

ARTICLE 33
REDUCTION-IN-FORCE AND/OR TRANSFER OF FUNCTION

Section 33.01 - Reference. The policy, procedures, and terminology established in this Article are in conformance with:

- (1) 5 U.S.C. 3501-3504
- (2) 5 CFR Part 351

A reduction in force (RIF) will comply with all government-wide regulations in effect as of the effective date of this Agreement, and the provisions of this Agreement.

Section 33.02 - Policy. Nothing in this Article shall diminish the rights of employees which are specifically provided by law. Where a provision of this Article conflicts with a provision of law which provides greater legal rights for employees than that provided by this Article, the provision of law shall apply.

Section 33.03 - Definitions.

- (1) **Reduction- In-Force (RIF)** - The release of an employee from their competitive level by:
 - (a) separation,
 - (b) demotion,
 - (c) furlough for more than thirty (30) days, or
 - (d) reassignment requiring displacement

When the release is required because of:

- (e) lack of work or shortage of funds,
 - (f) insufficient personnel ceiling,
 - (g) reorganization,
 - (h) reclassification due to an erosion of duties only if action shall take affect after the RIF has been formally announced in the employee's competitive area and when the RIF shall take effect within one hundred eighty (180) days, or
 - (i) the need to replace a person exercising reemployment or restoration rights requires Management to release the employee from their competitive level.
- (2) **Transfer of Function** - The transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected. A TOF is also the movement of the competitive area in which the function is performed to another commuting area. In a transfer of function, the function must cease in the losing competitive area and continue in an identical form in the gaining competitive area.

- (3) Excepted Service Employee - An employee whose position is excepted from the competitive service. These persons are appointed in the Federal personnel system under various authorities including: "Schedule A," "Schedule B," and "Schedule C", as defined in 5 CFR 213.
- (4) Undue Interruption - A degree of interruption that would prevent the completion of required work by the employee 90 days after the employee has been placed in a different position under the provisions of 5 CFR 351.203. The 90 day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if an employee needed more than 90 days after the RIF to perform the optimum quality or quantity of work. The 90 day standard may be extended if placement is made under the regulation to a low priority program or to a vacant position.
- (5) Order of Release - The groups will be determined based on 5 CFR 351.501, Order of Retention-Competitive Service and applicable OPM guidance.
- (6) Competitive Level - A competitive level consists of all the positions in a competitive area that are in the same grade or occupational level and classification series and which are similar enough in qualification requirements, duties, pay schedule, and working conditions, so that the agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption, in accordance with 5 CFR 351.403. All actions which impact employees as a result of establishing a competitive level shall be uniformly and consistently applied.
- (7) Competitive Area -The Department shall establish competitive areas in which employees compete for retention under 5 CFR 351.402. The Department will establish competitive areas in accordance with law and regulation.
- (8) Employee Placement and Career Transitional Programs. The following programs are available to those employees adversely affected by a RIF.
 - (a) The Reemployment Priority List (RPL) is a required component of the Department's placement programs to assist its current and former competitive service employees who will be or were separated by a RIF, or who have recovered from a compensable work-related injury after more than 1 year. In filling vacancies, an agency must give its RPL registrants placement priority for most competitive service vacancies before hiring someone from outside its own permanent competitive service workforce. An agency may choose to consider RPL placement priority candidates before other agency permanent competitive service employees under its Career Transition Assistance Plan (CTAP), after fulfilling agency obligations to its CTAP selection priority candidates.
 - (b) The Career Transition Assistance Plan (CTAP) provides intra-agency selection priority for the agency's eligible surplus and displaced employees.
 - (c) The Interagency Transition Assistance Plan (ICTAP) provides eligible displaced Federal employees with interagency selection priority for vacancies in agencies that are filling positions from outside their respective permanent competitive service workforces. The

ICTAP selection priority does not apply in the ICTAP eligible's current or former agency and it does not prohibit movement of permanent competitive service employees within an agency.

Section 33.04 - Alternative Considerations. To the extent that is practicable and not prohibited by law, and without interfering with the accomplishment of the Department mission, the Department will seriously consider other alternative means of reducing costs before conducting a RIF; e.g. furloughs, limited hiring, attrition. Upon request, Management will provide to the Union a summary of all actions considered or adopted prior to deciding to conduct a RIF and the reasons why the action was adopted or rejected.

Section 33.05 - Union Notification.

- (1) When it is determined that any of the actions stated in this Article are necessary and the scope of the action affects locals in more than one (1) geographic area, Management shall inform the Union President at the National level, the Regional Vice President(s) and the affected office representative(s). If only one (1) local is affected in a geographic area, Management shall notify the designated Local Union representative(s). The Union shall apprise Management of the names and locations of all Union officials, as well as any subsequent changes.
- (2) The Department shall provide the President of HUD Council 222 a copy of the Department's competitive area and competitive level for the purpose of a RIF as detailed in 5 CFR §351.402 and 351.403 within 10 days of approval by OPM.
- (3) The Department will conduct pre-decisional meetings with the President of the Council of HUD Locals, or the designee, as soon as practicable when it is contemplating a RIF, or TOF in accordance with this Article.
- (4) Written notification shall be given to the appropriate Union representatives identified in item 1 above at least fifteen (15) days in advance of the specific notice to the employee. The written notice shall provide the Union with specific information concerning the matter. Any negotiations shall be conducted in accordance with Article 49 Mid-Term Bargaining of this Agreement. The following information shall be provided in the notice:
 - (a) The reasons for the RIF or TOF or in accordance with this Article;
 - (b) The number and work location of employees involved;
 - (c) A reminder of the competitive areas and the competitive levels approved by OPM;
 - (d) The criteria for developing the retention registers that were created for the RIF; and
 - (e) The proposed effective date of the action.

- (5) The parties understand on-going communications between the parties is vital and they will share information as it becomes available including, but not limited to, additional positions affected, the names of affected employees, revised dates, and listings of job offers made.

Section 33.06 - Employee RIF Notification. An individual employee who is adversely affected by a RIF shall, as a minimum, be given specific notice not less than sixty (60) days in advance of the effective date. Such notices shall contain the information required by law and regulations, in addition to that required by this Agreement.

- (1) **Content of Specific Notices.** The specific RIF notice shall include the following information and those specified at 5 CFR 351.802:

- (a) The specific RIF and personnel action to be taken with respect to the employee involved;
- (b) The reason(s) and effective date of the action;
- (c) The employee's competitive area, competitive level, subgroup and service date, and annual performance ratings of record received during the last four (4) years;
- (d) The place where the employees may inspect the regulations and records pertinent to their cases;
- (e) The employee's ranking relative to other competing employees;
- (f) A description specifically showing how the employee's ranking relative to other competing employees was determined;
- (g) The justification for retaining a lower standing employee in the same competitive level because of a temporary or continuing exception;
- (h) Grade and pay retention information;
- (i) A description of the employee's grievance or appeal right; and
- (j) Reemployment rights.

Section 33.07 - Additional Employee Information.

- (1) Within five (5) business days of when specific written RIF notices are distributed, the Department will provide a briefing(s) for the affected employees to explain the RIF process. In the meeting, a representative of the Department will explain how RIF retention is determined, the scope of the particular reduction in force, how to access their electronic Official Personnel Folder (eOPF), employee placement opportunities, severance pay computations, RPL, CTAP and ICTAP provisions and services to employees who are designated for separation in the RIF. A representative of the Department will take employee

questions and attempt to provide immediate answers. If immediate answers cannot be provided, then answers to those questions will be distributed via e-mail to all employees who were invited to the briefing. In addition, the Department will designate someone who will receive and respond to additional employee questions. A representative of the Union will be invited to attend these briefings, and will be given thirty (30) minutes at the conclusion of the briefing to speak with the employees.

- (2) If early retirement or buy-out opportunities are offered to employees in connection with a RIF, the Department will provide a briefing(s) for employees. Eligibility requirements, and the application processes will be explained. The effects of a buyout or early retirement on severance pay, reemployment, and continued health insurance coverage will be presented. A representative of the Department will take employee questions and attempt to provide immediate answers. If immediate answers cannot be provided, then answers to those questions will be distributed via e-mail to all employees who were invited to the briefing.

Section 33.08 - Employee Verification.

As far in advance as possible of an anticipated RIF, the Department will notify employees of the need to review their personnel records and ensure that these records are complete and accurate. This notice will advise employees to ensure that their records are up to date concerning:

- (a) Veterans preference;
- (b) Three most recent performance ratings of record received during the previous four-year period;
- (c) All periods of federal civilian and military service;
- (d) Completed training;
- (e) Current licenses and certifications;
- (f) Experience gained outside Federal service.

The Department will expeditiously resolve any discrepancies raised by the employee.

Section 33.09 - Competitive Level. An employee is assigned to a position in a competitive level in accordance with regulations at 5 CFR 351.403. Factors considered in the establishing of competitive levels are as follows:

- (1) A competitive level consists of all the positions in a competitive area that are in the same grade or occupational level and classification series and which are similar enough in qualification requirements, duties, pay schedule, and working conditions, so that the Department may reassign the incumbent of one position to any of the other positions in the level without undue interruption.

- (2) **Qualification Considerations.** When Management considers the effect of qualifications on the composition of a competitive level, the concern is not with the qualifications an employee possesses but with the qualifications required by the duties and responsibilities of the position as stated in the Official Position Description. Separate levels may be indicated because the knowledge, technique, and know-how acquired on the job may be distinctive enough to keep the Department from readily moving employees from one job to another. Separate levels shall not be so narrowly defined as to favor or disfavor an employee or group of employees with respect to RIF actions.
- (3) **Separate Competitive Levels Prohibited.** Management may not assign a position to a separate competitive level based only on:
- (a) The employee's sex, except for a position for which OPM has found that restricting the certification of eligible by sex is justified;
 - (b) The fact that the employee is serving a probationary period required by 5 CFR 315, Subpart I, upon initial assignment to a supervisory or managerial position; and
 - (c) Differences in work schedules among other than full-time employees who would otherwise be assigned to the same competitive level.
- (4) **Separate Competitive Levels Required.**
- (a) In accordance with applicable OPM regulations, the Department establishes separate competitive levels for positions according to the following categories:
 - 1. **By Service.** Separate levels shall be established for positions in the competitive service and the excepted service;
 - 2. **By Appointment Authority.** Separate levels shall be established for excepted service positions filled under different appointment authorities;
 - 3. **By Pay Schedule;**
 - 4. **By Work Schedule.** Separate levels shall be established for positions filled on a full-time, part-time, intermittent, seasonal, or on-call basis;
 - 5. **By Supervisory or Nonsupervisory Status.** Separate levels shall be established for positions filled by a supervisor or Management official as defined in 5 U.S.C. 7103(a)(10) and (11); and
 - 6. **By Trainee Status.** Separate levels shall be established for positions filled by an employee in a formally designated trainee or developmental program having all the characteristics covered in paragraph 4-6a of FPM Chapter 351.

Section 33.10 - Use of Vacancies to Satisfy Assignment Right. In order to minimize displacement actions that would result from a reduction in force, the Department will make a good faith effort to

search for vacancies and offering lateral assignments to vacant positions that the Department otherwise intends to fill to employees who would otherwise be released from their competitive level.

- (1) **Within the Competitive Area.** Consistent with the needs of the Department, Management will make every effort to use vacancies to satisfy an employee's assignment right.
- (2) **Outside the Competitive Area.** If a bargaining unit employee's assignment right determined in accordance with law, regulation, and this Agreement results in an offer at a lower grade or if the bargaining unit employee has no assignment right and is identified for separation, Management will make every effort to utilize available positions in areas outside the employee's competitive area if such an offer is in the best interest of the Department and the offer shall not adversely affect the assignment rights of bargaining unit employees in the other competitive area. If such an offer is accepted, a bargaining unit employee shall be entitled to a reasonable amount of duty time in order to obtain housing and to facilitate other aspects of their relocation.
- (3) The Department shall consider the employees who have received RIF notices and who are otherwise qualified for vacant positions, prior to selection of external candidates, in accordance with CTAP procedures.
- (4) If the Department considers an employee who has received a RIF notice for a vacant position, they shall be considered in accordance with Merit System Principles.

Section 33.11 - Waiver of Qualifications. The Department may exercise discretion granted by law and regulation to waive non-mandatory qualifications in order to place employees who are affected by the RIF in continuing positions.

After consultation with the appropriate Union representative, Management may assign an employee without regard to OPM's standards and requirements for the position if:

- (1) The employee meets any minimum education requirement for the position; and
- (2) The employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

All waivers of qualification(s) must be properly documented and justified; this documentation must be maintained by the servicing Human Resources office subject to Union review.

Section 33.12 - Training for Displaced Employees. If Management waives qualification standards to place an employee into a vacant position under RIF, then Management shall develop a training plan and assure training is provided in accordance with the plan.

Section 33.13 - Exceptions to the Order of Release.

- (1) Temporary Exceptions. In accordance with 5 CFR 351.608:

- (a) After consultation with the appropriate Union Representatives, Management may allow temporary exceptions, not to exceed ninety (90) days, to the RIF order of release to continue an employee on duties that a higher standing employee cannot take over within ninety (90) days:
- i. Without undue interruption to the Department.
 - ii. To satisfy Management's obligation to the retained employee; for example, to delay the effective date of the employee's release long enough to allow the specific notice period required by this Article, as when they are absent from their duty station on leave and cannot receive their notice the same day as a higher ranking employee.
 - iii. To help an employee administratively when the temporary exception does not adversely affect the rights of any other employee released ahead of the excepted employee.
- (2) Continuing Exceptions. In accordance with 5 CFR 351.607: After consultation with the appropriate Union Representatives, Management may allow continuing exceptions to the RIF order of release to continue an employee in duties at a higher standing employee cannot take over within ninety (90) days without undue interruption to the Department.
- (3) Employee Representation. Employee representatives designated pursuant to Article 47 of the HUD/AFGE Agreement, who are scheduled for separation due to a RIF, may be temporarily excepted from the RIF order of release for up to ninety (90) days upon the notification by the Council President provided that the affected employee has been a designated employee representative for the three (3) months preceding the scheduled separation. Regardless of their RIF their status, the Union representative(s) will have access to the Union office and network capabilities until another representative is named, under the following conditions. If the offices are accessible and RIFd union officials are allowed access, it will be solely for the purpose of performing voluntary unpaid representational functions (i.e., they could not be working on official time or in any other way incurring obligations that would require subsequent agency payment).
- (4) Documentation. All exceptions to the RIF order of release shall be justified and the documentation of such justification shall be maintained with other required RIF records. Justification of continuing exceptions must clearly demonstrate that no higher standing employee could take over the duties of the position without undue disruption to the Department and must explain the consequences of not permitting the exception. The reasons should be consistent with the criteria for justifying a temporary exception and the reasons why a temporary exception not to exceed ninety (90) days is not sufficient, must also be included.

Section 33.14 - Tie Breaking. It is possible, in releasing an employee from a competitive level, to reach two (2) employees with identical retention standing. In such cases, the decision to retain one or the other employee in the competitive level shall be made on the basis of the following criteria in the following order:

First: Employees most recent entry on duty (EOD) date with the Department;

Second: Employees time in grade; and

Third: Comparative number of RIF displacements resulting from release.

The decision must be documented in writing and retained with RIF files. The Union shall be notified, in writing, of the names of such employees with identical retention standing, the decision as to which employee to retain, and the criteria that were used to make such a decision.

Section 33.15 - Offer of Assignment.

- (1) When an employee is released from their competitive level, the operating human resources office must determine whether that employee is entitled to a job offer and, if so, at what grade level. It is possible that a released employee may be qualified and able to displace (by bump or retreat) several other employees at the grade level of entitlement. This offer shall be made on the basis of the following criteria in the following order:
 - (a) The comparative overall performance rating of the vulnerable employee;
 - (b) Qualification match; and
 - (c) Comparative RIF disruption.
- (2) In order to minimize displacement resulting from a reduction in force the Department will assist employees in their search for vacancies, and may offer lateral reassignments to vacant positions that the Department otherwise intends to fill.
- (3) Employees who receive job offers will be given reasonable time to consider and respond as to whether they will accept or decline the offer.
- (4) Employees may volunteer to relocate to another location under a RIF and may volunteer to pay for their own relocation expenses.
- (5) Employees who receive an offer of assignment to a different commuting area will be allowed up to 90 calendar days as necessary, to complete the move and report to work. Upon demonstrated need, additional time may be granted.
- (6) The Department will utilize the Reemployment Priority List when filling vacancies subject to a RIF.
- (7) The decision shall be fully documented and this documentation shall be made available to the Union.

Section 33.16 - Excepted Service. In a RIF, employees in the excepted service shall compete within competitive levels, in order of retention standing, on a separate retention register from competitive positions as specified in OPM regulation. The Department shall provide for bumping or retreat rights for its excepted service employees when they cannot be retained in their competitive levels using the same methodology as that used for competitive service employees.

Section 33.17 - Other Provisions.

- (1) Management may, at its election:
 - (a) Use subgroup priority in displacing tenure Group III employees.
 - (b) Allow employees in the same subgroup with more service to displace those with less service in order to make a better assignment offer.
- (2) Written justification of these actions shall be made available to the Union.

Section 33.18 - Counseling and Benefits Assistance.

- (1) In the event of a RIF effecting separation of employees, Management shall determine from the appropriate State employment service or other appropriate assistance program whether any of the affected employees may be eligible for training or benefits at Government expense, and, if so, shall inform the employees how to apply for such training and benefits.
- (2) In order to expedite implementation of this Section, the Department shall transfer necessary data, in keeping with the Privacy Act, to the Office of Personnel Management and appropriate State employment and benefits agencies. Employees shall be provided an opportunity to waive privacy rights to aid in this transfer of data.
- (3) Management agrees to assist and refer any Group I or II displaced employees to the Office of Personnel Management (OPM) for consideration for employment under the Displaced Employee Program (DEP).
- (4) **Unemployment Compensation.** The Department and the Union may collaborate in arranging to have representatives of the Unemployment Insurance Agencies from all states in which employees would file claims come to the Department and make presentations regarding benefits, eligibility requirements, and application procedures.
- (5) **Severance Pay.** The Department will notify all employees who are separated in a RIF of their rights to receive severance pay under law and regulation. Those who are eligible to receive severance pay will get an estimate of the amount of severance pay that they will receive, and information on how these payments will be made.

(6) Employment outside the Department.

- (a) If resources are available, for employees who cannot be placed within the Department, the Department may provide assistance in finding employment outside the Department, whether in another Federal agency, a State or local government, or the private sector. This assistance may include, but not be limited to:
 - i. Resume writing;
 - ii. Coaching in job search and interview techniques;
 - iii. Reasonable Amount of time to visit local job fairs or attend local job interviews.
- (b) For a reasonable amount of time and to the extent permitted under law, regulation, and the availability of resources, the Department will continue to extend the services of subsections above to employees after the date of the employee's separation.

Section 33.19 - Personnel Files. Bargaining unit employees have access to their electronic Official Personnel File, and may forward it to the Union if they reasonably believe that the information used to place them on the retention register is inaccurate, incomplete, or not in accordance with law, rule, regulation, and provisions of this Agreement.

Section 33.20 - Records. Management shall maintain all lists, records, and information pertaining to the RIF for at least one (1) year from the date a specific RIF notice is issued in accordance with applicable rules and regulations.

Section 33.21 - Retention Register. Management shall certify the accuracy of all retention registers which are to be used to conduct a RIF. A copy of the certified retention registers shall be made available to the Union immediately upon its completion. Upon request, the Union shall have the right to review any subsequent changes to the uncertified and certified retention registers. When the Department discovers an error in the determination in an employee's retention standing, it must correct the errors and adjust erroneous RIF actions in accordance with the employee's actual retention standing.

Section 33.22 - Training for Union Representatives. Management shall provide opportunity to all Union representatives in each office for RIF training prior to the briefing of the employees. Management sponsored training shall be equivalent to the training provided to supervisors.

Section 33.23 - Early Retirement Authorization. Management shall request from OPM authorization for early optional retirement for any segment or component of the Department when the minimum eligibility requirements established by regulation are met.

Section 33.24 - Performance Appraisals. In a RIF, all employees shall be entitled to additional service credit for performance in conformity with the regulations at 5 CFR 351.504. Annual performance

appraisals shall be frozen prior to issuance of the specific RIF notice and shall be the evaluations used to determine eligibility for additional credit toward an employee's service computation date.

Prior to freezing performance appraisals, Management will ensure that all employees have current performance ratings of record.

An employee who has not received any rating of record during the four (4) year period shall receive credit for performance based on the modal rating (as defined in 5 CFR 351.203) for the summary level pattern that applies to the employee's official position of record at the time of the RIF.

An employee who has received at least one (1) but fewer than three (3) ratings of record during the four (4) year period shall receive credit for performance based on the value of the actual rating(s) of record divided by the number of actual ratings received. If an employee has received only two (2) actual ratings of record for the period, the value of the rating is added together and divided by two (2) and rounded to the next higher whole number to determine the amount of additional retention service credit. If the employee has received only one (1) actual rating of record, its value is the amount of additional retention service credit provided.

Section 33.25 - Grade and Pay Retention. Grade and pay retention for affected employees shall be in accordance with applicable law and regulations at 5 CFR Part 536.

Section 33.26 - Details. RIF determinations will be based on the permanent position of record and not the detail.

Section 33.27 - Transfer of Function. When the Department determines that a TOF is necessary, the Department will inform the Union as far in advance as practicable, giving the reason for the action, the approximate numbers, types, and geographic location of the positions to be affected, and the approximate date of the action. At that time, Management will issue a notice in accordance with Article 49, as appropriate.

- (1) The Department will identify which positions will transfer with the function in accordance with Office of Personnel Management regulations.

Section 33.28 - New Organization. In anticipation of a RIF, Management shall not create new or different organizational components or subcomponents to favor or disfavor an employee or group of employees.

Section 33.29 - Additional Negotiations. Nothing in this section shall waive, limit or impair the statutory or legal rights of employees or their representatives.

Section 33.30 - Appeals and Grievances. The employee may not appeal to MSPB if they have grieved the alleged action.