

# INDIAN AFFAIRS MANUAL

Part 28  
Chapter 335

Human Capital Management  
Merit Promotion and Placement

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- 1.1 Purpose.** The intent of this policy is to provide a fair and systematic means for applying merit system principles and Indian Preference requirements in the process of considering and selecting all applicants and employees for advancement and promotion.
- 1.2 Scope.** This policy applies to filling positions under the authority of 5 U.S.C. 33 and 5 CFR 335, including all positions in the Bureau of Indian Affairs (BIA), all positions in the Bureau of Indian Education (BIE), except Contract Educator positions, and all positions under the Assistant Secretary-Indian Affairs (AS-IA) that primarily and directly relate to the provision of services to Indians. This policy does not apply to initial appointments made under the authority of Indian preference laws, including 25 U.S.C. §§ 472 and 472a. Guidance for implementing such appointments is provided in 28 IAM 335-H, Indian Affairs (IA) Merit Promotion and Placement Plan and Excepted Service Handbook.
- 1.3 Policy.** It is the policy of IA to apply merit system principles when filling positions by merit promotion procedures to ensure that fair and equitable treatment is afforded to all interested, eligible candidates.
- 1.4 Authority.**
- A. Statutes and Regulations.**
- 1) 5 U.S.C. 33 - Examination, Selection, and Placement
  - 2) 5 U.S.C. § 2301(b) - Merit system principles
  - 3) 25 U.S.C. § 472 - Standards for Indians appointed to Indian Office
  - 4) 25 U.S.C. § 472a - Indian preference laws applicable to Bureau of Indian Affairs and Indian Health Service positions
  - 5) 5 CFR 335 – Promotion and Internal Placement
  - 6) P.L. 96-135, Indian Civil Service Retirement Act
  - 7) Excepted Service Appointment Authority Schedule A, Department of the Interior, 213.3112(a)(7)
- B. Handbooks.**
- 1) 28 IAM 335-H, IA Merit Promotion and Placement Plan and Excepted Service Handbook

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### 1.5 Responsibilities.

- A. **Deputy Assistant Secretary – Indian Affairs (Management) (DAS-M)** is responsible for the overall management and administration of Office of Human Capital Management (OHCM) policy for IA.
- B. **IA OHCM** is responsible for overall policy and direction to bureaus and offices with regard to effective human resources management.
- C. **Directors, BIA and BIE** are responsible for implementing and supporting the IA Merit Promotion and Placement policy to recruit, select, and advance employees based on merit, after fair and open competition, and in compliance with Indian Preference laws.
- D. **IA Management** is responsible for ensuring the selection process is consistent with the IA Merit Promotion and Placement policy, merit principles, Indian Preference law, and other applicable laws and regulations. Management has the right to select or not select from among properly ranked and certified candidates, to select from other appropriate sources, and to promote or not to promote an employee based on merit factors and other requirements.
- E. **Human Resources (HR) Professionals** are responsible for implementing, overseeing, and ensuring fair and equitable application of the IA Merit Promotion and Placement policy; providing technical assistance and guidance to managers, supervisors, and employees on the IA Merit Promotion and Placement policy; ensuring that those who are assigned merit promotion administration responsibilities are properly trained; ensuring that Indian Preference and merit principles have been applied before filling a position; and evaluating all candidates to determine eligibility of qualified Indian Preference candidates before a non-Indian preference candidate may be appointed, transferred, or reassigned to a position subject to Indian Preference.

### 1.6 Covered Actions. This policy covers:

- A. Initial appointments to covered positions.
- B. Permanent promotion to a higher-graded position or to a position with a higher full performance level than previously held on a permanent basis in the competitive service.
- C. Temporary promotion for over 120 days.
- D. Detail of more than 120 days to a higher-graded position or to a position with greater promotion potential than previously held on a permanent basis in the competitive

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service.

- E. Reassignment, transfer, reinstatement, or change to a lower grade to a position with promotion potential higher than any position held on a permanent basis in the competitive service.
- F. Term appointments and term promotions to higher-graded positions.
- G. Excepted appointments to a higher grade, or to a position with promotion potential higher than the last grade held in a non-temporary position in the excepted or the competitive service.
- H. Selection for training designed to prepare an employee for advancement and the training is a requirement for promotion.

### 1.7 Exceptions. This policy does not apply to:

- A. **Executive positions** in the Senior Executive Service (SES).
- B. **Senior Level (SL)** employees.
- C. **Contract Educator** positions in the BIE.
- D. **Career Ladder Promotions.** Promotion without current competition because the employee previously competed and was selected for an assignment intended to prepare him/her for the position and grade level being filled, and the intent was a matter of record and made known to all potential candidates.
- E. **Classification Standard or Correction of Classification Error.** The promotion of an incumbent of a position which is upgraded without significant changes in duties and responsibilities due to issuance of a new classification standard or correction of an initial classification error.
- F. **Reduction-in-Force.** A change permitted by reduction-in-force regulations.
- G. **Special Employment Program.** Appointment of disabled veterans with 30% or more compensability; veterans readjustment appointments; conversions of Pathways students; appointment of the disabled, Peace Corps, and Vista volunteers; or appointments under a special employment program authority.
- H. **Temporary Promotion of 120 Days or Less.** A qualified employee may be promoted non-competitively not to exceed 120 days.
- I. **Temporary rehire** appointment authority to make and extend temporary appointments to positions involving intermittent or seasonal work.
- J. **Detail to a Higher Graded Position not to exceed (NTE) 120 days.** An employee may be noncompetitively detailed to a higher graded position NTE 120 days.

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- K. Detail to same grade, lower grade, unclassified position** made in 120 day increments NTE one year.
- L. Promotion of a Previously Downgraded Employee.** A previously downgraded employee may be non-competitively promoted to the grade from which previously demoted if the demotion was without personal cause, and the promotion action is consistent with Indian Preference.
- M. Accretion of Duties.** A promotion resulting from an employee's position being reclassified at a higher grade (with no further promotion potential) because of additional duties and responsibilities that have evolved and grown into a higher grade over a period of time, where no vacant position exists. The employee must continue to perform the same basic function in the upgraded position, with the former duties being absorbed into the revised duties, and must meet minimum qualifications and eligibility requirements for the position. Refer to 28 IAM 335-H, IA Merit Promotion and Placement Plan and Excepted Service Handbook for additional information.
- N. Priority Promotion Consideration** to a candidate not given proper consideration in a previous competitive promotion action.
- O. Corrective Placement Actions.** Corrective placement actions based on legal orders, Department of the Interior (DOI) finding, and other direction.
- P. Excepted Service.** Includes all positions in the executive branch of the government which are specifically excepted from the competitive service by or pursuant to statute, by the President or by the Office of Personnel Management (OPM), and which are not in the SES.
- Q. Reassignment, transfer, reinstatement or change to lower grade** to a position with no greater promotion potential is allowed, provided the action is consistent with Indian Preference (see section 1.8 below). Employees with Indian Preference may be reassigned, transferred, reinstated, or changed to a lower grade to any position with no greater promotion potential.
- R. Realignments.** An employee and his/her position may be moved from one organization or activity within DOI to another.
- S. Redescription.** Indian Preference is not required when a vacancy does not exist. When an employee is reassigned because of the addition, deletion, or modification of duties and responsibilities of the employee's current position, and provided such changes constitute a redescription of an encumbered position rather than the filling of a vacancy, then the resulting description is considered a redescription. In addition, an employee must continue to perform the same basic function with the former duties being absorbed into the redescribed position.

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**1.8 Applicability of Indian Preference in Filling Positions.** Preference in filling vacancies is given to qualified Indian candidates in accordance with 25 U.S.C. § 472. Verification of Indian Preference for Employment in the Bureau of Indian Affairs and the Indian Health Service (Form BIA-4432) must be submitted with the application when claiming Indian Preference. Indian Preference eligibles not currently employed in Federal service will be appointed under the Excepted Service Appointment Authority Schedule A, 213.3112(a)(7).

Indian Preference will be afforded to qualified Indians meeting the job qualification standards established by the OPM, and specialized experience requirements as defined and publicized in a vacancy announcement for all positions in the BIA and BIE, and all positions under the AS-IA that primarily and directly relate to the provision of services to Indians. For positions subject to Indian Preference, preference will be applied in accordance with Covered Actions in 1.6. Consideration will be given to non-Indian applicants in the absence of a qualified Indian Preference eligible candidate.

Selections may be made at any grade level as long as there is compliance with applicable federal law in the selection process. For positions subject to Indian Preference which are advertised at multiple grade levels, a non-Indian candidate may not be considered at any grade level if there is a qualified Indian Preference candidate available.

A tribe may grant, in writing, a waiver of the application of Indian Preference laws when recommending selection of a bureau non-Indian employee.

**1.9 Reassignment of non-Indians.** Under the provision of P.L. 96-135, individuals who are not entitled to Indian Preference may be reassigned to positions not subject to Indian Preference or to positions subject to Indian Preference where such reassignment is for the benefit of the service/bureau. Typical justifications for such a reassignment may include safety, health, reduction in force, or other unforeseen circumstances. Refer to 28 IAM 335-H, IA Merit Promotion and Placement Plan and Excepted Service Handbook for procedural guidance.

**1.10 Applicability of Veteran's Preference.** Veteran's Preference does not apply when considering individuals under Merit Promotion procedures; however, the Veterans Employment Opportunity Act (VEOA), as amended, allows any eligible veteran with three years or more of continuous active service performed under honorable conditions, to apply for positions.

**1.11 Management Discretion.** This policy does not restrict management's right to fill any position by other appropriate means such as reinstatement, reemployment, transfer, or reassignment, or other means consistent with the Indian Preference statute and this policy. Management has the right to select or not to select from best qualified candidates.

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However, a determination as to the availability of qualified Indian Preference candidates must be made and documented before a non-Indian candidate may be selected.

- 1.12 Grievances.** The servicing HR office will respond promptly to questions about the merit promotion and placement program or about a specific selection action. Employees may file a grievance concerning merit promotion matters under the DOI's administrative grievance program (370 DM 771), or under a negotiated grievance procedure, as appropriate, unless otherwise excluded from either process.

If bargaining unit employees wish to grieve any merit action, they must use the negotiated grievance procedures rather than the DOI's administrative grievance program. If anything in this policy conflicts with a negotiated agreement, the agreement prevails. However, non-selection from a list of properly ranked and certified applicants is excluded from both the administrative grievance and the negotiated grievance process. Further, employees may not use the grievance procedures and the Equal Employment Opportunity (EEO) complaint process at the same time for the same issue.

- 1.13 Exceptions, Waivers, and Changes to this Policy.** The Director, IA OHCM is delegated the authority to make exceptions, grant waivers, and issue changes to this policy provided the action is consistent with the Indian Preference statute, all personnel and EEO laws and regulations, and OPM and DOI policies, procedures, and guidance. These exceptions will be shared with the servicing HR office as appropriate, and documented in the case file if applicable to a specific announcement.

- 1.14 Definitions.** Refer to 28 IAM 335-H, IA Merit Promotion and Placement Plan and Excepted Service Handbook for definitions of pertinent HR terminology.

## Approval



James N. Burckman

Acting Deputy Assistant Secretary – Indian Affairs (Management)

3-10-16

Date