certificates – This important accountability process certifies actions taken by hiring managers on returned Certificates of Eligibles are compliant with Department policy as well as legal and regulatory selection procedures. Certificates must be audited in Monster Government Solutions Hiring Management System **prior to extending a tentative offer** to a selectee and must comply with Department policy and DEOH procedures. Please note the requirement to audit prior to extending a tentative offer is exclusive to delegated examining and implements an earlier audit deadline than noted in HR Bulletin #131, FY11, “Application Acceptance and Processing.” An HR Specialist who issued Certificates of Eligibles may not audit his/her own certificates. If an improper selection is discovered during the audit of a certificate, the manager(s) must be notified immediately. Any further selections from the certificate by the manager or other managers (in the case of shared certificates) must be placed “on hold” until a correction is made. SHROs must have a documented SOP in place that describes the process for auditing certificates shared by multiple managers making multiple selections. After an initial selection made from a shared certificate is completely and successfully audited, there is no requirement to completely “re-audit” the certificate for subsequent selections. A “spot check” audit may be performed for subsequent selections. The SOP must describe how the SHRO will document a “spot check” audit. In addition, the SOP must require a record of all managers with whom the certificate was shared be maintained. SHROs have the option of sharing certificates with multiple managers simultaneously or serially (one manager at a time).

In an instance where the vacancy announcement has been cancelled but a certificate was issued, the certificate must still be audited. Certificates should be annotated to reflect candidate declinations or any failed-to-reply actions. Acceptable documentation from the

hiring manager can be in the form of a signature on the actual certificate, an email, an electronic signature, or a manager's statement on the system-generated email to the servicing HR Specialist. All declinations and withdrawals from consideration must be documented in the DE case file or in the Monster Government Solutions Hiring Management System.

17. Application for 10-Point Veteran Preference Eligibles – In October 2013, OPM released the revised Standard Form 15 (SF-15), Application for 10-Point Veteran Preference. Signatures are no longer required; the form is now PDF-fillable; veterans may file for preference if they have documentation showing they are to be discharged under honorable conditions within 120 days. The SF-15 must be collected at appointment if not before.
18. Direct-Hire – In accordance with Title 5, CFR § 337.206(c), OHRM may request information from the SHROs on the use and implementation of direct-hire authority. Documentation (e.g., streamlined job analysis) identifying the basis for applicable specialized experience is required to be completed for direct-hire recruitments and included in the case file. ~~If a SHRO does not utilize a job analysis for direct-hire recruitments, the SHRO must have an SOP in place that describes how it will assess qualifications of a CTAP or ICTAP applicant.~~ [this language has been removed following consultation with OPM]
19. Clearing the RPL – The RPL (Reemployment Priority List) applies when filling all competitive service vacancies, regardless of whether the position is being filled by a temporary, term, or permanent appointment. The RPL must be cleared at the grade/ band level at which the position is filled, regardless of the full performance level. If the position is advertised at multiple grade/band levels, the RPL must only be cleared at the grade/band level at which the position is filled. The recruitment case file must annotate the date that clearance was obtained at each point of the recruitment process.

Note: Please reference Title 5, CFR §§ 330.204 and 330.205, as well as HR Bulletin #158, FY13, “The Reemployment Priority List (RPL).”

The SHROs must clear the RPL at the following points in the recruitment process:

- a. Prior to posting a JOA. (If there is an RPL-eligible, then a JOA may only be posted if its area of consideration is “DOC-wide.”)
- b. Prior to issuing a Certificate of Eligibles;
- c. Prior to making a tentative job offer.

Note: RPL eligibles who meet the minimum qualification requirements for a position must be selected over an individual from outside the Department. However, current Department employees may be selected over one who is RPL-eligible.

Exceptions to RPL Clearance Requirements: In accordance with Title 5, CFR § 330.211, SHROs may disregard RPL clearance requirements when they:

- a. Fill a vacancy with a current employee of the Department's permanent competitive service workforce through a detail or permanent position change (i.e., reassignment, promotion);
- b. Appoint a 10-point preference eligible appointed through an appropriate appointing authority;
- c. Appoint a current or former Department employee exercising restoration rights under Title 5, CFR, Part 353 based on a return from military service or recovery from a compensable injury or disability within 1 year;
- d. Appoint a current or former Department employee exercising other statutory or regulatory reemployment rights;
- e. Fill a position when all RPL placement priority candidates decline an offer of the position or fail to respond to a written agency inquiry about their availability;
- f. Convert a current Department employee serving under an appointment that provides non-competitive conversion eligibility to a competitive service appointment;
- g. Reappoint a current Department employee, without a break-in-service, to the same position currently held under a temporary appointment of 1 year or less, to another temporary appointment not to exceed 1 year;
- h. Extend a current Department employee's temporary or term appointment up to the maximum permitted by the appointment; or
- i. Appoint an individual under an excepted service appointment.

20. Reporting and Recordkeeping – All offices performing DE activities under DOC-1 must comply with requirements annotated in Chapter 7 of the DEOH and applicable bureau and/or SHRO policy. The certificate case file should be arranged to permit reconstruction or validation of actions in the event of appeal or legal action. For example, all case files, whether hard copy or electronic, should contain a copy of forms SF-52, SF-39, or equivalent, as well as job analysis, position description, rating schedules/plans, and the signed certificate. An electronic signature is acceptable. It is recommended that case file documents for each recruitment be stored electronically in one location (e.g., Monster Government Solutions vacancy case file management). Note: All files are to be maintained in accordance with DEOH Appendix C – Records Retention and Disposition Schedule.

21. Delegated Examining Unit (DEU) Auditing – The Department's OHRM, Office of Accountability is the centralized accountability unit for the Department's Delegated Examining Unit (DEU) auditing purposes. The OA is responsible for scheduling all DE audits for all bureaus and operating units authorized to conduct DE activities for the Department under DOC-1.

22. Annual Self-Audit – All bureaus and operating units except the OIG must schedule and conduct an internal, annual self-audit of their DE activities, unless such audits are scheduled to be conducted by the Department's OHRM, Office of Accountability (or OPM). Such self-audits must be conducted using certified staff external to your bureau or SHRO DE operations. Every effort must be made to **complete self-audits by September 30 each**

fiscal year. Request for an extension due to unforeseen circumstances will be considered on a case-by-case basis. (Failure to plan is not a valid reason to request an extension.) The PHRMs must submit a written request (email is acceptable) to the Director of the OHRM Accountability Office.

The OIG may use a peer review to meet audit requirements if the review is conducted by DE-certified staff from a peer OIG and is in accordance with the Council of the Inspectors General on Integrity and Efficiency peer review process. The OIG office that conducts the peer review must send a full copy of the final peer review report to the Director, OHRM. In addition to the annual audit, SHROs are encouraged to review their DE activities throughout the year and identify successful practices and potential operational barriers. Internal reviews are not a substitute for the annual audit.

REFERENCES: OPM Interagency Delegated Examining Agreement Number (DOC-1); OPM Delegated Examining Operations Handbook, “A Guide for Federal Agency Examining Offices”; OPM Delegated Examining Certification Program Guide; and the following OHRM HR Bulletins: HR Bulletin #210, FY17, “Creating a Job Opportunity Announcement”; HR Bulletin #131, FY11, “Application Acceptance and Processing”; HR Bulletin #033, FY06, “Job Analysis – Roles and Responsibilities”; HR Bulletin #148, FY12, “End-to-End (E2E) Hiring Model and Reporting”; HR Bulletin #153, FY12, “Career Transition Assistance Plan (CTAP) and Interagency Career Transition Assistance Plan (ICTAP) Evaluation and Clearance Process”; HR Bulletin #071, FY07, “Hiring of Non-Citizens”; HR Bulletin #245, FY20, “Process for Requests to Pass Over All Preference Eligibles for Competitive Service Positions and Excepted Service Positions Covered Under Title 5, United States Code (U.S.C.)”; and HR Bulletin #158, FY13, “The Reemployment Priority List (RPL).”

For additional information, please contact Nancy Osborn via email to nosborn@doc.gov.