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**Approved for Release**  
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**Date**

**DEPARTMENT OF COMMERCE**  
**OFFICE OF HUMAN RESOURCES MANAGEMENT**  
**HUMAN RESOURCES (HR) BULLETIN #258, FY22**

**SUBJECT:** Non-Competitive Reinstatement to a Higher Grade/Band than Previously Held

**EFFECTIVE DATE:** Upon release of this HR Bulletin

**EXPIRATION DATE:** Effective until canceled or superseded

**COVERAGE:** This bulletin applies to all bureaus/operating units (OUs) in the Department of Commerce under merit assignment procedures (MAP) for all competitive service positions through the GS-15 level or equivalent.

The Office of Personnel Management posted the final regulation amending Title 5, Code of Federal Regulations (CFR) § 335.103(c)(1)(vi), and adding § 335.103(c)(3)(viii) in the [Federal Register](#) on June 8, 2021, titled, “Promotion and Internal Placement.” The regulation supports the Biden-Harris administration’s efforts to rebuild the Federal workforce by giving agencies a new recruitment tool that allows them, under certain conditions, to non-competitively hire former employees at the grade level for which they qualify. The previous regulation only allowed for non-competitive reinstatement up to the grade level the employee previously held on a permanent basis. The final rule is effective July 8, 2021.

**PURPOSE:** To establish Department-wide authority to use this hiring flexibility and Department policy to assist bureaus/OUs in implementing the revisions of Title 5, CFR § 335.103(c)(1)(vi) and uniformly applying the new section § 335.103(c)(3)(viii).

**AUTHORITY:** Department Administrative Order (DAO) 202-335 “Merit Assignment Program,” Section 10, states, “The Director for Human Resources Management has the authority to grant exceptions or to modify Section 5.02, ‘Mandatory Department requirements for all MAP policies,’ and to any other section of this Order that is not mandated by law or regulation.” As such, the Director for Human Resources Management is modifying, through this HR Bulletin, DAO 202-335, Section 5.02, to add (k), “Promotion and Internal Placement” under revised Title 5, CFR § 335.103(c)(1)(vi), and § 335.103(c)(3)(viii)), until such time as the DAO can be updated. All bureau/OU MAPs should be updated as soon as possible to include this Department-wide mandatory hiring flexibility.

**POLICY:** Former Federal employees may be non-competitively reinstated to a position at a higher-grade/band level or with higher promotion potential than a position previously held when the following conditions are met:

- The reinstatement eligibility requirements under Title 5, CFR § 315.401 *Reinstatement*.
- Time-in-grade/band restrictions in accordance with Title 5, CFR Part 300, Subpart F, as reinstatement is not an exception from time-in-grade/band restrictions, per Title 5, CFR § 300.603(b);
- The former employee is separated from Federal service for at least 1 year;
- The former employee has a “most recent” rating of record from their last career or career-conditional position of at least “Fully Successful or equivalent”; and
- The former employee meets all qualification requirements for the position.

This hiring flexibility may only be used only when accepting applications from outside the Department’s workforce. However, this condition does not prohibit non-competitive internal movement.

The hiring flexibility must be in accordance with any applicable Collective Bargaining Agreement (CBA). The CBA will apply in the event of a conflict between a provision of this regulation and the applicable negotiated CBA.

In addition:

- Reinstatement eligibles do not need to apply to the JOA to be selected.
- Hiring officials are not required to select reinstatement eligibles.
- Servicing Human Resources Offices/Enterprise Services (SHRO/ES) must adhere to Merit System Principles in the appropriate and effective use of this flexibility.
- Each JOA must have language that clearly conveys the use of this hiring flexibility.

**PROCEDURES:** When using this hiring flexibility, the SHROs and ES must:

- Comply with public notice requirements as outlined in Title 5, United States Code (U.S.C.) 3327 and 3330;
- Clear the Reemployment Priority List (RPL), in accordance with Title 5, CFR § 330.210; the Career Transition Assistance Plan (CTAP) and the Interagency Career Transition Assistance Plan (ICTAP), in accordance with Title 5, CFR §§ 330.607 and 330.705;
- Assess the qualifications of all candidates, including those from outside the Department pursuant to the Veterans Employment Opportunities Act of 1998 (VEOA), Title 5, U.S.C 3304 (f), and the Land Management Workforce Flexibilities Act;
- Determine that any reinstatement eligibles have met all qualifications requirements of the posted JOA;
- Issue a List of Eligibles, as applicable (i.e., competitive, non-competitive, etc.); and
- Document all case files.

**REFERENCES:** *Federal Register* (86 FR 30375) dated June 8, 2021, “Promotion and Internal Placement,” pages 30375-30379; Title 5, Code of Federal Regulations (CFR), Part 330, “Recruitment, Selection, and Placement (General)”; Department Administrative Order 202-335, “Merit Assignment Program”; HR Bulletin #153, FY 12, “Career Transition Assistance Plan

(CTAP) and Interagency Career Transition Assistance Plan (ICTAP) Evaluation and Clearance Process;" HR Bulletin #158, FY13, "The Reemployment Priority List"; HR Bulletin #210, FY17, "Creating a Job Announcement."

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