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October 2017

# U.S. MARSHALS SERVICE

## Additional Actions Needed to Improve Oversight of Merit Promotion Process and Address Employee Perceptions of Favoritism

Accessible Version

# GAO Highlights

Highlights of [GAO-18-8](#), a report to the Chairman, Committee on the Judiciary, U.S. Senate

## Why GAO Did This Study

USMS mission areas include fugitive apprehension, witness protection, and federal prisoner transportation, among others. USMS whistleblowers recently alleged that USMS officials engaged in improper promotion practices—such as routinely preselecting favored candidates. Investigations have substantiated multiple whistleblower allegations which has raised questions about the integrity of USMS's merit promotion process. USMS announces about 260 law enforcement promotion opportunities annually.

GAO was asked to review USMS's promotion processes and policies and effects that USMS promotion practices have on employee morale. This report examines (1) the extent to which the USMS's merit promotion policies are aligned with federal guidelines; (2) the extent to which USMS monitors its merit promotion processes; and (3) the steps, if any, USMS has taken to understand and address employee concerns about its merit promotion policies and processes. GAO analyzed data and documents on USMS promotions from October 2015 through April 2017, and found these data to be sufficiently reliable for the purposes of GAO's study. GAO also analyzed USMS documentation, and interviewed USMS officials and non-generalizable groups of employees (85 in total) in four district locations.

## What GAO Recommends

GAO recommends that USMS develop specific rater guidance and develop and implement an agency-wide action plan to better understand and address employee concerns, among other steps. USMS concurred with the recommendations.

View [GAO-18-8](#). For more information, contact Diana Maurer at (202) 512-8777 or [maurer@gao.gov](mailto:maurer@gao.gov).

October 2017

## U.S. MARSHALS SERVICE

### Additional Actions Needed to Improve Oversight of Merit Promotion Process and Address Employee Perceptions of Favoritism

## What GAO Found

The U.S. Marshals Service's (USMS) merit promotion policy aligns with relevant provisions in title 5 of the United States Code and Code of Federal Regulations, which are the government-wide laws and related provisions agencies must follow to make federal appointments. Agencies must design and administer merit promotion programs to ensure a systematic means of selection for promotion based on merit and these programs must conform to five key requirements outlined in title 5. GAO found that the USMS merit promotion plan, as revised in November 2016, aligned with each of these five requirements. For example, the first requirement states that agencies must establish merit-based procedures for promoting employees that are available in writing to candidates. The USMS merit promotion plan, which is available to employees, outlines such procedures.

USMS is taking steps to improve how it monitors the implementation of the scoring component of its process to rate promotion applications, but lacks documented guidance to ensure consistent compliance with its merit promotion policy. GAO found that USMS does not adequately monitor the rating process, which allowed for conflicts of interest with raters who may compete with candidates whose applications they score. USMS also does not monitor the rating process to ensure that raters complied with a key requirement—that raters decline to score applications of candidates with whom there is a conflict of interest, such as a supervisor-employee relationship. USMS is implementing a process change that, if implemented effectively, can address these two deficiencies. The new process entails having a third-party contractor, rather than USMS employees, determine candidates' scores. Finally, GAO found that USMS lacks documented guidance on rater scoring. USMS only provides verbal guidance to instruct raters on how to score the experience category of merit promotion packages, creating inconsistent application of the guidelines. Employees GAO met with expressed the view that such discrepancies create the perception that the rating process is unfairly subjective. Developing clear and specific documented guidance on how raters should apply the benchmark guidelines could minimize scoring inconsistency and potential rater subjectivity for both the current rating process and the new competency-based assessment.

USMS has taken limited steps to understand and address employee concerns about the promotion process. An estimated 41 percent of USMS respondents to the 2016 Office of Personnel Management Federal Employee Viewpoint Survey strongly disagreed or disagreed that USMS promotions are merit-based, while 34 percent strongly agreed or agreed, and 25 percent neither agreed nor disagreed. During discussion groups GAO held at four USMS district locations across the U.S., employees frequently expressed negative views and many indicated low or no trust that the process is fair and merit-based. Although USMS has acknowledged employees' negative perceptions of the promotion process, it has not developed an agency-wide action plan in accordance with federal guidance to better understand the nature and causes of employee concerns across districts and divisions. Providing specific and consistent information to employees about key steps in the merit promotion process and internal management decisions could improve transparency and help mitigate employee perceptions of favoritism that have negatively impacted employee morale.

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### **Abbreviations**

DOJ	Department of Justice
FEVS	Federal Employee Viewpoint Survey
HRD	Human Resources Division
JMD	Justice Management Division
MSPB	Merit Systems Protection Board
OMB	Office of Management and Budget
OPM	Office of Personnel Management
OPR	Office of Professional Responsibility
USMS	United States Marshals Service

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October 17, 2017

The Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary  
United States Senate

Dear Mr. Chairman:

Between February 2015 and November 2016 more than 85 United States Marshals Service (USMS) employees made allegations that USMS officials engaged in improper promotion practices—such as routinely pre-selecting favored candidates and offering detail assignments to certain individuals based on non-merit factors—among others. In recent years, several internal and external investigations have substantiated several allegations. Specifically, investigations in 2014 and 2015 found evidence of nepotism and employee misconduct.

In January 2016, the Department of Justice (DOJ) Justice Management Division (JMD) completed a review of USMS hiring and promotion policies and procedures and found several deficiencies. JMD made recommendations to bring USMS into compliance with applicable statutes, regulations, and policies. For example, based on this review USMS revised its scoring process to remove points awarded to candidates for service in an acting (temporary promotion) capacity. Furthermore, in November 2016, a Senate Judiciary Committee report on improper hiring practices and whistleblower reprisal noted that USMS had begun implementing changes in response to the January 2016 JMD review, such as incorporating and elaborating on restrictions against nepotism. However, the Committee report also determined that USMS lacked protections for whistleblowers and could improve employee engagement to promote a stronger merit-based culture.<sup>1</sup>

In light of ongoing Congressional questions, you asked us to assess the extent to which USMS's promotion processes and policies ensure the selection of candidates based on merit as well as any effects that USMS

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<sup>1</sup>Majority Staff of S. Comm. On the Judiciary, 114th Cong., Rep. on Allegations of Improper Hiring Practices and Whistleblower Reprisal at the U.S. Marshals Service (Comm. Print 2016) (S. Print No. 114-25).

promotion practices may have on employee morale. This report addresses the following objectives:

1. To what extent are the USMS's merit promotion policies aligned with federal guidelines?
2. To what extent does the USMS monitor its merit promotion processes?
3. What steps, if any, has the USMS taken to understand and address employee concerns about its merit promotion policies and processes?

To address these objectives, we analyzed relevant USMS documentation and data. In determining whether the USMS merit promotion policies are aligned with federal guidelines, we reviewed relevant provisions in title 5 of the United States Code and the Code of Federal Regulations and compared these with certain provisions in the USMS *Merit Promotion Plan*.<sup>2</sup> Specifically, we examined the extent to which the USMS *Merit Promotion Plan* conformed to the five general requirements outlined in title 5 of the Code of Federal Regulations that agencies must incorporate in merit promotion programs to ensure a systematic means of selection.

In determining the extent to which USMS monitors its merit promotion processes, we examined documentation on merit promotion procedures and practices, including documentation on the merit promotion rating process. To examine USMS compliance with key aspects of this plan, such as candidate rating and selection, we analyzed merit promotion documentation, including all lists containing competitive candidate scores for fiscal years 2015 and 2016.<sup>3</sup>

We examined the extent to which USMS complied with federal regulations on temporary promotions by analyzing the records for all 844 noncompetitive, not-to-exceed 120-day temporary promotion selection records from October 2015 through February 2017. We reviewed USMS compliance with temporary promotion regulations because whistleblowers

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<sup>2</sup>For the first objective, we did not assess the extent to which the policies as documented in the USMS *Merit Promotion Plan* were implemented in accordance with federal guidelines because we assessed how certain aspects of the policies were implemented under the second objective.

<sup>3</sup>Competitive candidates must take a merit promotion examination and submit required documents, including the promotion application package during an annual open season process. Candidate scores comprise the combined scores from the examination and application package.

alleged that candidates who received temporary promotions may have received unfair advantages for permanent promotion. We assessed the reliability of the temporary promotions data we used by reviewing the data for missing elements, outliers, and obvious errors, and interviewing officials about data errors and applicable quality control procedures to ensure the accuracy and integrity of the data. Although we found some inconsistencies, such as incorrect documentation of legal citations and some missing data elements, we determined these data were sufficiently reliable for identifying the extent to which non-competitive temporary promotions exceeded the regulatory limit of 120 days.

We evaluated USMS internal control activities against *Standards for Internal Control in the Federal Government* to determine the extent to which USMS has developed internal control mechanisms to monitor the implementation of key steps in the merit promotion process. We reviewed all job vacancy announcements for fiscal years 2015, 2016, and part of fiscal year 2017 (October 2016 through April 2017) to determine the extent to which USMS has documented steps in accordance with Office of Personnel Management (OPM) requirements.

To identify areas of concern raised by employees, we reviewed USMS Federal Employee Viewpoint Survey data for fiscal years 2015 and 2016.<sup>4</sup> We also interviewed USMS officials and federal human capital experts in OPM and the Merit Systems Protection Board (MSPB) for their perspectives on the extent to which USMS implemented key steps in its merit promotion process in accordance with federal guidelines and merit principles. In addition, we met with four whistleblowers and employees who contacted us anonymously to provide their perspectives on these issues. Because of the sensitivity of whistleblowers' identities, we are not identifying their locations.

We also interviewed employees in four district locations for their perspectives on how USMS implemented key steps in its merit promotion process and efforts to understand and address employee concerns about the merit promotion process. The four district locations were Chicago, Los Angeles, San Diego, and Washington, D.C. We selected these sites based on a range of geographic locations and a medium-to-large district size to obtain a wide representation of employees and maximize the pool

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<sup>4</sup>The USMS response rate was 68 percent for the 2015 survey and 57 percent for the 2016 survey.

of employees available to meet with us. At each location, we interviewed the U.S. Marshal and Chief Deputy U.S. Marshal, and conducted separate discussion groups with GS-14, GS-13, and GS-12 level law enforcement employees. For the discussion groups, we used a structured interview questionnaire, which focused on implementation of USMS merit promotion processes and potential concerns about merit promotion practices. Collectively, we met with a total of 93 USMS employees, including 4 U.S. Marshals, 4 GS-15 Chief Deputy U.S. Marshals, 7 GS-14 Assistant Chief Deputy U.S. Marshals and Chief Inspectors, 24 GS-13 Criminal Investigators (which included both supervisors and non-supervisors), and 54 GS-12 Deputy U.S. Marshals. USMS uses a separate process for promoting non-operational employees (i.e., administrative) which we did not include in our scope. We collectively refer to law enforcement employees in our discussion groups as USMS employees.<sup>5</sup> The selection of employees we met with in each district was based on which employees were available and willing to meet during our visit. Our discussion groups included a total of 85 GS-14, GS-13, and GS-12 employees, and we collected questionnaire responses from all 85 participants. To ensure candid discussions, we met separately with groups of employees by GS level and did not include supervisors with non-supervisors. While not generalizable to all USMS districts and divisions, the views we collected overall provide insights into employee perspectives on USMS merit promotion practices.

We conducted this performance audit from July 2016 to October 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

USMS mission areas include fugitive apprehension, witness protection, and federal prisoner transportation, among others. There are 94 U.S.

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<sup>5</sup>Most USMS employees are covered by the General Schedule (GS) Classification System, the federal government's primary pay and classification system. The GS system has 15 grades: GS-1 (low est) to GS-15 (highest). U.S. Marshals are non-executive positions, but are classified as Senior Level employees above the GS-15 grade.



Marshals—one for each federal judicial district—who are presidentially appointed and direct agency operations in each district. U.S. Marshals are considered to generally operate autonomously from headquarter offices and divisions. USMS's current workforce consists of roughly 3,709 Deputy U.S. Marshals and Criminal Investigators, and approximately 1,435 Detention Enforcement Officers and administrative employees. In general, a cadre of Deputy U.S. Marshals in each district collectively conducts various activities associated with the USMS mission areas. In addition, Deputy U.S. Marshals and Criminal Investigators who are assigned to headquarter operational divisions are located in district offices and work collectively with district employees across the 94 districts to carry out division functions.<sup>6</sup>

Deputy U.S. Marshals are categorized into two federal government occupational series – 0082 and 1811.<sup>7</sup> USMS typically hires entry-level Deputy U.S. Marshals in the 0082 series at the GS-5 or GS-7 level. At the GS-11 level, deputies automatically convert to the 1811 series and receive non-competitive career ladder promotions through GS-12 if they complete the required waiting period for advancement to the next grade level and maintain an acceptable level of performance. For GS-13 and above, deputies must compete for promotions through the operational merit promotion process.

USMS's Human Resources Division (HRD) is responsible for issuing and implementing policy guidelines, revisions, and supplements in accordance with appropriate regulations and merit system principles.<sup>8</sup> HRD also periodically assesses the effectiveness of merit promotion policy, assists in filling division and district vacancies, and reports officials who inappropriately discriminate against candidates, and candidates who engage in improper behavior, such as willful exaggeration, misstatements, or other abuses of the application process. USMS's Office of Professional Responsibility (OPR) oversees the internal compliance

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<sup>6</sup>USMS headquarter operational divisions include: Investigative Operations Division, Judicial Security Division, Justice Prisoner and Alien Transportation System, Prisoner Operations Division, Tactical Operations Division, and Witness Security Division.

<sup>7</sup>OPM defines position classification standards which are used in determining the occupational series and title for positions performing white collar work in the federal government. They also provide grading criteria for positions classified under the GS classification system.

<sup>8</sup>These responsibilities describe HRD's role specifically relating to USMS merit promotion policy.

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review of USMS staff, division, and district offices, which assess compliance with DOJ and USMS policies and procedures, and ensures the integrity of the agency's internal controls.

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## Federal Guidelines on Merit Promotion Policy

Congress passed the Pendleton Act in 1883, establishing that federal employment should be based on merit.<sup>9</sup> The nine merit system principles established by the Pendleton Act were later codified as part of the Civil Service Reform Act of 1978.<sup>10</sup> The first merit principle indicates that federal personnel management should be implemented consistent with certain merit system principles, including that selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

Title 5 of the United States Code refers to the government-wide personnel management laws and related provisions generally applicable to federal employment. While title 5 of the United States Code generally outlines the rules agencies must follow to make appointments in the competitive service, excepted service, and the senior executive service, agencies have significant discretion to design and implement internal merit promotion policies and processes. Title 5 also states that federal personnel management should be implemented consistent with merit system principles that protect federal employees against "personal favoritism."<sup>11</sup> According to MSPB, personal favoritism occurs when a supervisor or selecting official grants an advantage to one employee or candidate but not another similarly situated employee or candidate based on friendship or other affinity rather than a legitimate merit-based reason. Favoritism is distinct from discrimination on legally protected bases and is frequently more difficult to clearly identify when it occurs.

OPM is responsible for overseeing all policy created to support Federal human resources departments as well as for ensuring that these policies are properly implemented and continue to be correctly carried out. OPM

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<sup>9</sup>Act of January 16, 1883, ch. 27, 22 Stat. 403.

<sup>10</sup>Pub. L. No. 95-454, § 101, 92 Stat. 1111, 1113-14 (Oct. 13, 1978), codified at 5 U.S.C. § 2301(b).

<sup>11</sup>5 U.S.C. § 2301(b)(8)(A).

delegates many personnel decisions to federal agencies, but is responsible for establishing and maintaining an oversight program ensuring that the personnel management functions it delegates to agencies are in accordance with merit system principles and the standards established by OPM for conducting those functions.<sup>12</sup>

OPM has also established minimum qualification requirements for hiring or promoting individual employees under the competitive process. In addition, OPM allows agencies to make minimum qualification requirements more specific by adding selective placement factors. According to OPM, selective placement factors identify any qualifications that are important for the job and are required when an individual starts the job. Candidates who do not meet selective placement factors are ineligible for further consideration. OPM generally allows agencies to establish selective placement factors for any position without prior OPM approval, but requires agencies to establish and document selective placement factors through the job analysis process.<sup>13</sup> OPM guidance also states that selective placement factors have four characteristics:

- extensive training or experience to develop;
- essential for successful performance on the job (i.e., if individuals do not have the selective factor, they cannot perform the job);
- almost always are geared toward a specific technical competency; and
- cannot be learned on the job in a reasonable amount of time.

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<sup>12</sup>5 U.S.C. § 1104(b).

<sup>13</sup>According to OPM guidance, a job analysis is a systematic procedure for gathering, documenting, and analyzing information about the content, context, and requirements of the job, and demonstrates a clear relationship between the tasks performed on the job and the competencies required to perform the tasks.

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## USMS Has Aligned its Merit Promotion Policy with Federal Guidelines and Developed a Corresponding Process

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### USMS Merit Promotion Policy Is Aligned with Federal Human Capital Guidelines

We determined that the USMS merit promotion policy aligns with relevant provisions of title 5 of the United States Code, and title 5 of the Code of Federal Regulations. Specifically, the most recent version of the *USMS Merit Promotion Plan*, which was revised in November 2016, outlines the mechanisms for affording merit staffing and promotional opportunities to competitive status candidates for GS-13, GS-14, and GS-15 1811 operational law enforcement positions.<sup>14</sup> The plan states that it is the policy of the USMS to maintain a sound staffing program that will ensure that USMS fills positions from among the best qualified candidates and that the selection, assignment, and promotion of employees are on the basis of job-related criteria.

*The Merit Promotion Plan* cites parts of title 5 of the Code of Federal Regulations as the governing authority under which the plan was developed and aligns with key provisions of title 5 of the United States Code and title 5 of the Code of Federal Regulations. Agencies must design and administer merit promotion programs to ensure a systematic means of selection for promotion based on merit. These programs must conform to five requirements outlined in title 5 of the Code of Federal Regulations. Table 1 describes the five requirements and how key provisions in the *USMS Merit Promotion Plan* align with these requirements.

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**Table 1: Comparison of Selected Provisions of Title 5 of the Code of Federal Regulations (C.F.R.) with U.S. Marshals Service Merit Promotion Plan**

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Federal Requirements <sup>a</sup>	USMS Merit Promotion Plan
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<sup>14</sup>USMS Policy Directive 3.10, *Merit Promotion Plan*.

Federal Requirements <sup>a</sup>	USMS Merit Promotion Plan	
<b>Requirement 1. Promotion Procedures and Decisions</b>	Establish procedures for promoting employees which are based on merit and are available in writing to candidates; list appropriate exceptions to the procedures; actions under a promotion plan must be made without regard to non-merit-based factors (including race, color, religion, and other enumerated factors), unless specifically designated by statute as a factor that must be taken into consideration when awarding such benefits, and must be based solely on job-related criteria.	USMS incorporates procedures for promoting employees, including exceptions to the procedures. The plan also states selections for promotions or other placement actions covered by this policy must be made without regard to non-merit-based factors (including race, color, religion, and other enumerated factors), unless specifically designated by statute as a factor that must be taken into consideration when awarding such benefits, and will be made solely on the basis of merit- and job-related criteria.
<b>Requirement 2. Areas of Consideration</b>	Have areas of consideration sufficiently broad to ensure the availability of high quality candidates, taking into account the nature and level of the positions covered; and ensure that employees within the area of consideration who are absent for legitimate reason receive appropriate consideration for promotion.	USMS policy states that areas of consideration must be sufficiently broad to ensure the availability of high-quality candidates, taking into account the nature and level of the positions covered. Additionally, USMS incorporates procedures for consideration of USMS employees who are absent for promotion.
<b>Requirement 3. Qualification Standards</b>	Promotion candidates must meet OPM's minimum qualification standards. Methods of evaluation for promotion and placement, and selection for training which leads to promotion, must be consistent with additional federal regulations; and due weight should be given to performance appraisals and incentive awards.	USMS policy states that candidates must meet the minimum qualification standards as prescribed by OPM, as well as time-in grade requirements, approved selective placement factors, and all legal, regulatory and administrative requirements for a position as determined by the USMS to be eligible for promotion. Additionally, USMS incorporates procedures for evaluating candidates.
<b>Requirement 4. Selection Procedures</b>	Selection procedures must provide management the right to select or not select from among a group of best qualified candidates, or from other appropriate sources, such as reemployment priority lists.	USMS policy states that the USMS Director is the selecting official and will make selections for all permanent GS-1811 Merit Promotion vacancies. Additionally, the plan states that managers may request not to fill the position and cancel the announcement. USMS also incorporates manager's right to select from other appropriate sources, in accordance with 5 C.F.R. § 335.103(b) (4).
<b>Requirement 5. Records</b>	Agencies administering promotions will keep records and provide necessary information to employees and the public, while ensuring that individuals' rights to privacy are protected. Agencies must maintain a temporary record of each promotion sufficient to allow reconstruction of the promotion action, including documentation on how candidates were rated and ranked. These records may be destroyed after 2 years or after the program has been formally evaluated by OPM (whichever comes first) if the time limit for grievance has lapsed before the anniversary date.	USMS policy states that records should be maintained in accordance with 5 C.F.R. § 335.103(b)(5), National Archives and Records Administration General Records Schedule 1, and DOJ policy.

Source: GAO analysis of selected provisions of title 5 of the Code of Federal Regulations and USMS Merit Promotion Plan. | GAO-18-8

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<sup>15</sup> 5 C.F.R. § 335.103(b)(1-5). We did not assess the extent to which USMS implemented the five requirements, as documented in the USMS Merit Promotion Plan, in accordance with title 5 of the Code of Federal Regulations.

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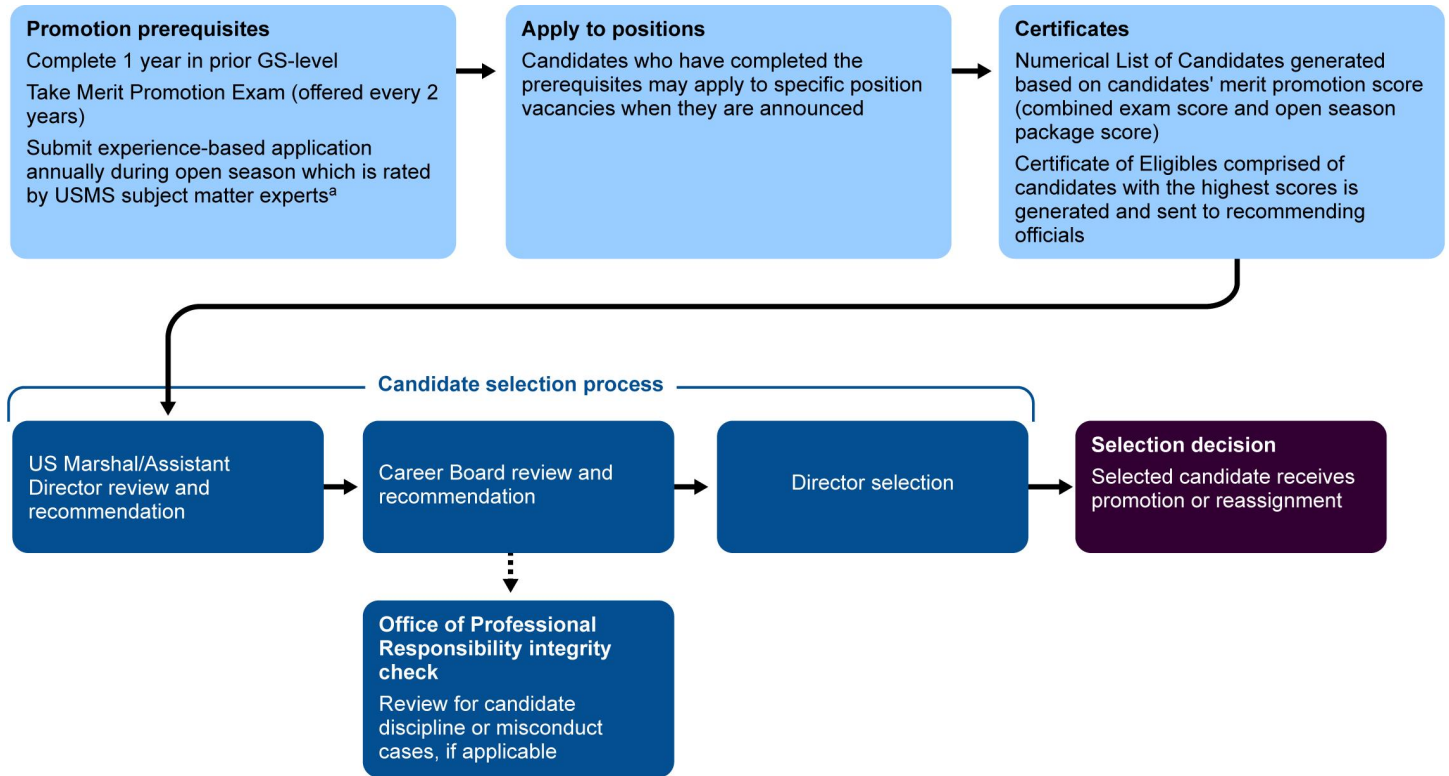
## USMS Has Developed a Promotion Process Based on Its Merit Promotion Plan

USMS has developed a multi-step process based on the USMS *Merit Promotion Plan* to assess and select eligible candidates for promotion. To be considered eligible for promotion to GS-13, GS-14, or GS-15 law enforcement positions, candidates must (1) serve one year in an operational position at the next lower grade than the position desired; (2) take the most recent USMS merit promotion examination, which is administered every two years; and (3) submit required documents, including the promotion application package, during an annual open season submission process.<sup>15</sup> Once candidates have met these prerequisites, they may apply to individual position vacancy announcements, which are advertised electronically to all USMS employees. Figure 1 depicts the multiple steps in the USMS merit promotion process.

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<sup>15</sup>Until recently, there were two separate annual open seasons, one for GS-13 position candidates, and one for GS-14 and GS-15 position candidates, open for approximately one month. In May 2017, the GS-13 open season was discontinued and replaced with a new merit promotion process that uses a scenario-based competency assessment instead of an experience-based application.

**Figure 1: U.S. Marshals Service Merit Promotion Process**



Source: GAO analysis of U.S. Marshals Service information. | GAO-18-8

<sup>a</sup>In May 2017, USMS began implementation of a new competency-based assessment process which replaced the GS-13 open season and subsequent rating of experienced-based packages. Promotions to GS-14 and GS-15 will continue to follow the process as depicted in Figure 1 until USMS determines whether to convert these positions to the new competency-based assessment process.

Table 2 provides a detailed description of the multiple steps in the USMS merit promotion process.

**Table 2: U.S. Marshals Service Merit Promotion Process**

<b>Promotion Packages Scored</b>	<p>After candidates submit the required documentation during open season, the information contained in the promotion application package is scored on four criteria: experience, education, training, and awards. USMS HRD staff assess and score the education, training, and awards components, while the experience component is scored by a rating panel of USMS subject matter experts. According to USMS guidance, the raters are subject matter experts who are USMS employees in GS-13, GS-14 and GS-15 law enforcement positions, and are selected and trained by the USMS merit promotion staff in HRD.</p> <p>The experience component is scored independently by two raters, who assign numerical scores to each experience category—such as problem-solving and leadership—by comparing the experience described in the application narrative to specific guidance, referred to as benchmarks. The benchmarks contain descriptions of relevant experience designed to guide the raters as they assign scores to specific knowledge, skills, and abilities, for each experience category of the application narrative. According to USMS guidance, raters are trained to rely exclusively on the contents of the application, and to exclude independent knowledge of the candidate. Moreover, raters are expected to recuse themselves from rating a candidate's application when there may be a conflict of interest (for example, if the candidate was a former employee or supervisor or had a personal relationship with the rater, among other reasons).</p> <p>The application scores are compiled and combined with the scores from the two components of the merit promotion exam, which collectively determines the total merit promotion score. Once candidates are assigned a merit promotion score, they may apply to individual merit promotion position announcements, which are posted periodically throughout the year. Merit promotion scores are used to determine the best-qualified candidates for each open position.</p>
<b>Certificate of Eligibles Generated</b>	<p>After a merit promotion vacancy announcement closes, HRD staff generates a numerical list of all candidates who applied to the position in order of highest merit promotion score to lowest merit promotion score. Then a final certificate of eligibles is generated for each position and generally contains the five candidates with the highest merit promotion scores, but lists the candidates in alphabetical order and does not contain the candidates' merit promotion scores.<sup>a</sup> A separate list of all reassignment eligible candidates is included with the final certificate.<sup>b</sup> Candidates on the final certificate for GS-14 and GS-15 positions were required to engage in a structured interview; however, USMS eliminated this step in March 2017.</p>
<b>U.S. Marshal/Assistant Director Review and Recommendation</b>	<p>HRD sends the final certificate of eligibles and accompanying résumés to the recommending official, who is the head of a district or division. For example, the U.S. Marshal is the recommending official for district positions, while the Assistant Director is the recommending official for division positions. The recommending official evaluates and ranks the candidates on the certificate list, and recommends the top candidate for selection. This official also documents the recommendation on a worksheet.</p>
<b>Career Board Review and Recommendation</b>	<p>Following the recommending official's selection, HRD provides documentation for all pending positions to the USMS Career Board, which is comprised of GS-14 and GS-15 USMS law enforcement employees appointed by the USMS Director. The Career Board reviews applications and the recommending official's recommendations, deliberates, and makes a recommendation for all positions under consideration. The Career Board documents and provides its recommendation to the Director.</p>



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<b>Office of Professional Responsibility (OPR) Integrity Check</b>	Prior to the Career Board review, HRD sends a list of all candidates to the USMS OPR, which conducts an integrity check. If OPR determines any candidate is the subject of an open or recently concluded internal investigation or discipline case, it provides that information to the Chair of the Career Board. If a candidate with an integrity issue is likely to be recommended, the Career Board Chair submits the request to an agency proposing official who is a senior criminal investigator designated to propose penalties for USMS staff charged with conduct violations. This official reviews the case against various factors and makes a determination on the candidate's eligibility to be selected. If the agency proposing official determines the applicant to be ineligible, the Career Board may not advance that employee and will review the remaining applicants for recommendation.
<b>Director Selection</b>	The USMS Director makes the final selection for all merit promotion vacancies. The Director may decide to cancel the promotion opportunity instead of filling the vacancy.
<b>Selection Decision</b>	The USMS Director notifies the USMS and selected candidates by sending a selection memorandum via email across the agency on the selections.

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Source: GAO table based on USMS documentation. | GAO-18-8

<sup>a</sup>According to the USMS Merit Promotion Plan, if there are more than five candidates, at least the top five rated candidates will be referred for consideration. A break in score of generally one point is used to determine whether more than five eligible candidates will be referred. If there is a tie for the last position on the promotion certificate list, all candidates with that score will be referred. In addition, if there are multiple vacancies for the same type of position (same series, grade and title, location), one additional name for each additional vacancy may be added to the certificate.

<sup>b</sup>To apply for a lateral reassignment through the Merit Promotion Process, a candidate need not have taken the examination nor have submitted anything during an open season, but instead must submit certain documents to the merit promotion staff to confirm their eligibility for a lateral reassignment.

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## USMS Is Taking Steps to Improve Monitoring of Its Merit Promotion Process, but Lacks Documented Guidance to Ensure Consistent Compliance with Merit Promotion Policy

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### Although USMS Does Not Monitor Key Aspects of Its Merit Promotion Process, It Is Taking Steps to Improve

USMS does not monitor the implementation of the scoring component of its rating process or compliance with its temporary promotion policy, but is taking steps to improve these aspects. We found that raters may directly compete with candidates whose merit promotion packages they score. For example, for an open GS-13 position, a GS-12 employee may promote into the position or a GS-13 employee may be laterally reassigned to the position. Employees seeking a lateral reassignment to another district or division are not required to submit a merit promotion application package during the open season, but instead submit documentation to the merit promotion staff to confirm their eligibility for a lateral reassignment. Thus, a GS-13 employee who serves as a rater may directly compete as a lateral candidate with a GS-12 employee seeking a promotion to the same position. Some USMS employees in our discussion groups expressed the view that the rating process is biased due to this potential conflict of interest. Specifically, seven employees across multiple districts, including four who had served as raters, expressed the view that raters may have personal incentives to score strong candidates lower because they may compete with these candidates for the same positions.

The Office of Management and Budget's (OMB) Circular No. A-123, Management's Responsibility for Internal Control (A-123) explains that an agency should have processes in place to detect and mitigate potential employee conflicts of interest to demonstrate a commitment to integrity and ethical values. We found that USMS does not have a process in place to eliminate potential rater conflicts of interest. USMS stated that it would be difficult to detect situations where raters who might be seeking a lateral reassignment would be scoring a potential competitor, but acknowledged that to the extent this is occurring, it would be a conflict of interest.

USMS also does not monitor the implementation of the rating component of its process to ensure that raters complied with a key merit promotion process requirement. Specifically, USMS guidance states that raters are expected to decline to score a candidate’s application if there is a conflict of interest with the candidate, for example, a former employee or supervisor relationship or a close personal relationship. USMS officials explained that using two raters to score each merit promotion application is intended to mitigate personal bias. However, during our discussion groups, 4 employees who had served as raters said they had directly observed raters scoring applications for employees with whom there existed possible conflicts of interest. Additionally, 18 employees in our discussion groups told us they had heard from colleagues who served on rating panels that raters have used personal knowledge of candidates to influence their scoring. Another 16 employees expressed a related concern that raters can see the names of the applicants they are scoring. According to HRD officials, they relied on raters to decline to score applications of candidates for which they may have personal knowledge and only use the information in the package to determine candidate scores.

Although USMS does not monitor the implementation of key aspects of its rating process to mitigate potential rater conflicts of interest or bias, USMS has begun to implement changes that could address these deficiencies. In February 2017, during the course of our review, USMS announced a planned change to the process the agency uses to assess the experience component of candidate applications. Under the existing process, USMS raters collectively score the experience narrative component, which helps determine the overall merit promotion score. The planned change entails having a third-party contractor, rather than USMS employees, determine candidates’ competency scores using a scenario-based competency assessment. As part of the new process, USMS also updated the scoring rubric based on the new competency assessment, which includes the elimination of the experience category (see table 3).

**Table 3: U.S. Marshals Service Revised Scoring for GS-13 Merit Promotion Assessment**

Scoring Categories	Former 1811 GS-13 Scoring Rubric	Revised 1811 GS-13 Scoring Rubric
Job Knowledge Exam	30 percent	40 percent
Writing Skills Exam	8 percent	10 percent
Education	14 percent	10 percent
Training	10 percent	<i>Eliminated Category</i>
Awards	8 percent	<i>Eliminated Category</i>

Experience	30 percent	<i>Eliminated Category</i>
Competency Assessment	_____	40 percent

Source: GAO table based on USMS documentation. | GAO-18-8

USMS started to implement this change to the process during the summer 2017 promotion cycle for GS-13 promotions. USMS plans to evaluate the effectiveness of the new process during the fall of 2017 and determine whether the new process is ready to be implemented for GS-14 and GS-15 promotions during the next promotion cycle. If USMS effectively implements these planned changes, these actions could address the deficiencies we identified by reducing the potential for rater conflict of interest and bias because independent, third-party raters will assess candidate qualifications, rather than USMS employees evaluating their colleagues.

We reviewed USMS compliance with federal guidelines for noncompetitive temporary promotions and found, in a few instances, that USMS violated federal guidelines and its merit promotion policy by extending some noncompetitive temporary promotions beyond the regulatory limit of 120 days.<sup>16</sup> According to USMS officials, they typically use temporary promotions to fill open positions between merit promotion cycles. A temporary promotion may also be used to temporarily promote a GS-14 employee to the Chief Deputy position in the event a U.S. Marshal resigns and the Chief Deputy becomes the acting U.S. Marshal. According to title 5 of the Code of Federal Regulations and the USMS *Merit Promotion Plan*, individual employees may receive noncompetitive temporary promotions or details to a higher-graded position, or a position with known promotion potential, if the total time spent in any noncompetitive position is 120 days or less within a 12-month timeframe.<sup>17</sup> USMS may also fill open positions between cycles using another type of temporary promotion for up to one year; however, employees are required to compete for temporary promotions beyond 120 days through the merit promotion process. These requirements help USMS use a systematic process of selection according to merit. We analyzed all 844 noncompetitive temporary promotion selections (of 120 days or less) from October 2015 through February 2017 and found 9

<sup>16</sup>Whistleblowers who raised concerns about improper promotion practices to Congress had alleged that USMS allowed favored candidates to hold temporary promotion positions for extended periods of time until the candidates obtained sufficient experience to be promoted to the position permanently.

<sup>17</sup>5 C.F.R. § 335.103.

instances in which the USMS exceeded the regulatory limit of 120 days for individual employees. These 9 instances exceeded the statutory limit by approximately 30 days on average, while ranging from 5 days to 103 days.

USMS officials acknowledged that because they manually enter the noncompetitive temporary promotion end dates into the system that contains the temporary promotions data, they have made errors in reviewing these dates, such as incorrectly adding dates for candidates who have received multiple noncompetitive temporary promotions that exceeded a 12-month timeframe. According to HRD, this system has internal checks and controls to ensure an employee's temporary promotion does not go beyond the not-to-exceed date. For example, the system does not allow an employee who received a noncompetitive temporary promotion to a higher grade level to continue to be paid at the higher level beyond the date the temporary promotion is set to expire unless HRD processes an action to extend the promotion. Otherwise, to ensure the employee continues to be paid, HRD must process an action to revert the employee back to their original grade level. USMS officials explained that they must manually review instances in which employees receive multiple noncompetitive temporary promotions within a year, to ensure the total time spent serving in these positions does not exceed 120 days during any 12-month period.

Despite having identified relatively infrequent instances of non-compliance, we note that agencies are required to comply with federal regulations. As a result of our review, USMS took immediate steps to strengthen its internal controls to ensure its compliance with these temporary promotion regulations. Specifically, USMS reported to us that they developed a spreadsheet to help staffing specialists correctly calculate the number of days the employee is eligible for a temporary promotion. Moreover, USMS has developed training on how to use the new tool and on the federal regulations that guide temporary promotions, which it plans to provide to staffing specialists in October 2017. Finally, USMS plans to incorporate a regular review of temporary promotion actions into the HRD standard operating procedure.

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## USMS Lacks Documented Guidance on Rater Scoring

USMS provides verbal guidance to instruct raters on how to score the experience category of merit promotion packages, which may result in inconsistent application of the guidance. USMS Merit Promotion

Procedures generally state that raters assign a numerical grade to each experience category—such as problem-solving or leadership—by comparing how the experience described in the application relates to the established benchmarks. The benchmarks, which are provided to raters, contain descriptions of relevant experience that are designed to guide the raters as they assign scores to specific knowledge, skills and abilities, such as supervising staff and working with databases. At the beginning of the scoring process, each rating panel receives verbal guidance from merit promotion staff, which entails using actual candidate applications as examples and verbally discussing how to use professional judgment to apply the benchmarks.

Some employees in our discussion groups expressed the opinion that the guidance provided to raters to score candidate experience narratives is unclear, which results in inconsistent scoring. Specifically, during our discussion groups, 39 employees across multiple districts, including 7 employees who had served as a rater, stated that raters often had different interpretations of HRD's expectations for how to apply the benchmarks. For example, they stated that some raters determined scores based on whether a candidate's narrative contained the specific language in the benchmark. Other raters, by contrast, determined scores based on whether the candidate met the intent of the benchmark, regardless of whether the candidate included the specific language in the benchmark. As a result, employees in our discussion groups explained that highly qualified candidates with relevant management and supervisory experience may receive a low experience score if a rater determines that the candidate did not use the exact language appearing in the benchmarks.

Furthermore, 70 of 85 employees (82 percent) expressed the view that inconsistent scoring of similarly qualified candidates creates the perception that the rating process is unfairly subjective. Specifically, they asserted that comparable candidates with similar types of experience have received vastly different scores depending on which raters scored their applications. Two employees in different districts also said that they re-submitted the same experience narrative as the prior year, and received a significantly different score each year. Additionally, approximately 20 employees contended that raters may be influenced by their own professional experiences. For example, raters who have operational experiences that are different from candidates' experiences may not sufficiently understand the duties or professional experiences described by candidates. Consequently, they argued, these raters may be limited in their ability to fairly rate some candidates' experiences.

Although USMS is implementing a new competency assessment process for GS-13 merit promotions, it is not clear at this time whether the new process will address concerns about inconsistent rater scoring because the agency plans to use new benchmarks that were developed by a third-party contractor in collaboration with USMS subject matter experts to determine candidate scores. According to USMS officials, the new process will entail professionally trained assessors using evaluation guidelines to assess how well USMS promotion candidates respond to scenario-based questions. In collaboration with the contractor, USMS also developed evaluation guidelines that include plans for monitoring quality assurance over the rating process. For example, according to USMS officials, the third-party contractor will conduct random spot checks to assess the consistency with which raters apply the new benchmarks and will provide USMS a report on the results of the quality assurance monitoring. However, given that USMS implemented these changes near the end of our review, we did not assess the implementation of the new process or the related quality assurance monitoring. Furthermore, until USMS determines a timeframe for implementing the new competency assessment at the GS-14 and GS-15 levels, the current rating process will remain in effect.

*Standards for Internal Control in the Federal Government* call for agency management to determine the consistency with which controls are applied.<sup>18</sup> Furthermore, it states management should document policies in the appropriate level of detail to allow management to effectively monitor the control activity. While USMS provides raters with benchmarks and verbal guidance on how to apply the benchmarks when scoring applications, USMS has not documented guidance for raters. Six employees who had served as raters said the rating guidance provided was insufficient or the guidance could be improved. By developing clear and specific documented guidance on how raters should interpret and apply the benchmark guidelines, USMS could minimize rater subjectivity and scoring inconsistency for both the current rating process and the forthcoming competency-based assessment.

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<sup>18</sup>[GAO-14-704G](#).

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## USMS Has Taken Limited Steps to Understand or Address Employee Concerns about the Merit Promotion Process

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### USMS Employees Have Expressed Negative Views and Concerns about the USMS Merit Promotion Process

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According to an OPM report summarizing 2016 Federal Employee Viewpoint Survey (FEVS) data, about one-third of USMS employees who answered the survey indicated they agree that promotions are based on merit. Specifically, in response to the survey statement, *promotions in my work unit are based on merit*, an estimated 41 percent of USMS respondents strongly disagreed or disagreed with the statement, while 34 percent strongly agreed or agreed, and 25 percent neither agreed nor disagreed.<sup>19</sup> Based on our review of an agency report examining district and division-level USMS 2016 FEVS scores, district and division scores varied greatly among those employees who responded to the FEVS.<sup>20</sup> For example, across the 10 districts with the lowest reported ratings in 2016, we found that 63 percent to 78 percent of respondents disagreed that promotions are based on merit. By comparison, across the 10 districts with the highest reported satisfaction ratings in 2016, 7 percent to 16 percent of respondents disagreed that promotions are based on merit.

Most of the USMS employees at four district locations who met with us and answered our questions viewed the merit promotion process unfavorably, citing concerns primarily related to favoritism in the process. For example, 57 of 82 employees (70 percent) indicated that they had low or no trust that the merit promotion process is fair and based on merit.<sup>21</sup>

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<sup>19</sup>OPM's report does not include information on statistical uncertainty. Estimates for USMS from the 2015 report, which show an identical response pattern to the 2016 results, had a maximum margin of error of 2 percentage points or less at the 95% confidence level. The USMS response rate was 68 percent for the 2015 survey and 57 percent for the 2016 survey.

<sup>20</sup>The views of employees who responded to the FEVS may not be generalizable to the views of all employees in each district and division.

<sup>21</sup>Across the four locations we visited, our discussion groups included a total of 85 GS-14, GS-13, and GS-12 employees, which we collectively refer to as USMS employees. We collected questionnaire responses from all 85 participants. The number of employees who answered our questions varied because some employees did not answer each question.



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Employees in lower grade levels expressed a greater degree of mistrust than did those in higher grades (see table 4). Specifically, 45 of 53 GS-12 employees (85 percent) indicated that they had low or no trust in the merit promotion process, while just less than half of GS-13 employees (10 of 22) and relatively few GS-14 employees (2 of 7) said they had low or no trust in the merit promotion process. While most employees (51 of 70, or 73 percent) answered that sometimes qualified candidates get promoted; several explained during our discussion groups that they believe the promotion of less qualified—or unqualified—employees occurs frequently enough to affect morale. Further, 47 of 84 employees (56 percent) noted that morale has deteriorated as a result of merit promotion processes or selections. Finally, most of the employees (66 of 85, or 78 percent) answered that USMS has not taken any steps to understand or improve employee morale or they were unsure of whether any steps had been taken.

**Table 4: U.S. Marshals Service Employee Responses to Site Visit Questionnaire, by GS-level**

		GS-14	GS-13	GS-12
How much trust do you have that the merit promotion process is fair and based on merit?	total number of respondents	N=7	N=22	N=53
	High	1	2	0
	Moderate	4	10	8
	Low	1	8	22
	None	1	2	23
To what extent does the USMS merit selection process result in qualified candidates being promoted?	total number of respondents	N=6	N=17	N=47
	Always	0	0	0
	Most of the time	2	9	5
	Sometimes	4	8	39
	Never	0	0	3
Have merit promotion processes or selections impacted morale in your district over the past 2 years?	total number of respondents	N=7	N=23	N=54
	Yes – morale has improved	0	0	1
	Yes – morale has deteriorated	3	11	33
	No change – morale is good	2	3	0
	No change – morale is poor	0	0	13
	I'm unsure	2	8	6
	No change to morale	0	1	1
To your knowledge, has USMS HQ taken any steps to understand or improve employee morale?	total number of respondents	N=7	N=24	N=54
	Yes, steps were taken that improved morale	1	4	2
	Yes, steps were taken, but did not result in improvement	0	4	8
	No steps were taken	1	6	18
	Unsure	5	10	26

Source: GAO analysis based on GAO questionnaires. | GAO-18-8

Note: N = total number of respondents. N varies by question because some respondents did not answer each question.

In addition, USMS employees we talked with during our discussion groups expressed concerns about the USMS merit promotion process. The prevalent themes that emerged during these groups were concerns that (1) promotions are based on favoritism, (2) the promotion process lacks transparency, and (3) promotion guidance is unclear and promotion candidates do not receive feedback.

Concerns that Promotions are Based on Favoritism

Employees in our discussion groups expressed the view that many promotion decisions are based on personal relationships over individual

merit. Notably, 51 of 85 employees in our discussion groups cited examples of qualified candidates who were passed over for promotion by those whom they believed were less-qualified due to favoritism. From their perspective, there have been instances where candidates with high promotion package scores and good reputations as supervisors have not been promoted, while lower scoring candidates with poor reputations as supervisors who have personal relationships with decision-makers have been promoted. Further, 36 employees in our discussion groups said they believed that career-enhancing opportunities, such as temporary promotions, which improve employees' promotion potential by providing them with directly related experience in positions for which they may be competing, are often provided unfairly to employees based on personal relationships.

Employees in our discussion groups also expressed the view that some employees receive more guidance on their application from supervisors than do others, which they attributed to favoritism. As part of the merit promotion process, supervisors are required to verify the experience statements submitted by candidates. We found that among the limited number of supervisors with whom we met, there were varying interpretations of their responsibility in meeting this requirement. Specifically, 1 supervisor viewed his role as strictly verifying the experience and providing no further input. However, 7 other supervisors viewed their role as providing guidance and mentorship to employees by offering advice for improving candidate applications. Finally, 5 additional supervisors said they provided additional guidance to employees only when specifically requested. Of the 85 employees in our discussion groups, 28 indicated that they believed supervisors helped certain candidates develop their merit promotion packages, which provides an unfair advantage over candidates who do not receive such guidance.

Additionally, nine employees raised concerns that USMS has sometimes expanded certificate of eligibles lists inconsistent with USMS policy to include preselected, favored candidates. According to the USMS *Merit Promotion Plan*, if there are more than five candidates applying for a position, at least the top five scoring candidates will generally be included on the list and subsequently referred for candidate selection. In some circumstances, more than five eligible candidates are allowed to be placed on the list. For example, if there is a tie for the last position on the list, all candidates with that score will be included. Additionally, candidates with a score within one point from the fifth highest scoring candidate would also be included on the list. Finally, if there are multiple

vacancies for the same position (same series, grade, title, and location), one additional name for each vacancy may be added to the list.

To examine USMS compliance with this policy, we analyzed certificate of eligibles lists and the corresponding candidate scores for fiscal years 2015 and 2016. For fiscal year 2015, we examined all 213 position vacancies and found 2 instances where additional candidates were included on the list inconsistent with USMS' established policy. Specifically, these 2 lists contained the names of candidates with scores that were more than one point below the fifth highest-scoring candidate, and of these 2 instances, 1 candidate was promoted. For fiscal year 2016, we examined all 224 position vacancies and did not find any inconsistencies with USMS' established policy.

Whistleblowers who raised concerns about improper promotion practices to Congress had alleged that USMS managers used selective placement factors to limit competition for certain positions or to tailor vacancy announcements for preselected, favored candidates. Similarly, five employees in our discussion groups expressed the view that USMS used selective placement factors to limit competition or pre-select certain candidates. In this regard, we reviewed USMS compliance with OPM requirements for the use of selective placement factors. Specifically, OPM requires that agencies document the justification for using selective placement factors through a job analysis process.<sup>22</sup>

We reviewed all job vacancy announcements for fiscal year 2015, fiscal year 2016, and part of fiscal year 2017 (October 2016 through April 2017) to determine if a job analysis had been performed when selective placement factors were included in the announcement. In fiscal year 2015, there were 213 vacancy announcement positions, and 12 contained selective placement factors. We found USMS had not completed a job analysis justification for any one of these 12 announcements. In fiscal year 2016, there were 224 vacancy announcements, and 15 contained selective placement factors. USMS completed a job analysis justification for all 15. For part of fiscal year 2017, there were 171 vacancy announcements, and 23 contained selective placement factors, each of which had a justification. HRD

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<sup>22</sup>According to OPM guidance, a job analysis is a systematic procedure for gathering, documenting, and analyzing information about the content, context, and requirements of the job, and demonstrates a clear relationship between the tasks performed on the job and the competencies required to perform the tasks.

officials acknowledged that in the past they did not consistently document the agency's use of selective placement factors by conducting job analysis justifications, as required by OPM, but have consistently complied with this requirement since April 2016.

### Concerns that the Promotion Process Lacks Transparency

Employees in our discussion groups also expressed the view that poor communication and limited transparency about the merit promotion process and certain management decisions further contribute to employees' negative perceptions of the merit promotion process. For example, among the 85 employees in our discussion groups:

- Sixty-three employees expressed the view that the merit promotion process lacks transparency because HRD does not effectively communicate with employees about procedural steps or process changes, contributing to a lack of understanding about the process.
- Forty-eight employees expressed the view that they have a limited understanding of the rating and ranking process or that there is no mechanism to dispute or appeal their score if they do not believe they were fairly rated.
- Nineteen employees stated that HRD does not provide information about policy or process changes until the changes have been implemented and that they initially learn about forthcoming process changes through other employees and hearsay, causing confusion and frustration.
- Twenty-five employees expressed the perspective that USMS management cancels vacancy announcements when preselected or favored candidates do not appear on the certificate of eligibles list.

According to USMS officials, the agency cancels an announcement when the announcement posting was made in error (i.e., the position was not actually available) or when they need to reassign an employee to a different location. We found vacancy cancellations were infrequent—9 of 437 announcements—during fiscal years 2015 and 2016; however, we noted that USMS canceled 5 of the 9 announcements after final certificate of eligibles were issued, which may have contributed to employees' concerns.

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Concerns that Promotion Process is Unclear and Promotion Candidates Lack Feedback

Another prevalent theme that emerged during our discussion groups was that the merit promotion process is unclear, and that employees do not receive feedback when they do not get promoted. Notably, among the 85 employees in our discussion groups:

- Forty-six employees described the merit promotion process as unclear.
- Fifty-nine employees stated that the merit promotion application package does not reflect their qualifications to perform specific jobs or their readiness to be promoted.
- Thirty-seven employees told us they are not notified of key steps in the merit promotion process, such as whether they make the certificate of eligibles list.
- Thirty-eight employees stated that because they are not provided feedback when they are not selected for a promotion, they do not have a clear understanding of how the USMS promotion process assesses the extent to which candidates are ready for promotion.

While there is no formal mechanism for providing specific feedback, HRD officials explained, they may provide general feedback about the process to candidates who proactively request feedback. However, as part of the promotion process, HRD officials do not provide employees with specific feedback at that time about their performance or readiness for promotion. HRD officials also noted that as part of the new competency-based assessment process, candidates will receive detailed instructions and guidance on how candidates will be assessed for each competency. HRD officials acknowledged that informing candidates about key merit promotion steps, such as making the certificate of eligibles, would help improve transparency and employee morale. They further explained that while they do not directly inform candidates about making the certificate of eligibles, in 2016 during the course of our review, they began posting the cutoff scores for each job so candidates are now able to determine whether they made the certificate of eligibles by comparing their final score to the cutoff score for each position.

Federal guidance notes that perceptions of favoritism, particularly when combined with unclear guidance, a lack of transparency, and limited feedback, negatively impact employee morale. According to MSPB, perceptions of favoritism are damaging to employee morale regardless of

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their basis in fact, because employees' perceptions are their reality. Moreover, MSPB noted that providing honest feedback from selecting officials can help employees improve their readiness for future opportunities, and provide transparency to decrease perceptions of favoritism. The report further noted that to achieve the goals of fair and effective management of the federal workforce, organizations must establish clear expectations for supervisors, and supervisors must be aware of employees' perceptions and exercise sound judgment when making a variety of decisions such as promotion selections, work assignments, training, performance management, and providing workplace flexibilities.

In addition, *Standards for Internal Control in the Federal Government* state that management should communicate quality information down and across reporting lines to enable personnel to perform key roles in achieving objectives, addressing risks, and supporting the internal control system.<sup>23</sup> Providing specific and consistent information to employees about key steps in the merit promotion process and internal management decisions, and constructive feedback to employees on the results of the promotion process, including employee readiness for promotion, would improve transparency and help mitigate employee perceptions of favoritism that have negatively impacted employee morale.

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<sup>23</sup>[GAO-14-704G](#).

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## USMS Has Taken Limited Steps to Understand and Address Employee Concerns about the Merit Promotion Process

USMS has taken limited steps to understand and address employee concerns about its merit promotion process. Specifically, after analyzing the results of the 2016 FEVS responses, USMS headquarters staff acknowledged employees' negative perceptions of the merit promotion process as an internal agency challenge. In an update provided to DOJ on plans for addressing employee engagement challenges identified in the FEVS, USMS reported that the primary employee engagement challenges are the geographical dispersal and management structure of district offices (since USMS districts are led by political appointees, who have different management styles). To address this challenge, USMS disseminated an agency-wide memorandum emphasizing to all employees that each employee and manager has an individual responsibility to take action to improve engagement at the local level. Also, USMS encouraged local managers to evaluate their FEVS results and formulate an action plan that fits their individual district or division.

USMS does not track the extent to which district and divisions complete action plans and does not require district or division offices to submit their action plans to HRD. We found that none of the four districts we visited had developed a written action plan in response to the 2016 FEVS results. At three of these districts, the Chief Deputy U.S. Marshals indicated to us that no steps were being taken to develop an action plan because they did not consider it a required or necessary step. However, the Chief Deputy U.S. Marshal in one district explained that while he did not document an action plan, he took steps to better understand employee engagement challenges identified in the FEVS for his district. Specifically, he facilitated small discussion groups to better understand low employee agreement with two FEVS survey statements, including *promotions in my work unit are based on merit*. During these discussions, he said that he aimed to clarify areas where employees' negative perspectives were based on a lack of understanding about the merit promotion process.

While USMS has taken some positive steps, having a better understanding of the basis for these concerns, and how to address them, will likely require that USMS take additional steps. Most of the employees we interviewed said they were unaware of whether USMS has taken any steps to understand or improve employee morale related to merit



promotions, and some feared raising concerns to management. Specifically, 25 of 85 (29 percent) employees in our discussion groups said no steps were taken to understand or improve employee morale, while an additional 41 employees (48 percent) were unsure that any steps were taken. Further, 24 of 85 employees in our discussion groups expressed fears of raising concerns to USMS district or headquarters management, citing allegations of district management intimidating or retaliating against employees who raise issues, such as not selecting those employees for career-enhancing opportunities or promotions. To the extent that employees fear they will not get promoted if they raise concerns to management and management does not have sufficient information to understand the nature and causes of employee concerns about the merit promotion process, taking meaningful and effective steps to address the concerns will be difficult.

OMB and OPM intend for agency managers to use the findings in the FEVS to develop policies and action plans for improving agency performance, including the enhancement of employee engagement and satisfaction.<sup>24</sup> According to OPM, action plans should be developed at multiple levels; agency-wide, by subcomponent, and several levels down in the agency. Also, many agencies have found it beneficial to conduct focus groups after reviewing survey results to better understand the underlying causes of employee engagement scores and get employee suggestions for how to improve. OPM's action planning guidance also suggests that agencies specify

- time frames for accomplishing the actions,
- who will be responsible for implementing the actions,
- who will be affected by the actions,
- the resources required, and
- a plan to communicate these actions to managers and employees.

Although HRD disseminated a memorandum requesting district and division managers to develop action plans, it has not developed an agency-wide action plan, nor has it taken steps to ensure that all districts and divisions develop action plans. By delegating responsibility for

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<sup>24</sup>A December 2014 joint memorandum issued by the White House, OPM, and OMB established a goal for federal agencies to improve employee engagement scores by using feedback from employees to inform actions by each leader, manager, and supervisor, and empower supervisors at unit levels to foster a culture of employee engagement locally.

developing action plans to individual districts and divisions, HRD does not have consistent or adequate information to understand the nature and causes of employee concerns across districts and divisions. Without this information, USMS is unable to address employee concerns about its merit promotion process and remains vulnerable to adverse effects, such as decreased employee satisfaction and engagement, and decreased agency performance.

USMS management stated that they take employee concerns and feedback into consideration as appropriate, but are primarily concerned with ensuring the process is implemented in accordance with legal requirements. They further stated that they generally believe the USMS merit promotion process to be fair, and attributed some employee concerns with the merit promotion process to a lack of available positions relative to the number of employees who are ready for promotion. Nevertheless, we believe an agency-wide action plan would help USMS more fully understand and address areas where employees express negative perceptions of the merit promotion process.

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## Conclusions

Selecting candidates based on their qualifications instead of patronage has been the foundation of the federal hiring system for more than 130 years. Federal guidelines give agencies significant discretion to design and implement their merit promotion processes to best meet their needs. Since 2016, USMS has been implementing changes to its merit promotion process in response to multiple internal and external investigations, which substantiated allegations made by whistleblowers. While the new competency assessment process has the potential to reduce the risk of rater conflicts of interest and bias, USMS could still do more to further improve its process. Developing specific guidance to help raters more consistently score candidate applications would minimize scoring subjectivity. Continuing to take steps to improve this process would better position USMS to improve employee engagement. In light of the significant distrust in the merit promotion practices we heard from employees, USMS management can also take further action to better understand and appropriately address employee concerns, such as providing employees specific feedback on the results of the promotion process, including their readiness for promotion and developing an agency-wide action plan to more fully understand and address areas where employees express negative perceptions of the merit promotion process. More actively engaging employees could also bolster ongoing

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USMS efforts to improve the promotion process and enhance agency performance.

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## Recommendations for Executive Action

We recommend that the Director of the USMS take the following actions:

- Develop specific documented guidance—both for the current and new processes—to enhance raters’ ability to consistently interpret and apply experience-based benchmarks for GS-14 and GS-15 positions and competency-based benchmarks for GS-13 positions when evaluating candidate qualifications. (Recommendation 1)
- Develop and implement a mechanism to provide specific feedback to employees on the results of the promotion process, including their readiness for promotion. (Recommendation 2)
- Develop and implement an agency-wide action plan to more fully understand and address areas where employees express negative perceptions of the merit promotion process. Consistent with OPM guidance in this area, the plan should specify
  - time frames for accomplishing the actions,
  - who will be responsible for implementing the actions,
  - who will be affected by the actions,
  - the resources required, and
  - a plan to communicate these actions to managers and employees. (Recommendation 3)

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## Agency Comments

We provided a draft of this report to DOJ and USMS for review and comment. Liaisons from DOJ and USMS responded in an email that DOJ had no formal comments on the report. In addition, the USMS liaison concurred with the recommendations and provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to DOJ, the Director of the USMS, appropriate congressional committees and members, and other interested parties. In addition, this report is available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff have any questions, please contact Diana Maurer at (202) 512-8777 or [maurerd@gao.gov](mailto:maurerd@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff that made significant contributions to this report are listed in appendix I.



Diana Maurer  
Director, Homeland Security and Justice Issues

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# Appendix I: GAO Contact and Staff Acknowledgments

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## GAO Contact

Diana Maurer, (202) 512-8777 or [maurerd@gao.gov](mailto:maurerd@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Brett Fallavollita (Assistant Director), Carissa Bryant (Analyst-in-Charge), Jessica Du, and Kelsey Hawley made key contributions to this report, along with David Alexander, Willie Commons III, Dominick Dale, and Eric Hauswirth.

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# Appendix II: Accessible Data

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## Data Tables

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### Accessible Data for Figure 1: U.S. Marshals Service Merit Promotion Process

1. Promotion prerequisites
  - a. Complete 1 year in prior GS-level Take Merit Promotion Exam (offered every 2 years)
  - b. Submit experience-based application annually during open season which is rated by USMS subject matter experts<sup>a</sup>
2. Apply to positions
  - a. Candidates who have completed the prerequisites may apply to specific position vacancies when they are announced
3. Certificates
  - a. Numerical List of Candidates generated based on candidates' merit promotion score (combined exam score and open season package score)
  - b. Certificate of Eligibles comprised of candidates with the highest scores is generated and sent to recommending officials
4. Candidate selection process
  - a. US Marshal/Assistant Director review and Recommendation
  - b. Career Board review and recommendation
    - i. Director selection

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ii. Office of Professional Responsibility integrity check  
Review for candidate discipline or misconduct  
cases, if applicable

5. Selection decision Selected candidate receives promotion or  
reassignment

Source: GAO analysis of U.S. Marshals Service information. GAO-18-8



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