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Date

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

**HUMAN RESOURCES (HR) BULLETIN #098, FY 09**

**SUBJECT:** 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.).

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

**EXPIRATION DATE:** Effective until canceled or superseded

**SUPERSEDES:** HR Bulletin #089, Process for Requests to Pass Over or Object to All Preference Eligible Veterans and All Applicants Under Certain Conditions.

**BACKGROUND:** The Office of Personnel Management (OPM) issued guidance on February 9, 2009 requiring agencies to apply the same rules to excepted service positions covered under Title 5, U.S.C. as applied to competitive service positions when passing over preference eligibles with a 30 percent or more compensable service-connected disability. OPM's guidance is based upon a December 24, 2008 decision issued from the U.S. Court of Appeals for the Federal Circuit in *Stephen W. Gingery v. Department of Defense*.

**PURPOSE:** The purpose of this HR Bulletin is to establish procedures in reviewing, clearing, and approving requests to pass over any preference eligibles for competitive service positions and excepted service positions covered under Title 5, U.S.C. In accordance with the President's strong commitment to veterans' preference hiring, the Department of Commerce (DOC) is aggressively enforcing the prohibited personnel practice of by-passing preference eligibles for job opportunities.

**COVERAGE:** This HR Bulletin applies to competitive service positions and excepted service positions covered under Title 5, U.S.C. when operating units request to pass over any preference eligible.

**APPROVAL PROCESS:** The following approval process must be followed prior to passing over a preference eligible for competitive service positions and excepted service positions covered under Title 5, U.S.C. Operating units may NOT extend an offer of employment until a written approval of the pass over is received from the Deputy Chief Human Capital Officer and Director for Human Resources Management (Director).

**Less than 30 percent compensably disabled veterans, and those with derived preference:** All requests must be forwarded to the Director for approval. Only after the pass over of a less than 30 percent compensably disabled veteran or an applicant with derived preference has received final approval from the Director, can the preference eligible be passed over. Submission requests must include an Agency Request to Pass Over a Preference Eligible or Object to an Eligible (SF-62), a copy of the job announcement, position description, crediting plan, preference eligible's application, ranking sheet justification for pass over, and any other available information and documents considered pertinent to the case.

**Thirty percent or more compensably disabled veterans:** All requests must be forwarded to the Director for preliminary approval. Upon preliminary approval from the Director, requests for pass over of a 30 percent or more compensably disabled veteran must be submitted to OPM by the Director for final approval. Only after the pass over of the preference eligible has received final approval from OPM, can the 30 percent or more compensably disabled veteran be passed over. Submission requests must include an Agency Request to Pass Over a Preference Eligible or Object to an Eligible (SF-62), a copy of the job announcement, position description, crediting plan, preference eligible's application, ranking sheet justification for pass over, and any other available information and documents considered pertinent to the case.

**All preference eligibles when based on material, intentional false statement or deception or fraud in examination or appointment:** All requests must be submitted to the Director for review and preliminary approval. Upon preliminary approval from the Director, requests for pass over of a preference eligible must be submitted to OPM by the Director for final approval. Only after the pass over of the preference eligible has received final approval from OPM can the eligible be passed over. Submission requests must include an Agency Request to Pass Over a Preference Eligible or Object to an Eligible (SF-62), a copy of the job announcement, position description, crediting plan, preference eligible's application, ranking sheet justification for pass over, and any other available information and documents considered pertinent to the case.

**REFERENCES:** 5 U.S.C. 3318; 5 CFR Part 731; 5 CFR 339.306; Delegated Examining Operations Handbook 2007; Interagency Delegated Examining Agreement Number DOC-1 between OPM and DOC, effective May 1, 2008; and OPM Memorandum, dated February 9, 2009, Procedures for Passover of Compensably-Disabled Preference Eligibles in the Excepted Service.

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