

The U.S. & Foreign Commercial Service 2018 Officer Promotion Process Did Not Comply With Applicable Criteria

FINAL REPORT NO. OIG-21-021-I

JANUARY 28, 2021



U.S. Department of Commerce
Office of Inspector General
Office of Audit and Evaluation



January 28, 2021

MEMORANDUM FOR: Diane Farrell
Acting Deputy Under Secretary of Commerce for
International Trade
International Trade Administration

A handwritten signature in black ink, appearing to be "RB", is written over a horizontal line.

FROM: Richard Bachman
Assistant Inspector General for Audit and Evaluation

SUBJECT: *The U.S. & Foreign Commercial Service 2018 Officer Promotion Process
Did Not Comply With Applicable Criteria*
Final Report No. OIG-21-021-I

Attached is our final report on our evaluation of the International Trade Administration's (ITA's) U.S. & Foreign Commercial Service's (US&FCS's) officer promotion process. The objective of our evaluation was to determine whether US&FCS adhered to applicable laws, regulations, and policies when conducting the 2018 officer promotion process.

We found ITA's 2018 US&FCS officer promotion process did not adhere to certain applicable laws, regulations, and policies. Specifically, we found the following:

- I. ITA did not determine the number of available promotion opportunities before selection boards convened.
- II. Board rankings and other sensitive information were improperly stored on an unsecured shared network drive.
- III. US&FCS incorrectly determined promotion eligibility.
- IV. Discrepancies were identified in the rankings of one selection board.

We also note a separate matter for your attention with respect to conflicts of interest within an "Other Matter" section of this report.

In its August 27, 2020, response to our draft report, ITA did not explicitly state whether it agreed or disagreed with each recommendation. Accordingly, we asked ITA to clarify its position on each recommendation in writing in accordance with Department Administrative Order (DAO) 213-2.¹ On November 6, 2020, we received a response from ITA. ITA's revised response is included within the final report as appendix B.

¹ Effective October 21, 2020, DAO 213-2 was revoked. The policies and procedures from DAO 213-2 are now found within DAO 213-3. DAO 213-3 states Department officials must submit written comments responding to

Pursuant to DAO 213-5, please submit to us an action plan that addresses the recommendations in this report within 60 calendar days. This final report will be posted on OIG's website pursuant to sections 4 and 8M of the Inspector General Act of 1978, as amended (5 U.S.C. App., §§ 4 & 8M).

We appreciate the cooperation and courtesies extended to us by your staff during our evaluation. If you have any questions or concerns about this report, please contact me at (202) 482-2877 or Patricia McBarnette, Audit Director, at (202) 482-3391.

Attachment

cc: Dale Tasharski, Acting Assistant Secretary for Global Markets and Director General of the
U.S. and Foreign Commercial Service, ITA
Jennifer Eveland, Audit Liaison, ITA
Stan Kowalski, Alternate Audit Liaison, ITA
MaryAnn Mausser, Audit Liaison, Office of the Secretary

the issues and recommendations raised in the draft report. It further states officials should specifically: (1) state concurrence or reasons for non-concurrence with, and make other pertinent comments about, the finding(s); and (2) briefly indicate the action(s) taken or proposed to be taken regarding the recommendation(s).



Report in Brief

January 28, 2021

Background

The U.S. Department of Commerce International Trade Administration's (ITA's) mission is to create prosperity by strengthening the international competitiveness of U.S. industry, promoting trade and investment, and ensuring fair trade and compliance with trade laws and agreements. In 2018, in addition to creating and safeguarding jobs, ITA assisted more than 33,000 exporters and increased revenue of clients by an average of \$2 million. Global Markets—a business unit of ITA—assists and advocates for U.S. businesses in the international markets to foster U.S. economic prosperity.

The United States & Foreign Commercial Service (US&FCS) is a primary component of Global Markets. US&FCS's 229 foreign service officers are typically assigned to international posts to promote the export of U.S. goods and services, increase high-impact foreign direct investment into the U.S., and strengthen fair competition in international trade for U.S. firms and workers—all while facing demanding careers which require one to carry "the privileges and responsibilities associated with that representation at all times," frequent relocation, and cultural sensitivity, among other challenges.

Why We Did This Review

The objective of our evaluation was to determine whether US&FCS adhered to applicable laws, regulations, and policies when conducting the 2018 officer promotion process.

INTERNATIONAL TRADE ADMINISTRATION

The U.S. & Foreign Commercial Service 2018 Officer Promotion Process Did Not Comply With Applicable Criteria

OIG-21-021-I

WHAT WE FOUND

We found ITA's 2018 US&FCS officer promotion process did not adhere to certain applicable laws, regulations, and policies. Specifically, we found the following:

1. ITA did not determine the number of available promotion opportunities before selection boards convened.
2. Board rankings and other sensitive information were improperly stored on an unsecured shared network drive.
3. US&FCS incorrectly determined promotion eligibility.
4. Discrepancies were identified in the rankings of one selection board.

Consequently, important aspects of ITA's 2018 US&FCS officer promotion process were significantly flawed and may have resulted in inappropriate recommendations to promote certain foreign service officers, while failing to recommend other deserving officers for promotion.

WHAT WE RECOMMEND

We recommend that the Under Secretary for International Trade do the following:

1. Review the 2018 US&FCS officer promotion process and determine whether any selection boards should reconvene, in order to ensure the process was conducted fairly, with integrity and transparency.
2. Ensure US&FCS establishes the number of promotion opportunities by officer class and provide those numbers via sealed communication to the American Foreign Service Association before selection boards convene.
3. Require US&FCS to prepare and maintain complete documentation to support the number of promotion opportunities for each foreign service officer class before selection boards convene.
4. Establish controls to comply with federal requirements for properly protecting sensitive promotion information and other sensitive federal records stored on shared network drives.

We recommend that the Assistant Secretary for Global Markets and Director General of US&FCS do the following:

5. Define the appropriate bureau personnel records that should be used to determine and verify promotion eligibility based on the *Foreign Service Personnel Management Manual's* requisites and require applicable Office of Foreign Service and Human Capital officials to preserve adequate and proper records to support both the subject officer's and future determinations of their respective promotion eligibility.
6. Ensure that the Office of Foreign Service and Human Capital requires future selection boards to adequately and properly document selection board rankings.

Contents

| | |
|--|-----------|
| Introduction..... | 1 |
| Objective, Findings, and Recommendations | 4 |
| I. ITA Did Not Determine the Number of Available Promotion Opportunities Before Selection Boards Convened..... | 5 |
| II. Board Rankings and Other Sensitive Information Were Improperly Stored on an Unsecured Shared Network Drive | 7 |
| III. US&FCS Incorrectly Determined Promotion Eligibility..... | 7 |
| IV. Discrepancies Were Identified in the Rankings of One Selection Board..... | 8 |
| Recommendations | 9 |
| Other Matter..... | 11 |
| US&FCS Employees with Conflicts of Interest Participated in the Promotion Process..... | 11 |
| Summary of Agency Response and OIG Comments | 12 |
| Appendix A: Objective, Scope, and Methodology | 16 |
| Appendix B: Agency Response | 19 |

Cover: Herbert C. Hoover Building main entrance at 14th Street Northwest in Washington, DC. Completed in 1932, the building is named after the former Secretary of Commerce and 31st President of the United States.

Introduction

The U.S. Department of Commerce International Trade Administration's (ITA's) mission is to create prosperity by strengthening the international competitiveness of U.S. industry, promoting trade and investment, and ensuring fair trade and compliance with trade laws and agreements. In 2018, in addition to creating and safeguarding jobs, ITA assisted more than 33,000 exporters and increased revenue of clients by an average of \$2 million.¹ Global Markets—a business unit of ITA—assists and advocates for U.S. businesses in the international markets to foster U.S. economic prosperity. The United States & Foreign Commercial Service (US&FCS) is a primary component of Global Markets. US&FCS's 229² foreign service officers are typically assigned to international posts to promote the export of U.S. goods and services, increase high-impact foreign direct investment into the U.S., and strengthen fair competition in international trade for U.S. firms and workers—all while facing demanding careers which require one to carry “the privileges and responsibilities associated with that representation at all times,”³ frequent relocation, and cultural sensitivity, among other challenges.

An additional challenge US&FCS officers face is the pressure to constantly demonstrate superior performance. Specifically, officer “promotions are merit based and do not take into account length of service”⁴ and time in class limits⁵—established by the Foreign Service Act of 1980⁶—require career officers to either be promoted within a specified number of years or risk separation from US&FCS. In summary, US&FCS officer performance is integral to an officer's continued tenure with US&FCS. Consequently, the US&FCS officer promotion process's adherence to applicable laws, regulations, and policies takes on increased importance to both US&FCS officers and ITA.

Annually, Global Markets' Office of Foreign Service and Human Capital (OFSHC) establishes and administers a selection board to evaluate the performance of each class⁷ of US&FCS officers for advancement. The *Foreign Service Personnel Management Manual* (the *Manual*)⁸ and a memorandum of understanding between US&FCS and the American Foreign Service

¹ U.S. Department of Commerce, March 2019. *FY 2020 Annual Performance Plan and FY 2018 Annual Performance Report*. Washington, DC: DOC, 53–54.

² Number of US&FCS officers as of January 9, 2020.

³ International Trade Administration Global Markets. *U.S. & Foreign Commercial Service Information Package*. Washington, DC: ITA GM, 4. See https://legacy.trade.gov/cs/CS_Assessment.pdf (accessed on May 6, 2020).

⁴ ITA GM. *U.S. & Foreign Commercial Service Information Package*, 18.

⁵ *Time in class limits* vary and are identified in the *Foreign Service Personnel Management Manual*, subchapter 700-1. See <https://www.afsa.org/sites/default/files/tic-policy-amendments.pdf> (accessed May 4, 2020).

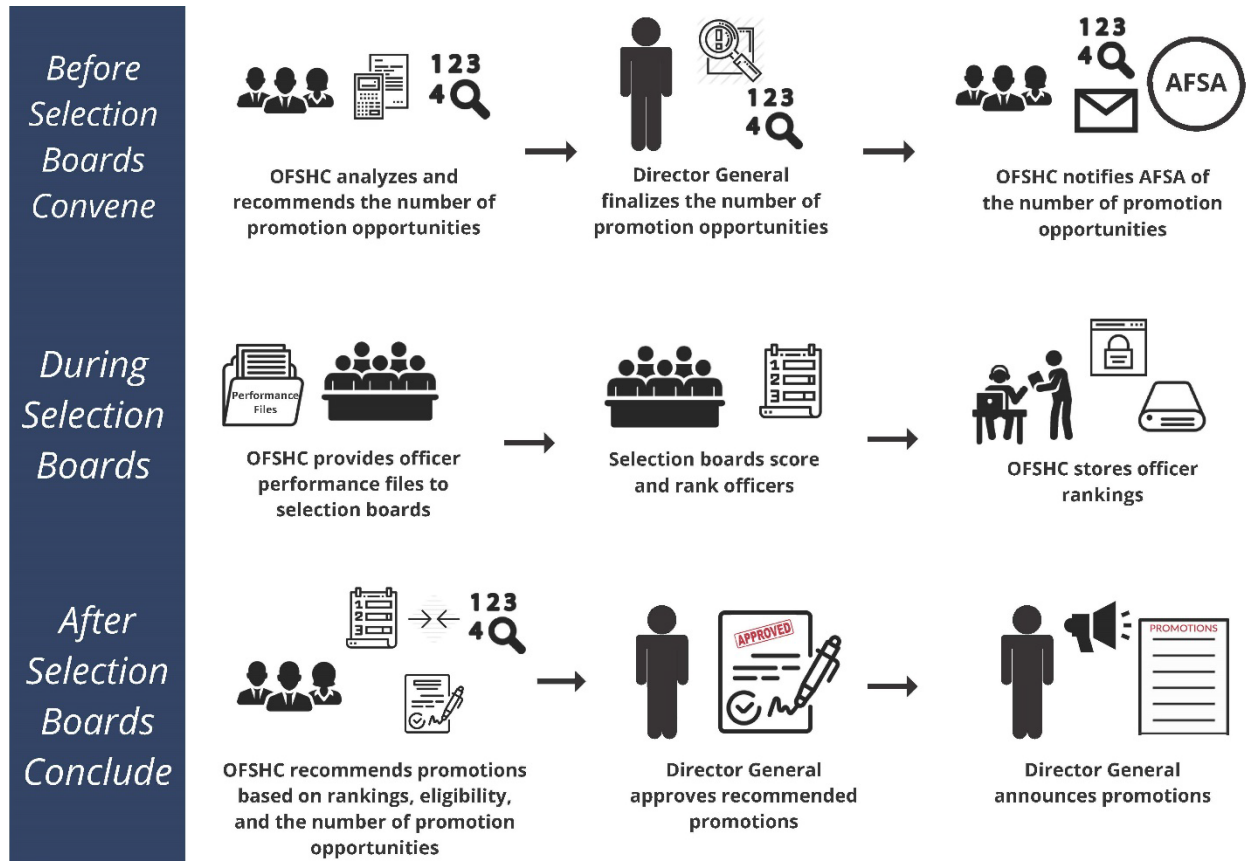
⁶ 22 U.S.C. § 4007.

⁷ Officer class corresponds to the foreign service (FS) officer grade. From lowest to highest, the officer classes are FS-04, FS-03, FS-02, FS-01, counselor, minister counselor, and career minister. Officers in the counselor, minister counselor, and career minister classes make up the senior foreign service.

⁸ The *Manual*, subchapter 500-3, “Precepts for the Foreign Service Selection Boards for the U.S. Department of Commerce Foreign Service,” dated July 13, 2016.

Association (AFSA) (hereafter referred to as the *US&FCS/AFSA MOU*)⁹ details policy, procedures, and regulations that govern the selection board process. Key steps of the US&FCS officer promotion process are illustrated in figure 1 as well as described in the paragraphs that follow.

Figure 1. Key Steps of the US&FCS Officer Promotion Process



Source: OIG review of the US&FCS officer promotion process

Before selection boards convene (see row 1 of figure 1)

OFSHC annually performs an analysis to identify and recommend the number of available promotions within each foreign service officer class to the Assistant Secretary for Global Markets and Director General of the US&FCS (director general). The analysis includes consideration of the maximum number of positions, current staffing levels, and attrition, among other factors. Recommendations resulting from the analysis are provided to the director general for further evaluation. After evaluating OFSHC's recommendations, the director general determines and formally approves the final number of available promotions by officer class. OFSHC then notifies AFSA of the number of promotions established by the director

⁹ Director General of US&FCS and Vice President of AFSA memorandum of understanding, June 1, 2005. *Memorandum of Understanding Between the U.S. Department of Commerce, United States & Foreign Commercial Service [US&FCS] and the American Foreign Service Association [AFSA]*. AFSA is a nonfederal professional association and is also the exclusive representative for federal foreign service officers.

general.¹⁰ Providing the number of promotions to AFSA before the selection boards convene ensures that the final number of promotions does not change and is not affected by selection board ranking decisions, thereby, creating a mechanism for oversight and transparency. The number of promotion opportunities are protected and not shared with selection board members.

During selection boards (see row 2 of figure 1)

Selection boards consist of five members and are made up of (1) non-foreign service employees from the Department of Commerce (not including OFSHC personnel), (2) US&FCS officers, (3) other foreign affairs agency officers, and (4) public members. The boards convene to score and rank officers based on officer performance files provided by OFSHC. At the conclusion of the selection board evaluations, each selection board submits a memorandum to the director general, which includes the rank order list¹¹ and may also include a cut-off point¹² in the rank order list of the foreign service officers that are recommended for promotion within the class. The placement of the cut-off point is significant because it establishes the maximum number of recommended candidates for promotion.¹³ OFSHC then stores the selection boards' rankings on a secured drive.

After selection boards conclude (see row 3 of figure 1)

OFSHC recommends officers for promotion to the director general based on (1) each selection board's rankings above the cut-off point, (2) determinations of promotion eligibility made by OFSHC, and (3) number of promotion opportunities established by the director general before selection boards convened. The director general approves promotions based on OFSHC recommendations. Finally, the director general announces the promotions internally to US&FCS.

¹⁰ The *US&FCS/AFSA MOU* requires US&FCS to provide AFSA "with a sealed envelope containing a copy of the approved document establishing these numbers."

¹¹ Officers are ranked based on the selection board's total scores with higher scoring officers receiving increased opportunities for promotions, bonuses, and awards.

¹² The *Manual*, subchapter 500-3, section 3.04.a.

¹³ Only officers ranked above the cut-off point may be recommended for promotion even if the number of promotion opportunities is greater than the number of officers ranked above the cut-off point. For example, if there are five promotion opportunities available but only two officers ranked above the cut-off point, the maximum number of promotions is two—the remaining three promotion opportunities will not be filled.

Objective, Findings, and Recommendations

This report provides the results of our evaluation of ITA's 2018 US&FCS officer promotion process. The objective of our evaluation was to determine whether US&FCS adhered to applicable laws, regulations, and policies when conducting the 2018 officer promotion process. Appendix A provides additional details regarding the objective, scope, and methodology of our evaluation.

We found ITA's 2018 US&FCS officer promotion process did not adhere to certain applicable laws, regulations, and policies. Specifically, we found the following:

- I. ITA did not determine the number of available promotion opportunities before selection boards convened.
- II. Board rankings and other sensitive information were improperly stored on an unsecured shared network drive.
- III. US&FCS incorrectly determined promotion eligibility.
- IV. Discrepancies were identified in the rankings of one selection board.

Consequently, important aspects of ITA's 2018 US&FCS officer promotion process were significantly flawed and may have resulted in inappropriate recommendations to promote certain foreign service officers, while failing to recommend other deserving officers for promotion.

On November 7, 2019, we issued a management alert memorandum notifying ITA about three of the findings that are identified in this report (i.e., findings II, III, and IV).¹⁴ Following the issuance of our management alert, we contacted US&FCS personnel for updates on actions it had taken to address these previously identified issues, and we have included relevant updates in this evaluation report.

Additionally, in May 2020, ITA management informed our office that it engaged an outside entity to (1) review documentation of the decisions made by the selection board discussed in finding IV of this report and (2) following issuance of its report on the selection board, review US&FCS' procedures for evaluating officer promotions to determine compliance with applicable criteria. On August 17, 2020, we received a copy of the report on the outside entity's first review and found that its scope was limited to the issues described in findings III and IV of our report. See the Summary of Agency Response and OIG Comments section of this report for our comments on aspects of the outside entity's review noted in ITA's response to our draft report.

¹⁴ DOC Office of Inspector General, November 7, 2019. *Management Alert: U.S. & Foreign Commercial Service Needs to Address Urgent Issues in the Officer Promotion Process*, OIG-20-005-M. Washington, DC: DOC OIG.

I. ITA Did Not Determine the Number of Available Promotion Opportunities Before Selection Boards Convened

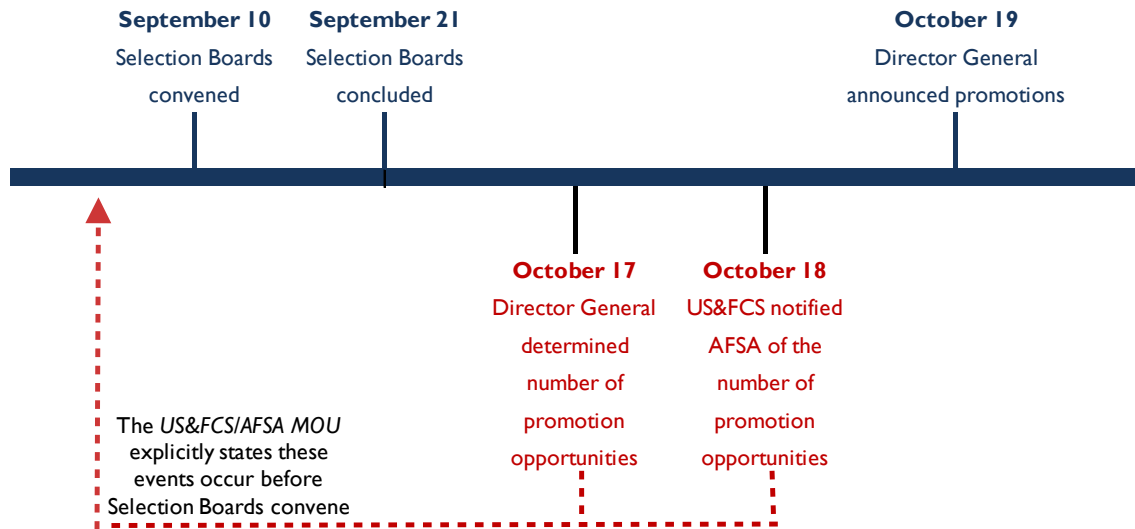
The *US&FCS/AFSA MOU* dated June 1, 2005, states prior to convening the selection boards, the director general or his/her designee will determine the number of promotion opportunities by officer class. It further states that the human resources manager or designee will provide AFSA with a sealed envelope containing a copy of the approved document establishing these numbers. These two key actions must be completed *before* the selection boards convene.¹⁵ However, we found that US&FCS did not adhere to the stipulations in the *US&FCS/AFSA MOU* before convening the five selection boards. Specifically, the director general or designee did not determine the number of available promotion opportunities by officer class and then have the US&FCS human resource manager provide the results in a sealed envelope to AFSA. The determination of the number of promotion opportunities is closely safeguarded and intentionally not shared with, and is independent of, selection board members, who are required to rank US&FCS officers based on criteria outlined in the *Manual*.¹⁶ This separation is designed to enhance the integrity and fairness of the promotion process.

US&FCS convened its selection boards on September 10, 2018, and concluded them by September 21, 2018.¹⁷ However, not until nearly a month later on October 17, 2018, did US&FCS determine its number of available promotion opportunities by officer class. US&FCS then shared the number of promotion opportunities with AFSA on October 18, 2018. This sequence of events is illustrated in figure 2. As discussed in finding II of this report, during this same period, the results of the selection board were stored on an unsecured server.

¹⁵ The *US&FCS/AFSA MOU* states “Prior to convening the Selection Boards, the Director General or his/her designee will determine the number of promotion opportunities by class.” It further states that the human resources manager or designee will provide AFSA “with a sealed envelope containing a copy of the approved document establishing these numbers.”

¹⁶ The *Manual*, subchapter 500-3, section 3.02.

¹⁷ There were five selection boards in 2018. Selection boards V and IV convened from September 10, 2018, to September 14, 2018, to evaluate the senior foreign service and FS-01 classes, respectively. Selection boards III, II, and I convened from September 17, 2018, to September 21, 2018, to evaluate the FS-02, FS-03, and FS-04 classes, respectively.

Figure 2. Timeline of ITA's 2018 US&FCS Officer Promotion Process

Source: OIG review of the US&FCS 2018 officer promotion process

Discussions with the director general and other key US&FCS personnel found both were unaware of requirements in the *US&FCS/AFSA MOU* to determine and communicate the number of promotion opportunities to AFSA before the selection boards convened.

We also requested the supporting documentation used by US&FCS to determine the number of 2018 promotion positions.¹⁸ However, US&FCS personnel did not provide adequate documentation that supported the final number of promotion opportunities. Instead, US&FCS provided various drafts of its memorandum documenting OFSHC's recommended number of promotions to the director general and a brief verbal explanation of the director general's final decision on the number of promotion opportunities for 2018. US&FCS personnel also explained that staff shortages and the loss of key employees involved in the promotion process resulted in the lack of adequate documentation. The absence of adequate documentation increases the risk that US&FCS failed to implement safeguards to ensure the integrity of promotional opportunities available in 2018. Consequently, by not adhering to the *US&FCS/AFSA MOU* and failing to adequately document promotion decisions,¹⁹ the 2018 officer promotion process lacks transparency and the assurance of fairness.

¹⁸ The *US&FCS/AFSA MOU* states "Decisions by the Director General or his/her designee on the number of individuals to be promoted and within the Foreign Service will be based upon the needs of the service and long term projections of personnel needs designed to provide: i) a regular, predictable flow of recruitment into the Foreign Service; ii) Effective Career development patterns to meet Service needs; and iii) A regular, predictable flow of talent upward and through the ranks and into the Senior Foreign Service."

¹⁹ Further, we note that federal recordkeeping requirements provide that agencies must make and preserve records that contain "adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency." 44 U.S.C. § 3101.

II. Board Rankings and Other Sensitive Information Were Improperly Stored on an Unsecured Shared Network Drive

According to the Code of Federal Regulations, US&FCS is required to protect personnel records from unauthorized access and disclosure.²⁰ However, US&FCS selection board rankings from the 2018 officer promotion process—as well as other sensitive personnel information pertinent to US&FCS operations—were left unprotected on a shared network drive. As a result, all of ITA’s nearly 1,400 employees could gain access to this information by simply adding the location of the shared drive to their government issued computer. Further, because selection board rankings were completed nearly a month prior to management’s determination of the number of available promotion opportunities and were not protected from unauthorized access, this calls into question the ability of the US&FCS to assure the promotion process was protected from improper influences. Additionally, any potential disclosure of this sensitive promotion-related information and other personnel records could have resulted in a violation of the Privacy Act of 1974, as amended.²¹ During the course of our evaluation, Enterprise Operations²² became aware that ITA did not properly configure its security settings. Although we did not identify evidence that the vulnerability had been exploited, this vulnerability could have compromised the integrity of the promotion process through unauthorized access to, and altering of, selection board decisions.

We briefed ITA’s Under Secretary for International Trade on our finding on October 25, 2019, and issued a management alert memorandum on November 7, 2019,²³ proposing that the US&FCS director general ensure sensitive promotion data is protected. In response, US&FCS told our office that only authorized employees accessed its shared drive and it found no evidence of any possible violations of the Privacy Act of 1974. Further, US&FCS stated that it will establish a new position to control and monitor all information technology systems and files. We made multiple attempts starting in January 2020 to obtain evidence to validate US&FCS’s response, however, it was not until August 27, 2020, when ITA initially responded to our draft report that we received additional information regarding its actions. ITA submitted a revised response on November 6, 2020, which is included as appendix B of this report.

III. US&FCS Incorrectly Determined Promotion Eligibility

US&FCS did not use an acceptable source document to verify that an officer met mandatory experience requirements for promotion eligibility.²⁴ We found that one out of the four senior foreign service officers approved for promotion by the director general did not meet eligibility requirements. The *Manual* does not address the required or permissible sources of information used to verify the eligibility of potential candidates for promotion. Likewise,

²⁰ 5 C.F.R. § 293.106. The definition of “personnel record” is found at 5 C.F.R. § 293.102.

²¹ 5 U.S.C. § 552a(b).

²² Enterprise Operations is a component of ITA’s Office of the Chief Information Officer.

²³ OIG-20-005-M.

²⁴ The *Manual*, subchapter 500-3, section 3.05, “Senior Foreign Service Promotion Eligibility Requirements.”

OFSHC does not have guidance stating the sources of information that should be used to determine whether officers meet eligibility requirements. The responsible OFSHC specialist we interviewed relied on performance appraisals and determined that the officer was not eligible for promotion. However, OFSHC management reviewed the specialist's determination and concluded that the subject officer met the experience requirements for promotion eligibility by introducing other personnel information obtained from the U.S. Department of State. Our review of relevant US&FCS personnel records and Departmental policy obtained to support the officer's promotion eligibility²⁵—including information obtained from the Department of State—indicates that the officer did not possess the requisite experience requirements. Consequently, we determined that the officer was not eligible for promotion and OFSHC's incorrect determination may have prevented an eligible officer's promotion into this senior foreign service class. The lack of guidance identifying acceptable sources of information for completing promotion eligibility may have contributed to OFSHC's incorrect conclusion and increases the risk that future determinations could also be flawed.

We briefed ITA's Under Secretary for International Trade on our finding on October 25, 2019, and issued a management alert memorandum regarding this matter on November 7, 2019,²⁶ proposing that the director general ensure each promoted officer met all eligibility requirements. On November 22, 2019, US&FCS personnel informed us that the officer was temporarily removed from the promotion list and that US&FCS initiated a detailed review of the officer's eligibility. We made multiple attempts starting in January 2020 to obtain evidence of actions taken in response to this management alert issue but it was not until August 17, 2020, that we learned the outside entity's report included a review of this finding. On August 27, 2020, ITA provided an initial response to our draft report and we received additional information regarding its actions. On November 6, 2020, ITA submitted a revised response which is included as appendix B of this report.

IV. Discrepancies Were Identified in the Rankings of One Selection Board

The *Manual* states that officer rankings will be based on the cumulative point totals from each board member's evaluation.²⁷ However, for one selection board, we found significant discrepancies during our comparison of individual board member scores to the aggregated selection board scoresheet for two officer candidates. For example, one officer ranked seventh on the aggregated selection board scoresheet but ranked fourth in our re-calculation using individual scoresheets, and therefore, could have been recommended for promotion. This occurred, in part, because board members did not update their individual scoresheets to reflect changes to officer evaluation ratings, nor did OFSHC ensure that individual scoresheets supported final aggregated scores. Without reconciling

²⁵ Review of relevant US&FCS personnel records and Departmental policy included, but was not limited to, the following: (1) four consecutive years of performance appraisals; (2) the officer's bid history (for preferred assignment locations and position grades); (3) a memorandum signed by the director general documenting the officer's assignment location and position grade; and (4) DOC, September 30, 2004. *Department of Commerce Foreign Service Position Classification Handbook*. Washington, DC: DOC.

²⁶ OIG-20-005-M.

²⁷ The *Manual*, subchapter 500-3, section 3.01.b, "Rank Order Procedures."

such differences in ranking, these discrepancies could influence whether one or more officers obtain a promotion and cast doubt on the objectivity of the rating and ranking of candidates.

OFSHC management provided us differing explanations in our attempts to determine the cause of the discrepancy. Initially, OFSHC management stated that the selection board revised the rank order for four foreign service officers because the selection board felt some officers performed more strongly than others.²⁸ In responding to our requests for further detail on the selection board's action, however, the explanation changed with OFSHC stating that the selection board had a four-way tie and modified scores to break the tie. Any revisions to the rank order stemming from the board's opinion that some officers performed stronger than others would have violated applicable procedural requirements as we found no evidence that these revisions were performed in an allowable situation. Although the *Manual* allows selection boards to revise rankings in cases of ties,²⁹ due to the lack of adequate and proper documentation, we found no evidence of a four-way tie.

We briefed ITA's Under Secretary for International Trade on our finding on October 25, 2019, and issued a management alert memorandum regarding this matter on November 7, 2019,³⁰ proposing that the director general urgently ensure the 2018 selection board decisions were made in accordance with required procedures and were appropriately documented. Additionally, we made multiple attempts starting in January 2020 to obtain evidence of actions taken in response to this management alert issue. Although US&FCS had not replied to our follow-up inquiries, in May 2020, we were informed that ITA engaged an outside entity to review this selection board's determinations. We received a copy of the outside entity's review on August 17, 2020. On August 27, 2020, ITA provided an initial response to our draft report and we received additional information regarding its actions. On November 6, 2020, ITA submitted a revised response which is included as appendix B of this report.

Recommendations

We recommend that the Under Secretary for International Trade do the following:

- I. Review the 2018 US&FCS officer promotion process and determine whether any selection boards should reconvene, in order to ensure the process was conducted fairly, with integrity and transparency.

²⁸ According to OFSHC personnel, if a selection board believes one officer's performance is stronger than another officer's performance, the selection board may add or subtract points to revise the officer's ranking. OFSHC refers to this process as "force ranking" and states it may occur irrespective of any ties. However, the *Manual* (subchapter 500-3, Section 3.01, "Rank Order Procedures"), does not reference the use of the force ranking process, and OFSHC was unable to provide any written documentation (such as manuals, policy, or procedures) justifying its use.

²⁹ The *Manual*, subchapter 500-3, section 3.01, "Rank Order Procedures," states rank order ties must be resolved by selection boards.

³⁰ OIG-20-005-M.

2. Ensure US&FCS establishes the number of promotion opportunities by officer class and provide those numbers via sealed communication to AFSA before selection boards convene.
3. Require US&FCS to prepare and maintain complete documentation to support the number of promotion opportunities for each foreign service officer class before selection boards convene.
4. Establish controls to comply with federal requirements for properly protecting sensitive promotion information and other sensitive federal records stored on shared network drives.

We recommend that the Assistant Secretary for Global Markets and Director General of US&FCS do the following:

5. Define the appropriate bureau personnel records that should be used to determine and verify promotion eligibility based on the *Manual's* requisites and require applicable OFSHC officials to preserve adequate and proper records to support both the subject officer's and future determinations of their respective promotion eligibility.
6. Ensure that OFSHC requires future selection boards to adequately and properly document selection board rankings.

Other Matter

US&FCS Employees with Conflicts of Interest Participated in the Promotion Process

OFSHC does not have policies and procedures to ensure all employees involved in the promotion process are impartial in fact and appearance. During the course of our work, we learned three US&FCS employees—including those in managerial positions—still participated in the 2018 promotion process despite having a conflict of interest. For example, one US&FCS employee directly reported to an officer who was evaluated and recommended for promotion. Because of their prominent roles in the process, participation of employees with conflicts of interest raises concerns about whether the promotion process was conducted with integrity and fairness. It further creates the perception that these individuals could have been biased resulting in inappropriate promotion recommendations.

Summary of Agency Response and OIG Comments

On August 27, 2020, we received ITA's initial response to our draft report. Because ITA did not explicitly state whether it agreed or disagreed with each recommendation, we asked ITA to clarify its position on each recommendation in writing in accordance with Department Administrative Order (DAO) 213-2.³¹ On November 6, 2020, we received a revised response from ITA.

We have summarized ITA's response and provided our comments within this section of the report. We also updated other sections of the report to acknowledge that ITA provided our office with a copy of the outside entity's report on the 2018 officer promotion process, as well as a response to our draft report. After considering ITA's comments, we maintain our findings and reaffirm our recommendations. We look forward to ITA's action plan that will provide details on the corrective actions to be taken. Appendix B of this report includes ITA's response. Attachments have been removed at ITA's request.

We recommend that the Under Secretary for International Trade review the 2018 US&FCS officer promotion process and determine whether any selection boards should reconvene, in order to ensure the process was conducted fairly, with integrity and transparency.

ITA comments

ITA does not concur with our overall findings regarding the 2018 US&FCS officer promotion process. In its response, ITA states it conducted an extensive internal review of the 2018 US&FCS officer promotion process and engaged an outside entity to complete an additional review. Following these reviews, ITA determined that the 2018 US&FCS promotion process was conducted fairly, with integrity, and with appropriate transparency and that there is no need to reconvene a selection board. Furthermore, ITA states it will move forward with processing eligible 2018 foreign service officer candidates for promotion.

OIG comments

ITA did not provide our office with the details of its internal review. Therefore, we cannot comment on the internal review's scope, conclusions, and actions taken to address OIG's findings. However, ITA did provide the results of the outside entity's review. We determined that the review's scope was limited and did not assess all the issues identified in our report. Specifically, the outside entity's review was limited to issues described in findings III and IV of our report, and therefore, did not address key internal controls such as determining the number of available promotion opportunities before convening selection boards. Further, despite both the internal and external reviews, ITA did not provide OIG

³¹ Effective October 21, 2020, DAO 213-2 has been revoked. The policies and procedures from DAO 213-2 are now found within DAO 213-3. DAO 213-3 states Department officials must submit written comments responding to the issues and recommendations raised in the draft report. It further states officials should specifically: 1) state concurrence or reasons for non-concurrence with, and make other pertinent comments about the findings; and 2) briefly indicate the action taken or proposed to be taken regarding the recommendations.

with additional direct evidence to demonstrate it complied with important aspects of the promotion process.

We believe the evidence gathered during our evaluation supports our findings and conclusion that important aspects of the promotion process were significantly flawed. Furthermore, because ITA did not provide any substantial information to demonstrate a thorough review of the 2018 officer promotion process before determining whether any selection boards should reconvene, we reiterate our recommendation.

We recommend that the Under Secretary for International Trade ensure US&FCS establishes the number of promotion opportunities by officer class and provide those numbers via sealed communication to AFSA before selection boards convene.

ITA comments

ITA does not concur that available promotion opportunities in 2018 were not determined before selection boards convened (see finding I of this report). In its response, ITA states it adhered to the stipulations in the US&FCS/AFSA MOU -- the director general determined the number of available promotion opportunities by class prior to the 2018 selection boards convening and the AFSA vice president received a sealed envelope in a timeframe consistent with the MOU. Despite its disagreement with our finding, ITA states that it has hired additional OFSHC personnel and developed training to ensure continued adherence with applicable policies and procedures.

OIG comments

We believe that ITA hiring additional personnel and developing training to ensure adherence with applicable policies and procedures are appropriate steps forward. However, we do not agree that the 2018 officer promotion process followed the stipulations in the US&FCS/AFSA MOU. As discussed in our report, the MOU states prior to convening the selection boards, the director general or his/her designee will determine the number of promotion opportunities by officer class. It further states that the human resources manager or designee will provide AFSA with a sealed envelope containing a copy of the approved document establishing these numbers. We determined that US&FCS concluded its selection boards on September 21, 2018. However, not until nearly a month later on October 17, 2018, did US&FCS determine its number of available promotion opportunities by officer class. US&FCS then shared the number of promotion opportunities with AFSA on October 18, 2018.

The determination of the number of promotion opportunities is intentionally not shared with, and is independent of, selection board members. This separation is designed to enhance the integrity and fairness of the promotion process. The results of our review and recommendation for finding I remain unchanged.

We recommend that the Under Secretary for International Trade require US&FCS to prepare and maintain complete documentation to support the number of promotion opportunities for each foreign service officer class before selection boards convene.

ITA comments

ITA does not concur with our finding that US&FCS personnel did not provide adequate

documentation that supported the final number of promotion opportunities (see finding I of this report).

ITA also states the US&FCS prepares and maintains data documentation in support of decisions including those used for officer promotion opportunities through the selection boards, as evidenced by the documents associated with the process and provided to our office. Further, it will continue to review and improve its processes.

OIG comments

As indicated in our report, US&FCS personnel did not provide our office with adequate documentation to support the final number of 2018 promotion opportunities during the course of our evaluation. Furthermore, ITA's response does not include any additional supporting documentation. Therefore, the results of our review and recommendation for finding I remain unchanged.

We recommend that the Under Secretary for International Trade establish controls to comply with federal requirements for properly protecting sensitive promotion information and other sensitive federal records stored on shared network drives.

ITA comments

ITA concurs with this recommendation. Upon notification of our management alert,³² ITA states it took immediate steps to ensure the proper protection of sensitive information stored on network drives. ITA also states it worked with its Technology, Services, and Innovation unit to update procedures for access and management of OFSHC's network drives which it provided with its response. Finally, ITA states it found no evidence of unauthorized access to sensitive information and federal records stored on network drives.

OIG comments

While we are pleased that ITA took immediate steps to protect sensitive information on network drives and updated its procedures, it is important to note that the lack of protection over the network drive during the 2018 officer promotion process calls into question the ability of the US&FCS to assure the promotion process was protected from improper influences. ITA did not provide any evidence during our evaluation or with its response to support its assertion there was no unauthorized access to sensitive information and federal records stored on network drives. Therefore, the results of our review for finding II remain unchanged.

We recommend that the Assistant Secretary for Global Markets and Director General of US&FCS define the appropriate bureau personnel records that should be used to determine and verify promotion eligibility based on the Manual's requisites and require applicable OFSHC officials to preserve adequate and proper records to support both the subject officer's and future determinations of their respective promotion eligibility.

ITA comments

ITA does not concur with our finding that US&FCS incorrectly determined promotion eligibility (see finding III of this report) and states OIG wrongly used a single system of record for determining and verifying promotion eligibility. It further states there are

³² OIG-20-005-M.

numerous sources of information including official records which officers are required to review on an annual basis. ITA concludes officers were recommended for promotions consistent with their experience, promotion eligibility, and position classifications, and this was verified by the outside entity's review.

OIG comments

As indicated in our report and shared with OFSHC management, we used multiple sources of information to determine the subject officer did not possess the requisite experience requirements outlined in the *Manual* including, but not limited to, four consecutive years of annual performance appraisals signed by the subject officer, the officer's bid history (for preferred assignment locations and position grades), a memorandum signed by the director general documenting the officer's assignment location and position grade, and criteria from the *Department of Commerce Foreign Service Position Classification Handbook*.

During our evaluation, ITA did not provide sufficient documentation to substantiate the subject officer met requirements for promotion eligibility. In addition, neither ITA's response to the draft report nor the outside entity's report provide enough additional information to prove eligibility. Therefore, the results of our review and recommendation for finding III remain unchanged.

We recommend that the Assistant Secretary for Global Markets and Director General of US&FCS ensure that OFSHC requires future selection boards to adequately and properly document selection board rankings.

ITA comments

ITA does not concur with our finding regarding discrepancies in the rankings of one selection board (see finding IV of this report).

ITA also stated for the 2018 selection process, it verified, through both reviews performed internally and by the outside entity, its selection board rankings were properly documented and it will continue to document selection board results and rankings consistent with its policies and guidelines. However, it will improve upon processes and provide additional oversight and training to the boards in this area.

OIG comments

We are encouraged that ITA is willing to improve upon its processes and provide additional oversight and training to the boards in this area. Because the *Manual* states that officer rankings will be based on the cumulative point totals from each board member's evaluation, it is imperative that any changes to individual board member evaluation scores are properly documented. For the 2018 officer promotion process, we stand by our finding that US&FCS did not demonstrate that selection board decisions were made in accordance with required procedures because individual board member scoring decisions were not properly documented.

Appendix A: Objective, Scope, and Methodology

We initiated this evaluation of US&FCS's officer promotion process on February 19, 2019. The objective of our evaluation was to determine whether US&FCS adhered to applicable laws, regulations, and policies when conducting the 2018 officer promotion process.

To accomplish our objective, we performed the following:

- Reviewed the following to understand requirements related to ITA and the US&FCS officer promotion process:
 - *Foreign Service Act of 1980* (Public Law 96-465), dated October 17, 1980
 - United States Code, Title 44, Chapter 31, *Records Management By Federal Agencies*
 - Code of Federal Regulations, Title 36, Chapter 12, Subchapter B, *Records Management*
 - Code of Federal Regulations, Title 5, Part 2635, *Standards of Ethical Conduct for Employees of the Executive Branch*
 - Code of Federal Regulations, Title 5, Part 293, *Personnel Records*
 - Department Administrative Order 202-250, *Delegation of Authority for Human Resources Management*, dated April 30, 2009
 - *Department of Commerce Foreign Service Position Classification Handbook*, dated September 30, 2004
 - *Department of Commerce Foreign Commercial Service Position Classification Handbook*, dated 2016
 - *Department of Commerce Information Technology Security Program Policy*, dated September 2014
 - *Foreign Service Personnel Management Manual*, dated July 13, 2016
 - Director General of US&FCS and Vice President of AFSA memorandums of understanding:
 - *Memorandum of Understanding Between the U.S. Department of Commerce United States & Foreign Commercial Service [US&FCS] and American Foreign Service Association [AFSA]*, dated June 1, 2005 (re: number of promotions)
 - *Memorandum of Understanding Between the U.S. Department of Commerce United States & Foreign Commercial Service [US&FCS] and American Foreign Service Association [AFSA]*, dated June 18, 2003 (re: mid-term bargaining proposals)
 - National Institute of Standards and Technology Special Publication 800-53, Rev. 4, *Security and Privacy Controls for Federal Information Systems and Organizations*, dated April 2013

- Interviewed US&FCS officials, including those from OFSHC, to gain an understanding of the 2018 promotion process, those involved, and their responsibilities.
- Reviewed the composition of all five 2018 selection boards to determine compliance with Departmental requirements.
- Interviewed members from two³³ of the 2018 selection boards, including those from US&FCS, Department of State, and a public member to understand the evaluation process.
- Examined all 2018 selection board member scoresheets and final class lists to determine officer rankings.
- Reviewed member's hand-written notes from two of the 2018 selection boards to determine officer rankings and cut-off points.
- Obtained and reviewed foreign service officer personnel records including, but not limited to, performance appraisals, assignment bid history, and assignment panel minutes to determine promotion eligibility during the 2018 promotion process.
- Reviewed final reports signed by selection boards to verify foreign service officer rankings and promotion recommendations for the 2018 promotion process.
- Reviewed the director general's signed recommendations for promotions in 2018.
- Interviewed officials from ITA's Enterprise Operations to understand internal controls over electronically stored documents related to the 2018 promotion process.
- Obtained and reviewed internal memorandums and electronic communications to understand event timelines related to the 2018 promotion process.
- Interviewed personnel from the Department of State and the U.S. Department of Agriculture to understand their respective officer promotion processes.
- Reviewed the *U.S. & Foreign Commercial Service Information Package*.
- Reviewed the *FY 2020 Annual Performance Plan and FY 2018 Annual Performance Report*, dated March 2019.

Data from computer-based systems was not significant to our evaluation objective and, therefore, we did not rely on computer-processed data to perform this evaluation. Our evidence consisted of manually generated information such as performance appraisals and selection board records, for example. We performed procedures to verify the validity and reliability of that data. We believe the information we obtained for this report is sufficiently reliable and valid.

We conducted our review from March 2019 through November 2019 under the authority of the Inspector General Act of 1978, as amended (5 U.S.C. App.), and Department Organization Order 10-13, dated April 26, 2013, as amended October 21, 2020. We performed our

³³ We interviewed members from these particular boards due to concerns noted during our review of selection board member scoresheets, officer rankings, and placement of cut-off points.


fieldwork at ITA headquarters in Washington, DC, and at OIG offices in Seattle and Washington, DC.

This review was conducted in accordance with the *Quality Standards for Inspection and Evaluation* (January 2012) issued by the Council of the Inspectors General on Integrity and Efficiency.

Appendix B: Agency Response

November 6, 2020

MEMORANDUM FOR: Richard Bachman
Assistant Inspector General for Audit and Evaluation

FROM: Ian Steff 
Assistant Secretary of Commerce for Global Markets and
Director General of the United States and Foreign Commercial
Service
International Trade Administration

SUBJECT: Response to Draft OIG Report: The U.S. & Foreign Commercial
Service 2018 Officer Promotion Process Did Not Comply with
Applicable Criteria

On behalf of the International Trade Administration's Global Markets business unit (ITA/GM), I appreciate this opportunity to review and comment on the Office of Inspector General's (OIG) draft report regarding the 2018 U.S. & Foreign Commercial Service (US&FCS) promotion process and to provide the following response.

ITA/GM takes great pride in the integrity of our promotion processes throughout our bureau, including for the Foreign Commercial Service. Following extensive reviews, we have concluded that the 2018 Foreign Commercial Service Selection Board and related officer promotion process was fully consistent with pertinent policies, regulations, laws, organizational guidelines, and applicable criteria. In conducting these reviews, we engaged a secondary, external Foreign Service agency to conduct a comprehensive review of the 2018 Selection Boards at issue, to verify eligibility of officers recommended for promotion, and to determine whether the process was conducted in a manner consistent with all applicable laws, rules, regulations, policies, and collective bargaining agreement provisions. This review is now complete, and the resulting report was provided to OIG on August 17, 2020. We have considered it in our response.

From March to August 2019, ITA/GM personnel participated in every OIG interview request and responded to 37 requests for documentation, supplying the OIG with approximately 831 documents over the course of six months, demonstrating the responsiveness of our bureau and the importance that ITA/GM attaches to this process and the OIG's review.

***OIG Recommendation 1:** Review the 2018 US&FCS officer promotion process and determine whether any selection boards should reconvene, in order to ensure the process was conducted fairly, with integrity and transparency.*

Reply: ITA/GM does not concur with the OIG's findings. Regardless, ITA/GM has independently executed the OIG's recommendation. ITA/GM has already conducted an extensive review of the 2018 US&FCS officer promotion process internally and proactively engaged an external Foreign Service agency to complete an additional review. That external Foreign Service agency review concluded that the 2018 US&FCS officer promotion process for the Selection Boards at issue was fully consistent with existing guidelines, laws, and regulations.

Both the internal and external review determined that all officers reviewed for promotions by Selection Boards IV and V met the mandatory experience requirements for promotion eligibility. The report from the external Foreign Service agency validated this assessment in its analysis and concluded that “the 2018 Selection Boards IV and V recommendations for promotion and the Office of Foreign Service Human Capital (OFSHC) promotion eligibility determinations complied with applicable laws, rules, regulations, policies, and collective bargaining unit provisions.” Following these reviews, we have determined that the process was conducted fairly, with integrity, and with appropriate transparency, and that there is no need to reconvene a selection board. In accordance with these determinations, eligible 2018 foreign service officer candidates recommended for promotion will move forward and have been re-submitted to the State Department for further processing.

OIG Recommendation 2: *Ensure US&FCS establishes the number of promotion opportunities by officer class and provide those numbers via sealed communication to AFSA before selection boards convene.*

Reply: ITA/GM concurs in part. The 2005 memorandum of understanding (MOU) between US&FCS and the American Foreign Service Association (AFSA) states, “Prior to convening the Selection Boards, the Director General, or his/her designee will determine the number of promotion opportunities by class.” (See Attachment 1). The Director General determined the number of promotion opportunities available by class prior to the 2018 Selection Boards convening. The MOU further states that “The Human Resources Manager or his/her designee will provide the AFSA Vice President with a sealed envelope containing a copy of the approved document establishing these numbers.” Our review indicated that US&FCS actions adhered to these stipulations, and the AFSA Vice President received the sealed envelope in a timeframe consistent with the 2005 MOU. (See Attachment 2). Demonstrating the importance our bureau attaches to this process, ITA/GM has also hired additional OFSHC personnel and developed training to ensure we continue to adhere to these prescribed policies and procedures that enable fair and transparent results.

OIG Recommendation 3: *Require US&FCS to prepare and maintain complete documentation to support the number of promotion opportunities for each foreign service officer class before selection boards convene.*

Reply: ITA/GM does not concur with the OIG’s findings. ITA/GM presently executes the OIG’s recommendation and suggested actions as a matter of standard procedure. ITA/GM’s US&FCS prepares and maintains data documentation in support of decisions made regarding its flow-through processes, including those used for officer promotion opportunities through the selection boards, as evidenced by the documents associated with the process and provided to the OIG. Underscoring the importance of this requirement, ITA/GM will continue to review its existing documentation with an eye toward improving the thoroughness and clarity of its actions and supporting measures associated with the foreign service promotion process, in line with its prescribed policies and procedures.

OIG Recommendation 4: *Establish controls to comply with federal requirements for properly protecting sensitive promotion information and other sensitive federal records stored on shared network drives.*

Reply: ITA/GM concurs with and has implemented this recommendation. ITA/GM is fully committed to adhering to the Privacy Act and protecting sensitive personnel information. Upon notification of the OIG's management alert dated November 7, 2019, OFSHC immediately took steps with ITA's TSI (Technology, Services, and Innovation) unit to ensure the proper protection of sensitive information stored on network drives. OFSHC worked with TSI to implement the appropriate authorities to govern access, update internal controls and procedures, and create a policy for access and management of OFSHC's network drives. (See Attachment 3). Throughout our review, ITA/GM found no evidence of unauthorized access to sensitive promotion information and other sensitive federal records stored on shared network drives.

OIG Recommendation 5: *Define the appropriate bureau personnel records that should be used to determine and verify promotion eligibility based on the Manual's requisites and require applicable OFSHC officials to preserve adequate and proper records to support both the subject officer's and future determinations of their respective promotion eligibility.*

Reply: ITA/GM does not concur with the OIG's findings, as ITA/GM ensures that appropriate and accurate personnel records are in place to properly identify and document promotion eligibility. The system the OIG identified as being used to make its recommendation is not the single system of record for determining and verifying promotion eligibility. There are numerous points of information gathered from several databases, including official records which Officers are required to review on an annual basis. Additionally, as a Foreign Service agency, the US&FCS must also cross-check position classifications with the State Department, to ensure position balance at posts. In 2018, Officers were recommended for promotions consistent with their experience, promotion eligibility, and position classifications. This was fully verified for Selection Boards IV and V in the external Foreign Service agency review. The US&FCS will continue to take steps to clearly define in OFSHC policies the appropriate bureau personnel records that should be used, and will continue to ensure that appropriate and accurate personnel records are in place to properly identify and document promotion eligibility based on prescribed laws, rules, regulations, policies, and collective bargaining agreement provisions.

OIG Recommendation 6: *Ensure that OFSHC requires future selection boards to adequately and properly document selection board rankings.*

Reply: ITA/GM does not concur with the OIG's findings as OFSHC has a long-standing requirement for selection boards to adequately and properly document selection board rankings as a matter of course. As our internal and external reviews verified, the 2018 Selection Board rankings were properly documented, and OFSHC will continue to document selection board results and rankings consistent with our policies and guidelines. At the same time, we will improve upon those processes and provide additional clarity to the boards on those improvements. OFSHC is now able to provide additional levels of oversight and training to the boards in this area and in other areas, following ITA/GM's approval of hiring additional personnel in the unit. These resources also allow us to expand our outreach and engagement with the State Department and other Foreign Service agencies to share best practices and new ideas on improving systems and processes.

For additional questions or comments, please contact Ned Rauch-Mannino, Acting Deputy Assistant Secretary for Global Operations, Global Markets, International Trade Administration at (202) 482-5206.