

**U.S. DEPARTMENT OF EDUCATION  
PERSONNEL MANUAL INSTRUCTION**

**PMI** 920-4

**DATE:** January 23, 1984

**APPROVED:**

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For Director of Personnel

6/24/02

**SUBJECT:** Senior Executive Service Reduction In Force

**I. Purpose**

This Instruction establishes the policies and procedures for conducting a reduction in force (RIF) among career appointees in the Senior Executive Service (SES) in the Department of Education.

**II. Authority**

Statutory authority and procedural requirements for conducting a reduction in force in the SES are contained in Title 5 U.S.C. 3595. FPM Letter 920-10 dated August 13, 1981, describes the placement activities of the Office of Personnel Management (OPM).

**III. Coverage**

This Instruction applies to all career appointees in the SES, including those serving probationary periods. Noncareer, limited term and limited emergency appointees and reemployed annuitants may be removed without regard to this Instruction. If a reemployed annuitant holding a career appointment is not removed prior to initiation of a RIF, the procedures of this Instruction will apply.

**IV. Policy**

It is the policy of the Department to make a concerted effort to place surplus career SES appointees in SES vacancies for which they qualify before initiating competitive RIF procedures.

All appointees shall be accorded fair and equitable treatment consistent with governing law, regulations and this Instruction.

Career appointees shall receive at least fifteen calendar days advance written notice of reassignment to another SES position. Probationary employees who cannot be placed in an SES position shall receive at least

30 calendar days advance written notice of separation or other placement, as appropriate. Career appointees who have completed the probationary period and who cannot be placed in an SES vacancy in the Department or displace another appointee shall receive at least 120 days advance written notification of the effective date of separation should placement by OPM or other action not occur.

**V. Basis For Reduction In Force**

The policies and procedures of this Instruction will be applied when an SES position becomes surplus to the needs of an organization and is abolished due to any of the following reasons:

- o Lack of work or curtailment of a function;
- o Lack of funds;
- o Reorganization;
- o Determination that a position no longer justifies SES designation because of change in duties or responsibilities; or
- o Other action that results in the elimination or modification of one or more SES positions.

**VI. Responsibilities**

A. Senior Officers

1. Identify which SES positions will become surplus because of program curtailments, reduction in funds or other factors which will result in a reduction in their SES workforce.
2. Recommend placement actions within their organization for surplus SES appointees.
3. Provide requests for personnel action and other appropriate data for RIF actions affecting employees or positions in their organization.

B. Executive Resources Board

1. Approves the need for a RIF in the SES.
2. Approves placement offers or separation notices for surplus or displaced SES appointees.

- C. Director of Personnel
1. Implements the procedures in this Instruction for a RIF in the SES.
  2. Provides staff and technical support for program implementation and recommends actions to be taken.
  3. Maintains liaison with OPM on placement assistance for affected employees.

**VII. Placement in New or Vacant Positions**

- A. A Senior Officer who anticipates a surplus of incumbered SES positions must submit a written proposal to the Executive Resources Board. The following information must be included in the request.
1. Specific reason for the RIF;
  2. Positions and incumbents affected;
  3. Internal reassignments proposed to vacant or proposed positions; and
  4. Identification of incumbents for whom reassignment will not be possible and the reasons why the individual is not qualified for vacant or proposed positions.
- B. The Director of Personnel will review the proposal of the Senior Officer and assess the appropriateness of the proposed actions. Individuals who cannot be placed within their organization will be referred for consideration for vacant SES positions for which they are minimally qualified in other organizations.
- C. Career SES appointees who have completed the probationary period must be selected for reassignment to a vacant SES position for which they are minimally qualified. Career SES appointees who are serving the one year probationary period are not entitled to placement in an SES vacancy. Probationary employees will be referred for consideration and those with performance ratings of Superior or Outstanding must be interviewed. If more than one SES appointee is eligible for reassignment to a vacancy, the individual with the highest performance score as determined under Part VIII shall be placed in the vacancy. Ties shall be broken as provided in Part VIII., H.

- D. Senior Officers with vacant SES positions will interview individuals referred and submit a written recommendation to the Executive Resources Board for reassignment or for nonselection. Nonselection must specifically identify the qualification requirement(s) which the individual referred does not possess or other reason for nonselection in the case of a probationary appointee.
- E. The Director of Personnel will prepare a written report on actions recommended to the Executive Resources Board which includes:
  - 1. The initial proposal for the RIF and recommendations on internal reassignments proposed;
  - 2. Identification of vacancies for which a surplus employee was considered, the recommendation for selection or nonselection by the appropriate Senior Officer and a recommendation on the placement; and
  - 3. Identification of displacements under Part VIII which may occur if reassignment to a vacant SES position is not possible or approved.
- F. The Executive Resources Board will review the recommendations and issue a written decision on the proposed actions. Reassignments approved shall be effected as directed reassignments. Individuals approved for reassignments shall receive at least fifteen days advance notice of the effective date of the reassignment.

**VIII. Placement Through Competitive RIF Procedures**

SES appointees, including those serving probation, who are surplus and not placed in a vacant SES position are entitled to compete for retention based on their performance score as follows.

- A. The area of competition will be Department wide.
- B. Performance ratings received while serving in an SES position during the past five years will be used in arriving at a performance score for each individual. A probationary employee who has not received a rating will be considered Fully Successful.

1. Performance scores shall be computed by assigning the following points:

Outstanding	= 4
Exceeds Fully Successful	= 3
Fully Successful	= 2
Minimally Satisfactory	= 1
Unsatisfactory	= 0
  2. The current performance rating will be averaged with the average of any SES rating received during the past four years.
  3. The result will be the performance score.
- C. All SES appointees will be listed on a retention roster in rank order according to performance score.
- D. A surplus SES appointee who was not placed in a vacancy will be considered for assignment to positions which are occupied by persons with lower performance scores.
- E. A higher ranking surplus SES appointee may displace a lower ranking SES appointee if he or she is qualified for the position held by the lower ranking person. Displacement shall be in the position held by the person with the lowest performance score.
- F. A person may not displace an individual with the same performance score.
- G. If more than one surplus employee is qualified to displace a lower ranking person, and no other assignment alternatives are available, the highest ranking surplus employee shall be entitled to the placement.
- H. In the event of a tie, placement priority will be given in the following order:
- o Receipt of a Presidential Rank Award of Distinguished within the past five years;
  - o Receipt of a Presidential Rank Award of Meritorious within the past five years;
  - o Receipt of an SES performance award (bonus) in the past year;
- or

- o Possession of higher degree of qualifications for the position based on the skills, knowledges and abilities required for the position.

**IX. Action If SES Placement Or Displacement Is Not Possible**

- A. SES appointees who are serving the probationary period and are not placed in as SES vacancy or not entitled to displace another SES appointee are subject to separation.
  - 1. Probationary employees who were appointed to the SES from a career or career-conditional position in the competitive service or an equivalent tenure appointment in the excepted service are entitled to be placed in a continuing civil service position at grade GS-15 or above within the Department. Such placement may not cause the separation or reduction in grade of any other employee.
  - 2. Probationary employees who were not appointed to the SES from the civil service as described above may be separated from the Federal service.
  - 3. Probationary appointees will receive at least 30 calendar days advance notice if separation or placement outside the SES is necessary.
- B. SES appointees who have completed the probationary period are entitled to receive consideration for SES vacancies in other Federal agencies.
  - 1. The Secretary of Education must certify in writing to the Office of Personnel Management that the career appointee is not eligible for nor entitled to placement in an SES position in the Department.
  - 2. The Office of Personnel Management has 120 calendar days from the date of Department certification to make efforts to place the individual in an SES vacancy in another agency.
  - 3. If the Office of Personnel Management is not able to place the individual in a vacancy or the individual declines a reasonable offer of placement, the individual may be separated form the Federal service.

4. In the case of a career appointee who had completed the probationary period and was on the rolls on May 31, 1981 as a career appointee, the Office of Personnel Management must notify appropriate Congressional Committees 30 days in advance of the proposed removal that efforts to place the individual were not successful.
5. Career appointees will be notified in writing of the referral to OPM and the separation date should placement not be made during the 120 day period.

**X. Placement In Vacancies At The GS-15 Level Or Below**

- A. Career SES appointees who have completed the probationary period and are not entitled to placement in an SES vacancy nor to displace another SES appointee and who have reinstatement eligibility for the competitive civil service do not have an entitlement to be placed in a vacancy at the GS-15 level or below.
- B. The Department may offer reinstatement to the competitive service to eligible persons in lieu of separation from the Federal service.
- C. Such offer may be made at any time during the RIF or placement process.
- D. At least 5 calendar days will be allowed for consideration of such offers.

**XI. Notice Requirements**

- A. SES appointees who are offered reassignment to an SES position shall be given written notification of the reassignment at least 15 calendar days in advance of the effective date.
- B. Probationary SES appointees who cannot be placed in another SES position in the Department will receive written notification of removal from the Department or of offer of assignment to a GS-15 position as appropriate at least 30 calendar days in advance of the effective date of the action.
- C. Career SES appointees who have completed the probationary period and who cannot be placed in another SES position through reassignment to a vacant position or displacement of a lower ranking SES appointee will be given written notice at the same time as Departmental certification to OPM. This provides at least

120 days advance notice of possible separation. The notice will specify:

1. Why the action is being taken;
2. The appointee's retention standing;
3. The OPM priority placement process;
4. Any available offer of placement in a GS-15 or lower position in the Department through exercise of reinstatement eligibility;
5. The appointee's appeal rights;
6. The name and telephone number of the personnel specialist who is available to discuss the appointee's rights and benefits;
7. The place where regulations and records pertinent to the action are available for inspection;
8. The date of separation from the Department if no offer is made by OPM, if such an offer is not accepted, or if an alternative assignment at a lower level is not offered; and
9. That the appointee will remain in a duty status and will be notified of assignment changes during this period.

## **XII. SES Reinstatement**

A career SES appointee who is involuntarily removed from the SES due to a RIF in the Department is entitled to be reinstated to a vacant SES position in the Department for which qualified if the appointee was a career appointee in the SES on May 31, 1981; successfully completed the probationary period before separation from SES; and applies for the vacant position within one year after the certification to OPM that no SES positions were available in the Department. Separated SES appointees shall receive a copy of each vacancy announcement issued. They are responsible for maintaining a current address for vacancy notifications and for requesting consideration for the vacancy within the dates established.

## **XIII. Appeal Rights To The Merit Systems Protection Board**

- A. Probationary employees are entitled to appeal:
  - o Whether the RIF complied with the competitive procedures established under 5 U.S.C. 3595 (c) (1); and
  - o Removal for declining a directed reassignment, under 5 U.S.C. 7543.



- B. Career appointees who completed the probationary period are entitled to appeal:
  - o Whether the RIF complied with the competitive procedures established under 5 U.S.C. 3595 (c) (1);
  - o Removal due to failure to accept a reasonable offer in another agency, under 5 U.S.C. 3595 (c) (2);
  - o Lack of reasonable placement effort by OPM, under 5 U.S.C. 3595 (c) (3); and
  - o Removal for declining directed reassignment, under 5 U.S.C. 7543.
- C. Career appointees who had completed the probationary period before separation and were career appointees before May 31, 1981 are entitled to appeal nonselection for reinstatement in an SES vacancy, as provided in Section XII, under 5 U.S.C. 3593 (c) (2).

**XIV. Records**

All records relating to a reduction in force will be maintained for a one year period after the effective date of the action.