

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR PART 351

RIN 3206-AH95

### Reduction in Force Offers of Vacant Positions

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Office of Personnel Management is proposing retention regulations that clarify existing policy on reduction in force offers of vacant positions.

**DATES:** Written comments will be considered if received no later than July 13, 1998.

**ADDRESSES:** Send or deliver written comments to Mary Lou Lindholm, Associate Director for Employment Service, Office of Personnel Management, Room 6F08, 1900 E Street, NW; Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Glennon, or Jacqueline R. Yeatman, 202-606-0960, FAX 202-606-2329.

#### SUPPLEMENTARY INFORMATION:

#### Assignment Rights-General

Reduction in force assignment rights are covered in part 351, subpart G, of title 5, Code of Federal Regulations. Section 351.701(a) provides that a competing employee in retention tenure Groups I and II with current performance ratings of at least "Minimally Successful" who has been released from a competitive level is entitled to an offer of assignment under the retention regulations if the employee has "Bumping" or "Retreating" rights to an available position in the same competitive area.

Section 351.701(a) provides that the assignment right is limited to positions lasting at least 3 months with the same work schedule, and in the same competitive area, as the position of the

released employee. The assignment right is to another position which requires no reduction, or the least possible, reduction, in representative rate.

Section 351.701(b)(2) covering bumping rights, and § 351.701(c)(2) covering retreat rights, provide that the available position must be within three grades or grade-intervals (or equivalent) of the employee's present position. However, under § 351.702(c)(2), an employee who is eligible for veterans' preference under the retention regulations, and who has a service-connected disability of 30 percent or more, has a retreat right to positions up to five grades or grade-intervals (or equivalent) of the employee's present position.

#### Assignment Rights-Offer of Vacant Positions

Section 351.201(b) provides that an agency is not required to offer a vacant position during a reduction in force. However, if the agency chooses to fill a vacancy with an employee who has been released under authority of 5 CFR part 351 from a competitive level, then the agency must make the offer consistent with the provisions found in subpart G of that part.

Section 351.704(a)(1) provides that an agency may satisfy an employee's right to assignment under section 351.701 by offering the employee assignment to a vacant position under § 351.201(b) if the offered position has a representative rate equal to the employee's entitlement under § 351.701. (As another option, § 351.704(a)(1) also provides that an agency may satisfy an employee's right to assignment under the administrative assignment provisions of § 351.705.)

Section 351.704(a)(1) is now revised to clarify longstanding OPM policy that an agency may also offer an employee assignment to a vacant position in lieu of separation by reduction in force under 5 CFR part 351.

Section 351.704(a)(1) is also revised to clarify longstanding OPM policy that an offer of assignment to a vacant position must be consistent with § 351.201(b) and § 351.701, including the grade limits applicable to bump and retreat set forth in § 351.701(b)(2) and § 351.701(c)(2). This revision modifies the decision of the Merit Systems Protection Board in *Monk v. Department of the Navy*, 68 M.S.P.R. 560 (1995), in

which the Board held that the usual grade limits applicable to bump and retreat rights do not apply to reduction in force offers of vacant positions. Agencies may still make offers of vacant positions below the applicable grade limits under other authority (e.g., as an offer of voluntary change to lower grade in lieu of reduction in force).

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

#### List of Subjects in 5 CFR Part 351

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management

**Janice R. Lachance,**

*Director.*

Accordingly, OPM proposes to amend part 351 of title 5, Code of Federal Regulations, as follows:

#### PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

**Authority:** 5 U.S.C. 1302, 3502, 3503, Section 351.801 also issued under E.O. 12828, 58 FR 2965.

2. In § 351.704, paragraph (a)(1) is revised to read as follows:

#### § 351.704 Rights and prohibitions.

(a)(1) An agency may satisfy an employee's right to assignment under § 351.701 by assignment to a vacant position under § 351.201(b), or by assignment under any applicable administrative assignment provisions of § 351.705, to a position having a representative rate equal to that the employee would be entitled under § 351.701. An agency may also offer an employee assignment under § 351.201(b) to a vacant position in lieu of separation by reduction in force under 5 CFR part 351. Any offer of assignment under § 351.201(b) to a vacant position must meet the requirements set forth under § 351.701.

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