



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

30.4.1

FEBRUARY 7, 2025

EFFECTIVE DATE

(02-07-2025)

PURPOSE

- (1) This transmits revised CCDM 30.4.1.3.1.3, Regular Program.

BACKGROUND

- (1) This material is being revised to reflect current coordination and submission procedures and legal developments.

MATERIAL CHANGES

- (1) CCDM 30.4.1.3.1.3, The Regular Program for GS-9 through GS-14 positions and vacancies for GS-15 positions.

EFFECT ON OTHER DOCUMENTS

This section supersedes CCDM 30.4.1.3.1.3 dated 06-05-2014.

AUDIENCE

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30.4.1

Employment

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30.4.1.1
(09-15-2009)
**Introduction to
Employment Programs**

- (1) This section provides information on employment matters, including application and selection procedures, Bar Association requirements, background investigations, employee details, voluntary separations, priority placement program, position classification, reassignments, flexiplace, performance assessment, and policies pertaining to recruitment, relocation, and retention bonuses.

30.4.1.2
(02-01-2007)
**Senior Executive
Service, Executive
Resources Boards and
Performance Review
Board**

- (1) This subsection covers information about the Senior Executive Service (SES), Executive Resources Boards (ERB), Performance Review Board (PRB) and SES Sabbaticals. It provides guidance in regard to each board's composition and their duties and responsibilities.

30.4.1.2.1
(02-01-2007)
**Executive Resources
Boards for GS-15 and
SES Positions**

- (1) Within the Office of Chief Counsel, competitive staffing of GS-15 and SES positions are handled through Executive Resources Boards (ERB). These boards, which consist of management officials, are responsible for reviewing applicants for these positions and making selection recommendations to the Chief Counsel.
 - a. For positions at the GS-15 level, the Chief Counsel is the selecting official.
 - b. SES selections must be approved by the General Counsel.
- (2) There are two primary types of boards, National and Local, each of which has its own membership requirements as described in the following subsections.
 - a. National Boards handle SES positions and GS-15 Area Counsel positions.
 - b. Local Boards handle GS-15 positions, except for GS-15 Area Counsel positions.
- (3) It is the policy of the Office of Chief Counsel to hire and maintain a diverse workforce that is comprised of individuals having different racial, gender, religious, cultural, and educational backgrounds, work experiences and perspectives. We will strive to recognize this policy in our ERB activities.
- (4) Noncompetitive selection actions, such as the reassignment of a GS-15 or SES employee, may be exempted from the Board process when so authorized by the Chief Counsel and/or his designee. SES actions must, however, be approved by the General Counsel.

30.4.1.2.1.1
(05-18-2012)
National Boards

- (1) National ERB boards will generally be composed of no more than five SES executives as described below:
 - The Deputy Chief Counsel (Operations) or the Deputy Chief Counsel (Technical), serving as chairperson
 - The Associate Chief Counsel (Finance and Management) (F&M)
 - The Division Counsel or the Associate Chief Counsel of the affected organization (i.e., organization where position is located)
 - A Division Counsel or an Associate Chief Counsel from outside the affected organization
 - An SES executive from the IRS

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- (2) In the event the Deputy Chief Counsel (Operations or Technical) is unable or elects not to participate on a board, the Associate Chief Counsel (F&M) will serve as chairperson of the board.
- (3) The Deputy Chief Counsel (Operations or Technical) will be responsible for making final determinations with respect to the board members who will participate. The Associate Chief Counsel (F&M) will be responsible for tracking these assignments and making recommendations to the Deputy Chief Counsel (Operations or Technical) on board membership, when appropriate.
- (4) A Deputy Division Counsel or Deputy Associate Chief Counsel may serve in lieu of their respective Division Counsel or Associate Chief Counsel at the election of the Deputy Chief Counsel (Operations or Technical).
- (5) A quorum of three members must participate, in person or via teleconference, in all board deliberations and decisions, unless an exception is authorized by the board Chairperson to promote the efficiency of the Office of Chief Counsel. Such an exception will normally be authorized only in very rare circumstances in which the unavailability of a board member cannot reasonably be anticipated, and rescheduling would unduly inconvenience the applicants under consideration, or be otherwise impractical. One example might be a situation in which a board member is unexpectedly absent due to illness on the day on which applicant interviews have been scheduled.
- (6) The composition of the board described above is intended as a guideline. In all cases, however, the Board must have at least one person from outside the affected organization.

30.4.1.2.1.2 (02-01-2007) Local Boards

- (1) Local ERB boards will generally be composed of between three and five SES executives or GS-15 managers/management officials as described below:
 - The Division Counsel or Associate Chief Counsel of the affected organization (i.e., organization where position is located), who will serve as chairperson
 - The Area Counsel or the Assistant Chief Counsel of the affected organization
 - The immediate supervisor of the position (if not already represented above)
 - An SES executive or GS-15 manager from outside the affected Division/Associate area
 - At the option of the board chairperson, an SES executive or GS-15 manager from the IRS client organization or Treasury
- (2) The Deputy Chief Counsel may participate on any board and serve as chairperson.
- (3) Deputy Division Counsel and Deputy Associate Chief Counsel may serve in lieu of their respective Division Counsel or Associate Chief Counsel (including serving as the board chairperson).
- (4) The board chairperson is responsible for identifying board members who will serve as members. If needed, assistance in identifying pools of SES and GS-15 managers eligible to participate may be obtained by contacting ERB staff in the office of the Associate Chief Counsel (F&M).

- (5) A quorum of three members must participate, in person or via teleconference, in all board deliberations and decisions, unless an exception is authorized by the board chairperson to promote the efficiency of the Office of Chief Counsel. Such an exception will normally be authorized only in very rare circumstances in which the unavailability of a board member cannot reasonably be anticipated, and rescheduling would unduly inconvenience the applicants under consideration, or be otherwise impractical. One example of such an exception might be a situation in which a board member is unexpectedly absent due to illness on the day on which applicant interviews have been scheduled.
- (6) The composition of the board described above is intended as a guideline. In all cases, however, the Board must contain a person from outside the affected organization.

30.4.1.2.2
(02-01-2007)
**Application and
Selection Procedures**

- (1) Vacancy announcements will normally be advertised for a period of at least four weeks. (SES announcements must be open for a minimum of 14 calendar days.)
- (2) Applicants must submit all application materials listed in the vacancy announcement within the prescribed time frames. These materials will normally include:
 - A written application (or resume)
 - A memorandum of interest emphasizing qualifications especially relevant to the position
 - A copy of the most recent performance appraisal
 - A supervisory report
 - For SES positions, a narrative which addresses the position's Professional/Technical Competencies and the Executive Core Qualifications (ECQ)

Note: ECQ statements are not needed from those already certified as SES members or candidates by the Office of Personnel Management (OPM).
- (3) Applications will initially be screened for minimum qualification requirements by staff in the office of the Associate Chief Counsel (F&M). The applications of those candidates who are deemed eligible for the position will then be referred to the Board for a determination as to which candidates are best qualified for the position.
 - a. For a bargaining unit (BU) Senior Counsel position, the board uses the "Bargaining Unit GS-15 Rating Sheet" provided by the ERB and, in accordance with the Chief Counsel-NTEU collective bargaining agreement, annotates the four best qualified.
 - b. In the unusual event that a BU Senior Counsel vacancy is advertised to an area of consideration beyond the Office of Chief Counsel, the ERB will provide instructions on how to give "first consideration" to Chief Counsel applicants in accordance with the Chief Counsel-NTEU collective bargaining agreement.
 - c. Interviews of the best qualified candidates may be conducted at the option of the Board.
- (4) After considering the candidates' qualifications (including interviews if conducted), the Board chairperson will prepare a selection recommendation

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memorandum on behalf of the Board for submission to the Chief Counsel (and General Counsel for SES positions). This memorandum will document the Board's decisions regarding which candidates were determined to be best qualified, in ranked order whenever possible, and their relative qualifications for the position, including any dissenting opinions.

- (5) If the Chief Counsel does not concur in the recommended selection, he/she may make an alternate selection from among the best qualified candidates by preparing a separate memorandum which documents this decision. Otherwise, the Chief Counsel will indicate his/her concurrence by signing the Board's recommendation.
- (6) All SES selections must additionally be reviewed and approved by the General Counsel. New appointments to the SES must also be certified by OPM.
- (7) If a previously advertised vacancy becomes vacant within three months of the original selection, the Chief Counsel may authorize an alternate selection to be made from the best qualified candidates. If no selection is made from the original announcement, and/or additional vacancies subsequently arise, the Chief Counsel may authorize new/additional selections when it is determined that it is in the Office's best interest to do so, and that a sufficient pool of best qualified candidates was recruited under the original announcement.

30.4.1.2.3 (05-18-2012) Performance Review Board

- (1) The Performance Review Board (PRB) makes recommendations to the Chief Counsel concerning performance appraisals and ratings, performance awards and awards of rank, and performs other duties requested by the Chief Counsel or General Counsel or as required under General Counsel Directive No. 15. The role that the Planning and Management Division (CC:FM:PM) plays within this process can be found in *CCDM 30.1.1.3.4.3*, Strategic and Program Plan.
- (2) The PRB services all components of the Office of Chief Counsel, and is responsible for the review of all Counsel SES executives, except the Deputy Chief Counsels (Technical or Operations), who are reviewed by a second Board consisting of the Deputy General Counsel, and two other IRS or Treasury SES executives designated by the Chief Counsel.
- (3) OPM requires that the PRB consists of three or more members. At least one of the members should have previous PRB experience. The PRB will generally consist of:
 - The Deputy Chief Counsel (Operations) or (Technical) as Chairperson
 - An Associate or Deputy Associate Chief Counsel
 - A Division or Deputy Division Counsel
 - Two other Counsel or IRS SES executives designated by the PRB Chairperson

Note: At their option, the General Counsel and/or IRS Commissioner may also elect to designate an SES executive to participate on the PRB.

- (4) PRB members serve for approximately one year, usually beginning in early October. The names of the PRB members must be published in the *Federal Register*.

- (5) A member of the PRB may disqualify himself/herself when the PRB is considering the performance of a particular executive. When the performance of a member of the PRB is being evaluated, that member shall not participate and shall excuse themselves from the meeting.

30.4.1.2.4
(02-01-2007)
SES Sabbaticals

- (1) Treasury Personnel Management Bulletin (TPMB) 81-9, dated November 3, 1981, outlines the policy for applying for and granting SES Sabbaticals. Members of the Senior Executive Service who meet the eligibility requirements and wish to avail themselves of this program must submit the required material to the Deputy Chief Counsel (Operations or Technical) in the time frames established by TPMB 81-9.

30.4.1.3
(02-01-2007)
Attorneys

- (1) This subsection establishes policies for the recruitment, employment, and merit promotion of attorneys in the Office of Chief Counsel.

30.4.1.3.1
(02-01-2007)
Recruiting Policies and Programs

- (1) *Director, Human Resources Division.* Under the direction of the Associate Chief Counsel (F&M), the Director, Human Resources Division (HR) has the responsibility to coordinate and execute the attorney recruiting programs, and to conduct a continuing review of these programs. More specifically, the Director will:
 - a. Participate with the Chief Counsel, Associate Chief Counsel (F&M), and other supervisory officials in establishing staffing needs and allocations
 - b. Issue national guidelines and instructions on recruiting plans, methods, reports, and procedures
 - c. Conduct recruiting conferences and seminars
 - d. Direct, coordinate, and review recruiting programs and campaigns to determine progress and to advise the Chief Counsel, the Associate Chief Counsel (F&M), and other supervisory officials, as appropriate, on the solution of problems
 - e. Serve as the recognized central point of contact for law school students in their filing of the necessary applications for employment
 - f. Screen all applications and circulate them throughout the Associate Chief Counsel/Division Counsel offices
 - g. Reply promptly to all employment inquiries and inform all applicants of their selection or non-selection for employment
- (2) *Associate Chief Counsel/Division Counsel.* Under the general direction of the Director, Human Resources Division, Associate Chief Counsels/Division Counsels have the responsibility to support attorney recruiting activities and programs at law schools located within their geographic area. More specifically, Associate Chief Counsels/Division Counsels will:
 - a. Furnish recruiting literature and other related information to the law schools in their areas
 - b. Schedule interviews at the law schools or field counsel offices of applicants after having screened their applications
 - c. Prepare reports of all Office interviews and keep HR currently informed in this regard
 - d. Meet with law school officials, faculty members, and placement officers at appropriate times to maintain good relationships and communications with the law schools

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- e. Arrange for attorneys of the Office to speak at the law schools within the geographic area for the purpose of explaining the programs, objectives, operations, hiring needs, etc., of the Office of Chief Counsel, and stimulate interest in the Office
 - f. Coordinate the arrangements for speakers from the Associate Chief Counsel/Division Counsel offices
 - g. Keep HR informed of recruitment program problems and developments at the law schools within the area
 - h. Serve as the recognized geographic area point of student contact for the law schools within the geographic area to answer questions and transmit applications received for employment to HR for review
 - i. Notify HR of selection of Honors Program, Regular Program and Summer applicants and forward hiring memos to HR to make job offers
- (3) Where possible, Associate Chief Counsel (General Legal Services) attorneys should visit law school campuses that have Labor Law Programs for the purpose of holding recruiting meetings of students enrolled in such programs. For those law schools in areas other than the metropolitan area in which the GLS area office is located, such visitations should normally be conducted only when the General Legal Services attorney is in that area on case-related travel.
- (4) In the spring or fall of each year, the Office should visit law schools and speak with students to acquaint them with the work of the Office and opportunities for employment. This program is intended to maximize student awareness of the Office and to provide them with helpful information in order that they may consider the advisability of applying for employment under the Honors Program.
- a. Every effort should be made to answer fully any questions that the students may have, and make recruitment brochures and employment applications available for distribution to interested students.
 - b. The representative of the Office at these meetings should be an attorney or supervisor who has a thorough knowledge of the Chief Counsel organization.
 - c. Applicants should be advised that a completed application package must be received by HR to help facilitate formal interviews on campus or in the office.

30.4.1.3.1.1
(02-01-2007)

Attorney Interviews

- (1) Those who conduct interviews will be expected to have precise information about the nature of the positions that are available and about fringe benefits, advancement opportunities, the educational and experience requirements of the positions, and how selections for appointments are made. Due to the importance of the interviewing process, only GS-14 attorneys or higher should conduct interviews.
- (2) The interview is the only method by which the Office can judge applicants outside of their "paper" qualifications. The Chief Counsel application form is designed to elicit much of the information which interviewers in the past have had to spend valuable interview time to obtain. Thus, the interviewer should be free to find out more about the applicant and to answer any questions the applicant may have. Applicants interested in General Legal Services (GLS) work should be interviewed by GLS attorneys where possible.

- (3) Applicants will be subject to a second interview if they have been determined to be acceptable for employment by the initial interviewer. Ordinarily, an offer of employment will not be made under any of the programs unless the applicant has been interviewed by two officials of the Office. In such case, the initial interviewer will see to it that a second interviewer is immediately available to talk with the applicant to avoid the necessity of a second visit to the office.

Caution: The second interviewer must be at the GS-15 level or higher, if the first interviewer is a grade GS-14 or lower. There should be no less than one GS-15 interviewer.

- (4) Interview expenses may be requested of and authorized by the Associate Chief Counsel (F&M) on a case-by-case basis. Authorization may be granted in unusual circumstances based upon the interviewees' accomplishments which indicate that he/she is of an exceptional caliber.
- (5) Each interviewer will complete a separate *Form 12990*, Interview Data. Interviewers should promptly return interview data sheets along with the original application package to HR when so requested.
- (6) Interviewers should check the application package to ensure that it is properly completed. Interviewers should be aware that pursuant to the Privacy Act, the first time information is requested from the individual, either orally (i.e., at an interview) or in writing, a copy of the "Privacy Act and Paperwork Reduction Notice", which is on the reverse side of the application form, must be provided to the applicant. Interviews should not be conducted until the applicant has completed an application form that has the "Notice" printed on it.
- (7) *Checklist.* All interviewers should be certain that applicants understand the following:
 - a. Criteria and eligibility for the Honors, Regular, and Summer Programs
 - b. All appointments are subject to a background investigation which will be conducted during the first year of employment as described in CCDM 30.4.1.5, Investigations.
 - c. *Three-year Commitment Rule.* Counsel generally requires a three-year employment commitment although provisions exist for commitments of two-year duration. The interviewer should explain to applicants that if they were to leave the Office in violation of their two- or three-year commitment without a release, they ordinarily would not be considered for re-employment by the Office and that a breach of commitment will be noted in any letter furnished to prospective employers and others concerning the individual's employment history.

Note: See CCDM 30.4.1.3.3 for detailed information concerning the nature and extent of this commitment and the criteria under which attorneys will be released from their employment commitments.

- d. The Office of Chief Counsel does a substantial amount of legal work which does not involve substantive tax law. Criminal tax work involves general substantive and procedural criminal law. General Legal Services attorneys handle legal cases and problems involving labor law, Government contracts, tort law, and administrative law. Disclosure litigation work involves, among other things, matters arising under the Freedom of Information Act and the Privacy Act, and problems arising from requests for discovery under court procedural rules.

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- e. Applicants who profess an interest solely in substantive tax work should be urged to indicate that on their applications; interviewers should also note it in their evaluations. Likewise, applicants who are interested only in other areas of Chief Counsel work should so specify. Applicants are, of course, not required to list any particular work preferences and will not receive less consideration for appointment if they fail to indicate a specific division or function in which they are interested.
- (8) Interviewers should evaluate applicants as if applicants would be working for them. The Office depends on the evaluation of the interviewers to select among many well-qualified applicants. Interview data sheets should contain constructive comments; however, when an applicant is not being recommended, one or two explanatory sentences are all that is usually necessary.
- (9) Interviewers should include an evaluation of the writing sample submitted in their interview data sheets. An original paper, such as a seminar paper, is more desirable than a law review article or similar document which has been edited a number of times. Since much of the work product of the Office of Chief Counsel is written, the interviewers should review the paper, having in mind the question: "Is this paper of the quality expected by the Office of Chief Counsel?"
- (10) In selecting applicants for employment, HR relies heavily on the recommendation of the interviewer and the interview data sheet. In the interview data sheet, the conclusions stated under "comments" and the recommendation should coincide. Since the Office has many more applicants than vacancies, it is essential in recommending applicants for employment that the interviewers be fair but critical and carefully consider whether they would want to have the applicants working with or for them. Supervisors may contact HR for an example of a completed *Form 12990*, Interview Data sheet.

30.4.1.3.1.2 (02-01-2007) Honors Program

- (1) Applicants for this program must be third-year law students who have graduated from an American Bar Association accredited law school and will take a bar examination shortly after graduation. Applicants may receive a full time appointment prior to graduation and taking the bar. Generally, applicants will not report for duty until after taking the bar exam. Counsel may consider allowing an applicant to report to duty prior to taking the bar exam; however, this practice is not strongly encouraged.
 - a. Any applicant who reports to duty before admission to the bar will receive an appointment as a law clerk. Once proof of admission to the bar is submitted, the law clerk is automatically designated as an attorney.
 - b. If the clerk is not admitted to the bar within 14 months after appointment, employment is terminated.
- (2) In addition, applicants ordinarily should be in the top third of their law school class, or have performed at a comparable level at those law schools which do not rank their classes.
- (3) Those qualifying for the Honors Program with a J.D. are employed at grade GS-11 Step 8; those with an LL.M degree in Tax or Labor law at GS-12 Step 4.
- (4) Applications for employment under this program will be accepted throughout the year.

30.4.1.3.1.3
(02-07-2025)
Regular Program

(5) Applicants will be informed of their selection or non-selection in writing.

(1) The Regular Program for GS-9 through GS-14 positions and vacancies for GS-15 positions is open to applicants who have graduated from an American Bar Association accredited law school and possess a J.D. degree. Applicants must also:

1. Have passed a bar examination
2. Be admitted to the bar
3. Be in good standing

(2) Professional legal experience following law school will be considered in determining the appropriate grade level an applicant is qualified for. To qualify for a particular grade level, one year of the required experience with the nature of the legal work and the level of responsibility characteristic of the next lower grade is required. In addition, the following overall length of experience is required:

- GS-9 – Candidates must possess the first professional law degree (LL.B. or J.D.)
- GS-11 – Candidates must possess the first professional law degree (LL.B. or J.D.), plus one year of professional legal experience;
– or an LL.M. degree;
– or an LL.B. or J.D. degree plus superior law student work or activities in conformance with *General Counsel Directive No. 2*
- GS-12 – 1 year of general legal experience
- GS-13 – 1 year of professional general legal experience, plus 1 year of professional legal tax experience
- GS-14 – 1 year of professional general legal experience, plus 2 years of professional legal tax experience
- GS-15 – 1 year of professional general legal experience, plus 3 years of professional legal tax experience

Note: The type of work typically done by the division to which the applicant is applying along with its particular need for the position to be filled could affect the qualification requirements.

- For GLS positions, GLS-related legal experience is required instead of tax experience.
- For P&A FOIA/Disclosure positions, FOIA/Disclosure legal experience is required instead of tax experience.
- Litigation experience may be credited in lieu of tax experience when appropriate.
- Experience with accounting firms that is not the practice of law may be credited in lieu of tax experience when appropriate.

(3) The specialized experience on the vacancy announcement must clearly define the experience required.

(4) An LL.M. degree in the field of the position (tax, GLS-related, or P&A- FOIA/ Disclosure related field) may be substituted for the one year of the general legal experience listed above.

(5) Applicants ordinarily should have been in the top one-third of their law school class, or have performed at a comparable level at those law schools that do not rank their classes.

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- (6) The above guidance pertains to experience acquired after graduation from law school and after admission to a bar. Experience prior to bar admission is not considered professional legal experience.
- 30.4.1.3.1.4
(02-01-2007)
Summer Intern Program
- (1) A number of first- and second-year law students will ordinarily be employed by the Office as interns during the summer months. The period of employment generally will be during the months of June, July, and August and will not exceed 89 days. However, if necessary, a summer appointment of a shorter duration, or one which begins earlier or later, can be arranged. Interns can be assigned to any Counsel office.
- (2) Announcements of the forthcoming Summer Intern Program will be sent to law schools accredited by the American Bar Association and all interested students will be invited to apply. The purpose of the program is twofold:
- To give outstanding law students the opportunity to gain practical legal experience with the Office
 - To give the Office an opportunity to evaluate the potential of the student for permanent employment
- (3) Appointments under this program are made at the grade GS-7 level for first-year students and GS-9 level for second-year students. Applicants will be notified of their selection or non-selection in writing.
- (4) Because of the increased emphasis on the Summer Law Clerk Program for recruiting purposes *Form 9163*, Summer Intern Evaluation, should be completed by the supervisor as soon as the law clerk leaves. This is a critical and detailed evaluation of the law clerk's performance, including a recommendation for or against hiring for permanent employment. The evaluation should be sent to HR within one week after the law clerk's departure.
- (5) Law clerks will be asked to evaluate the Summer Law Clerk Program. Supervisors should notify the law clerks that they are to send their evaluations of the Summer Law Clerk Program, including any suggestions about the program, to HR before they leave the Office.
- (6) Summer law clerks who are interested in being considered for permanent employment with the Office should, upon termination of their summer employment, forward to HR a current Chief Counsel Application package.
- 30.4.1.3.1.5
(02-01-2007)
Law Student Volunteer Intern Program
- (1) The Office of Chief Counsel authorizes the use of the Law Student Volunteer Intern Program to provide opportunities for students to become familiar with the Office while gaining practical work experience, to encourage the interchange of ideas between the Office and law schools concerning career options and to expand recruitment sources by allowing firsthand observation of potential employees.
- (2) Use of such student volunteer services must be planned to avoid conflict with the summer intern program. In addition, no indication should be given to student volunteers that they will receive special preference for employment as summer interns.

- (3) Law students selected as volunteers in this program are prohibited from simultaneous outside employment that would result in a conflict of interest or give the appearance of a conflict of interest.
- (4) The Human Resources Division is designated as the coordinator of the program, and is responsible for promulgating internal instructions and serving as the point of contact with the law schools. Every effort will be made to inform students about employment opportunities.
- (5) Law Student Volunteer Interns may have access to returns and return information to the same extent that attorneys or tax law specialists have access to such material. It is the obligation of the students' supervisors to brief the students on their responsibility to maintain the confidentiality of the tax information they obtain in the course of their service. Interns may not disclose any returns or return information obtained in any manner except as authorized by IRC § 6103(h)(1), (k)(6), and (l)(4).
- (6) This program will be periodically reviewed to assess its statutory and regulatory compliance and its effectiveness in accomplishing the goals and objectives of the Office of Chief Counsel in this area.

30.4.1.3.1.5.1
(02-01-2007)
**Law Student Volunteer
Intern Program
Requirements**

- (1) This program is available to any law school accredited by the American Bar Association that has agreed to execute an agreement similar to *Form 13702*, Law Student Volunteer Intern Program Agreement. Agreements with the schools and students will be executed by HR for all interns located in Washington, DC; agreements for field offices will be executed by designated Field Counsel. Generally, this agreement will require the students to work a minimum of 12 hours per week in increments of at least 4 hours per day, for a total minimum of 150 hours per period. (A period is a school's normal grading period.)
- (2) Students must be enrolled on at least a half-time basis, meet the normal Honors Program criteria for employment with the Office, and be willing to comply with the provisions of the agreement described above.
- (3) Students will be eligible to participate if they are enrolled in the second semester of their second year of law school, are third-year law students, or are graduate law students.
- (4) Generally, students must have successfully completed a course in Federal taxation to qualify. Those interested in General Legal Services work should have completed some relevant course work, such as Government contracts or labor law.
- (5) Students must be recommended by the dean or other representative of the school. Such recommendation will include the student's subject area preference. Students will be selected for the program by the interested Associate Chief Counsel/Division Counsel.
- (6) The Office will ensure that students perform educationally related work assignments.
- (7) While no office is required to participate in the program, generally there will be no more than one student accepted in a branch or in a group. This is to

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enhance the effective use and supervision of the students. Generally, students in this program will not work in the same office in which an intern is working under the summer program.

- (8) Students will be evaluated on the work performed and their potential for employment. A copy of *Form 9163* will be forwarded to HR. Only that portion of the evaluation pertaining to the work performed will be forwarded to the law school.
- (9) Students may be terminated at any time without cause by Associate Chief Counsel/Division Counsel after consultation with the appropriate law school dean or other representative of the school.
- (10) The Associate Chief Counsel/Division Counsel offices will select and appoint their own students. Upon selection, but at least 30 days prior to the anticipated entry date, the Associate Chief Counsel/Division Counsel office will send the following forms to the student:
 - *Form 13702*, Law Student Volunteer Intern Program Agreement
 - SF 87, Fingerprint Card
 - *OF 306*, Declaration for Federal Employment

Note: Instructions accompanying these forms should advise the students to complete and return them to HR at least 10 days prior to the anticipated reporting date.

- (11) Each area will prepare a SF 52 with student's work schedule (days and hours per week) along with a forwarding address.

30.4.1.3.1.6 (02-01-2007) Student Volunteer Program

- (1) Non-law and law school students may apply to the student volunteer program. Under this program, students will perform a range of duties for the office. These duties are not necessarily comparable with those assigned to a law student volunteer intern. Students will not receive compensation for services rendered, nor are they required to be enrolled in an accredited course in conjunction with their volunteer service. Students will be eligible to participate if they are enrolled in any college or university. Pursuant to ABA guidelines, first year law students participating in this program should work no more than twenty hours per week during the school year.
- (2) The Associate Chief Counsel/Division Counsel offices will select their own student volunteers. If the student is enrolled in a law school, prior approval must be granted by the Associate Chief Counsel (F&M).
- (3) Use of such student volunteer services must be planned to avoid conflict with the summer program and the law student volunteer intern program. Generally, students in this program will not work in the same office in which an intern is working under the summer program or the law student intern volunteer program. Law students are required to sign a written acknowledgment (*Form 13700*, Student Volunteer Acknowledgment Statement), that this is not a formal intern program. No indication should be given to student volunteers of an expectation for future employment with the Office.

- (4) Students selected as volunteers in this program are prohibited from simultaneous outside employment that would result in a conflict of interest or give the appearance of a conflict of interest.
 - (5) The Human Resources Division is designated as the coordinator of the program.
 - (6) Upon selection, but at least 30 days prior to the anticipated entry date, the Associate Chief Counsel/Division Counsel office will send the following forms to the student:
 - SF 87, Fingerprint Card
 - OF 306, Declaration for Federal Employment
 - Student Volunteer Acknowledgment Statement
- Note:** Instructions accompanying these forms should advise the students to complete and return them to HR at least 10 days prior to the anticipated reporting date.
- (7) Student volunteers may have access to returns and return information to the same extent that attorneys or tax law specialists have access to such material. It is the obligation of the students' supervisors to brief the students on their responsibility to maintain the confidentiality of the tax information they obtain in the course of their service. Students may not disclose any returns or return information obtained in any manner except as authorized by IRC § 6103(h)(1), (k)(6), and (l)(4).
 - (8) Students will be evaluated on the work performed in a manner as set forth in *Form 9163*, Summer Intern Evaluation. Only that portion of the evaluation pertaining to the work performed should be completed and submitted to the Associate Chief Counsel/Division Counsel with a copy forwarded to HR.
 - (9) Student volunteers under this program may be terminated at any time without cause by Associate Chief Counsel/Division Counsel.

30.4.1.3.2
(02-01-2007)
**Bar Association; Tax
Court & Supreme Court
Admissions**

- (1) This subsection sets forth the policy concerning bar membership requirements and examinations, bar association activities, and admission to the U.S. Tax Court and the U.S. Supreme Court.

30.4.1.3.2.1
(02-01-2007)
**Bar Membership
Requirements**

- (1) Admission to the bar is a **condition of employment** as an attorney in the Office of Chief Counsel. If not already admitted at the time of employment, all attorneys hired by the Office must become admitted to the bar of the highest court of a state, territory, the District of Columbia, or the Commonwealth of Puerto Rico within 14 months after employment.
- (2) It is the duty of every attorney in the Office of Chief Counsel to keep informed of, and in compliance with, the various requirements which may be imposed by the bars and courts to which the attorney is admitted to practice, and to pay fees which may be imposed to maintain good standing. This means that an attorney's membership in the bar must be such as to permit him/her to practice law. Therefore, an attorney's membership in a unified bar (also called an integrated bar) must also be such as to permit him/her to practice law in that jurisdiction whether or not it involves maintaining an active status. However, where, under local bar provisions, it is impossible for attorneys working outside

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of a state to maintain bar membership making them eligible to practice, the attorney need only maintain the highest level of bar membership possible. If this is inactive membership, or some other classification under which they are ineligible to practice, then this is adequate.

- (3) By March 10 of each year, all attorneys must advise their immediate supervisor of their bar membership and current standing. The annual certification shall be submitted in such form as prescribed by the Associate Chief Counsel/Division Counsel for the attorneys under his/her supervision.
- (4) An annual certification will be made by supervisors to the appropriate Associate Chief Counsel/Division Counsel by April 10 of each year which states that all attorneys under their supervision have been admitted to practice before the highest court of at least one State, Territory, the District of Columbia, or the Commonwealth of Puerto Rico, and are members in good standing before the bar of one of these jurisdictions.
- (5) Attorneys newly appointed in the Office of Chief Counsel must submit evidence of admission to practice before the highest court of a state, territory, the District of Columbia, or the Commonwealth of Puerto Rico, through the attorney's Associate Chief Counsel/Division Counsel to HR for inclusion in the attorney's Official Personnel Folder. This must be an original letter generated from the appropriate overseeing agency or court (a standard size letter, on official letter-head with a seal - if used) stating that the attorney is currently an active member in good standing with the bar.
- (6) Bar Examination expense. Attorneys will be responsible for the cost of bar review courses, fees for admission to the bar, and fees or expenses for continuing legal education incurred to maintain bar membership.

Note: Payment of training costs for which the attorney is selected because of Office needs will not be denied merely because the training also satisfies a state's continuing legal educational requirements.

30.4.1.3.2.1.1 (02-01-2007) Bar Association Activities

- (1) All attorneys are encouraged to attend bar association meetings and otherwise to participate in bar association activities. For further procedures, see *CCDM* 30.4.8, Public Information (Speeches, Publications, and Teaching).
- (2) Attorneys are encouraged to participate in bar association activities as officers or members, specifically in work of the Section of Taxation of the American Bar Association and in similar activities of state and local bar associations. In the course of such activities and as members of such organizations, attorneys are free to express their opinions as individuals and to vote on recommendations in accordance with their own judgment and conscience, recognizing, however, that they may be viewed as representatives of the Departments of the Treasury.
- (3) When serving as chairperson of a committee or subcommittee, positions taken become matters of public record, and the chairperson assumes an obligation to express the view of the committee. Consequently, before accepting such an office, attorneys should consider whether or not the jurisdiction of the committee or its expected activities might necessitate taking a position on tax legislation or the administration of tax laws.

- (4) Generally, attorneys should decline a committee or subcommittee office which would involve taking positions on the matters described above in order to avoid any misunderstanding as to, or conflict with, official positions of the Office of Chief Counsel. However, this should in no way be interpreted to preclude attorneys from participation as committee members.
- (5) Approval by the Associate Chief Counsel/Division Counsel is required before accepting an appointment as chairperson of a committee or subcommittee of a bar association. If the Associate Chief Counsel/Division Counsel has any reservation in granting approval, the matter should be sent to the Deputy Chief Counsel for a final determination.

30.4.1.3.2.1.2
(02-01-2007)
Leave

- (1) If an employee is not already admitted to the bar, administrative leave will be approved for the taking of one bar examination and for one local bar admission ceremony when workload considerations permit.
- (2) While no administrative leave is to be granted for attending bar review courses or studying for or taking the bar examination, work hours may be adjusted where practical. Also, advanced annual leave or leave without pay may be granted as prescribed by leave policy. See *CCDM 30.4.6*, Leave Administration.
- (3) Attorneys may be given administrative leave to attend bar association meetings, where workload permits. Generally, such administrative leave may not exceed two days for a single meeting, nor five days over the period of one calendar year.
- (4) Requests for administrative leave pursuant to this section are handled in accordance with regular leave procedures in each Associate Chief Counsel/Division Counsel office.

30.4.1.3.2.2
(02-01-2007)
Admission to the U.S. Tax Court

- (1) All field attorneys (other than those assigned to GLS), and all other attorneys wishing to be admitted to practice before the Tax Court, should obtain an Application for Admission to Practice and a Practitioner's Oath from the Admissions Office.
- (2) The completed forms and admission fee should be directly submitted to the Admissions Clerk of the Tax Court by the attorney. Attorneys who appear before the U.S. Tax Court pay their own admission fees.

30.4.1.3.2.3
(02-01-2007)
Admission to the U.S. Supreme Court

- (1) Applications for admission to the Supreme Court are filed with the Supreme Court's Admissions Office. Attorneys who elect to be admitted on written motion, without going to the Court, must execute the Oath of Admission and have the sponsor whose name is to appear on the certificate sign as the moving party.
 - a. The person who moves the admission must be a member of the Bar of the Supreme Court.
 - b. The Oath (signed and notarized), together with the completed application, the required certificate, and a check to cover the fee (payable to Clerk, U.S. Supreme Court), must be mailed by the attorney to the Supreme Court's Admission Office.
- (2) Attorneys who wish to have the Chief Counsel execute the Motion for Admission to the Supreme Court may forward the Oath for Admission, signed

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and notarized, to HR. The executed Motion for Admission will be returned to the attorney for proper submission to the Supreme Court.

- (3) Attorneys who elect to be admitted in open Court must return the application and the required certificate to the Supreme Court's Admissions Office. After their receipt, instructions for being admitted in open Court will be provided by the Admissions Office.

30.4.1.3.3

(08-16-2023)

Employment Tenure Commitments for Attorney Personnel

- (1) It is the policy of the Office of Chief Counsel to require, as **a condition of employment**, the execution of an employment tenure commitment agreement by each newly appointed attorney. In so doing, the attorney commits to remaining in the employ of the Office of Chief Counsel for the minimum time specified. *Form 13701*, Employment Tenure Commitment, should be used to formalize the agreement.
- (2) An attorney appointed to a full-time tour of duty (80 hours per pay period) will be required to execute an employment tenure commitment in which he/she agrees to remain with the Office of Chief Counsel for a minimum period of three years.
 - a. If the attorney has at least five years of legal experience, in either the public or private sector, a one-, two- or three-year commitment will be required as determined by the Associate Chief Counsel/Division Counsel to which the attorney is to be assigned.
 - b. If the attorney has completed at least two years of employment with the U.S. Tax Court or with the Tax Division of the Department of Justice, a two-year commitment will be required.
 - c. If the attorney was previously employed as an attorney by the Office of Chief Counsel, a one-, two- or three-year commitment will be required as determined by the Associate Chief Counsel/Division Counsel to which the attorney is to be assigned.
- (3) An attorney on a full-time tour of duty who is given approval to convert to a permanent part-time tour of duty prior to completion of his/her current commitment, must execute a one-year extension of the current commitment.
- (4) An attorney appointed to a part-time tour of duty (64 hours, or less, per pay period) will be required to execute an employment tenure commitment in which he/she agrees to remain with the Office of Chief Counsel for a minimum of four years.

30.4.1.3.3.1

(02-01-2007)

Breach of Commitment

- (1) Attorneys should not accept offers of employment in disregard of the employment tenure commitment. Prior to committing to a new employer, the attorney should discuss the matter with his/her supervisor, who, in turn, will apprise the Associate Chief Counsel/Division Counsel through supervisory channels.
- (2) An attorney who resigns from the Office prior to completing his/her commitment will be regarded as having breached the commitment, unless released from the employment tenure commitment by the Associate Chief Counsel (F&M).

- (3) It is the policy of the Office of Chief Counsel generally not to rehire an attorney who has breached an employment tenure commitment and to note the breach of such commitment in any letter of reference furnished by the Office to prospective employers or others.

30.4.1.3.3.2
(02-01-2007)
**Release from Tenure
Commitment**

- (1) An attorney seeking release from his/her employment tenure commitment must submit a request in writing. The request must be endorsed by his/her Associate Chief Counsel/Division Counsel and submitted via HR to the Associate Chief Counsel (F&M).
- (2) A request for early release from the employment tenure commitment shall be granted when the facts and circumstances warrant approval of the request, in the judgment of the Associate Chief Counsel (F&M). Favorable facts and circumstances generally include:
 - a. The attorney has been employed in the Office of Chief Counsel for less than one year.
 - b. The attorney wishes to transfer to another position within the Federal government for a minimum period at least equivalent to the balance of the commitment.
 - c. The state of the attorney's health is such that he/she is unable to perform the duties of his/her position in a satisfactory manner.
 - d. The state of the attorney's health, or that of an immediate member of his/her family, is diagnosed as chronic and severe, requiring relocation to a location at which the Office is unable to offer employment.
 - e. The attorney wishes to become a permanent, full-time member of the faculty of a law school.
 - f. The attorney seeks release in order to leave the active practice of law to enter another occupational or vocational field. In this regard, intent to join the legal staff of a business, a trade association, or an exempt organization, will not qualify the attorney for early release.

30.4.1.3.4
(02-01-2007)
Attorney Promotion Plan

- (1) This subsection provides procedures governing the promotion of General Schedule (GS) attorneys, GS-11 through GS-14.
- (2) The Office of Chief Counsel has established a 52-week time in grade requirement before an attorney is eligible for promotion to the next higher grade.
- (3) The completion of time-in-grade requirements, by itself, does not entitle an attorney to promotion to the next grade level. There must additionally be a clear demonstration that the attorney has successfully performed at the current grade level, and has the ability to perform at the next higher grade level. Managers must, however, be able to explain (and document, if required) decisions not to promote. Law Clerks hired at the GS-11 level will not be eligible for promotion as Law Clerks to the GS-12 level and must have been admitted to practice before the appropriate court before promotion to an attorney position is considered.
- (4) In computing an attorney's experience for time-in-grade purposes, comparable legal experience gained at other Federal agencies may be credited. Promotion based on such experience is treated as a regular promotion, and does not require any justification beyond that of a normal promotion.

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- (5) Promotion recommendations for attorneys who have fulfilled all time-in-grade requirements require the concurrence of the Associate Chief Counsel/Division Counsel in whose organization the attorney works prior to submission to Human Resources Division.

30.4.1.3.5
(08-16-2023)

Procedures for Assistant Branch Chief and Assistant to the Branch Chief Positions

- (1) The Office can announce and fill at the GS-14 level either an Assistant Branch Chief or Assistant to the Branch Chief position where there is an authorized staff of at least five docket attorneys. Prior to filling the position, approval of the Associate Chief Counsel must be obtained and notification provided to the Associate Chief Counsel (F&M). These positions will provide additional reviewers and will serve as developmental assignments for attorney/tax law specialist personnel. Under most circumstances, due to the nature of the assignment, it should be for attorney/tax law specialists at the GS-14 grade level only.
- (2) The duties of these positions are to:
 - Assist in planning, directing, and supervising the operations of the branch
 - Assign work to personnel of the branch and review the work product to the extent authorized by the Branch Chief
 - Prepare and maintain records and reports with respect to the work of the branch as requested by the Associate Chief Counsel
 - Act as Branch Chief in the absence of that official
- (3) All Assistant Branch Chief and Assistant to the Branch Chief positions will be established and filled only at the GS-14 level.

30.4.1.3.5.1
(02-01-2007)

Selection Process and Documentation

- (1) The Associate Chief Counsel of the affected organization will appoint a panel to review and consider the applications of the qualified candidates. This review panel will be responsible for identifying the highly qualified candidates, conducting interviews (if appropriate), and making a selection recommendation to the Associate Chief Counsel.
- (2) The review panel will generally consist of three GM/GS-15 or above employees. The Associate Chief Counsel will appoint a chairperson of the panel who will generally be the Deputy Associate Chief Counsel or the Assistant Chief Counsel of the affected division or the Branch Chief of the affected branch. One of the members of the panel must be from outside the affected Associate area.
- (3) The chairperson will prepare a written selection recommendation memorandum on behalf of the review panel for submission to the Associate Chief Counsel (see Exhibit 30.4.1-1). For those organizations with Assistant Chief Counsel, this recommendation will be routed through the affected Assistant. The purpose of the selection memorandum will be to document the selection process by explaining the review panel's decisions regarding the relative qualifications of the applicants. Its focus should be on identifying the job-related criteria the panel used to assess the applicants' qualifications, and on describing the extent to which each of the highly qualified candidates met or did not meet these criteria.

- (4) Upon approval of the selection by the Associate Chief Counsel (as indicated by his/her signature on the selection memorandum), the recommendation is to be sent to the Human Resources Division Office for processing, along with the applications of all of the candidates who had been referred to the review panel for consideration.
- (5) In the event the Associate Chief Counsel does not concur with the recommended selection, he/she may make an alternate selection from among the other highly qualified candidates by preparing a separate written narrative which documents the basis for his/her decision. The original selection recommendation is, however, to remain as part of the file sent to Human Resources Division for processing.

30.4.1.4
(02-01-2007)
Paralegals

- (1) As we hire increasing numbers of paralegals, we want to ensure that there is uniformity and consistency in the hiring of such individuals in the Associate Chief Counsel and Division Counsel Offices.
- (2) Generally, paralegal positions can be filled as Paralegal Specialists, at different grade levels, up to GS-11. This series is used to hire applicants from both inside and outside the Chief Counsel organization.
- (3) Normally, the full working level of a paralegal position will be at the GS-11, although a small number of unique positions may be lower graded, depending upon the assigned duties and responsibilities of the position. Vacancy announcements will indicate the promotion potential of the particular position being filled.

30.4.1.4.1
(02-01-2007)
**Hiring Attorneys to Fill
Paralegal Slots**

- (1) As a general rule, attorneys (or law school graduates) should not be hired to fill paralegal positions. People who are qualified for, and aspire to, higher legal positions often become frustrated with a job that does not use all of their legal talents. Any resultant job frustration would have obvious adverse affects upon an office. There is also the possibility that an attorney who is hired for a paralegal position may have accepted the position only because he/she was not able to obtain an attorney position. As such, the attorney/paralegal might continue to look for an attorney position while performing the paralegal duties. Thus, the investment in bringing the attorney/paralegal up to speed as a paralegal could be lost as soon as the attorney was able to find other employment.
- (2) An additional management consideration is the attorney/paralegal's possible expectation of being selected for an attorney position if he/she performs well on the job as a paralegal. However, the fact that an employee performs well as a paralegal does not ensure that a person would be a good attorney. If an attorney/paralegal was not hired for an attorney position, this could create additional frustration and internal conflict between the attorney/paralegal and the supervisor. For these reasons, attorneys should generally not be hired to fill paralegal positions.
- (3) Exceptions to this policy require approval from the Associate Chief Counsel (F&M). The hiring official must prepare a memorandum to the Associate Chief Counsel (F&M) explaining the reason for their request to hire an attorney or law school graduate for a paralegal position.

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30.4.1.4.2 (02-01-2007) **Paralegal Duties and Ethical Considerations**

- (1) The Office of Chief Counsel has developed a number of position descriptions (PD) covering the various duties and responsibilities that paralegals can perform, but modifications can, and should, be made to fit particular circumstances. Although the position descriptions list specific functions that can be performed by paralegals, there are a number of ethical considerations that must be kept in mind with respect to paralegal work. Some general rules are set forth here for guidance, which are followed by additional specific rules that pertain to the tax litigation and general litigation activities.
- (2) Legal work can be delegated to paralegals as long as an attorney responsible for the supervision of the paralegal maintains a direct relationship with the client and supervises the paralegal in the performance of the delegated work.
- (3) A paralegal may sign correspondence as long as the recipient is not misled into believing that the sender is an attorney.
- (4) Paralegals may prepare legal documents under the direction and supervision of attorneys.
- (5) Paralegals may negotiate settlements, but it is considered improper to delegate to the paralegal final authority for the settlement without obtaining an attorney's approval. See ABA Informal Opinion 523 (1962).
- (6) Improper delegation of tasks to paralegal personnel or inadequate supervision would violate ethical standards prohibiting attorneys from aiding the unauthorized practice of law. See the following:
 - Rule 5.5(b) of the ABA Model Rules of Professional Conduct
 - Disciplinary Rule 3-101(A) of the Code of Professional Responsibility
 - Rules 5.3 and 5.5 of the Revised Model Rules of Professional Responsibility

30.4.1.4.2.1 (02-01-2007) **Tax Litigation**

- (1) Paralegals assigned to "S" cases may contact taxpayers and conduct conferences provided that taxpayers are not misled by improper suggestions that a paralegal is an attorney.
- (2) Paralegals may prepare stipulations of facts in trial memoranda provided that these documents are reviewed by attorneys in the Division Counsel's office.
- (3) Paralegals may engage in settlement negotiations, prepare computations and decision documents, and submit them to the taxpayer for signature, provided that these activities are supervised and that the terms of settlement are approved by authorized attorneys.
- (4) Paralegals may prepare answers in regular Tax Court cases provided that the attorney who is assigned to the case signs the answer.
- (5) It is ethically improper to delegate to paralegals the authority to conclude the settlement of any Tax Court case and to prepare settlement documents without the approval of an attorney.

30.4.1.4.2.2
(02-01-2007)
General Litigation

- (1) A paralegal can review routine requests for summons enforcement and prepare the litigation letter to the Department of Justice for the signature of an attorney, provided that the paralegal's work is actually reviewed and the attorney's signature is not pro forma.
- (2) A paralegal may initially review the legal sufficiency of an application for a writ of entry, provided that the paralegal's work is reviewed by an attorney.

30.4.1.5
(01-17-2008)
Pre-employment Clearances

- (1) The Office of Chief Counsel will not allow an individual to enter-on-duty in any of its business units until FBI fingerprint results and, if applicable, case disposition information are received and reviewed. This policy applies to all positions in all Office of Chief Counsel locations, and there will be no exceptions to the policy. In the event that staff shortages occur, managers should take steps to move existing staff into areas that require additional resources. For contractor personnel, the Office of Chief Counsel will follow the policy contained in *IRM 10.23.2, Contractor Investigations*. This policy applies to all individuals entering on duty regardless of the appointment type (or work schedule) for all positions in all Office of Chief Counsel locations. There are two circumstances when this policy does not apply:
 - Current IRS employees applying for jobs through an external announcement (e.g., a temporary employee applies for a permanent position via an external vacancy announcement)
 - Current IRS employees applying for internal vacancy announcements
- (2) Prior to entrance on duty or receipt of an official job offer, a selectee must receive favorable results for tax clearance for the last three years tax returns filed. This policy is required for all individuals entering on duty including current IRS employees applying for jobs through an external announcement (e.g., a temporary employee applies for a permanent position via an external vacancy announcement) and current IRS employees applying for internal vacancy announcements.
- (3) A Background Security Investigation will be initiated prior to appointment. After entrance on duty, failure to successfully meet the background investigation and favorable adjudication requirements may be grounds for termination. Background investigations are required for employees upon entry on duty and for movement into a job of greater sensitivity or risk level. Periodic reinvestigations are only conducted for holders of national security clearances, employees in Critical Sensitive positions, and employees in positions designated High Risk.
- (4) Depending on the type of job position, employees will be required to complete one of the following:
 - *Form SF 85, Questionnaire for Non-Sensitive Positions*
 - *Form SF 85P, Questionnaire for Public Trust Positions*
 - *Form SF 86, Questionnaire for National Security Positions*
- (5) Managers are responsible for arranging access to the facility for the investigator, adjusting the employee's duties to allow time for the interview, and arranging for any source interviews with other employees.

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30.4.1.5.1
(02-01-2007)

Background Investigations and Re-investigations

- (1) The U.S. Government conducts background investigations and re-investigations to ensure that people applying for Federal jobs, already employed by the Government, or working for the Government under contract, are:
 - a. Suitable for the job, *and/or*
 - b. Eligible for a public trust position, *or*
 - c. Suitable to have access to national security information
- (2) A background investigation consists of:
 - Checks of databases maintained by other agencies
 - A personal subject interview of the employee/applicant
 - Interviews of individuals who know the applicant/employee (called "source interviews")
- (3) The purpose of the background investigation is to determine information relating to the following topics:
 - Character and reputation
 - Honesty and integrity
 - Use of illegal drugs and alcohol
 - Negative involvement with law enforcement
 - Emotional or mental health as it affects the public trust and the safety of the workplace
 - Untrustworthy or unreliable associations
 - Susceptibility to blackmail or coercion
- (4) In the case of new hires, where there is an inquiry concerning a routine or a conduct matter in the pre- or post-background information investigation, the National Background Investigation Center (NBIC) will contact the Associate Chief Counsel (F&M). Finance and Management will then notify the appropriate Associate Chief Counsel/Division Counsel, Deputy Associate Chief Counsel/Deputy Division Counsel, or other official, that their employee is under investigation and that inquiries are being made about the employee.
- (5) If there is a negative background investigation report forwarded to the Associate Chief Counsel (F&M), the appropriate manager and employee will be notified. The outcome of the investigation could result in discipline, up to and including removal/termination.

30.4.1.5.2
(02-01-2007)

TIGTA Investigations

- (1) When there is an inquiry concerning a conduct matter for employees who are on-board, the Treasury Inspector General for Tax Administration (TIGTA) will contact the Deputy Chief Counsel (Operations), or the designated Acting official in the Deputy's absence. He/she will then determine which office(s) will serve as the contact point for TIGTA.

30.4.1.6
(02-01-2007)

Priority Placement Program and Reemployment Priority List

- (1) The Office of Chief Counsel will make every effort to avoid the demotion of an employee when it is without cause and not at the employee's request. However, when a demotion such as this is inevitable, this subsection covers those situations where employees qualify for grade/pay retention.
- (2) Reductions in force resulting in removals entitle employees only to coverage under the Department of the Treasury's Reemployment Priority List.

30.4.1.6.1
(05-18-2012)
**Chief Counsel's Priority
Placement Program**

- (1) Employees are eligible for the Priority Placement Program who are involuntarily demoted as a result of:
- A reduction in force (RIF)
 - Reclassification of their position to a lower grade
 - An A-76 contracting out of their position
 - Declining an offer of transfer with the function to a location outside the commuting area

Note: Employees must otherwise meet the conditions of eligibility for grade and/or pay retention as outlined in 5 *CFR* 536, Grade and Pay Retention, including any amendments thereto.

- (2) Employees become eligible for the program on the effective dates shown on their SF 50. The Human Resources Division office will provide official notice (Employee Notice of Eligibility and Standard Form 50) that the employees meet the eligibility requirements for grade and/or pay retention.
- (3) Program eligibility is terminated when the employee:
- Transfers to another agency
 - Resigns
 - Receives a "reasonable offer"
 - Is placed in a position the grade of which is equal to or higher than the retained grade
 - Elects in writing to terminate the benefits of grade retention
 - Otherwise loses eligibility for grade and pay retention
- (4) A "reasonable offer" must meet the following conditions:
- a. The offer must be in writing, and must include an official position description of the offered position
 - b. The offered position must be a permanent position and one for which the employee meets the established qualification requirements
 - c. The offered position must have at least the same number of hours as the employee's former position
 - d. The offered position must be in the same commuting area
 - e. The offer must come after formal determination and notification of entitlement to grade/pay retention
 - f. In the case of an employee eligible for grade retention, the offer must be to a position the grade of which is equal to or greater than the retained grade
 - g. In the case of an employee eligible for pay retention, the offer must be to a position the rate of basic pay of which is equal to or greater than the employee's retained pay
- (5) Acceptance of a position at an intervening grade will not terminate an employee's eligibility to continue in the program unless the position is one in an established career ladder with a full performance level equal to the grade of the position from which demoted.
- (6) A priority placement employee will have up to seven days to accept or reject a "reasonable offer".

30.4 Personnel Administration, Training, and Equal Employment Opportunity

30.4.1.6.1.1
(05-18-2012)

Determining Appropriate Vacancies for Referral

- (1) Employees in the Priority Placement Program will receive priority placement referral for vacancies within their commuting area which management has determined to fill, for which they are qualified, and that are at the same or an intervening grade/rate of pay as the position from which demoted. The vacancy need not be in the same classification series as the employee's previous position.
- (2) Employees in the program will receive consideration for career ladder vacancies for which they are qualified and that have a full performance level to the same or intervening grade as that from which demoted. Placement within the career ladder will be at the highest grade level for which the employee meets qualification requirements.
- (3) Promotions of employees within a career ladder or other career promotions that are made as an exception to competitive procedures and which do not create an additional vacancy are exempted from these provisions.
- (4) Whenever an appropriate vacancy is identified, first consideration will be given to employees in the Priority Placement Program before considering other employees. This procedure shall not affect management's right to fill vacancies from any appropriate source.
- (5) Applicants eligible for priority selection under the provisions of *5 CFR 330.601*, Agency Career Transition Assistance Plan (CTAP) for Local Surplus and Displaced Employees, et seq., and applicants eligible for priority consideration will precede referrals of Priority Placement Program employees.
- (6) If more than one employee is referred for priority placement, the selecting official will select any of those referred, or he or she may make no selection.

30.4.1.6.2
(02-01-2007)

Treasury Reemployment Priority List

- (1) The Office of Chief Counsel will participate in the Treasury Reemployment Priority List (RPL). This program is designed to help Treasury employees who would be adversely affected by a reduction-in-force (RIF) that results in an involuntary separation, or who have recovered from work-related (compensable) injuries.
- (2) Names of persons registered in the Treasury RPL will be referred to the Office of Chief Counsel from the Department of Treasury, Office of Personnel Policy. When persons are added or deleted from the list, a new listing will be released covering all employees registered for a specific local commuting area.
- (3) The list covers all competitive service employees at all grade levels in the Treasury.
- (4) Prior to filling a vacancy with a candidate external to the Office of Chief Counsel, HR will check the RPL to see if there are qualified employees registered at the appropriate grade level, series, and in the same commuting area in which the vacancy exists. An employee is entitled to priority consideration only in the commuting area from which he/she was separated or received notification of separation.
- (5) In making selections, the Office of Chief Counsel must give preference by tenure group.

30.4.1.7
(06-15-2017)
**Employment of
Non-Citizens**

- (1) This subsection covers information regarding the employment of non-citizens in all positions within the Office of Chief Counsel. The Office of Chief Counsel will give strong priority to hiring United States citizens and nationals. However, non-citizens may be hired in certain circumstances.
- (2) Several considerations will determine whether the Office of Chief Counsel may employ a non-citizen. They include:
 - Executive Order 11935
 - Whether the position is in the competitive service, excepted service or Senior Executive Service
 - The annual appropriations act
 - Immigration law requirement on employing citizens and aliens

30.4.1.7.1
(06-15-2017)
**Executive Order 11935
on the Competitive Civil
Service**

- (1) Under Executive Order 11935, only U.S. citizens and nationals (persons born in an outlying possession of the United States such as American Samoa and Swains Island) may compete for competitive jobs and be given an appointment in the competitive service.
- (2) If permitted under relevant appropriations and immigration law, and with approval from The Office of Personnel Management (OPM), the Office of Chief Counsel may hire qualified non-citizens for a competitive service position only when there are no qualified U.S. citizens or nationals available. A non-citizen may only be given an excepted appointment and does not acquire competitive civil service status when hired in the absence of a qualified citizen.
- (3) OPM may, as an exception to this rule and to the extent permitted by law, authorize the appointment of non-citizens to positions in the competitive service when necessary to promote the efficiency of the service in specific cases or for temporary appointments.

30.4.1.7.2
(06-15-2017)
**Excepted Service and
Senior Executive Service**

- (1) The Office of Chief Counsel may hire a qualified non-citizen in the excepted service or Senior Executive Service, if permitted to do so by the annual appropriations act and immigration law.

30.4.1.7.3
(06-15-2017)
**Appropriations Act
Restrictions on Paying
Certain Non-Citizens**

- (1) Annual appropriations law may prohibit the use of appropriated funds to employ non-citizens whose posts of duty are in the CONUS except;
 - a. Persons lawfully admitted for permanent residence and seeking citizenship as outlined in 8 U.S.C. § 1324b(a)(3)(B)

A person lawfully admitted for permanent residence and seeking citizenship under 8 U.S.C. § 1324b(a)(3)(B) is a person who is considered a protected individual under section 1324(a)(3)(B). Generally, a protected individual includes a permanent legal resident of the U.S. who applies, or intends to apply, for U.S. citizenship within six months of becoming eligible for naturalization.

30.4.1.7.4
(06-15-2017)
**Immigration Law
Requirements on
Employing Citizens and
Aliens**

- (1) For any work to be performed within the Office of Chief Counsel, immigration law requires Counsel to hire only individuals who are eligible to be employed. All newly appointed employees are required to complete a *U.S. Citizenship and Immigration Services Form I-9*, Employment Eligibility Verification. The Human Resources Division must check the employees' documents to verify employment eligibility.

30.4 Personnel Administration, Training, and Equal Employment Opportunity

30.4.1.8 (02-01-2007) Employee Details

- (2) The Office of Chief Counsel will not discriminate against employees by requesting more or different documents than are required in accordance with the Immigration and Nationality Act of 1990. Acceptable documents are listed on the back of the Form I-9.
 - (3) The Office of Chief Counsel will only hire an individual in accordance with *8 CFR 274a*, Control of Employment of Aliens,
- (1) It is the policy of Chief Counsel to detail employees only for the purposes of:
 - Meeting temporary needs of Chief Counsel's programs and activities when services cannot be obtained by other, more desirable or practicable means
 - Developmental assignments
 - Training
 - (2) In order to meet the intent of OPM and Treasury detail requirements, supervisors and managers (executives) should consider using alternative procedures when other than brief periods are involved. Some suggested alternatives are:
 - Restructuring organizational segments and reallocating duties to existing positions
 - Temporary promotions or appointments
 - Amending the position description for a temporary additional assignment for the incumbent
 - (3) All details shall be made without discrimination for any non-merit reason such as race, color, religion, age, gender, national origin, political affiliation, disability, sexual orientation, marital, or parental status.
 - (4) When an employee is on a detail, the employee performs different duties or is placed on a different position description for a specified period of time after which the employee returns to their regular duties. An employee on a detail continues to be the incumbent of their permanently assigned position and receives the salary attached to that position.
 - (5) An employee does not have to meet OPM/agency qualification requirements for the position to which he/she is detailed. Experience gained while serving on a detail may be creditable towards meeting qualification requirements for later permanent placement action. However, time served on a detail to a higher-graded position may not be used for purposes of satisfying time-in-grade requirements.
 - (6) Details may not be made without competition for more than 120 day increments, beyond 120 days to a position with greater promotion potential, or to a higher graded position.
 - (7) Temporary promotions in the Office of Chief Counsel can only occur through a formal detail from one position to another, i.e., an SF 52 is prepared to document the action.
 - (8) All details should be made matters of record because the experience and training gained by the employee may be important for later permanent placement actions. A detail over 30 days should be officially recorded on an SF

52. Although details for less than 30 days do not require an SF 52, written documentation may be prepared to create a permanent record and forwarded to HR.

- (9) These provisions apply to all employees in the legal functions of Chief Counsel, including non-Chief Counsel employees who are detailed to Chief Counsel.
- (10) Time and attendance records of detailed employees will be maintained by the office from which detailed. Detailed employees will keep their timekeeper informed of attendance and leave in accordance with prescribed instructions.

30.4.1.8.1 (02-01-2007) Duration of Details

- (1) All references within this subsection will be to calendar days rather than workdays.
- (2) Employees at GS 14 and below may be detailed to higher graded positions, or positions with greater promotion potential, in 120-day increments. Prior service during the preceding 12 months under noncompetitive details to higher graded positions or positions with greater promotion potential and under noncompetitive time-limited promotions counts toward the 120-day total.
- (3) Except for brief periods, employees should not be detailed to perform work of a higher grade level. Details of more than 120 days to a higher graded position or to a position with greater promotion potential must be made under competitive procedures.
- (4) One year is the maximum period allowed for each type of detail within Chief Counsel, i.e., detail to unclassified duties, and to the same, lower, or higher graded positions. All extensions beyond the maximum period allowed for each detail must have prior approval from the Associate Chief Counsel (F&M).

Exception: Details to SES positions

- (5) When a detail is expected to last 90 days or longer, the temporary supervisor shall provide elements and standards to the detailed employee. Ratings on the critical elements must be prepared and forwarded to the employee's permanent supervisor for consideration in deriving the employee's next rating of record.
- (6) Details of temporary employees are subject to the same time limits and documentation requirements as details of permanent employees.

30.4.1.8.2 (08-16-2023) Details, Grade 15 and Below

- (1) No employee in the excepted service may be assigned to a position in the competitive service without prior approval of the Associate Chief Counsel (F&M).
- (2) Employees detailed to positions GS-14 and below require the following approval:
 - a. Employees may be detailed within their offices in 120-day increments or less upon the approval of the Associate Chief Counsel/Division Counsel
 - b. Employees may be detailed between offices of Associate Chief Counsel/Division Counsel in 120-day increments or less with the approval of both Associates Chief Counsel/Division Counsels

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- (3) Employees detailed to GS-15 positions require coordination with the Associate Chief Counsel (F&M) prior to effecting the action.
- (4) Employees may be detailed to unclassified duties.
 - a. For details in excess of 30 days to unclassified duties, supervisors are required to prepare a brief task list or paragraph describing the duties associated with the detail. A copy of the duty statement should be given to the employee.
 - b. Employees at grade 14 and below may be detailed to unclassified duties between offices with the approval of both Associates Chief Counsel/ Division Counsels.
 - c. Details of grade 15 employees to unclassified duties require coordination with the Associate Chief Counsel (F&M).
- (5) The Associate Chief Counsel (F&M) may approve details between Chief Counsel and the IRS, other Treasury bureaus, and other Federal agencies. See 30.4.1.8.4.2.1 for procedures to approve a detail between Chief Counsel and DOJ Tax.

30.4.1.8.3 (02-01-2007) Details To and Within the Senior Executive Service

- (1) The Deputy Chief Counsel (Operations) or their designee must approve all requests for Senior Executive Service (SES) details.
- (2) The General Counsel or Deputy General Counsel of Treasury must approve all details of 240 days or more and all details outside of Chief Counsel.
- (3) The Director, Office of Personnel Policy, Treasury, must approve all details over 240 days, and all details over 30 days outside of Chief Counsel, that are not under competitive procedures.

Note: There are no regulations which allow either Treasury or OPM to extend SES details beyond the periods of time specified.

30.4.1.8.3.1 (02-01-2007) Types and Durations of SES Details

- (1) Career or career-type employees (i.e., GS/GM-15 to SES) may be detailed to career-reserve positions for up to 240 days.
- (2) Non-SES employees may be detailed to SES general positions for up to 240 days providing competitive promotion procedures are used for extensions beyond 120 days.

Note: There are no provisions which allow a temporary promotion into the SES.

- (3) Career SES members may be detailed to career-reserve or general positions up to 240 days.

Note: Non-career SES members may not be detailed to career or career-reserve positions.

- (4) Details between the Treasury Department (including the Office of the Secretary) and other departments and Federal agencies may be approved by the General Counsel for up to 30 days.

Note: For SES purposes, IRS and Chief Counsel are considered separate bureaus by Treasury.

30.4.1.8.4
(02-01-2007)
Other Types of Details

- (1) Details to the White House (including the Executive Office of the President) require approval of the Director, Office of Personnel Policy, Treasury.
- (2) Requests for details not specifically addressed, such as details to international organizations or foreign governments, will be handled on a case by case basis and should be submitted to the Associate Chief Counsel (F&M) for approval prior to effecting the action. Additional or differing rules than those described above may apply in these cases.

30.4.1.8.4.1
(02-01-2007)
Details to Congress and Congressional Committees

- (1) The detail of Treasury employees to Congress and Congressional committees requires safeguards in order to ensure compliance with governing laws and regulations. The following guidance for such details is taken from 5 U.S.C. § 3341.
- (2) An executive agency of the Government may not lend or place employees on a non-reimbursable detail to a Congressional investigating committee unless:
 - a. The work of the committee actually aids the agency in the accomplishment of a purpose for which its appropriations are made, or
 - b. The services of the employee who is already on the rolls may be spared for brief periods, such as a few days or a week, without detriment to the work of the agency and without necessitating the hiring of additional employees.

Note: In the absence of one or both of these conditions, it is unlikely the Comptroller General would approve any salary payments from the bureau appropriations covering the period the employee was on detail.

- (3) Reimbursable details (i.e., all costs are borne by the Congress and no use of Treasury appropriations is involved) and non-reimbursable details are permitted as long as written permission of the Committee on Rules and Administration of the Senate or the Committee on House Administration of the House of Representatives is obtained.
- (4) Reimbursable and non-reimbursable details to Congress or Congressional committees require the prior approval of the Director, Office of Personnel Policy, Treasury. A request for either a non-reimbursable or reimbursable detail submitted to the Director, Office of Personnel Policy, must include:
 - An original SF 52
 - Written approval from the appropriate House or Senate committee as referenced above
 - A statement outlining the duties the detailed employee will perform
 - A statement outlining how the work will aid the bureau

30.4.1.8.4.2
(08-16-2023)
Details to Tax Division, Department of Justice

- (1) **Purpose.** The purpose of this subsection is to provide general operating procedures governing details to the Department of Justice, Tax Division.
- (2) **Scope.** This subsection applies to all Chief Counsel attorneys participating in details to the Department of Justice, Tax Division.

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30.4.1.8.4.2.1 (08-16-2023) Relationship with the Tax Division

- (3) **Background.** Chief Counsel attorneys are eligible to be detailed to the Department of Justice, Tax Division to be assigned to litigate cases referred to the Tax Division.
- (4) Unless otherwise stipulated, a Chief Counsel attorney detailed to the Tax Division will prepare and file pleadings, motions, briefs, memoranda, and other relevant documents; appear on behalf of and represent the United States in court and undertake all other work necessary to effectively handle the cases assigned.
- (1) **The Appointment Process.** To have a Chief Counsel attorney detailed to the Tax Division, the attorney's local manager must first forward a letter of recommendation to the appropriate Tax Division Section recommending the detail. If the Tax Division concurs with such a detail, they will provide the necessary application materials for execution by the designated attorney. Ultimately, a Memorandum of Understanding between the Tax Division and the IRS Office of Chief Counsel will be executed. See Exhibit 30.4.1-3. Upon execution of the Memorandum of Understanding, the Tax Division or the Department of Justice Office of Attorney Recruitment and Management will issue a special attorney appointment letter to the IRS/CC attorney.
 - **Signatures.** A Memorandum of Understanding must be signed by the Chief Counsel attorney to be detailed, the Deputy Chief Counsel (Operations), and the appropriate Division Counsel.

Note: CCDM 30.4.1.8.2(5) authorizes the Associate Chief Counsel (F&M) to approve details between Chief Counsel and the IRS, other Treasury bureaus, and other Federal agencies; however, details between the Tax Division and Chief Counsel are approved by the Deputy Chief Counsel (Operations).

- (2) **Guidance.** The Tax Division will provide guidance and consultation as to positions and procedures, including local rules.
- (3) **Supervision.** The Chief Counsel detailee will be supervised by their local Chief Counsel manager in conjunction with the Tax Division detail supervisor. The procedures followed by the Tax Division for coordinating legal positions, briefs, pleadings, and other issues are applicable to the detailee.
- (4) **28 U.S.C. § 530B Requirement.** Under 28 U.S.C. § 530B, an attorney for the Department of Justice is subject to Federal, State and local laws and rules, including court rules, where such attorney practices to the same extent and in the same manner as any other non-government attorney in that State. Like other DOJ attorneys, a detailee must follow the rules and standards established by DOJ to comply with this provision. Detailees should contact the applicable Tax Division Section for guidance and answers to questions on § 530B.
- (5) **Referral Letter.** To assure that the Tax Division is properly authorized to act in these cases, suit referral letters will be prepared in all cases handled by Chief Counsel attorneys that are detailed to the Tax Division. See *CCDM 35.5.1* (07-27-2021), Defense Letters for procedures for sending defense letters for suits brought against the United States and *CCDM 34.6.1.3* (08-11-2004), Preparation of Suit Letters, for procedures for sending a suit letter to DOJ requesting and authorizing DOJ to institute a civil action on behalf of the Service.

- (6) **Cases That May Be Handled by a Detailee.** The following types of cases may be handled by a detailee:

- Preparer injunction suits
- Refund suits (including counterclaims)
- Petitions to enforce IRS Summonses

30.4.1.8.4.2.2
(08-16-2023)

**Terms and Conditions of
a Detail of a Chief
Counsel attorney to the
Tax Division**

- (1) Location. A Chief Counsel detailee to the Tax Division will work remotely from their current post of duty, although travel is anticipated.
- (2) Funding. Details of Chief Counsel personnel to the Tax Division under this program will be on a non-reimbursable basis (i.e. Chief Counsel will continue to pay detailees' salaries and other expenses for the duration of the detail, and will not seek reimbursement from DOJ). DOJ will reimburse the IRS for expenses incurred while on authorized travel, for detail-related assignments in accordance with the Federal Travel Regulations, 41 C.F.R. Ch. 301—Temporary Duty (Tdy) Travel Allowances.

Note: Generally, details of personnel between agencies must be done in accordance with the Economy Act, which requires full reimbursement of actual costs. However, an exception permits non-reimbursement where a detail: (1) involves a matter similar or related to matters ordinarily handled by the loaning agency; and (2) will aid the loaning agency in accomplishing a purpose for which its appropriations are provided. Detailees to DOJ will be assigned only to preparer injunctions, refund suits, and petitions to enforce IRS summonses, which are similar or related to matters ordinarily handled by Chief Counsel, and the work done by detailees on these suits will aid the IRS/Chief Counsel in accomplishing its enforcement mission. Accordingly, these details may be non-reimbursable under the "commonality of functions" exception to the Economy Act. Proposed details to DOJ not meeting the standards set forth in this subsection, i.e., for other purposes, should be reviewed by General Legal Services to determine if they should be reimbursable.

- (3) Reporting. A detailee will report to the appropriate Tax Division Trial Section Chief, or their designee. During the detail, a detailee will follow the Tax Division's policies and procedures regarding bar membership, and such other policies and procedures as apply generally to other office employees as well as the terms of the special attorney appointment letter the detailee will receive from the Tax Division.
- (4) Time and Attendance. The detailee will coordinate all requests for leave (e.g., annual, sick, leave without pay, compensatory time) with the detail supervisor and the IRS/CC supervisor.
- (5) Attorney Time Reporting for Case Management Purposes. A detailee will report time in the Tax Division's Case Management System (TAXDOC or its successor), as well as the IRS's Counsel Automated Systems Environment—Management Information System (CASE-MIS or a successor management system).

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30.4.1.8.4.3
(08-16-2023)

Participation by Tax Division Attorneys in Proceedings Before the United States Tax Court

- (1) These provisions set forth guidelines and procedures for participation by attorneys employed by the U.S. Department of Justice, Tax Division, in trials and other proceedings before the United States Tax Court. Participation by Tax Division attorneys in proceedings before the Tax Court is pursuant to the Economy Act, 31 U.S.C. § 1535, which authorizes the inter-departmental performance of work or services on a reimbursable basis; sections 7452 and 7803(b)(2)(D) of the Internal Revenue Code of 1986, and the Department of the Treasury General Counsel Order No. 4 (2001), which authorize the Chief Counsel of the Internal Revenue Service to decide whether and in what manner to defend, prosecute, settle, or abandon claims in cases pending in the Tax Court.
- (2) The invitation by the Chief Counsel for participation in Tax Court proceedings by Tax Division attorneys shall not be considered a reference of any case or proceeding docketed in the Tax Court to the Department of Justice within the meaning of I.R.C. §§ 7122(a), 7602(d), or any other provision of the Internal Revenue Code describing referrals of cases to the Department of Justice for prosecution or defense.
- (3) Tax Division attorneys who participate in Tax Court proceedings shall, at all times during which such attorneys are performing activities related to Tax Court proceedings to which they have been assigned, be under the direction and supervision of Chief Counsel managers assigned to manage cases docketed in the Tax Court. All activities undertaken and written work products produced by Tax Division attorneys shall be in conformity with the directives contained in the CCDM, as supplemented by Chief Counsel Notices or other directives. All activities and work product shall be supervised, reviewed, and approved by in accordance with the practices and policies of the Office of Chief Counsel, including the timely submission of work products to the designated Chief Counsel manager with sufficient time remaining prior to the due date of the document to permit meaningful review. At the conclusion of participating in the proceedings, the Tax Division attorney will return all files and materials with respect to the case to the Office of Chief Counsel.
- (4) Tax Division attorneys who participate in Tax Court proceedings shall be considered as officers or employees of the Department of the Treasury, Office of Chief Counsel, within the meaning of section 6103(h)(1) whose official duties require the inspection or disclosure for tax administration purposes of tax returns and return information related to the Tax Court proceedings to which they have been assigned. Any disclosures of tax returns or return information to Tax Division attorneys pursuant to section 6103(h)(1) shall not be further disclosed by them unless otherwise authorized by law and approved by the appropriate delegated IRS/CC official under Servicewide Delegation Order 11-2, *IRM Ex. 1.2.2-2*.
- (5) Tax Division attorneys who participate in Tax Court proceedings shall be duly admitted to practice before and be members in good standing of the Tax Court pursuant to Rule 200 of the Tax Court's Rules of Practice and Procedure and shall practice before the Tax Court in accordance with the Model Rules of Professional Conduct of the American Bar Association, as provided in Tax Court Rule 201(a). Tax Division attorneys are responsible for payment of the cost of admission to the Tax Court bar. Tax Division attorneys participating in this program shall be members in good standing of the bar of the highest court of a state, territory, the District of Columbia, or the Commonwealth of Puerto Rico.

- (6) Tax Division attorneys who participate in Tax Court proceedings shall be subject to all the laws, regulations, and policies applicable to employees of the Department of the Treasury and the Office of Chief Counsel, including, but not limited to, the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635), the Department of the Treasury Supplemental Standards of Ethical Conduct (5 C.F.R. Part 3101), the Department of the Treasury Employee Rules of Conduct (31 C.F.R. Part 0), the Employee Responsibility and Conduct provisions (5 C.F.R. Part 735), and the CCDM. All questions with respect to any of these provisions and any like matters arising from the handling of cases pursuant to this program, shall be referred to the Office of Chief Counsel, General Legal Services for advice and resolution.
- (7) Tax Division attorneys participating in this program shall be recommended for the program by the Assistant Attorney General, Tax Division, or a delegate or head of component in the absence of an Assistant Attorney General, and the recommendations shall be subject to approval by the IRS Chief Counsel. Tax Division attorneys selected for participation in this program shall agree to abide by the terms and conditions of a Memorandum of Understanding. See Exhibit 30.4.1-4.

30.4.1.9
(06-05-2014)
Reassignments

- (1) This subsection establishes the policy and procedures for the reassignment of employees (both attorneys and non-attorneys); it addresses those circumstances where the Office may have to reassign employees, or where employees request a voluntary reassignment. These procedures apply to reassignments between:
 - Offices in the same Division
 - The National Office and a Division
 - Divisions
 - Functions in the National Office
- (2) Articles 22 and 23 of the collective bargaining agreement between the National Treasury Employees Union and the Office of Chief Counsel address the reassignment procedures which apply to bargaining unit employees. Those procedures include an annual rotation program and a hardship transfer program.
- (3) Attorneys should generally expect to remain where they are first assigned throughout their three-year employment commitment with the Office of Chief Counsel. Generally, no extension of the three-year employment commitment or additional commitment will be required when a reassignment is initiated solely for the convenience of the Office.
- (4) Authorized travel, moving expenses, and allowances will be paid by the Office in accordance with relevant travel regulations, if the reassignment is in the best interest of the Government and is at the direction of the Government.
 - a. Employees reassigned to another office should be cognizant of the 12-month service agreement as required by 5 U.S.C. § 5724(i). Under such an agreement, the employee will reimburse the Government for travel, moving, and all other expenses incurred upon relocating to a new post of duty if the employee resigns, separates from the Government without authority, or is removed for cause within the succeeding 12-month period. For additional information, see *IRM 1.32.11*, Official IRS City-to-City Travel Guide, and *IRM 1.32.13*, Relocation Services Program.

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- b. If the voluntary reassignment is primarily for the employee's benefit or convenience, the employee will pay their own travel and moving expenses.

30.4.1.9.1 (02-01-2007) **Request for Voluntary Reassignment or Hardship Transfer**

- (1) Requests for voluntary reassignments by non-bargaining unit employees, either based on personal hardship or for some other reason, are to be submitted by the employee directly to his/her immediate supervisor with a copy to the management official where he/she wishes to be reassigned. Both the gaining and the losing office must agree before a voluntary reassignment can take place.

Note: For bargaining unit employees, see CCDM 30.4.1.9(2).

- (2) Requests for voluntary reassignments will be considered on a case-by-case basis if the employee has concluded at least one year of employment with the Office and the employee's performance during the initial one year period is fully successful.
- (3) The staffing of each office and division of the Office of Chief Counsel is based on, and determined by, the overall needs of the Office. Therefore, decisions regarding requests for voluntary reassignments must take into consideration the staffing requirements of the Office and whether positions and work are available to accommodate the employee's request and promote the efficiency of the Office.
- (4) The needs of the Office and those of the employee will be carefully considered before a decision to grant a request is made.
- (5) If the request for reassignment is approved, the gaining office will notify HR that the employee is being voluntarily reassigned. The Human Resources Division will be responsible for coordinating the administrative process required to effect the reassignment.
- (6) When a request is approved, it is the gaining office's responsibility to coordinate the employee's reporting date with the losing office. Consideration must be given to the losing office's need for enough time for the employee to complete projects and work assignments before releasing for duty to the gaining office.

30.4.1.10 (05-18-2012) **Personnel Actions**

- (1) *Standard Form 52*, Request for Personnel Action, will be used in Chief Counsel to originate requests for personnel actions two pay periods prior to the effective date using Chief Counsel's automated personnel system.
- (2) The Associate Chief Counsel, Deputy Associate Chief Counsel, Division Counsel, and Deputy Division Counsel are delegated the authority to approve non-competitive promotions for attorneys and non-bargaining unit employees. This authority can not be redelegated. Before approving such promotions, the appropriate management official must ensure that the employee meets eligibility requirements as outlined in CCDM 30.4.1.3, Attorneys, and 5 *CFR* 300.604, Restrictions, respectively. In addition, the employee must be performing at the fully successful level as outlined in 5 *CFR* § 335.104, Eligibility for Career Ladder Promotion, (meaning an appraisal of fully successful or above).
- (3) Supervisors and managers use the SF 52 to request and authorize:

- a. Position actions, such as the establishment of a new position or the reclassification of an existing position
 - b. Employee actions, such as the appointment, reinstatement, conversion, transfer, reassignment, change in work schedule/tour of duty, suspension, removal, termination, or promotion of an employee
 - c. Actions involving both a position and an employee, such as the establishment and recruitment for a position, or the reclassification of a position and reassignment of an employee to the reclassified position
 - d. Temporary actions, such as details in excess of 30 days or temporary promotions for 120 days or less
 - e. Dual actions which require one SF 52 for both actions (e.g., reassignment and name change that are effective on the same date)
- (4) Through their managers, employees may request any of the following actions (and implementation of these actions requires a SF 52):
- Resignation or retirement
 - Request Leave Without Pay (LWOP) (e.g., LWOP in excess of 30 days, LWOP-US for active military duty, LWOP for an on-the-job injury for 80 hours or more)
 - Return to duty
 - Request a name change

30.4.1.10.1
(02-01-2007)
**Accompanying
Documents**

- (1) Human Resources Division will attach position descriptions to SF 52s for career ladder promotions and actions involving recruitment for a new position.
- (2) Managers will forward administratively acceptable documentation on behalf of employees to effect the name change(s) which should include:
 - Former and new name
 - Date of name change
 - Reason for the change
 - Statement that the Social Security Administration was notified of the change
 - Signature using the new name
- (3) Managers will forward work schedule or LWOP requests which should include:
 - A written request from the employee
 - The manager's written approval
- (4) Managers will forward separation notifications which should include:
 - Name
 - Action (i.e., resignation or retirement)
 - Effective date
 - Reason for separation
 - Forwarding address
 - Signature

30.4.1.10.2
(02-01-2007)
**Recordkeeping and
Documentation**

- (1) Human Resources Division will maintain manual or automated tracking systems to monitor the timeliness and quantity of SF 52s received for processing.

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- (2) Administrative Officers are responsible for keeping records and maintaining control of SF 52s for their organization to assure that the requested action is completed. Automated tracking systems are authorized.
- (3) Human Resources Division will use SF 52 to record staffing, classification, and other personnel determinations.
- (4) SF 52 actions will generate a SF 50, Notification of Personnel Action, which is the permanent official record and is placed in the employee's Official Personnel Folder (OPF). The employee's copy and the administrative copy will be forwarded by HR to the employee's Administrative Officer who will review the information for accuracy and forward to the employee.

30.4.1.11
(02-01-2007)

Position Classification and Position Management

- (1) The Office of Personnel Management (OPM) approves and issues position classification standards that define the title, series and grade of positions in the federal government. Position classification is the identification of a position, the analysis of the duties and responsibilities to be performed, and the placement of the position in a class under the position-classification plan established by the OPM under the authority of Title 5 of the United States Code, Chapter 51.
- (2) Position management is the assignment of work to positions within an approved or planned organization in an efficient manner that will best achieve the organization's overall mission and goals, and provides for effective employee utilization within approved resources levels.
- (3) Position classification serves as a means for implementing, and as an integral part of, the position management program. The position classification program coupled with position management, when properly administered, provides the basis for compensating employees equally for the performance of substantially equal work, and serves as a tool essential to other federal personnel management programs, such as recruitment, training, reassignment and promotion of employees.

30.4.1.11.1
(05-18-2012)

Policies and Responsibilities

- (1) This subsection establishes policies and responsibilities for position classification and position management in the Office of Chief Counsel. These policies are based on the requirements of:
 - The Classification Act of 1949 (Title 5 of the United States Code)
 - *5 CFR Part 511*, Classification under the General Schedule
 - Treasury Personnel Management Manual Chapter 511
 - Governing policies, procedures, laws and regulations issued by OPM
- (2) The Office of Chief Counsel's position classification program will be operated in a positive-oriented manner, consistent with governing laws, implementing regulations (including new classification standards), and Treasury's policies and guidance. Position management will be observed in the classification of positions.
- (3) Classification determinations will be made objectively and without discrimination for any non-merit reason such as race, color, religion, age, gender, national origin, political affiliation, disability, sexual orientation, marital, or parental status.

- (4) The provisions of this subsection apply to all positions within the Office of Chief Counsel that are classified under the General Schedule (GS), and include any positions that are designated as “GM” because those positions were formerly covered under the Performance Management and Recognition System (PMRS). These provisions exclude SES positions.
- (5) The Chief Counsel has overall responsibility for administering the federal position classification and position management programs for the Office. This responsibility is delegated to the Associate Chief Counsel (F&M) for all positions classified under the General Schedule with designated “GS” pay plan and grades 1 through 15.
- (6) The Associate Chief Counsel (F&M) is responsible for providing a sound position management program that will ensure the efficient distribution of staff resources by:
 - a. Aiding in the identification, prevention, and elimination of unnecessary organizational fragmentation, excessive layering, improper design of jobs, outmoded work methods, and inappropriate span of control
 - b. Ensuring that position management is considered in Chief Counsel’s budget, planning, personnel, evaluation and management processes
 - c. Ensuring that position management provides a proper balance among program needs, efficiency of operations, and effective employee utilization

30.4.1.11.2
(02-01-2007)
Position Description

- (1) A position description (PD) is an official description of the major duties, responsibilities, qualification requirements, and supervisory relationships of a position. A position description reports the duties of a position as the duties exist and does not prescribe the duties of a position.
- (2) A position description is not considered to be officially established until it has been properly classified by HR or another official to whom this authority has been delegated.
- (3) All position descriptions must be properly classified in accordance with the Classification Act of 1949 and related OPM issuances and documents (e.g., OPM Position Classification Standards) to ensure proper titles, pay plan, occupational series, and grade levels. The position classification standards and supplemental guidance published by OPM and Treasury will serve as the sole basis for classification decisions. The use of OPM standards and guidance is mandatory.
- (4) Supervisors and managers have a continuing responsibility to maintain the accuracy of position descriptions under their control. They are also responsible for the review of vacant positions for accuracy prior to their being filled. Notwithstanding the above, a position will be reviewed for classification accuracy at the discretion of the Human Resources Division (HR) or at any time a review is requested by the supervisor or incumbent.

30.4.1.11.2.1
(02-01-2007)
**Circumstances
Requiring Preparation of
PDs or Classification
Decisions**

- (1) A properly classified position description must be established prior to the appointment, promotion, reassignment, demotion, or transfer of an employee.
- (2) A position description is required to be drafted under these circumstances:
 - a. When management wishes to establish a new position

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- b. When the major duties of a position (whether filled or vacant) have changed materially since the position was classified
- c. Any other circumstances(s) that are determined appropriate by HR

- (3) Any classification decision taken may, at HR's discretion, be reviewed at any time.

30.4.1.11.2.2
(02-01-2007)

Assignment of Duties to a Position

- (1) A position description reports the current assignments and the organizational design of positions. Managers and supervisors are exclusively responsible for deciding what duties and responsibilities will be assigned to each position. They may also direct and assign specific tasks which are not reflected in the position description. However, should such tasks become major duties, the position description must be modified to incorporate those tasks, and properly classified by HR.
- (2) The assignments of duties or the contents of position descriptions are not grievable, under either the negotiated or administrative grievance procedure. However, in the event of a disagreement between the employee and the supervisor over whether the position description accurately reflects the duties and responsibilities being assigned to the position, the employee can use the administrative or (if appropriate) negotiated grievance procedure to resolve the issue.
- (3) If an employee has assumed duties not specifically assigned to him or her, or is otherwise performing differently than directed by the supervisor/manager, failure of the supervisor to control the employee's actions must be interpreted as giving silent consent to the change the employee has made to the position. Changes which take place in this manner must ultimately be reflected in a new or revised position description and certified by the supervisor/manager.

30.4.1.11.3
(02-01-2007)

Position Classification Complaints and Appeals

- (1) Every effort will be made to resolve informally disagreements or misunderstandings involving the classification of positions to avoid the necessity of a formal classification appeal. Therefore, it is the policy of the Office of Chief Counsel to encourage its employees first to attempt to resolve dissatisfactions with the classification of the position of which he/she is officially assigned through their immediate supervisors, and if necessary, the Human Resources Division.
- (2) An employee may, at any time, initiate a classification complaint or appeal the title, occupational series, grade or pay system of their position provided that either the complaint or the appeal relates to the official position to which he/she is officially assigned.
- (3) Employees have the right to use the classification complaint process or the applicable appeal system as a means to resolve dissatisfactions relating to the classification of the position to which they are assigned. Supervisors and HR will provide the employee(s) and/or the designated representative with the assistance required to properly and effectively comply with all Office of Chief Counsel, Office of General Counsel, Treasury, and OPM policies, regulatory and procedural requirements.

30.4.1.11.3.1
(02-01-2007)
**Position Classification
Complaints Process**

- (1) The employee must submit the complaint in writing, through supervisory channels, to the Director, Human Resources Division. The written classification complaint must clearly specify the classification issues (i.e., title, pay plan, series or grade) with which the employee disagrees, and the employee's reason(s) for disagreement. The employee's complaint should include:
 - Their name, mailing address, office telephone number, employing office and location
 - Their current position title, pay plan, occupational series, and grade
 - The requested pay plan, position title, occupational series, and grade
 - A copy of the official position description along with a statement concerning its accuracy. If the employee believes that the position description is inaccurate, the employee must provide their own description of the work currently being performed.
- (2) The employee and the supervisor may include in the complaint any other information that should be considered in the classification of the position.
- (3) Upon receipt of the classification complaint HR will:
 1. Provide the employee with a full opportunity to present their case
 2. Review and reconsider all pertinent information and facts
 3. Render a final classification decision to the employee through supervisory channels

Note: If deemed necessary, a position audit will be conducted.

- (4) The decision will take into consideration the representations of the employee and supervisor, applicable position classification standards, and other regulatory requirements. HR will assist the supervisor in explaining the basis for the classification decision to the employee.
 - a. If the decision does not grant the employee's request, HR will advise the employee of their formal classification appeal rights.
 - b. If the decision on the complaint requires a change in title, series, grade or pay system of the position, a personnel action to effect the decision will be taken promptly (normally within four pay periods after a classification has been issued).

30.4.1.11.3.2
(05-18-2012)
**Position Classification
Appeals Process**

- (1) A position classification appeal is a formal written request by an employee or the agency asking to review the classification of a position to which the employee is officially assigned.
- (2) Some classification matters can not be appealed through the position classification appeals process, including, but not limited to:
 - The accuracy of the official position description such as the inclusion or exclusion of a major duty in the official position description
 - The assignment or detail outside the scope of normally performed duties that are described in the official position description
- (3) Information on all classification matters that are excluded from the position classification appeals process may be found in *5 CFR 511.607*, Nonappealable Issues. Supervisors or managers and/or employees should contact HR for more detailed information on and the requirements of the classification appeals process.

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- (4) The effective date of a classification appeal decision is governed by *5 CFR 511.701*, Effective Dates Generally, et seq.
- (5) A classification appeal may be cancelled for the following reasons:
 - At the employee's written request
 - If the employee is no longer officially assigned to the position, unless there is a possibility of retroactive benefit
 - If the employee fails to cooperate and/or provide requested information relating to the appeal

30.4.1.11.3.2.1
(02-01-2007)

Options For Formal Classification Appeals

- (1) An employee may file a written appeal request with the agency by filing an appeal directly to the Associate Chief Counsel (F&M). If dissatisfied with the agency's decision, an employee may file a subsequent appeal with either Treasury's Office of General Counsel or OPM. The employee's appeal should include:

- Their name, mailing address, office telephone number, employing office and location
- Their current position title, pay plan, occupational series, and grade
- The requested pay plan, position title, occupational series, and grade
- A copy of the official PD
- A statement concerning the accuracy of the PD

Note: If the employee believes that the position description is inaccurate, the employee must provide their own description of the work currently being performed.

- (2) An employee may file a written appeal directly to OPM. A classification appeal decision made by OPM is the final administrative decision, unless reconsidered and reopened by OPM at the request of either the agency or the employee.
 - a. The Office of Merit Systems Oversight may, at its discretion, reopen and/or reconsider an appeal decision only when written information is presented, within 45 calendar days of the date of the decision, that establishes a reasonable doubt as to the technical accuracy of the decision or provides evidence that material facts were not considered in the initial appeal.
 - b. To establish reasonable doubt, the requester should refer specifically to the decision and the classification standards to demonstrate possible error in the evaluation of the position.
- (3) A final classification appeal decision may not be submitted for reconsideration at a level lower than the adjudicating level, e.g., a final classification appeal decision rendered by OPM may not be reconsidered by Treasury, the Office of General Counsel or the Office of Chief Counsel.

30.4.1.11.3.2.2
(02-01-2007)

Employee Representation

- (1) An employee has the right to request a representative of their choice to assist in the preparation and presentation of an appeal. The appellant must notify the Office of Chief Counsel, the Office of General Counsel, or Treasury in writing the name and address of the representative if one is selected.
- (2) The Office of Chief Counsel, General Counsel or Treasury may disallow an employee's representative when:

- The individual's activities would cause a conflict of interest
 - The individual cannot be released from their official duties because of the priority needs of the Office of Chief Counsel, General Counsel, or Treasury
 - The individual's release would give rise to unreasonable costs to the Office of Chief Counsel, General Counsel, or Treasury
- (3) The appellant's representative cannot be a supervisor with line or staff authority over the position or any official having classification authority over the position, (i.e., a personnel officer or personnel specialist).
 - (4) A representative bears the same obligation to cooperate in processing the appeal as does the appellant. The representative should promptly relay instructions, from either the Office of Chief Counsel, Office of General Counsel, Treasury, or OPM to the appellant, and will be expected to provide information promptly to OPM upon request.
 - (5) The selection of a representative does not convey a right to the representative to be present during fact-finding conducted by either the Office of Chief Counsel, General Counsel, Treasury, or OPM. The deciding official is responsible for determining the best method of gathering facts concerning the duties, responsibilities, and qualification requirements of the appealed position. The appellant's representative may submit to the appropriate appellate office significant information concerning the classification of the position.

30.4.1.11.3.2.3
(02-01-2007)
Use of Official Time

- (1) An employee in a pay and duty status is entitled to a reasonable amount of official time for the preparation of a classification appeal under formal appeal procedures. The actual amount of time to be allowed will be determined on the basis of the particular circumstances in each case.
- (2) If the employee's representative is a Treasury employee in a pay and duty status, then he/she is also entitled to a reasonable amount of official time to assist the employee in the preparation of a classification appeal.
- (3) Employees, whether appellants or representatives, must make advance arrangements with their supervisors or managers for the use of official time to be used. If disagreements arise over the amount of official time to be used, then the matter will be submitted to HR for resolution, or will be resolved in accordance with local regulations, laws, or through negotiated agreement, as applicable.

30.4.1.11.3.2.4
(02-01-2007)
**Filing Deadlines to
Protect Retroactive
Benefits**

- (1) The appeal must be filed with the Office of Chief Counsel, Office of General Counsel, or OPM no later than 15 calendar days following receipt of the written notification of the Chief Counsel's decision, or 15 calendar days after the effective date of the Office of Chief Counsel's personnel action, whichever is later.
- (2) If initially filed with the Office of Chief Counsel or Office of General Counsel and its decision is unfavorable, the subsequent appeal to OPM must be filed no later than 15 calendar days after receipt of the Office of Chief Counsel's or Office of General Counsel's decision.

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30.4.1.12 (05-18-2012) **Performance Assessment**

- (3) OPM may extend the time limits if an employee was not notified of the limits and was not otherwise aware of them, or if circumstances beyond the employee's control prevented them from filing an appeal within the prescribed time limit.

30.4.1.12.1 (02-01-2007) **Definitions for Performance Assessment**

- (1) The Office strives to ensure high levels of performance from employees to further the accomplishment of the Office's mission. In setting up performance goals for the year, the Office will take into account employee perspectives and the perspective of the IRS as Counsel's client. In addition, organizational performance results will be shared with the business units to ensure that ratings given by a particular business unit reflect unit performance.
 - (2) Critical elements and performance standards, communicated to employees pursuant to 5 CFR 430, Performance Management, and annual written performance evaluations of employees based on the standards, are designed to promote these goals.
 - (3) This subsection covers the process of establishing performance elements and standards, evaluating employee performance based upon those standards, issuing annual performance ratings, and retaining records regarding performance.
- (1) *Appraisal Period* — The established period of time for which performance will be reviewed and a rating of record prepared.
 - (2) *Critical Element* — A component of a position consisting of one or more duties and responsibilities that contributes toward accomplishing organizational goals and objectives and that is of such importance that unacceptable performance in the element would result in overall unacceptable performance in the position.
 - (3) *Non-critical Element* — A dimension or aspect of individual, team, or organization performance exclusive of a critical element, that may warrant mention in the evaluation. Non-critical elements are not considered in assigning the overall/summary rating.
 - (4) *Departure Rating* — A departure rating is a rating used when an employee temporarily occupies a job or, under certain conditions, leaves one position for another position. Departure ratings will be used when a supervisor prepares an employee's annual evaluation. A departure rating is only required when an employee:
 - a. Completes a detail or temporary promotion (with a new supervisor) for 90 days or more
 - b. Leaves one position and moves on a permanent basis to a new position (with a new supervisor) where the Critical Elements are substantially different
 - (5) *Employee Performance File (EPF)* — The official performance file maintained on an employee which contains copies of performance elements and standards, annual ratings of record, etc.

- (6) *Employee Performance Drop File* — A file which may be maintained by a manager on individual employees containing performance notes, examples of work, counseling memorandums, and other documents of a temporary nature.
- (7) *Narrative* — A written narrative evaluation which is attached to the rating form used for annual rating of record and provides examples and/or explanation about the performance upon which the critical element ratings are based.
- (8) *Performance Plan* — The written performance elements and standards issued to each employee.
- (9) *Performance Standard* — The management-approved expression of the performance thresholds, requirements, or expectations that must be met to be appraised at a particular level of performance.
- (10) *Progress Review* — A review of the employee's progress toward achieving the performance standards. A progress review, in itself, is not a performance appraisal or a performance rating, but should be documented as a performance discussion. Progress reviews should be maintained in the EPF and/or drop file.
- (11) *Summary Rating or Annual Rating of Record* — The summary rating of each critical element, and the assignment of an overall rating on the basis of the critical elements.

30.4.1.12.2
(05-18-2012)

**Communication of
Performance Elements
and Standards;
Monitoring Performance**

- (1) Performance elements and standards must be communicated to employees at the beginning of the appraisal period.
- (2) Employees should acknowledge communication and receipt of elements and standards by signing Form LD-2 or other designated form. The signed form should be maintained in the Employee Performance File (EPF).
- (3) Managers should provide progress reviews to employees during the appraisal year. For further guidance, see the requirements in 5 *CFR* 430.207(b), Monitoring Performance.

30.4.1.12.3
(02-01-2007)

**Appraisal Periods and
Due Dates**

- (1) Generally, performance ratings are to be issued annually. An employee must have been issued, and been subject to, his/her elements and standards for a minimum period of 90 days in order to receive a rating.
- (2) If an employee received a departure rating within the last 90 days of the rating period, the departure rating can be used (at management's discretion) as the annual rating of record.
- (3) Part-time employees will receive an annual performance evaluation. Managers should consider the size and complexity of workload in light of scheduled work hours when rendering such evaluation.
- (4) Appraisals should be completed within 30 days of the end of the appraisal period.
- (5) Copies of employee appraisals will be forwarded to HR for inclusion in the employee's OPF. Appraisals will be due to HR within 45 days of the end of the appraisal period or the appraisal will be considered late. HR may notify the Deputy Chief Counsel (Operations) if an appraisal is 90 days overdue.

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- 30.4.1.12.3.1
(02-01-2007)
Appraisal/Rating Periods for Non-managers
- (6) The rating period for all Office of Chief Counsel managers (including SES members and management officials) is October 1 through September 30 of each year.
- (1) The Office of Chief Counsel uses a standardized appraisal period for all employees. This means that each year an employee's appraisal will be due at the same time, which is generally determined by the employee's date of hire. The appraisal due dates will not change due to a within-grade increase, LWOP, other absence, or a promotion.

Exception: If an employee is promoted into a managerial position, then the employee's appraisal period changes to the managerial appraisal period mentioned in CCDM 30.4.1.12.3(6).

- (2) For all Counsel employees on rolls prior to June 1, 2003, managers should consult HR to determine the standard appraisal period for each employee.

Note: The appraisal period runs from the start of one month to the last day of the prior month in the following year.

- (3) For all employees (attorneys and non-attorneys) hired by the Office of Chief Counsel on or after June 1, 2003, the appraisal year for those employees will begin on the date of hire and run through the last day of the month in the following calendar year which is immediately prior to the employee's month of hire.

Example: The appraisal year for an employee hired on June 15, 2006 would be June 15, 2006 through May 31, 2007. After the initial year, the appraisal year will be a standard 12 months (June 1, 2007 to May 31, 2008).

- (4) However, the first annual appraisal for all new attorneys in the Office of Chief Counsel is due no later than the end of the tenth month. The requirement to submit this first annual appraisal early does not change the appraisal period for any subsequent years; that appraisal period is determined as explained in paragraph (3) above.

30.4.1.12.4
(02-01-2007)
Performance Rating Forms

- (1) Each employee must be evaluated and given a rating on an annual basis. Each rating should be specifically tailored to the employee's performance over the past appraisal year. The Office of Chief Counsel does not re-validate ratings given in prior years.
- (2) The performance rating forms used by the Office of Counsel are as follows:

Position	Performance Rating Form	
SES	Executive Performance Agreement	See Exhibit 30.4.1-2.
Attorney Managers (non SES)	LD-2CC/IRS	Form 9664
Attorneys	LD-2CC/IRS	Form 9664

<i>Position</i>	<i>Performance Rating Form</i>	
All non-attorneys (including non-attorney managers)	Form 6850-CC	<i>Form 6850-CC</i>

- (3) In order to ensure that timely feedback is provided on employee performance on an annual basis, a narrative evaluation is required with all annual ratings of record.

30.4.1.12.5
(05-18-2012)
Employee Performance Files

- (1) There are two general types of performance records that may be maintained for each employee in Counsel. The Office of Personnel Management (OPM) established an Employee Performance File (EPF) System to include all official performance-related records maintained by an agency on its employees. (See 5 CFR 293, Personnel Records.) Managers may also choose to maintain a drop file which contains temporary information related to an employee.
- (2) The records in an EPF are used:
 - a. To assist rating officials in monitoring and rating performance
 - b. To provide employees with information about their actual performance or matters affecting performance and on how, if necessary, their performance may be improved
 - c. As a basis for decisions involving retention, pay, assignments, promotions, rewards, training, reduction-in-force determinations, etc.
- (3) Each Counsel employee must have an EPF. Depending on local practice, the EPF may be retained by the individual manager, an Administrative Officer, an Office Manager, or the Area F&M staff.
- (4) No documentation relating to any type of disciplinary or adverse action will be placed in an employee's EPF if the action was based purely on non-performance reasons (e.g., failure to file or pay income taxes). The EPF (and drop file, if maintained) may include:
 - Performance appraisal (narrative and rating form)
 - Critical Elements and performance standards
 - Receipt for Critical Elements and performance standards
 - Any progress reviews not included in summary ratings
 - Any employee rebuttals or requests for reconsideration of the rating
 - Records or documentation needed to justify or recommend a pending personnel action
 - Documents concerning the denial of a within-grade increase (WGI), or reflecting that a request for reconsideration of a WGI denial has been made, and its outcome
 - Documentation of performance awards, including the required justification for any special act awards

30.4.1.12.6
(02-01-2007)
Performance Records

- (1) Performance ratings of record, including the performance plan on which they are based, and any supporting documents shall be retained for a minimum of four years (five years for SES employees).
- (2) When an advance notice of proposed demotion or removal is issued but not effected, appraisals of unacceptable performance and all related documents

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containing any entry or other notation of the unacceptable performance for which the action was proposed will be destroyed when the employee demonstrates improved performance and the employee completes one year of acceptable performance from the date of the written advance notice of proposed removal or reduction in grade.

- (3) Performance evaluation documentation needed in conjunction with ongoing administrative, quasi-judicial or judicial proceedings may be retained as necessary beyond the time limits specified above.

30.4.1.12.6.1 (02-01-2007) **Disposition of EPF Records**

- (1) All EPF records older than four years (five years for SES employees) shall be destroyed.
- (2) When an employee is reassigned within Counsel, the EPF will be forwarded to the appropriate new organizational component.
- (3) When an employee resigns or retires from the federal government, the official maintaining the EPF shall destroy the EPF. No EPF-type records (including past performance appraisals) will be forwarded to the Federal Records Center.
- (4) When an employee leaves the Office of Chief Counsel to go to another federal agency, the official maintaining the EPF will forward all ratings of record which are four years old or less (five years for SES employees), including the performance plan on which the most recent rating of record was based, to HR to be filed in the OPF. These documents will be forwarded to the new employing agency along with the OPF. All other performance-related records should be destroyed.

30.4.1.12.6.2 (02-01-2007) **Access to Performance Records**

- (1) EPFs and drop files are systems of records covered by the Privacy Act (see *CCDM 30.6.1.2*, Security of Confidential Information, Official Documents and Tax Data). All employee performance records should be maintained in accordance with the rules and regulations governing the Privacy Act, i.e., they will be maintained in such a manner as to prevent access by unauthorized personnel. EPFs must be secured in a locked file cabinet, desk, or similarly secured storage area when not in use.
- (2) Employees may request access to their EPF at any time. An employee's designated representative also has a right to request access.
- (3) Whenever an employee's EPF is retrieved for any administrative purpose, the custodian shall review the EPF to ensure compliance with the provisions of this section before turning it over.

30.4.1.12.6.3 (02-01-2007) **Personal Notes**

- (1) Personal notes retained by supervisors or managers that are not required as documentation in the performance appraisal process are not considered a part of the employees' performance file and are not subject to the Privacy Act if such notes are:
 - For the personal use of the author
 - Not provided to any other person
 - Retained at the author's discretion

- (2) Supervisors and managers must protect such records to ensure that they are not disclosed or disseminated in any way, except (at the supervisor's discretion) to the individual who is the subject of the notes.
- (3) If such notes are used as the basis for a performance-related action, they then become a part of the system of records and are subject to the Privacy Act.

30.4.1.13
(02-01-2007)
**Voluntary Separation
Clearance Process**

- (1) As used in this subsection, the term "separation" refers to a voluntary action in which an employee leaves their employment with the Office of Chief Counsel (i.e., resignation, retirement, or transfer to another agency).
- (2) Non-attorney employees should submit a written notification of their intent to separate to their supervisor, Administrative Officer or Office Manager at least two weeks in advance of their separation. The appropriate official will assist them in completing the separation process.

Note: The separation clearance process for attorneys is described in CCDM 30.4.1.13.1.

- (3) The Office of Chief Counsel has implemented an automated Separating Employee Clearance (SEC) Process, which is the official record of the employee's clearance. The process described below applies to both Associate Chief Counsel Offices and Field Counsel Offices.
- (4) At least two weeks prior to separation, the employee or a designated official will initiate an SF 52 separation action.
 - a. The Administrative Officers will complete the SEC module for all separating employees.
 - b. For employees in Field Counsel Offices, the SEC module will be completed by the appropriate personnel/offices.
- (5) Managers are required to account for three items in the SEC module. The SEC module will generate a reminder (via e-mail) to managers to ensure the following items are returned:
 - ID badges/credentials
 - Keys/key cards
 - Laptop/PDA
- (6) The SF 52 will automatically initiate the following actions:
 - Deactivate systems passwords
 - Cancel phone service
 - Cancel VMS
 - Deactivate SDI
 - Deactivate Government-issued credit cards
 - Search for outstanding payroll and administrative debts

30.4.1.13.1
(02-01-2007)
**Clearance Process for
Attorneys**

- (1) Attorneys should give at least 30 days' written notice of their intention to separate from the Office of Chief Counsel.

30.4 Personnel Administration, Training, and Equal Employment Opportunity

- (2) If possible, the notice of intent to separate should be in memorandum form or an e-mail addressed to the employee's immediate manager. The memorandum or separation notification should state a reason for the separation and should also discuss possible post-employment conflicts of interest (see *CCDM 39.1.2.3.3, Post-Employment*).
 - a. Upon receipt, the memorandum or e-mail announcing an attorney's intent to separate should be forwarded to the Human Resources Division.
- (3) If the separation will be effective prior to the completion of the three-year employment tenure commitment, the attorney should consult *CCDM 30.4.1.3.3, Employment Tenure Commitments for Attorney Personnel*.
 - a. *Release*. If attorneys are separating for one of the reasons given in *CCDM 30.4.1.3.3.2*, attorneys should request a release from the commitment, citing the appropriate reference.
 - b. *Breach*. If the separation does not meet the criteria of *CCDM 30.4.1.3.3.2*, a breach of commitment will result. Attorneys should be cognizant of the provisions of *CCDM 30.4.1.3.3.1*.

30.4.1.13.2 (02-01-2007) Employee Responsibilities

- (1) Upon separating, employees must return all items of Government property listed in the following paragraphs to their supervisor or other designated official.

Note: When employees are reassigned between the National Office and field offices, or between field offices, they should consult with their supervisor to determine which items (if any) need to be returned.

- (2) *All official records and documents* — Employees must return manuals, notes or diaries of office business, work papers or personal copies of official papers, orders, correspondence, internal documents, or any other such material.
 - a. All files in the possession of a separating employee (including closed files or files borrowed from another office/division) should be returned at least three days before separation.
 - b. Removal of such material constitutes violation of the Rules of Conduct and may violate disclosure statutes, e.g., 26 U.S.C. § 6103, 5 U.S.C. § 552a (the Privacy Act).
 - c. If an employee wishes to remove any official records and documents upon separation from employment with the Office of Chief Counsel, the employee must consult with his/her manager. The employee's manager will consult with the IRS Records Officer or designee to determine whether removal of the document(s) is permitted under records management and disclosure rules.
- (3) *All equipment and supplies* issued to employees for use in their official duties, such as keys and calculators; computers, cell phones and pagers; and copies of the Internal Revenue Code, Federal Rules of Criminal Procedure, Federal Rules of Civil Procedure, and the Uniform System of Citation.
- (4) *Identification credentials* — Employees must return identification cards ("badges") pocket commissions, building passes, official passports, GSA drivers' licenses, parking permits, and LEXIS ID cards.

- (5) *Government credit cards* — Employees must return both travel cards and purchase cards.
- (6) Employees must provide in writing the secure messaging personal password used to un-encrypt messages prior to separation.

30.4.1.13.3
(11-15-2011)
Separation Exit Survey

- (1) All employees who separate from the Office of Chief Counsel are asked to complete the Department of the Treasury Employee Exit Survey, which replaced IRS' Form 13629, Separation Interview Report. The Treasury exit survey will provide information concerning employees' experience in the Office and will permit frank and open expressions that might otherwise not prevail during the employees' tenure. It will also help enhance the Office's recruitment and retention strategies.
- (2) Separating employees automatically receive the Treasury survey by e-mail before their separation date (the survey link is sent directly to employees through the HR Connect system if they registered in the system). The email sent to employees includes both internal and external website links to the survey tool, so employees have the option of completing the survey on their home computer, and a point of contact in case employees experience difficulties using the survey tool.

30.4.1.13.3.1
(11-15-2011)
Separation Interview

- (1) Separation interviews are conducted with all employees voluntarily leaving the Office of Chief Counsel.
- (2) Attorney and paralegal staff members leaving the Associate Chief Counsel offices are interviewed by their Associate Chief Counsel.
- (3) *Field Counsel Offices.* It is the responsibility of the Area Counsel to ensure that attorneys and paralegals leaving their offices in the field are interviewed and notified they will be asked to complete a voluntary Department of the Treasury Employee Exit Survey.
 - a. Employees leaving offices where the Area Counsel resides should be interviewed by the Area Counsel, if possible. Employees leaving other field offices may be interviewed by the Deputy Area Counsel or an Associate Area Counsel if it is not practical for the Area Counsel to do so.
 - b. Generally, the interviews should not be conducted by immediate supervisors of the separating employees.
 - c. If the separating employee and the manager conducting the exit interview are not in the same location, then the exit interview should be conducted by phone.
- (4) During separation interviews for attorneys and paralegals, employees should be counseled about the prohibitions on future employment as a precaution against conflicts of interest. See *CCDM 39.1.2.3.3*, Post-Employment, and the Department of the Treasury minimum standards of conduct booklet.
- (5) If an exit interview is not held with a departing employee for any reason, the supervisor will provide written notice to the employee about potential conflicts of interest in future employment and information about the voluntary Department of the Treasury Employee Exit Survey.

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30.4.1.14 (02-01-2007) Flexiplace

- (1) The Office of Chief Counsel recognizes that flexible workplace arrangements can, in appropriate circumstances, benefit the office as well as its employees. These arrangements should not result in any additional costs to the Government. This section establishes basic procedures for implementing project-based arrangements under which employees may work at alternate work sites.
- (2) *Flexiplace* is an arrangement in which employees of the Office of Chief Counsel may, under appropriate circumstances and on particular projects, work their normal tour of duty at alternate work sites. Alternate work sites may include the employee's residence or any other location mutually agreeable to the employee and their supervisor. This section does not cover sites such as Tax Court, law libraries, or other government offices.
- (3) Flexiplace is not intended to alter the normal tour of duty or serve as a substitute for child care or other care-giving responsibilities. Flexiplace will not affect rules or practices for work performed at such locations.
- (4) *Supervisor* means the immediate supervisor, or when the immediate supervisor is unavailable the person designated to act in their absence.
- (5) Employee coverage for work-related injuries or illnesses sustained or occurring at the alternate work site will be controlled by the Federal Worker's Compensation Act.

30.4.1.14.1 (02-01-2007) Employee Eligibility

- (1) It is the employee's responsibility to request to participate in the program. He/she must make a specific request, by date, to work at an alternate work site. Eligibility for flexiplace requires that the employee:
 1. Occupies a position in which the work performed is "portable", which is described as work that is definable, specific, verifiable, and is amenable to performance outside of the traditional work site. The employee's work cannot be restructured to fit this requirement except as described in CCDM 30.4.1.14.3, Hardship and/or Medical Situations.
 2. Has successfully completed the one-year probationary/trial period, although under unusual circumstances exceptions may be approved
 3. Has a current rating of at least "fully successful" and is not on a performance improvement plan
 4. Has not been on a leave restriction letter, or has not received any AWOL or discipline during the preceding 12-month period
 5. Be accessible at the alternate work site during the prescribed hours of duty (except for approved leave/credit hours) and also must understand that circumstances may require the employee's presence at the traditional work site
 6. Has executed *Form 13626*, Alternate Work Site Participation Agreement
- (2) Requests will be made to the supervisor in advance by email or by other mutually acceptable medium.

Note: One example for requesting flexiplace is on *Form 13628*, Request to Work at Alternate Work Site.

- (3) The employee must seek and receive management approval before he/she may work flexiplace.

30.4.1.14.2
(02-01-2007)
**Management Authority
and Responsibility**

- (1) The decision to permit an employee to work at an alternate work site will be made by the supervisor based on the following factors:
 - The work must be portable
 - The work must be definable and specific
 - The progress on the work performed can be verified as appropriate for the amount of time worked at the alternate work site
 - The employee's office will have adequate coverage, as determined by the supervisor, at the traditional work site. Supervisors will be reasonable in making this determination and will not make blanket determinations to exclude an office from participation.
 - The alternate work site must contain compatible, appropriate equipment, software and supplies for the work being performed
 - The employee has executed an Employee Participation Agreement
 - There are no other ad hoc circumstances which would require the employee's presence at the traditional work site (e.g., branch meetings, taxpayer conferences, etc.)
- (2) An employee may work no more than 60 hours per calendar month at an alternate work site. Before the beginning of a month, employees may submit a request to work flexiplace on specified dates during that month.
- (3) It is no longer necessary for managers to complete a flexiplace comment sheet each time an employee works flexiplace.

30.4.1.14.3
(02-01-2007)
**Hardship and/or Medical
Situations**

- (1) This subsection applies to those situations in which the presence of a temporary physical illness/injury or other medical condition significantly impairs the mobility of the employee (also called "medical flexiplace"). In this situation, the employee's physical condition prevents them from reporting to the traditional work site, or the condition imposes such a significant adverse impact on the employee's travel time that the routine use of leave (including leave without pay) would be necessitated.
- (2) An employee's request to work at an alternate work site due to physical incapacitation requires the approval of the Associate Chief Counsel (F&M). The proposed agreement and all supporting documentation, including supportive medical documentation, should be forwarded to the Labor and Employee Relations Division at least two weeks prior to the proposed effective date, if possible. The request may initially be approved for up to two months and extended in two-month increments for an additional four months.
- (3) Employees with disabilities as defined under the Rehabilitation Act of 1973, as amended, may be entitled to reasonable accommodation hereunder, which may include working at an alternate work site.

30.4.1.14.3.1
(02-01-2007)
**Hazardous Weather and
Environmental
Conditions**

- (1) This subsection applies to those situations in which the temporary presence of adverse weather or commuting conditions prevent the employee from reporting to the traditional work site. In these situations, the office officially remains open but OPM (for Washington, D.C.) or similar authority for offices in other locations, has announced that unscheduled leave, delayed arrival, or similar policy is in effect for the local commuting area.
- (2) Employees affected by these conditions or emergencies may work at an alternate work site if he/she would have otherwise been granted Flexiplace on that day and the employee has sufficient project-based work in their posses-

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sion. Employees may obtain conditional approval pending occurrence of the condition described above. The supervisor will not consider the adequate office coverage in this situation.

- (3) Additional information can be found in *CCDM 30.6.2.5*, Release of Employees in Emergency Circumstances.

30.4.1.14.4
(12-31-2012)

Leave, Credit Hours, Weekends, and Holidays

- (1) Employees working at alternate work sites must comply with all established procedures for requesting approval for and taking leave/credit hours.
- (2) Credit hours or religious comp time may be earned on weekends or holidays at an alternate work site. The total hours so earned may not exceed four hours in one work day or 12 hours on each non-work day. Because any such credit hours are flexiplace hours, advance approval must be granted by a supervisor before any such hours can be earned. In addition, all of the procedures, criteria, and restrictions otherwise applicable to a manager's decision whether to allow flexiplace are equally applicable to requests for weekend/holiday flexiplace.
- (3) Weekend/holiday project based flexiplace is not intended to alter the employee's normal hours of duty or serve as a substitute for child care or other care giving responsibilities. Before flexiplace is approved, the employee and manager must agree on which hours will be worked during the weekend. Generally, weekend/holiday project-based flexiplace will be during the employee's normal tour of duty unless the supervisor and employee agree to another time period.
- (4) All requirements for employee eligibility set out at *CCDM 30.4.1.14.1* are required for weekend/holiday flexiplace.
- (5) Employees must make a specific request to work at an alternate work site for each weekend/holiday in question in the same manner as for all other flexiplace.
- (6) All of the factors described in paragraphs (1) through (5) must be present to support a manager's decision to grant weekend/holiday flexiplace.

30.4.1.15
(05-18-2012)

Recruitment, Relocation and Retention Incentives

- (1) The policies and procedures for making determinations concerning the payment of recruitment, relocation and retention incentives within the Office of Chief Counsel are derived from the following:

Incentive Program

Authorities

Recruitment Incentive Program

- Public Law 108.411, October 30, 2004, section 101
- 5 U.S.C. 5753
- 5 CFR 575, subpart A

Relocation Incentive Program

- Public Law 108-411, October 30, 2004, section 101
- 5 U.S.C. 5753
- 5 CFR 575, subpart B

Incentive Program

Authorities

Retention Incentive Program

- Public Law 108.411, October 30, 2004, section 101
- 5 U.S.C. 5754
- 5 CFR 575, subpart C

- (2) Authority to pay incentives is vested in the Chief Counsel, per delegations from the General Counsel, Treasury. This authority has been redelegated to the Associate Chief Counsel (F&M).
- (3) The Director, Human Resources Division is redelegated the authority to approve payment of incentives to attorneys or law clerks hired under the Honors Program.
- (4) The amount of incentives for appointments of employees under the Office of Chief Counsel will be established by the Chief Counsel in the annual budget.

30.4.1.15.1
(11-15-2011)
**Definitions for the
Recruitment, Relocation,
and Retention Incentive
Programs**

- (1) *Employee* for the purposes of paying a recruitment, relocation, or retention incentive means:
 - a. An individual who has received a written offer to be newly appointed as an employee of the Office of Chief Counsel or to remain as a current employee of the Office of Chief Counsel; and
 - b. An individual who has signed a written agreement prior to payment of the incentive.

Exceptions to Paragraph 1a

1. Employment under the Student Educational Employment Program
 2. Employment as a law clerk trainee
 3. Employment while a student during school vacations under a short-term temporary appointing authority
 4. Employment under a provisional appointment if the new appointment is permanent and immediately follows the provisional appointment
 5. Employment under a temporary appointment that is neither full-time nor the principal employment of the candidate
- (2) *Basic Pay* refers to the rate of pay fixed by law or administrative action for the position to which the employee will be newly appointed or maintained before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304.
 - (3) *Service Agreement* for the purposes of an incentive means a written agreement between the Office of Chief Counsel and an employee under which the employee agrees to a specified period of employment with the appointing agency in return for payment of an incentive.
 - (4) *Newly Appointed* refers to:

30.4 Personnel Administration, Training, and Equal Employment Opportunity

- a. The first appointment, regardless of tenure, as an employee of the Federal government
 - b. An appointment as an employee of the Federal government following a break in service of at least 90 days from the candidate's last period of Federal employment
- (5) *Position in a different geographic area* for the purposes of paying a relocation incentive means:
- a. A different geographic area if the worksite of the new position is 50 or more miles from the worksite of the position held immediately before the move. If the worksite of the new position is less than 50 miles from the worksite of the position held immediately before the move, but the employee must relocate (i.e., establish a new residence) to accept the position, an authorized agency official may waive the 50-mile requirement and pay the employee a relocation incentive.
 - b. In all cases, an employee must establish a residence in the new geographic area before the agency may pay the employee a relocation incentive.
- (6) *Likely to be difficult to fill* means the Office of Chief Counsel is likely to have difficulty recruiting employees with the competencies required for the position or group of positions in the absence of an incentive.
- (7) *Annual Review* for the purpose of authorizing a retention incentive means a review of any applicable Service Agreements and payments at the end of the calendar year in which a retention incentive payment began.
- (8) *Likely to Leave Federal Service* means that it has been determined that in the absence of a retention incentive an employee or group of employees is likely to leave Chief Counsel or an employee has notified the Office of Chief Counsel that he or she will leave his or her position.
- (9) *Highly or Uniquely Qualified* refers to a candidate who possesses the knowledge, skills, abilities, behaviors, and other characteristics an individual needs to perform the duties of the position.

30.4.1.15.2
(05-18-2012)

Criteria and Procedures for Recruitment, Relocation, or Retention Incentives

- (1) In determining whether an incentive should be paid and in determining the amount of any such payment, the following factors will be considered:
- a. The success of recent efforts to recruit highly qualified candidates for similar positions, including such indicators as offer acceptance rates, the proportions of positions, and the length of time required to fill similar positions
 - b. Recent turnover in similar positions
 - c. Labor-market factors that may affect the ability to recruit highly qualified candidates for similar positions now or in the future
 - d. The practicability of using the superior qualifications appointment authority provided by 5 U.S.C. 5333 and 5 *CFR* 531, *subpart B*, 5 *CFR* 531.203 alone or in combination with a recruitment, relocation, or retention incentive
 - e. For a relocation incentive, the desirability of the duties, work or organizational environment, or geographic location of the position

- f. For a retention incentive, special or unique competencies required for the position and the direct impact of employee's departure on the agency's ability to carry out an essential activity or function of the Office of Chief Counsel
- (2) A recruitment and/or relocation incentive will be based on a written determination that, in the absence of such an incentive, it would be difficult to fill the position(s) with a highly qualified candidate(s). The determination of attorneys or law clerks newly appointed under the Chief Counsel Honors Program will be on a group basis.
- (3) A retention incentive will be based on a written determination that, in the absence of such an incentive, an employee who possesses unusually high or unique qualifications or provides Chief Counsel with a service that fulfills a special need would be likely to leave Chief Counsel.
- (4) The HR Division will collect written documentation outlining the basis for determining the incentive.
- (5) When using a retention incentive, the Office of Chief Counsel will conduct an annual review of the employee to determine whether payment is still warranted.
- (6) The HR Division will conduct periodic reviews and evaluations of the use of incentives to ensure that such payments conform to the criteria established under the Chief Counsel Recruitment, Relocation, and Retention Incentive Plan.
- (7) All documentation, certification, and Service Agreements used for the payment of the incentive will be maintained in the employee's Official Personnel Folder in accordance with 5 *CFR* 575.113, Records and Reports.

30.4.1.15.3
(05-18-2012)

**Payment of a
Recruitment, Relocation,
or Retention Incentive**

- (1) A lump-sum incentive of up to 25 percent of the annual rate of basic pay (excluding locality pay) may be paid to an employee in accordance with 5 *CFR* 575, subparts A — Recruitment Incentives, B — Relocation Incentives, and C — Retention Incentives.

Note: An incentive may be paid to an eligible employee at any grade level up to and including the Senior Executive Service.

- (2) A recruitment and relocation incentive will be determined before, but not paid before the prospective employee enters duty in the position for which recruited. The incentive will be paid as a lump-sum on the effective date of the employee's appointment. It will not be considered part of an employee's rate of basic pay for any purpose.
- (3) A retention incentive will be paid as installments after the completion of specified periods of service or a single lump-sum upon completion of the full service period. It will not be considered part of an employee's rate of basic pay for any purpose.

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30.4.1.15.4
(09-15-2009)

Service Agreement for a Recruitment, Relocation, or Retention Incentive

- (1) Recruitment Incentive Service Agreement — A written Service Agreement to complete a specified period of employment (no less than 11 months) with Chief Counsel, must be signed before an incentive will be paid. The minimum period of employment is 11 months.
 - a. A copy of *Form 13843*, Recruitment Incentive Service Agreement, will be prepared for signature by the Director, HR or the Associate Chief Counsel (F&M) as appropriate.
- (2) Relocation Incentive Service Agreement — A written Service Agreement to complete a specified period of employment (not to exceed four years) at the new duty station with Chief Counsel, must be signed before a relocation incentive will be paid.
- (3) Retention Incentive Service Agreement — A written Service Agreement to complete a specified period of employment (not to exceed four years) at the new duty station with Chief Counsel, must be signed before a retention incentive will be paid. The agreement must include the commencement and termination dates of the required service period.
- (4) The Service Agreements may be completed at any time after approval of the incentive, but no later than the time the employee enters on duty in the position for which the incentive is authorized.
- (5) The effective date of the Service Agreement shall coincide with the effective date of the personnel action.

30.4.1.15.5
(05-18-2012)

Repayment of a Recruitment, Relocation, or Retention Incentive

- (1) An employee who fails to complete the period of employment established under the Service Agreement, whether voluntarily or because of misconduct, will be indebted to the Office of Chief Counsel. The employee will repay the incentive on a pro rata basis.
- (2) An employee who is offered a retention incentive who receives a rating of less than “Fully Successful” or equivalent on his or her annual review is considered to have failed to complete the requirements under the Service Agreement and is thereby indebted to the Office of Chief Counsel. If the Office of Chief Counsel terminates a retention incentive Service Agreement based on this reason or fails to complete the period of employment, the following rules apply:
 - a. The employee is entitled to retain the retention incentive payments previously paid that are attributable to the completed portion of the service period.
 - b. If the payments received are less than the amount that would be attributable to the completed portion of the service period, the Office of Chief Counsel is not obligated to pay the employee for the completed service unless the agency agreed to the payment in the terms of the Service Agreement.
- (3) Repayment is not required if the employee is involuntarily separated (for reasons other than misconduct or delinquency).
- (4) Amounts owed by an employee for repayment of an incentive will be recovered from the employee under the Treasury Department’s regulation for debt collection by offset under 5 U.S.C. 5514 and 5 *CFR* 550, *subpart K*, Collection by Offset from Indebted Government Employees.

- (5) The right of recovery of an employee's debt may be waived in whole or in part by the Agency head if he or she determines that recovery would be against equity and good conscience, or against the public interest.
- (6) All documentation regarding the termination of a Service Agreement and incentive will be maintained in the employee's Official Personnel Folder.

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Exhibit 30.4.1-1 (02-01-2007)

Selection Recommendation Memorandum

MEMORANDUM FOR ASSOCIATE CHIEF COUNSEL ¹

[office]

FROM: Review Panel Chairperson

SUBJECT: Selection Recommendation for Assistant Branch Chief/
Assistant to Branch Chief [office]
Vacancy Announcement # [announcement number]

On behalf of the review panel for this position, I am pleased to recommend the selection of [name of proposed selectee]. The review panel consisted of myself as chairperson, [name and title of 2nd panel member], and [name and title of 3rd panel member]. After an initial assessment of the applications of the [number of total qualified] candidates who were rated eligible for this position, the panel determined the following candidates to be highly qualified for this position:

[List applicants interviewed in alphabetical order]

The interviews of these applicants were conducted on [date(s) of interview].

The panel considered a number of factors in distinguishing between the relative qualifications of the candidates. These factors included each candidate's technical knowledge and experience in [identify specialized law knowledge required; e.g., corporate tax matters²]; supervisory or managerial potential; and [list other factors considered; these can be anything which is job-related³]. Following is a summary of our final qualifications assessments of the highly qualified candidates.

[Starting with the selectee, provide a brief summary for each of the highly qualified candidates which discusses the relevance of his/her experience in terms of the technical, managerial, and any other skills needed to perform in the position, and the panel's impression of the candidate during the interview. If the panel ranked the non-selected candidates, they should be discussed in rank order; otherwise, the non-selectees can be listed alphabetically. ⁴ Summaries should include only information that was used in making final selection decisions. Information about degrees, etc., are available in the candidates' applications and do not need to be repeated here.]

1. Name of Selectee:

The panel was unanimous in its recommendation of [selectee name].⁵ [Summarize the basis of selection and why panel believes candidate surpasses other candidates. If any deficiency was noted, or selectee was weaker in an area than some of the other candidates, include a statement regarding how panel believes this weakness was off-set by other skills the candidate possesses, or how it believes the employee or management may address it in the future.]

2. Name of highly qualified candidate - non-select: **[Repeat for each non-select]**

If candidates were ranked:

Exhibit 30.4.1-1 (Cont. 1) (02-01-2007)
Selection Recommendation Memorandum

[Candidate name] was ranked as the panel's second choice for this position. [Summarize why applicant was not as well qualified for position as the selectee, but why he/she was better than other ranked candidates.]

If candidates were not ranked:

[Candidate name] was not as well qualified for the position as the selected candidate. [Summarize why applicant was not as well qualified for position as the selectee.]

Based on the above, if you agree with our recommendation of [selectee name] for the subject position, please indicate your approval by signing in the space provided. The file containing the application material is available upon your request.

I hereby approve the selection of [selectee name] for the position of [title of position and location].

APPROVED _____

DATE _____

ASSOCIATE CHIEF COUNSEL

Notes for Selection Recommendation Memorandum

¹Include a "thru" line, as appropriate, for Assistant Chief Counsel.

²This knowledge should generally be that which is described in the specialized experience and knowledge, skills and abilities sections of the vacancy announcement. If multiple tax areas were considered, but some were considered more important than others, this should be noted; e.g., "experience in corporate tax, particularly in corporate bankruptcy work".

³The point here is to identify all of the job-related factors that were used by the panel to sort/ rank the candidates. Examples of some appropriate factors might be: experience in writing/reviewing regulations; organizational vision; interpersonal skills; familiarity with litigation processes, etc.

⁴ It is recommended candidates be ranked so that another selection can be made if the original selection falls through. The panel does not, however, have to rank.

⁵If recommendation of selectee was not unanimous, this should be discussed here with an explanation of how final resolution was reached.

Exhibit 30.4.1-2 (02-01-2007)
Executive Performance Agreement

Department of the Treasury SES Performance Management System

Executive Performance Agreement

Executives in the Department of the Treasury are accountable for supporting Department wide and Bureau Strategic Plans, missions, and organizational objectives. This Agreement identifies critical job elements and establishes performance requirements for each element. As described below, executives will be appraised on critical elements in three categories: *Responsibilities* that are Department wide competency-based elements shared by all executives; *Additional Mandated Elements* that include Department wide and organization-specific elements; and *Commitments* that are specific to each individual executive. Each executive's performance must be appraised against the performance requirements (set at the beginning of each appraisal period).

Starting date for the Performance Agreement: October 1, YYYY	Ending date for the Performance Agreement: September 30, YYYY
Name:	Series and Position Title:
Organization: Internal Revenue Service Office of Chief Counsel	

Part I: Responsibilities

All Treasury executives share certain critical responsibilities that are instrumental for achieving results. Set forth below, these responsibilities reflect the core competencies of the Department - what is important to the Department as an organization. These responsibilities guide achievement of the incumbent's commitments in Part II. The executive and immediate supervisor jointly reviews these responsibilities to ensure mutual understanding.

RESPONSIBILITY ELEMENT RATING DEFINITIONS:

<u>Outstanding</u>	<u>Exceeded</u>	<u>Fully Successful</u>	<u>Minimally Satisfactory</u>	<u>Unsatisfactory</u>
Performance not only exceeds the high level of accomplishment required at the Fully Successful level, but observable outcomes serve as a model for Treasury employees and fellow executives or are achieved despite significant obstacles (e.g., insufficient resources, conflicting demands, etc).	Performance is between the levels described for Outstanding and Fully Successful.	Performance meets the high level of accomplishment described at the Fully Successful level. Observable outcomes demonstrate quality performance (e.g., that the executive took initiative to address issues, identified potential barriers and inefficiencies, resolved serious problems in a timely manner, etc.). No areas of performance are deficient.	Performance is between the levels described for Fully Successful and Unsatisfactory.	Performance fails to meet the level of accomplishment described at the Fully Successful level to such an extent that it results in demonstrable negative consequences for the organization. Removal from the position is required.

Form Number	Date
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30.4 Personnel Administration, Training, and Equal Employment Opportunity

Exhibit 30.4.1-2 (Cont. 1) (02-01-2007)

Executive Performance Agreement

Part I: Responsibilities (continued)

Element: Leadership and Employee Perspective

Department wide Performance Standards (Fully Successful)

Develops, prioritizes and aligns strategies, objectives and goals, taking into account key influences on organizational performance. Successfully leads organizational change, effectively communicating the organization's mission, core values, and strategic goals to employees and other stakeholders. Creates and sustains a positive workplace that inspires others to support the organization's mission and goals. Uses sound judgment to make effective and timely decisions. Exhibits leadership style that demonstrates integrity, sound judgment and high ethical standards of public service. Motivates others to achieve high performance through open and honest communication. Creates an environment for continuous learning. Develops and recognizes employees so that they realize their full potential. Establishes and maintains a culture of professionalism and integrity where employees are treated with dignity and respect. Advocates a safe and healthy workplace by maintaining personal knowledge and promoting awareness of Treasury safety, health, and environmental policies, practices, and procedures to avoid injuries from preventable causes.

☐ Outstanding ☐ Exceeded ☐ Fully Successful ☐ Minimally Satisfactory ☐ Unsatisfactory

Organizational Performance Standards (Fully Successful)

Attorney Performance Management – Ensure that subordinate managers understand that their personal evaluations are impacted by the execution of their managerial responsibilities to attorneys under their supervision (e.g. timely and accurate performance evaluations, timely performance counseling, timely actions to address marginal or unacceptable performance, accurate assignment of work based on position descriptions, etc.) Ensure that subordinate managers receive training in performance management techniques and that new staff attorneys are evaluated in writing each quarter of their first year. Use sound position management to appropriately assign work to managerial and non-managerial attorneys commensurate with the grade 15 duties and responsibilities as developed by the executives for these positions. Also, focus subordinate managers' attention on developing, enriching, and managing work to be consistent with the attorneys' assigned duties and responsibilities.

Attorney and Paralegal Development Management - Actively promote effective management of attorney and paralegal development by investing in effective legal training, assessing recruitment and retention strategies, promoting employment with the Office of Chief Counsel to recent law school graduates as a great place to start their career, and developing employees to ensure future leadership of the Office. Promote employee development by cultivating a cadre of employees to assume future management roles and by emphasizing litigation skill enrichment.

☐ Outstanding ☐ Exceeded ☐ Fully Successful ☐ Minimally Satisfactory ☐ Unsatisfactory

Form Number

Date

Exhibit 30.4.1-2 (Cont. 2) (02-01-2007)
Executive Performance Agreement**Part I: Responsibilities (continued)*****Element: Business Acumen*****Department wide Performance Standards (Fully Successful)**

Pursues business excellence through effective process management and the application of balanced measures. Develops and executes plans to achieve organizational goals, leveraging resources (human, financial, etc.) to maximize efficiency and produce high quality results. Ensures effective internal and management controls are in place and takes appropriate action to strengthen controls or correct identified weaknesses. Responds appropriately to GAO and IG audit reports. Ensures that corrective action plans that fix the identified weaknesses are implemented. Advocates organizational integrity by maintaining personal knowledge and promoting awareness of acceptable business practices and procedures to prevent misconduct and mismanagement, and instill public trust. Monitors and evaluates programs and work practices to identify and report potential incidences of waste, fraud, and abuse. Learns about current and emerging issues/developments in own field of expertise and applies knowledge to make technically sound operational decisions. Effectively uses ongoing feedback, coaching, and timely evaluations of performance to promote cooperation, teamwork, knowledge/skill sharing, and goal accomplishment. Identifies and utilizes policies and economic, political, and social trends in an effort to improve organizational performance. Initiates actions and manages risks to develop new products and services within or outside the organization. Sets effective workforce performance standards and engages in rigorous and realistic performance management of others. Fosters diversity, innovation, initiative, risk-taking, open and honest communications, and trust and teamwork among employees and peers.

☐ Outstanding ☐ Exceeded ☐ Fully Successful ☐ Minimally Satisfactory ☐ Unsatisfactory

Organizational Performance Standards (Fully Successful)-As needed to clarify/tailor standards to specific bureau needs.

☐ Outstanding ☐ Exceeded ☐ Fully Successful ☐ Minimally Satisfactory ☐ Unsatisfactory

Element: Collaboration & Stakeholder/Customer Satisfaction**Department wide Performance Standards (Fully Successful)**

Listens to stakeholders (employees, colleagues, customers, and labor organizations with exclusive employee representation) to identify needs and expectations. Builds strong alliances, involves stakeholders in making decisions, and gains cooperation to achieve mutually satisfying solutions. Understands and uses organizational realities, networks, and accepted practices to achieve desired business results. Where appropriate, communicates to employees the importance of results and customer focus as a critical component of the organization's mission. Represents the Department/bureau in a professional and competent manner. Builds trust and cooperative working relationships with stakeholders both within and outside of the organization. Acts to continuously improve products and services.

☐ Outstanding ☐ Exceeded ☐ Fully Successful ☐ Minimally Satisfactory ☐ Unsatisfactory

Organizational Performance Standards (Fully Successful)-As needed to clarify/tailor standards to specific bureau needs.

☐ Outstanding ☐ Exceeded ☐ Fully Successful ☐ Minimally Satisfactory ☐ Unsatisfactory

Form Number**Date**

30.4 Personnel Administration, Training, and Equal Employment Opportunity

Exhibit 30.4.1-2 (Cont. 3) (02-01-2007)

Executive Performance Agreement

Part II: Commitments

In the space below, the executive and his or her immediate supervisor must describe four to eight critical actions, objectives, and/or results that the incumbent will be expected to accomplish during the performance rating period. These Commitments must be derived from, and directly contribute to, the program priorities and objectives established by the organization's Strategic Plan, annual business or operations plan. Commitments may be modified during the evaluation period if circumstances warrant. Changes must be made at least 90 days before the end of the evaluation period to prevent having to extend the evaluation period.

COMMITMENT ELEMENT RATING DEFINITIONS:

<u>Outstanding</u>	<u>Exceeded</u>	<u>Fully Successful</u>	<u>Minimally Satisfactory</u>	<u>Unsatisfactory</u>
Performance not only exceeds the agreed-upon critical action, objective and/or results required at the Fully Successful level, but results surpass expectations in quantity, quality, or timeliness to such an extent as to result in exceptionally positive impact on the achievement of organizational goals (e.g., had impact beyond the executive's purview); or executive overcame significant obstacles such as insufficient resources, conflicting demands, or unusually short timeframes, in achieving or exceeding desired results.	Performance is between the levels described for Outstanding and Fully Successful.	Performance demonstrates achievement of or substantial progress toward agreed-upon critical action, objective, and/or desired result. Performance has a positive impact on achievement of organizational goals.	Performance is between the levels described for Fully Successful and Unsatisfactory.	Performance fails to demonstrate achievement of or progress toward agreed-upon critical action, objective and/or desired result to such an extent that it results in demonstrable negative consequences for the organization. Removal from the position is required.

Form Number

Date

Exhibit 30.4.1-2 (Cont. 4) (02-01-2007) Executive Performance Agreement

Part II: Commitments (continued)

Element 1:

A rating of fully successful for this element will be achieved by providing the following support.

Measures:

Narrative:

☐ Outstanding ☐ Exceeded ☐ Fully Successful ☐ Minimally Satisfactory ☐ Unsatisfactory

Element 2:

A rating of fully successful for this element will be achieved by providing the following support.

Measures:

Narrative:

☐ Outstanding ☐ Exceeded ☐ Fully Successful ☐ Minimally Satisfactory ☐ Unsatisfactory

Element 3:

A rating of fully successful for this element will be achieved by providing the following support.

Measures:

Narrative:

☐ Outstanding ☐ Exceeded ☐ Fully Successful ☐ Minimally Satisfactory ☐ Unsatisfactory

Form Number

Date

30.4 Personnel Administration, Training, and Equal Employment Opportunity

Exhibit 30.4.1-2 (Cont. 5) (02-01-2007)

Executive Performance Agreement

Element 4:

A rating of fully successful for this element will be achieved by providing the following support.

Measures:

Narrative:

☐ Outstanding ☐ Exceeded ☐ Fully Successful ☐ Minimally Satisfactory ☐ Unsatisfactory

Element 5:

A rating of fully successful for this element will be achieved by providing the following support.

Measures:

Narrative:

☐ Outstanding ☐ Exceeded ☐ Fully Successful ☐ Minimally Satisfactory ☐ Unsatisfactory

Element 6:

A rating of fully successful for this element will be achieved by providing the following support.

Measures:

Narrative:

☐ Outstanding ☐ Exceeded ☐ Fully Successful ☐ Minimally Satisfactory ☐ Unsatisfactory

Form Number

Date

Exhibit 30.4.1-2 (Cont. 6) (02-01-2007)
Executive Performance Agreement

Element 7: NONE	
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☐ Outstanding ☐ Exceeded ☐ Fully Successful ☐ Minimally Satisfactory ☐ Unsatisfactory

Element 8: NONE	
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☐ Outstanding ☐ Exceeded ☐ Fully Successful ☐ Minimally Satisfactory ☐ Unsatisfactory

Form Number	Date
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30.4 Personnel Administration, Training, and Equal Employment Opportunity

Exhibit 30.4.1-2 (Cont. 7) (02-01-2007)

Executive Performance Agreement

Part III: Additional Mandated Element(s)

Executives must demonstrate proficiency in the each of the areas described below in order to receive a rating of Met for the element.

Department wide Performance Standards (Met)

Element #1: Equal Employment Opportunity Principles of Fairness and Equity in the Work Place – In consultation with the EEO staff and to the extent authorized and consistent with resources: Takes steps to implement the EEO and affirmative employment goals, established by the bureau. Supports staff participation in special emphasis programs. Promptly responds to allegations of discrimination and/or harassment and initiates appropriate action to address the situation. Cooperates with EEO counselors, EEO investigators, and other officials who are responsible for conducting inquiries into EEO complaints. Assigns work and makes employment decisions in areas such as hiring, promotion, training and developmental assignments without regard to sex, race, color, national origin, religion, age, disability, sexual orientation or prior participation in the EEO process. Monitors work environment to prevent instances of prohibited discrimination and/or harassment.

☐ Met ☐ Not Met

Element #2: Security Management – Serves as a security role model setting the example within the organization. Fosters a culture of security awareness and a sense of responsibility for protecting our National Security. When applicable, ensures all classified memos, e-mails and other documents are processed on approved IT classified systems and appropriately marked. If classified or sensitive but unclassified information is inadvertently disclosed, takes immediate corrective measures. Reports to security officials any apparent or suspected attempt to access information by unauthorized persons and assists in official inquiries. Solicits training (including annual mandatory) for self and his/her organization on proper safeguarding requirements for classified and sensitive but unclassified information. As warranted, initiates requests for security clearances based on staff need for access to classified information and ensures employees complete required background investigation forms in a timely manner.

☐ Met ☐ Not Met

Organizational Performance Standards (Met)

Element #3: Fair and Equitable Treatment of Taxpayers - Ensure that administration of the tax laws is fair and equitable, that taxpayer's rights are protected, and that Counsel employees treat taxpayers ethically and with honesty, integrity, and respect.

☐ Met ☐ Not Met

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Date

Exhibit 30.4.1-2 (Cont. 8) (02-01-2007)
Executive Performance Agreement

Part V: Summary Rating Narrative

A summary narrative statement describing the basis for the executive's rating(s) is required when performance falls below or exceeds the defined performance standard for any of the preceding Responsibilities, Commitments, and Additional Mandated elements. The narrative is limited to the space provided in this form.

Form Number**Date**

30.4 Personnel Administration, Training, and
Equal Employment Opportunity

Exhibit 30.4.1-2 (Cont. 9) (02-01-2007)
Executive Performance Agreement

Part V: Summary Rating Narrative (continued)

Form Number Date

Exhibit 30.4.1-2 (Cont. 10) (02-01-2007)
Executive Performance Agreement

Part VI: Performance Agreement Certification

The signatures below certify that the supervisor has developed the performance agreement in consultation with the executive. The supervisor has discussed the agreement with the executive and provided examples of behaviors that would/would not meet the performance standards. The discussion occurs at the beginning of the performance rating period. The executive is given a copy of the agreement, and the original is placed in the executive's Employee Performance File.

Employee's Signature	Date
Rating Official's Signature	Date
Reviewing Official's Signature (Optional)	Date

Part VII: Progress Review Certification

Employee's Signature	Date
Rating Official's Signature	Date
Reviewing Official's Signature (Optional)	Date

Privacy Act Notice

The Privacy Act of 1974 requires that when we ask you to provide information about yourself, we must tell you: our legal right to ask for the information; the principal purpose(s) for which the information is intended to be used; what could happen if we do not receive any or all of the information; and whether your response is voluntary or mandatory. This statement is being provided pursuant to the Privacy Act of 1974, as amended, for individuals who have been requested to submit a statement of accomplishment/self-assessment. The authority to solicit this information is derived from 5 USC 4301, et seq., and 5 CFR Part 430, Performance Management. In order to allow you the opportunity to provide input into the evaluation process, management may request this information from you. Your supervisory officials will consider the information you furnish in preparing an evaluation of your performance or conducting periodic progress reviews.

The information contained in your performance evaluation may be disclosed to Department employees who have a need for the record in their official duties. Disclosures may also be made when appropriate, under routine uses published in the Federal Register for Privacy Act system of records, OPM/GOVT-2, Employee Performance File System of Records. Under the appropriate circumstances, disclosure may be made to the Office of Personnel Management, the Equal Employment Opportunity Commission, the General Accounting Office and others. Failure to furnish any or all of this information may result in your supervisors preparing your evaluation, or conducting a progress review, without considering information you may feel is relevant or significant.

Form Number	Date
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30.4 Personnel Administration, Training, and Equal Employment Opportunity

Exhibit 30.4.1-2 (Cont. 11) (02-01-2007)

Executive Performance Agreement

Part VIII: Rating

Reason for Rating: ☐ Annual Rating ☐ Departure Rating ☐ Other _____

Responsibilities

Leadership	<input type="checkbox"/> Outstanding	<input type="checkbox"/> Exceeded	<input type="checkbox"/> Fully Successful	<input type="checkbox"/> Minimally Satisfactory	<input type="checkbox"/> Unsatisfactory
Business Acumen	<input type="checkbox"/> Outstanding	<input type="checkbox"/> Exceeded	<input type="checkbox"/> Fully Successful	<input type="checkbox"/> Minimally Satisfactory	<input type="checkbox"/> Unsatisfactory
Collaboration	<input type="checkbox"/> Outstanding	<input type="checkbox"/> Exceeded	<input type="checkbox"/> Fully Successful	<input type="checkbox"/> Minimally Satisfactory	<input type="checkbox"/> Unsatisfactory

Commitments

Element 1	<input type="checkbox"/> Outstanding	<input type="checkbox"/> Exceeded	<input type="checkbox"/> Fully Successful	<input type="checkbox"/> Minimally Satisfactory	<input type="checkbox"/> Unsatisfactory
Element 2	<input type="checkbox"/> Outstanding	<input type="checkbox"/> Exceeded	<input type="checkbox"/> Fully Successful	<input type="checkbox"/> Minimally Satisfactory	<input type="checkbox"/> Unsatisfactory
Element 3	<input type="checkbox"/> Outstanding	<input type="checkbox"/> Exceeded	<input type="checkbox"/> Fully Successful	<input type="checkbox"/> Minimally Satisfactory	<input type="checkbox"/> Unsatisfactory
Element 4	<input type="checkbox"/> Outstanding	<input type="checkbox"/> Exceeded	<input type="checkbox"/> Fully Successful	<input type="checkbox"/> Minimally Satisfactory	<input type="checkbox"/> Unsatisfactory
Element 5	<input type="checkbox"/> Outstanding	<input type="checkbox"/> Exceeded	<input type="checkbox"/> Fully Successful	<input type="checkbox"/> Minimally Satisfactory	<input type="checkbox"/> Unsatisfactory
Element 6	<input type="checkbox"/> Outstanding	<input type="checkbox"/> Exceeded	<input type="checkbox"/> Fully Successful	<input type="checkbox"/> Minimally Satisfactory	<input type="checkbox"/> Unsatisfactory
Element 7	<input type="checkbox"/> Outstanding	<input type="checkbox"/> Exceeded	<input type="checkbox"/> Fully Successful	<input type="checkbox"/> Minimally Satisfactory	<input type="checkbox"/> Unsatisfactory
Element 8	<input type="checkbox"/> Outstanding	<input type="checkbox"/> Exceeded	<input type="checkbox"/> Fully Successful	<input type="checkbox"/> Minimally Satisfactory	<input type="checkbox"/> Unsatisfactory

Additional Mandated Element(s)

☐ Met ☐ Not Met

Initial Summary Rating

The summary rating is derived from using the rating for the Additional Mandatory Element(s) in combination with the ratings for each of the three elements in Responsibilities and each of the elements in Commitments. The definitions outlined below describe the minimums for each rating level. If the individual ratings on the elements meet the definition for a higher summary rating level, the higher summary rating level applies.

<input type="checkbox"/> Outstanding	<input type="checkbox"/> Exceeded	<input type="checkbox"/> Fully Successful	<input type="checkbox"/> Minimally Satisfactory	<input type="checkbox"/> Unsatisfactory
A rating of Met on the Additional Mandated Elements and a rating of Outstanding on 75 percent or more of the other elements, no element rating below Exceeded.	A rating of Met on the Additional Mandated Elements and a rating of Exceeded or higher on 75 percent or more of the other elements, no element rating below Fully Successful.	A rating of Met on the Additional Mandated Elements and a rating of Fully Successful or higher on all other elements.	A rating of Met on the Additional Mandated Elements and a rating of Minimally Satisfactory on 1 or more of the other elements, no element rating of Unsatisfactory.	A rating of Not Met on any of the Additional Mandated Elements or a rating of Unsatisfactory on any of the other elements.

Rating Official's Signature	Date
Reviewing Official's Signature (Optional)	Date
<i>This evaluation has been discussed with me and I have been given a copy. I am aware that if I decide to submit a narrative response and/or request a higher level review, one or both must be submitted in writing within 10 workdays of receipt of my evaluation.</i>	
Employee's Signature	Date

Form Number	Date
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Exhibit 30.4.1-2 (Cont. 12) (02-01-2007)
Executive Performance Agreement**Part IX: Performance Review Board Recommendation**☐ Concur with Rating ☐ Do Not Concur with Rating

PRB Chairperson's Signature

Date

Part X: Final Summary RatingFinal Rating: ☐ Outstanding ☐ Exceeded ☐ Fully Successful ☐ Minimally Satisfactory ☐ Unsatisfactory

Appointing Authority's Signature

Date

Form Number**Date**

30.4 Personnel Administration, Training, and Equal Employment Opportunity

Exhibit 30.4.1-3 (08-16-2023)

Memorandum of Understanding - Details to Tax Division, Department of Justice

MEMORANDUM OF UNDERSTANDING

[Name]
[Position] [(Office)]
Office of Chief Counsel, IRS

This Memorandum of Understanding sets forth the agreement between the U.S. Department of Treasury, Internal Revenue Service, Office of Chief Counsel (IRS/CC), and the U.S. Department of Justice Tax Division (DOJTAX). The purpose of this Memorandum of Understanding is to arrange for [Name] to be assigned to litigate cases referred to DOJTAX in [*Case Name*], a suit to be filed in [name of court], and other suits to [describe category of cases to be assigned by detailee], as directed by the Chief, Civil Trial Section [Region].

During this detail, the following terms and conditions apply:

1. **Location.** [Name]'s official Place of Duty will be IRS Associate Area Counsel, [address], and they will primarily work remotely on matters for the Civil Trial Section, [Region]. [State the extent to which travel will be anticipated and to what locations.]
2. **Duration.** The duration of the detail shall be from [date] through [date]. The detail may be extended upon the consent of all the parties.
3. **Time.** If part-time, the time spent on work and activities related to this detail shall not exceed ____ hours per week for the duration of the detail.
4. **Continued Employment.** [Name] will continue to be employed by the IRS/CC with no break in federal service.
5. **Reimbursement.** This is a non-reimbursable detail position. The IRS/CC will continue to pay [name]'s salary and benefits. This is based on a determination the matter/s to be worked are similar or related to matters ordinarily handled by Chief Counsel, and the work done by [name] on those matter/s will aid the IRS/Chief Counsel in accomplishing its enforcement mission.
6. **Travel.** Some travel may be required. DOJTAX will reimburse the IRS for [name]'s expenses incurred while on authorized travel, for detail-related assignments in accordance with the Federal Travel Regulations. The IRS/CC will pay [name's] expenses incurred while on authorized travel to [specify which expenses IRS/CC will pay, e.g., to attend the trial, etc.].
 - a. Detailee will send an email request prior to travel with the dates, location, and estimated cost to [NAME], Chief, Civil Trial Section, ____ Region.
 - b. Detailee will process their travel authorization and voucher through the IRS financial systems, and DOJTAX will reimburse the IRS for actual costs.
7. **Reporting.** [Name] will report to the Chief, Civil Trial Section, [Region], or its designee. For the term of this detail, [name] will follow the Tax Division's policies and procedures regarding bar membership, and such other policies and procedures as apply generally to other office employees as well as the terms of the special attorney appointment letter [name] will receive from DOJTAX or the Department of Justice's Office of Attorney Recruitment and Management.
8. **Time and Attendance.** During the period of the detail, the IRS/CC will maintain [name]'s Time and Attendance in Single-Entry Time Reporting (SETR). [Name] will coordinate all requests for leave (e.g., annual, sick, leave without pay, compensatory time) with the detail supervisor and the detailee's IRS/CC supervisor.
9. **Attorney Time Reporting for Case Management Purposes.** During the detail, [name] will report time in DOJTAX Case Management System (TAXDOC or successor system), as well as the IRS's Counsel Automated Systems Environment—Management Information System (CASE-MIS) or a successor management information system.

Exhibit 30.4.1-3 (Cont. 1) (08-16-2023)**Memorandum of Understanding - Details to Tax Division, Department of Justice**

10. **Performance Rating.** DOJTAX will provide to [name]'s IRS/CC supervisor a narrative description of work performed during the detail for use in quarterly progress reviews and annual performance appraisal (LD-2 CC/IRS). The IRS/CC will inform DOJ of these deadlines.
11. **Personnel Records.** During this detail, the IRS/CC will maintain [name's] Official Personnel Folder. The IRS/CC will be responsible for processing all personnel and payroll actions during the detail period.
12. **Status During a Lapse in Appropriations.** IRS will determine [name]'s status (excepted or non-excepted) should a lapse of appropriations occur, and notify DOJTAX. Should the IRS/CC determine it necessary to furlough employees for budgetary reasons the IRS/CC will notify DOJTAX before implementing a furlough of [name].
13. **Termination.** This agreement may be terminated by any party upon 30 days' written notice to the other parties.
14. **Modification.** This agreement may be modified by any of the parties with the written concurrence of the other parties.
15. **Notification.** No deviations from this Memorandum of Understanding will be authorized without the express written approval of the Division Counsel ([Office]), Office of Chief Counsel of the Internal Revenue Service, and the Executive Officer of the Tax Division.
16. **Approvals:**

[Name] Date [Name] Date
Deputy Chief Counsel (Operations) Executive Officer
Office of Chief Counsel Tax Division
Internal Revenue Service

[Name] Date [Name] Date
Division Counsel ([Office]) Chief, Civil Trial Section ([Region])
Office of Chief Counsel
Internal Revenue Service

17. **Acknowledgement:**
As temporary duty detailee, I acknowledge that I understand my obligations under the MOU and any other applicable policies and/or procedures.

[Name] Date
[Title] [(Office)]
Office of Chief Counsel
Internal Revenue Service

30.4 Personnel Administration, Training, and Equal Employment Opportunity

Exhibit 30.4.1-4 (08-16-2023)

Memorandum of Understanding - Details to participate in United States Tax Court proceedings

MEMORANDUM OF UNDERSTANDING BETWEEN THE OFFICE OF CHIEF COUNSEL, INTERNAL REVENUE SERVICE, AND THE DEPARTMENT OF JUSTICE, TAX DIVISION, CONCERNING PARTICIPATION BY TAX DIVISION ATTORNEYS IN PROCEEDINGS BEFORE THE UNITED STATES TAX COURT

1. This Memorandum of Understanding sets forth guidelines and procedures for participation by attorneys employed by the U.S. Department of Justice, Tax Division, in trials and other proceedings before the United States Tax Court. This program is established under the authority of the Economy Act, 31 U.S.C. § 1535, which authorizes the inter-departmental performance of work or services on a reimbursable basis; sections 7452 and 7803(b)(2)(D) of the Internal Revenue Code of 1986, 26 U.S.C. §§ 7452 and 7803(b)(2)(D), and the Department of the Treasury General Counsel Order No. 4 (2001), which authorize the Chief Counsel of the Internal Revenue Service to decide whether and in what manner to defend, prosecute, settle, or abandon claims in cases pending in the Tax Court.
2. Pursuant to sections 7452 and 7803(b)(2)(D), the Chief Counsel of the Internal Revenue Service or delegates are the legally authorized representatives of the Commissioner of Internal Revenue in proceedings before the Tax Court. Nothing in this Memorandum of Understanding is to be interpreted to modify the sole authority of the Chief Counsel of the Internal Revenue Service to represent the Commissioner of Internal Revenue in the Tax Court and to determine whether and in what manner to defend, prosecute, settle, or abandon claims in cases pending in the Tax Court.
3. The invitation by the Chief Counsel of the Internal Revenue Service for participation in Tax Court proceedings by Tax Division attorneys shall not be considered a reference of any case or proceeding docketed in the Tax Court to the Department of Justice within the meaning of section 7122(a), 7602(d), or any other provision of the Internal Revenue Code describing referrals of cases to the Department of Justice for prosecution or defense.
4. Tax Division attorneys who participate in Tax Court proceedings shall at all times be under the direction and supervision of officials of the Office of Chief Counsel assigned to manage cases docketed in the Tax Court with respect to activities relating to the Tax Court proceedings to which they have been assigned. All activities undertaken and written work products produced by Tax Division attorneys participating in Tax Court proceedings pursuant to this Memorandum of Understanding shall be in conformity with the directives contained in the Chief Counsel Directives Manual (CCDM) as supplemented by Chief Counsel Notices or other directives. All activities and work product shall be supervised, reviewed, and approved by management officials of the Office of Chief Counsel, Internal Revenue Service, in accordance with the practices and policies of the Office of Chief Counsel, including the timely submission of work products to the designated Chief Counsel manager with sufficient time remaining prior to the due date of the document to permit meaningful review. At the conclusion of participation in the proceedings, the Tax Division attorney will return all files and materials with respect to the case to the Office of Chief Counsel.
5. Tax Division attorneys who participate in Tax Court proceedings pursuant to this Memorandum of Understanding shall be considered as officers or employees of the Department of the Treasury, Office of Chief Counsel, within the meaning of section 6103(h)(1) whose official duties require the inspection or disclosure for tax administration purposes of tax returns and return information related to the Tax Court proceedings to which they have been assigned. Any disclosures of tax returns or return information to Tax Division attorneys pursuant to this paragraph and section 6103(h)(1) shall not be further disclosed by them unless otherwise authorized by law.
6. Tax Division attorneys who participate in Tax Court proceedings pursuant to this Memorandum of Understanding shall be duly admitted to practice before and be members in good standing of the Tax Court pursuant to Rule 200 of the Tax Court's Rules of Practice and Procedure, and shall practice before the Tax Court in accordance with the Model Rules of Professional Conduct of the American Bar Association, as provided in Tax Court Rule 201(a). Tax Division attorneys are responsible for

Exhibit 30.4.1-4 (Cont. 1) (08-16-2023)

Memorandum of Understanding - Details to participate in United States Tax Court proceedings

- payment of the cost of admission to the Tax Court bar. Tax Division attorneys participating in this program shall be members in good standing of the bar of the highest court of a state, territory, the District of Columbia, or the Commonwealth of Puerto Rico.
7. Tax Division attorneys who participate in Tax Court proceedings pursuant to this Memorandum of Understanding shall be subject to all the laws, regulations, and policies applicable to employees of the Department of the Treasury and the Office of Chief Counsel for the Internal Revenue Service, including, but not limited to, the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635), the Department of the Treasury Supplemental Standards of Ethical Conduct (5 C.F.R. Part 3101), the Department of the Treasury Employee Rules of Conduct (31 C.F.R. Part 0), the Employee Responsibility and Conduct provisions (5 C.F.R. Part 735), and the Chief Counsel Directives Manual. All questions with respect to any of these provisions and any like matters arising from the handling of cases pursuant to this program, shall be referred to the Office of Chief Counsel, General Legal Services for advice and resolution.
 8. Tax Division attorneys who participate in Tax Court proceedings pursuant to this Memorandum of Understanding shall serve without compensation other than that which they receive pursuant to their existing employment with the Department of Justice, Tax Division. The IRS will reimburse the Tax Division for any assignment related travel expenses for Tax Division attorneys participating in this program.
 9. The Office of Chief Counsel will provide any necessary training to Tax Division attorneys concerning the representation of the Commissioner in the Tax Court, including training on rules of practice and procedure, and the policies and practices of the Office of Chief Counsel with respect to Tax Court litigation. The Office of Chief Counsel will supply any necessary sample pleadings, manuals, and guidance to Tax Division attorneys to assist in handling Tax court cases.
 10. Tax Division attorneys participating in this program shall be recommended for the program by the Assistant Attorney General, Tax Division, delegate or head of component in the absence of an Assistant Attorney General, and the recommendations shall be subject to approval by the Chief Counsel of the Internal Revenue Service. Tax Division attorneys selected for participation in this program shall agree to abide by the terms and conditions of this Memorandum of Understanding.
 11. Tax Division attorneys participating in this program serve at the pleasure of, and may be removed from the program at the discretion of, the Chief Counsel.

By:

[TITLE, NAME] [TITLE, NAME]

[Assistant Attorney General of Delegate] Chief Counsel

Tax Division Internal Revenue Service

Department of Justice Department of Treasury

Date: Date:

Acknowledgement:

As temporary duty detailee, I acknowledge that I understand my obligations under the MOU and any other applicable policies and/or procedures.

[Name] Date

[Title] ([Office])

Tax Division

Department of Justice

