

HIRING BEST PRACTICES

Presented by the Office of the General Counsel
Civil Rights, Labor and Employment Law Division

May 2024

Executive Order on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce

- EO 14035 dated June 25, 2021
- Federal government's policy to cultivate a workforce that draws from the full diversity of the Nation, which includes advancing equity and accessibility for employees with disabilities.
- Accordingly, the Federal Government must strengthen its ability to recruit, hire, develop, promote, and retain the Nation's talent and remove barriers to equal opportunity.

Ways to Reduce Bias in the Hiring Process

- Hiring managers can reduce bias in the hiring process by examining current hiring policies, procedures, and practices for unconscious bias and to identify and remove systemic barriers (institutional, structural, attitudinal, or physical), for equitable, fair, and impartial treatment of all individuals. Some examples include:
 - review your hiring policy, procedures, and practices that may limit certain demographics;
 - re-examine traditions, unwritten rules, norms, assumptions, and beliefs regarding what a highly qualified, professional, and/or successful hire “looks like” (e.g., dress, school, experience), with an eye toward equity;
 - post reasonable accommodation (RA) procedures in job announcements and ensure all applicants can readily access RAs; and
 - promote interviewing Schedule A eligible candidates prior to posting a vacancy.

Creating a Diverse Recruitment Plan

- Create a recruitment plan to reach a diverse pool of candidates and strengthen and expand meaningful external outreach and engagement during the recruitment process:
 - establish and make public a DEIA recruitment policy/strategic plan to ensure that you actively recruit from a wide variety of groups, including underserved communities to ensure that your workforce includes qualified employees and interns from all backgrounds;
 - evaluate current demographic representation in the work force and target recruitment efforts based on evaluation findings;
 - leverage intern programs as a recruiting pipeline; and
 - work with other agencies to offer hiring managers consultation on strategic recruitment alternatives.
- Supervisors and hiring managers should support the recruitment plan by:
 - sharing outreach notices and vacancy announcements with partner groups and schools to target a diverse applicant pool; and
 - reviewing your agency's Diversity, Equity, Inclusion, and Accessibility Strategic Plan before announcing any vacancy.

The Position Description

- A current and accurate position description (PD) is the foundation of your vacancy.
- Ensure PD is up to date and accurately captures the expected duties.
- The PD is the official record of duties and responsibilities assigned by management, via a supervisor, to an employee.
- The PD should specify:
 - All required duties and functions;
 - The required skills and abilities; and
 - The physical demands and any special requirements (i.e. driver's license, bilingual ability)

The Vacancy Announcement

- The vacancy announcement should explain to potential applicants the duties, required knowledge and skills, and any special requirements, so that the individual can make an informed decision whether to apply.
- The vacancy announcement should identify:
 - The major duties of the position; and
 - The competencies required to perform the duties and responsibilities of the job.
- Know your priorities:
 - What skills are you looking for when hiring?
 - Are you interested in an entry level, or someone who has more experience?

Evaluation of Applications

- Human Resources (HR) will review applications for:
 - Minimum qualification determination
 - Any quality ranking factors.
 - Any selective placement factors.
- HR will evaluate applications based on the assessment method created for the position.
- Determine whether applicant meets the qualifications identified on the job announcement.
- Best qualified and non-competitive applicants are referred on separate certificates to the selecting official.

Test your knowledge: Increasing Diversity

Which of the following can you do in the selection process to try to increase diversity in your workforce?

- Send the vacancy announcement to the career centers at Historically Black Serving Universities (HBSUs) and other Minority Serving Institutions.
- Have the technical review panel score resumes with the names of applicants and the names of the schools they attended redacted.
- Conduct interviews by phone rather than videoconference.
- Include in the scoring matrix extra points for candidates who would add diversity.

Use of Panels to Interview

- Once a referral list is received, the selecting official, or a panel will review resumes/applications and determine who should be interviewed.
- Best Practices
 - Use a selection/interview panel to review candidates
 - Try to diversify the panel
 - Include an EEO observer on the panel
 - Form the panel while the vacancy announcement is open to avoid delays once you have the certificate
- Have panel members rate applicants based on a simple rating scale.
- Identify top candidates to interview.
- All panel members recommendations must be recorded, and all documents generated will become part of a file maintained by the Hiring Manager.

Conducting an Effective Job Interview

- Be consistent.
- All interviewees should be asked the same job-specific questions.
- Follow consistent procedures during the selection process.
- Panel members should follow the same method for taking notes.



Interview Questions

- The interview questions should:
 - Be job-related, and designed to build rapport with the interviewee; and
 - Relate to the established qualification standards, and the specific qualification requirements of the position.
- Sample questions can include why they are interested in the position, their skills, experience, and other qualifications.
- Candidates can also be asked how they would handle a certain situation, such as competing deadlines, or conflict in the workplace.
- The interviewer should ask questions that will elicit information from the candidate that reveals whether s/he is able to do the job, and if s/he will make a good match for the organization.
- For additional information on conducting an effective interview see OPM's *How to Conduct a Successful Interview* available at [OPM's How to Conduct a Successful Interview](#)

Acceptable Interview Questions

- The interviewer can ask the candidates about their:
 - Responsibilities at past or current jobs;
 - Likes and dislikes relating to their work; and
 - Job knowledge and job-related experiences.
- The questions should be tied to job competencies.



Prohibited Questions and Topics

- It is unacceptable to ask the applicant questions concerning:
 - Age
 - Race
 - Color
 - Religion
 - National Origin
 - Sex
 - Pregnancy
 - Sexual Orientation
 - Marital Status
 - Parental Status
 - Political Affiliation
 - Genetic Information
 - Disability

More Prohibited Questions and Topics

- Plans to get pregnant or have a family
- Childcare arrangements
- Retirement plans
- Spouse's job situation
- Past worker's compensation claims
- Any prior EEO activity or whistleblower activity

Okay versus Not Okay to Ask

- The interviewer can ask the candidates about membership in any professional organization that is relevant to their ability to perform the job; such as any scientific organization.
- However, the interviewer should not ask the candidate about **all** organizations they belong to, or what kinds of organizations they belong to, which could include, religious, ethnic background, political, union, etc.

Prohibited versus Acceptable Questions

- Prohibited Question:
 - This job requires traveling up to 25% of the time. You mentioned that you have small children. Can you travel given your family situation? How will you handle this?
- Acceptable Question:
 - This job requires traveling up to 25% of the time. Will you be able to fulfill this requirement?
- Ask the same questions to all candidates.

Performance –Based Interview Questions

Performance-based interview questions ask about job functions.
For example:

- Tell me about your research experience?
- Have you conducted research on plant diseases?
- Describe your experience in your current or past positions managing a laboratory.
- Have you published any scientific reports?
- What is your management style? (If it is a management position.)
- Describe an example of when you worked effectively as a member of a team. What was the task? How many people were involved? What was your role? How did it turn out?
- What interests you about this this position?
- Why do you want to work for (Agency and/or USDA)?

Behavior-Based Interview Questions

- Behavior-based interview questions ask about how a interviewee/candidate has handled a certain situation.
- For example:
- Describe a situation where you had to deal with competing priorities or unanticipated change. What was the issue? How did you handle it? What was the outcome? Is there anything you would have done differently?
- Describe an example of when you had to adjust to a change in your team's priorities. What was the issue? How did you handle it? What was the outcome?
- Describe a situation when you had to deal with an angry customer.

Situational-Based Interview Questions

- Situational-based interview questions present a job scenario and ask how the candidate would respond.
- For example:
- You have an important presentation tomorrow that requires preparation. Your supervisor tells you this morning that you must go to an all day meeting. How would you handle this situation?

Test your knowledge: Interview Questions

Which of the following questions are acceptable to ask in an interview?

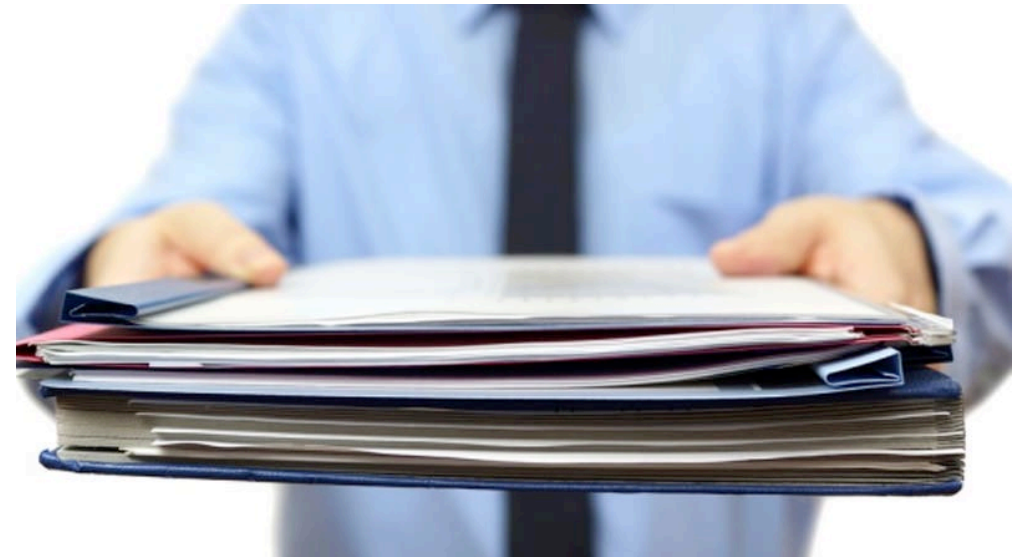
- You live in California. This job requires onsite work in New Orleans at least 3 days a week. Are you willing to relocate?
- You have elderly parents who live with you in California. This job requires onsite work in New Orleans at least 3 days a week. How will you be able to meet this requirement?
- This job requires that the incumbent travel for 25% of the time. Are you able to meet this requirement?
- You are a single parent of young children. This job requires that the incumbent travel for 25% of the time. How will you be able to meet this requirement?

Retention of Records

- Agencies must preserve any records pertaining to selections and promotions for a specified time period. Before deleting any records contact Human Resources
- Proper retention of records supports USDA in case of a Freedom of Information Act (FOIA) request, appeal, non-selection, or associated litigation.
- Work with your Agency Records Officer to request approval for the disposal, deletion, and destruction of records.
- It is a best practice to submit interview notes to the hiring official.
- Failure to preserve evidence may harm the agency's defenses should an applicant file a non-selection complaint.

More on Preserving Evidence

- Duty to preserve applies to all documents in the selection process including the SF-52 that begins the process, Vacancy Announcement, all applications, certificates, and interview notes (not just the Complainant's).
- If it is part of the process it has to be preserved.
- Do not put anything in your notes that cannot be shared!



Reasonable Accommodation in the Application and Interview Process

- An Agency must provide Reasonable Accommodation (RA) in the application and interview process.
- A RA is any change in the work environment, including in the application and interview process, that enables an individual with a disability to enjoy equal employment opportunities without creating an undue hardship on the Agency.
- Reasonable accommodation means:
 - Modifications to the job application or interview process;
 - Modifications to the work environment - so employee can perform essential functions; or
 - Modifications that allow the employee to enjoy equal benefits and privileges of employment.

Examples of Reasonable Accommodation in the Application and Interview Process

- Modifying the application process for an individual with a visual impairment.
- Providing a sign language interpreter for an interview of an individual with a hearing impairment.
 - A request might sound like: “I will need a sign language interpreter for the job interview next week.”
- Making sure the interview location is accessible.



Do Not Ask About an Individual's Disability During an Interview

- An agency cannot ask disability-related questions until after it makes a conditional job offer to the applicant.
- Employers are prohibited from making pre-offer inquiries about an applicant's disability. Applicants can be asked whether they have the ability to perform the duties of the job for which they are applying.

Fair Chance Act

- The Fair Chance to Compete for Jobs Act of 2019 (Fair Chance Act, 4 U.S. Code Chapter 92) prohibits federal agencies from inquiring about applicants' criminal history before the applicant receives a conditional job offer.
 - An applicant's criminal history may only be considered during the suitability determination, after a conditional offer is made (except in very limited circumstances).
 - The Fair Chance Act prescribes the range of penalties OPM may direct an agency to process when an agency employee has been found to have violated the Act.
- The Fair Chance Act does not prohibit federal agencies from inquiring about applicants' performance or misconduct in prior jobs during the selection process.

Follow Merit System Principles

1. Recruit qualified individuals from all segments of society and select and advance employees on the basis of merit after fair and open competition which assures that all receive equal opportunity.
2. Treat employees and applicants fairly and equitably, without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or disability, and with proper regard for their privacy and constitutional rights.
3. Provide equal pay for equal work and recognize excellent performance.
4. Maintain high standards of integrity, conduct, and concern for the public interest.

Merit System Principles (Continued)

5. Manage employees efficiently and effectively.
6. Retain and separate employees on the basis of their performance.
7. Educate and train employees when it will result in better organizational or individual performance.
8. Protect employees from arbitrary action, personal favoritism, or coercion for partisan political purposes.
9. Protect employees against reprisal for the lawful disclosure of information in "whistleblower" situations (i.e., protecting people who report things like illegal and/or wasteful activities).

Test your knowledge: Evaluating Candidates

Which of the following may you consider when deciding whether to promote internal an internal candidate?

- The candidate has a medical limitations that restricts them from performing an essential function of the job for which they applied.
- The candidate is pregnant and plans to take 12 weeks of parental leave after giving birth.
- The candidate recently filed a meritless harassment complaint against a co-worker.
- The candidate's performance was unsatisfactory 2 years ago, although the candidate's performance was satisfactory during their demonstration opportunity period and has continued to be satisfactory since then.

Reference Checks

- It is important to check the front running candidate's references before hiring that individual.
- Managers should rely on thorough background checks conducted by those authorized to conduct background checks, and extensive reference checks before offering a candidate a position.



Reference Checks: What to Ask

- The Agency official checking references should ask questions relevant to the position and the qualification standards. Reference checks should be used to verify information provided by the candidate and to obtain additional information about his/her knowledge and abilities.
- Per OPM's guide on *Reference Checking* available at [OPM's guide on Reference Checking](#) sample questions include:
 - In what capacity did you work with the candidate (e.g., peer, colleague, supervisor)?
 - Could you give me a brief description of the duties the candidate performed?
 - What were the candidate's strengths? What were the candidate's weaknesses or areas where the candidate could improve?
 - Would you recommend him/her for this position? Why or why not?

Reference Checks: What to Ask (Continued)

- How well did the candidate know the work? How well did the candidate perform on the job? How well did the candidate manage the workload?
- How would you describe the candidate's relationships with co-workers, subordinates, and supervisors?
- Is there anything else you can tell me about the candidate's ability to perform his/her job?
- What kind of work-related training, certificates, education, or other qualifications does the candidate have?

Reference Checks: What NOT to Ask

- The Agency cannot ask prohibited questions, such as questions about the candidate's religion, political affiliation, marital status, age, pregnancy, or disability.
- The Agency cannot ask about the candidates' use of leave or need for an accommodation.
- For additional information on reference checking see *Reference Checking in Federal Hiring: Making the Call*, U.S. Merit Systems and Protection Board, September, 2005, available at [Reference Checking in Federal Hiring: Making the Call, MSPB](#)

Social Media: Refrain from Searches

- Managers should not conduct internet searches on applicants in an attempt to review a social media profile or obtain other information from the internet.
- Managers should refrain from making hiring decisions based on the content of an applicant's social media account or based on the manager's lack of access to the applicant's social media account.

Social Media: EEO Pitfalls

- USDA managers who research job applicants online risk subjecting the Department to legal claims of discrimination.
- Managers may uncover—even inadvertently—information online about an applicant that should not be considered in employment decisions, including religious affiliation, political affiliation, age, marital status, parental status, sexual orientation, national origin, whether the applicant has a disability, and the extent of a disability.
- Even if the manager does not consider such characteristics in making employment decision, this may be very difficult to prove if the manager accessed information about such characteristics from an internet search or social media account.

Social Media: Is it even true?

- It may also be difficult to determine whether an online posting is about the applicant rather than someone else with the same name. Even if it is the correct person, online information is not necessarily true and even accurate information may be outdated or misinterpreted.
- A manager's hiring decision should be based on who is best qualified for the job, not the applicant whose lifestyle, hobbies, or interests resonate with, or least offend, the manager.



Test your knowledge: Researching Candidates

Which of the following may you do:



Look up a published article that the candidate has listed on their resume as an article that they authored.



Conduct a Google search to see if the candidate has published any articles that they did not list on their resume.



Contact the editor of the periodical that published the candidate's article to inquire about the circumstances under which the article was accepted for publication.



Ask the candidate's former supervisor, whom the candidate listed as a reference, about the scope of the candidate's research, which the published article was about.

Probationary Period

- Typically a 1 year probationary period
- Time for managers to evaluate a probationary employees performance and conduct and take appropriate actions, if necessary to avoid long-term problems.
- Do not have to use progressive discipline before removing a probationary employee for misconduct.
- Probationary employees are not entitled to most appeal rights granted to employees who have completed probationary periods.
 - Probationary employees retain EEOC rights and may also seek corrective actions with the Office of Special Counsel if he/she believes the action was taken because of a prohibited personnel practice.

Utilize the Probationary Period

- Encourage participation in the performance planning process; discuss expectations monitor performance, provide feedback and communicate deficiencies when first noted
- If managers are concerned about performance, immediately discuss this with employee relations.
- Managers do not have to give a probationary employee a demonstrated opportunity to improve before taking a performance based adverse action.
- **Do NOT miss the probationary period deadline.** Speak with Employee Relations as soon as you have concerns. Do not wait.



Questions

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Case Study 1

Clarine L. v. Department Transportation,
EEOC Appeal No. 2020005402, (July 28, 2022),
affirmed by EEOC Request No. 2022005084 (Feb.
23, 2023)

Clarine L. v. Department Transportation, Facts:

- The Complainant, the Selectee and one other applicant were deemed to be the best qualified based on their applications and resumes and were granted interviews.
- None of the interview panelists recommended the Complainant. The interview panelists provided detailed testimony about how the Complainant did not interview as well as the Selectee or the other applicant.
- However, the interview panelists' score sheets and interview notes were not included in the Report of Investigation or produced by the Agency.

Clarine L. v. Department Transportation

Facts (continued):

- The vacant position at issue was initially classified within the Engineer series.
- Selecting official authorized the Human Resources Office to advertise the position under the three different series, explicitly for the purpose of ensuring that the Selectee would qualify.
- If the vacant position had only been listed as within the Engineer series, the Selectee would not have qualified.
- Shortly after the vacant position was expanded to include other series, the Selectee was noncompetitively detailed into the vacant position.

Clarine L. v. Department Transportation

Ruling:

- The EEOC held that the “evidence of preselection is also evidence that the selection process was a sham and that the Selectee would have been awarded the position irrespective of Complainant's interview performance.”
- The EEOC also found that the Complainant’s qualifications were plainly superior to those of Selectee: The Complainant had a degree in Electrical Engineering and extensive experience as an Engineer, whereas the Selectee did not possess an Engineering degree.
- The Agency did not establish that the core duties of the position changed after the prior incumbent of the position retired.
- The Agency was ordered to promote Complainant to the position, retroactive to the date the position was filled, with backpay, and pay over \$94,000 in attorney’s fees and costs.

Case Study 2

Pamela W. v. Department of Homeland Security,
EEOC Appeal No. 2022003075 (Feb. 7, 2023)

Pamela W. v. Department of Homeland Security,

Facts:

- The position at issue was initially announced as Grade 13, and the Selecting Official informed Complainant that she was not qualified for the position since she did not have sufficient the time in Grade 12.
- The Complainant applied but did not make the certificate. The record did not contain any information about why Complainant did not make the certificate.
- Subsequently, the Selectee was hired under different (non-competitive) authority at a Grade 12.
- Complainant would have met the time in grade requirement to be eligible for a Grade 13 position around the time that the Selectee started in the position.

Pamela W. v. Department of Homeland Security

Ruling:

- Summary judgment was not appropriate. A hearing was necessary to explore the Selecting Official's motivations for his actions when filling the position.

Case Study 3

Nakesha D. v. General Service Administration,
EEOC Appeal No. 2022003095 (Feb. 2, 2023)

Nakesha D. v. General Service Administration,

Facts:

- The Complainant had an initial interview but was not referred for a second interview. Her resume indicated she had more experience regarding the essential responsibilities than the Selectee.
- The Agency failed to maintain the interview panelists' notes. The Administrative Judge (AJ) issued a decision granting adverse inferences in Complainant's favor based on the Agency's failure to maintain and produce relevant documents.
- Accordingly, the AJ determined that the appropriate adverse inferences were: (1) Complainant performed well during the first-round interview; and (2) based on Complainant's positive first round interview performance, Complainant should have advanced to the second round of interviews.
- Due to the missing documents, "there were no quantitative or objective angles to assessing interview performance." The panelists' testimony indicated that each one "essentially used their own system for evaluating the candidates" with no consistency among the panelists' system.

Nakesha D. v. General Service Administration,
EEOC Appeal No. 2022003095 (Feb. 2, 2023)

Ruling:

- The EEOC affirmed the AJ's ruling and ordered that the Complainant be given the position retroactively, with back-pay.
- The EEOC affirmed the award of \$170,000 in nonpecuniary compensatory damages to Complainant.
- The EEOC affirmed restoration of over 250 hours of leave to Complainant.

Case Study 4

Priscilla H. v. Social Security Administration,
EEOC Appeal No. 2021001678 (Jan. 18, 2022),
request for reconsideration denied,
EEOC Request No. 2022001994 (June 30, 2022)

Priscilla H. v. Soc. Sec. Admin.,

Facts:

- There was no interview for the promotion, nor was there a selection panel.
- Complainant's Assistant District Manager, in coordination with the District Manager, selected two other candidates for the promotion.
- The Assistant District Manager and District Manager asserted that Complainant was not hired because she was not highly recommended by her supervisor, whereas the Selectees were highly recommended.
- The record did not include any references for any of the candidates for the promotion, and Assistant District Manager could not remember the names of the supervisors who were used for references.

Priscilla H. v. Soc. Sec. Admin.

Ruling:

- The Agency failed to overcome Complainant's prima facie case of discrimination, and Complainant prevailed without having to prove pretext.
- “The evidence presented by the Agency is not sufficient to provide a specific, clear, and individualized explanation as to why Complainant was not selected for the position.”
- “It is not apparent from the record why the selectees received a highly recommended rating whereas Complainant received a only a recommended rating, nor is there evidence that those were, in fact, the respective recommendations at all.”

Case Study 5

Dewey R. v. Department of the Navy,
EEOC Appeal No. 2020004294 (Feb. 7, 2022)

Dewey R. v. Dep't of the Navy,

Facts:

- The Director and the Supervisory Analyst were the only members of the selection panel.
- In the interviews, each candidate was asked the same questions, and the Director and the Supervisory Analyst separately scored the answers.
- The Selectee received the highest interview score; Complainant slightly lower than the Selectee.
- The Director and the Supervisory Analyst provided detailed explanations for their scoring.
- The candidates' resumes were not considered or scored by the panel during the selection process, even though the resumes were provided to the panel by HR. Complainant's resume indicated significantly more experience than the Selectee's resume.
- A Supervisor testified that the Director discussed his desire to select the Selectee before the position was posted, and informed the Supervisor that he had decided that the selectee would be chosen for the position before the interviews were completed.

Dewey R. v. Dep't of the Navy

Ruling:

- Summary judgment was not appropriate. A hearing was necessary to weigh the credibility of the witnesses.

Case Study 6

*OSC File Nos. MA-15-5942 and MA-16-0194,
Prohibited Personnel Practices Report (Department
of Justice)*

OSC File Nos. MA-15-5942 and MA-16-0194,

Facts:

- The Selecting Officials discussed their dismay that veteran candidates had priority, and they discussed returning the certificates without a selection and re-advertising the positions “over and over again until we have a good candidate.”
- The Selecting Officials encouraged preference eligible veterans to withdraw their applications.
- When the veterans declined to withdraw the applications, the Selecting Officials selected a non-veteran candidate, despite rules mandating that veterans receive priority in hiring over non-veterans under the circumstances.
- After human resources staff refused to process the selection of the non-veteran, DOJ re-announced the positions with new qualification requirements that effectively excluded all veterans who applied.

OSC File Nos. MA-15-5942 and MA-16-0194,

Finding:

- During the course of its investigation, OSC sought and obtained a stay from the U.S. Merit Systems Protection Board to ensure that DOJ did not fill the positions while OSC investigated.
- OSC found that DOJ officials unlawfully attempted to influence the veterans to withdraw from competition in violation.
- OSC also found that the Selecting Official unlawfully recommended a personnel action that would violate a veterans' preference requirement, when the Selecting Official selected the non-veteran candidate.
- OSC recommended disciplinary action for the violations.

Case Study 7

*OSC File No. MA-14-2635,
Prohibited Personnel Practices Report (Department
of the Treasury)*

OSC File No. MA-14-2635,

Facts:

- The Agency required attorney experience and prior federal service for a series of Supervisory Investigator positions, although neither requirement was listed in the corresponding vacancy announcements.
- The vacancy announcements stated that “no prior federal experience is required” and only mentioned “attorneys” as one of multiple careers that could demonstrate the required knowledge, skills, and abilities.
- However, the “score card” for rating applicants focused heavily on skills and experiences that attorneys would likely have, and non-attorneys were not likely to have. The scoring was designed so that there was no way for a non-attorney without prior federal service to score enough points to advance in the selection process despite meeting all the publicly-stated requirements.

OSC File No. MA-14-2635, Prohibited Personnel Practices Report

Finding:

- OSC found that the Agency's hiring actions did not comply with federal hiring rules and regulations regarding merit system principles, which constitutes a prohibited personnel practice in violation of the law.
- OSC also found that, by misleading applicants about the qualifications required for the jobs, the Agency willfully obstructed the right of applicants without attorney experience and with no prior federal service to compete for the positions, in violation of the law.
- The Agency lost its independent hiring authority when an audit revealed the prohibited personnel practices.

Case Study 8

King W. v. Department of Defense,
EEOC No. 0120160925 (June 19, 2018)

King W. v. Department of Defense,

Facts:

- An interview panel member performed an internet search of all the applicants and reported to others on the panel that Complainant engaged in prior EEO activity with another agency. This was done after the applicants' interviews, but before the interview panel solidified the rankings of the candidates.
 - The interview panel member told other panelists that the applicant was a "high risk" candidate in that he may file another complaint in the future.
 - The panel member admitted that he took into account Complainant's EEO activity in his decision not to recommend Complainant and stated that other panelists may have been influenced as well.
- However, the Agency established that Complainant would not have been selected even absent consideration of his prior EEO activity. Records revealed that there were other permissible factors that contributed to Complainant's nonselection, including the quality of his interview.

King W. v. Department of Defense,

Ruling:

- The EEOC found that the interview panel member's conduct was direct evidence that an impermissible factor was taken into account during the hiring process.
- The EEOC ordered the Agency to provide 8 hours of training and consider disciplining the responsible management officials.