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U.S. OFFICE OF PERSONNEL MANAGEMENT
WORKFORCE RESTRUCTURING OFFICE
RESTRUCTURING INFORMATION HANDBOOK

MODULE 6, REEMPLOYMENT PRIORITY LIST (September 1998 version)

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MODULE 6 (REEMPLOYMENT PRIORITY LIST), UNIT B (GUIDANCE), SECTION
3. GEOGRAPHIC COVERAGE OF THE REEMPLOYMENT PRIORITY LIST

2. DEFINITION OF "LOCAL COMMUTING AREA" FOR RPL PURPOSES (reference 6-A-3-2).
"LOCAL COMMUTING AREA" means the geographic area that usually includes one area for employment purposes, as determined by the agency. (5 CFR 351.203)

o The Local Commuting Area standard is covered in BEARDMORE v. AGRICULTURE, 761 F.2d 677 (Fed. Cir., 1984), in which the United States Court of Appeals for the Federal Circuit stated that the agency has both the right and responsibility to define a local commuting area for competitive area purposes, but that the agency's definition must be consistent with OPM's regulations and must be reasonable rather than arbitrary.

MODULE 6 (REEMPLOYMENT PRIORITY LIST), UNIT B (GUIDANCE), SECTION
4. ELIGIBILITY FOR REGISTRATION ON THE REEMPLOYMENT PRIORITY LIST BASED ON
REDUCTION IN FORCE

1. ELIGIBILITY FOR REGISTRATION ON THE RPL (reference 6-A-4-1).

(c) (Reference 6-A-4-1-(c)) In order to be placed on the Reemployment Priority List because of a reduction in force action, the employee must meet four conditions, including receipt of a specific notice of separation by reduction in force, or a Certification of Expected Separation. (5 CFR 330.203(a)(3))

o For additional information, reference GOMETZ v. NAVY, 69 M.S.P.R. 284 (1996); and SWEENEY v. INTERIOR, 73 M.S.P.R. 329 (1996).

5. THE RPL DOES NOT COVER RIF DOWNGRADES (reference 6-A-4-5). An employee who will be downgraded, or has been downgraded, by reduction in force is not eligible to register on the Reemployment Priority List. (5 CFR 330.203(a))

o For additional information, reference HORNER v. NAVY, 41 M.S.P.R. 20 (1989); and GOMETZ v. NAVY, 69 M.S.P.R. 284 (1996).

MODULE 6 (REEMPLOYMENT PRIORITY LIST), UNIT B (GUIDANCE), SECTION
7. LOSS OF ELIGIBILITY ON THE REEMPLOYMENT PRIORITY
LIST

5. EARLY LOSS OF RPL ELIGIBILITY ONLY FOR CERTAIN POSITIONS-
EMPLOYEE DECLINES AN OFFER IN FORMER AGENCY (reference 6-B-A-5).

(d) (Reference 6-B-A-5-(d)). An agency must remove an employee (or former employee) from consideration on the Reemployment Priority List for all positions with a representative rate at, or below, that of any position that the agency offers through the List, and for which the individual has failed to respond to an inquiry from the agency when the position offered from the List meets the acceptable conditions covered in the individual's registration form.
(5 CFR 330.203(c))

o If the agency removes an individual from the Reemployment Priority List because of failure to respond to an inquiry, the agency must document that it made a reasonable effort to contact the displaced employee; for additional information, reference THPRINGTON v. ARMY, 21 M.S.P.R. 728 (1984).

6. EARLY LOSS OF RPL ELIGIBILITY-EMPLOYEE VOLUNTARILY LEAVES
AGENCY BEFORE RIF (reference 6-A-7-6. An agency must remove an employee (or former employee) from the Reemployment Priority List if the employee voluntarily leaves the agency before being separated by reduction in force. (5 CFR 330.203(d)(2)(iv))

o For additional information, reference BARTLETT v. ARMY, 18 M.S.P.R. 75 (1983); and HANCOX v. AIR FORCE, 30 M.S.P.R. 207 (1986).

o For example, on June 1, 1998, an employee receives a specific notice of separation by reduction in force effective August 4, 1998. If the employee resigns on August 1, 1998, the employee is not eligible to be placed on the Reemployment Priority List.

MODULE 6 (REEMPLOYMENT PRIORITY LIST), UNIT B (GUIDANCE), SECTION
8. EMPLOYEE REGISTRATION FOR THE REEMPLOYMENT PRIORITY LIST BASED ON REDUCTION
IN FORCE

4. THE AGENCY SHOULD ASSIST EMPLOYEES IN REGISTERING FOR THE RPL (reference 6-A-8-4). The agency should assist each employee in identifying positions for which the employee is qualified, and listing these positions on the employee's Reemployment Priority List registration form. (5 CFR 330.303(c))

o For example, at its option the agency may establish a two-way street in administering the Reemployment Priority List, and provide employees with the opportunity to specifically apply for a vacancy that the agency plans to fill with an outside candidate.

o This option allows agencies to provide employees with full consideration for positions from the Reemployment Priority List, particularly when the employee's initial registration form under 6-A-8-3 indicates that the individual may or may not meet the qualifications for a position from the List.

o This option recognizes that an employee is unlikely to cover all potential selective placement factors when registration for the Reemployment Priority List under is limited to the single one-time completion of a registration form.

o This option allows provides separated employees with an opportunity to receive full consideration for any experience and retraining received following separation by reduction in force.

o Section 6-A-17 covers qualifications for selection from the Reemployment Priority List.

MODULE 6 (REEMPLOYMENT PRIORITY LIST), UNIT B (GUIDANCE), SECTION
10. EMPLOYEE CONSIDERATION FROM THE REEMPLOYMENT PRIORITY LIST
BASED ON REDUCTION IN FORCE

1. CONSIDERATION OF GRADE LIMITS-GENERAL (Reference 6-A-10-1).
An employee who is eligible for the Reemployment Priority List on
the basis of a specific reduction in force notice of separation
is registered on the List for positions with a representative
rate no higher than the rate of the position that the employee
held when the employee was separated, or will be separated,
unless the employee was previously downgraded by reduction in
force. (5 CFR 330.206(a)(1))

o In some situations, an employee an employee may have a right
through the Reemployment Priority List to the same lower-graded position that
the employee declined as a reduction in force offer of assignment; for
additional information, reference FREEMAN v. AGRICULTURE, 2 M.S.P.R. 224
(1980).

o For example, on June 1, 1998, a GS-12 employee receives a
specific reduction in force notice and subsequently declines an
offer of assignment to a GS-11 position. On August 3, 1998, the
employee is separated by reduction in force, and registers for
the Reemployment Priority List. After registration, the employee
could then have a right through the Reemployment Priority List to
the same GS-11 position that the employee declined as a reduction
in force offer.

6. CONSIDERATION OF LOCAL COMMUTING AREA-GENERAL (reference 6-A-6-6). Except
for certain locations overseas or in Alaska, an employee who is eligible for
the Reemployment Priority List on the basis of a specific reduction in force
notice, or a Certification of Expected Separation, is entered on the List only
for the local commuting area where the employee's former position was located.

(b) (Reference 6-A-10-(b)) There is no authority for the agency to register
an employee on a Reemployment Priority List in a different local commuting
area, except for positions in Alaska or overseas. (5 CFR 330.206(a)(3))

(1) Through its own internal placement program, an agency may offer priority placement in a different local commuting area(s) to employees eligible for the Reemployment Priority List, provided that:

(i) The agency has first met its obligation under the Career Transition Assistance Plan (CTAP), which is authorized by Subpart 5 CFR 330-F, to place surplus and displaced employees in the different competitive area; (5 CFR 330.606(b), and

(ii) The agency has first met its obligation to provide Reemployment Priority List rights to employees eligible for the List in the different competitive area. (5 CFR 330.206(a)(3).

MODULE 6 (REEMPLOYMENT PRIORITY LIST), UNIT B (GUIDANCE), SECTION
12. REEMPLOYMENT PRIORITY LIST RESTRICTIONS ON FILLING POSITIONS

2. RPL COVERS PERMANENT AND NONPERMANENT COMPETITIVE SERVICE POSITIONS (reference 6-A-12-2). The Reemployment Priority List includes competitive service vacancies filled by permanent, term, temporary, or other nonstatus appointment. (5 CFR 330.205(a))

o For additional information on the applicability of the Reemployment Priority List to the filling of temporary positions, reference ZIEGELDORF v. ACTION, 18 M.S.P.R. 700 (1984).

9. NONAPPLICABILITY OF THE RPL TO INTERNAL PLACEMENT ACTIONS (reference 6-A-12-9). A agency may fill a vacant competitive service position without regard to the Reemployment Priority List when the agency offers the position to a current, qualified employee. (5 CFR 330.205(c)(2))

o For additional information on the nonapplicability of the Reemployment Priority List to positions filled through internal placement, reference MASON v. ARMY, 26 M.S.P.R. 414 (1985); and REIMER v. INTERIOR, 71 M.S.P.R. 205 (1996).

MODULE 6 (REEMPLOYMENT PRIORITY LIST), UNIT B (GUIDANCE), SECTION 16.
EXCEPTIONS TO THE REGULAR ORDER OF SELECTION FROM THE REEMPLOYMENT PRIORITY LIST

2. EXCEPTIONS TO THE REGULAR ORDER OF SELECTION FROM THE RPL-
DEFINITION OF UNDUE INTERRUPTION (reference 6-A-16-2). Agencies apply the same definition of "UNDUE INTERRUPTION" that is used in OPM's reduction in force regulations to the Reemployment Priority List. (5 CFR 351.203)

o The reduction in force definition of "undue interruption" provides that the general 90 day standard may be extended if a placement is made to a vacant position, which would include a position filled through the Reemployment Priority List;

o For additional information on consideration of undue interruption in filling vacant positions under the 5 CFR Part 351 reduction in force regulations (which also applies to the filling of vacant positions from the Reemployment Priority List), reference JAMISON v. TRANSPORTATION, 20 M.S.P.R. 513 (1984); LEWELLEN v. AIR FORCE, 25 M.S.P.R. 525 (1985); and NARCISSE v. TRANSPORTATION, 32 M.S.P.R. 232 (1987).

5. EXCEPTIONS TO THE REGULAR ORDER OF SELECTION FROM THE RPL-
DOCUMENTATION OF EXCEPTIONS (reference 6-A-16-5). When an agency makes an exception to the regular order of selection to the Reemployment Priority List, the agency must notify, in writing, each employee on the Reemployment Priority List who is adversely affected by the exception of:

(a) The reasons for the exception; (5 CFR 330.207(d)), and

(b) The right of the employee to appeal the exception to the Merit Systems Protection Board. (5 CFR 330.207(d))

o For additional information on the general requirement to advise employees of their right to file a Reemployment Priority List appeal, reference WASHINGTON v. GARRETT, 10 F.3d 1421 (9th Cir, 1993); and RYAN v. INTERSTATE COMMERCE COMMISSION, 70 M.S.P.R. 17 (1996).

o The Merit Systems Protection Board may waive the usual 30 day requirement for filing an appeal if the agency failed to advise the employee of a possible violation of the Reemployment Priority List and/or the right to appeal the agency's action to the Board; for additional information, reference WASHINGTON v. GARRETT, 10 F.3d 1421 (9th Cir, 1993); HORNER v. NAVY, 41 M.S.P.R. 20 (1989); BAXTER v. ARMY, 45 M.S.P.R. 663 (1990); and RYAN v. INTERSTATE COMMERCE COMMISSION, 70 M.S.P.R. 17 (1996).

MODULE 6 (REEMPLOYMENT PRIORITY LIST), UNIT B (GUIDANCE, SECTION 17.
QUALIFICATIONS FOR SELECTION FROM THE REEMPLOYMENT PRIORITY LIST

1. QUALIFICATIONS FOR SELECTION FROM THE REEMPLOYMENT PRIORITY LIST-GENERAL STANDARD (reference 6-A-17-1). An employee registered on the Reemployment Priority List is considered qualified for selection from the List to a vacancy if the employee meets the conditions covered in 6-A-17-1-(a) through 6-A-17-1-(e). (5 CFR 330.208(a)(1)-(4))

o On appeal the Merit Systems Protection Board will review an agency's actions to determine if a qualified employee was denied a position to which the individual is entitled from the Reemployment Priority List; for additional information, reference WASHINGTON v. GARRETT, 10 F.3d 1421 (9th Cir, 1993).

MODULE 6 (REEMPLOYMENT PRIORITY LIST), UNIT B (GUIDANCE), SECTION
18. INDIVIDUAL AGENCY PLACEMENT PROGRAMS AS AN ALTERNATIVE TO
THE REEMPLOYMENT PRIORITY LIST

2. OPM APPROVAL IS REQUIRED TO ESTABLISH AN ALTERNATIVE TO THE RPL (reference 4-6-A-2). Before approving an agency's placement program as an alternative procedure for selecting employees from the Reemployment Priority List, OPM must find that the agency's program meets the basic provisions in OPM's regulations covering the List.

- o For example, the agency's alternative placement program must provide full recognition of veterans' preference in the selection procedures.

- o The alternative placement program option allows agencies, at their initiative, to develop placement procedures that are most effective for their particular programs, but still meet all legal entitlements concerning reemployment priority.

MODULE 6 (REEMPLOYMENT PRIORITY LIST), UNIT B (GUIDANCE), SECTION
19. REEMPLOYMENT PRIORITY LIST APPEALS

1. RIGHT TO FILE A REEMPLOYMENT PRIORITY LIST APPEAL (reference 6-A-19-1). An employee eligible for the Reemployment Priority List may appeal to the Merit Systems Protection Board if the individual believes that the agency violated the employee's right to a position from the List. (5 CFR 330.209)

o For additional information on the general requirement to advise employees of their right to file a Reemployment Priority List appeal, reference WASHINGTON v. GARRETT, 10 F.3d 1421 (9th Cir, 1993); and RYAN v. INTERSTATE COMMERCE COMMISSION, 70 M.S.P.R. 17 (1996).

o The appellant is required to specify the violation of the Reemployment Priority List; for additional information, reference REIMER v. INTERIOR, 71 M.S.P.R. 205 (1996).

2. AGENCY NOTICE OF RPL APPEAL RIGHTS (reference 6-A-19-2).

(b) (Reference 6-A-19-2-(b)) An agency is required to advise eligible employees about the right to file a Reemployment Priority List appeal when the agency uses an exception to the List in filling a position from outside of the agency. (5 CFR 330.209)

o For additional information on the general requirement to advise employees of their right to file a Reemployment Priority List appeal, reference WASHINGTON v. GARRETT, 10 F.3d 1421 (9th Cir, 1993); and RYAN v. INTERSTATE COMMERCE COMMISSION, 70 M.S.P.R. 17 (1996).

o This obligation to provide individuals with notice of the right to file a Reemployment Priority List appeal can extend to other situations where the employee believes there is a dispute on eligibility for a position from the List (such as whether the individual is qualified for a position). (5 CFR 330.209)

o On appeal, the Merit Systems Protection Board reviews whether the agency's actions violated the individual's rights to a position through the Reemployment Priority List; for additional information, reference WASHINGTON v. GARRETT, 10 F.3d 1421 (9th Cir, 1993); MARTIN v. NAVY, 61 M.S.P.R. 21 (1994); RYAN v. INTERSTATE COMMERCE COMMISSION, 70 M.S.P.R. 17 (1996); and SWEENEY v. INTERIOR, 73 M.S.P.R. 329 (1997), and 76 M.S.P.R. 644 (1997).

o The Merit Systems Protection Board may review whether the agency's operation of a priority placement program improperly denied the individual rights provided by the Reemployment Priority List; for additional information, reference STUCK v. NAVY, 72 M.S.P.R. 153 (1996).

o The Merit Systems Protection Board has the right to order the retroactive correction of a Reemployment Priority List violation, or other appropriate remedy; for additional information, reference ZIEGELDORF v. ACTION, 18 M.S.P.R. 700 (1984); and BANASZEK v. ARMY, 22 M.S.P.R. 98 (1984).

3. AGENCY NOTICE TO EMPLOYEE OF HOW TO APPEAL (reference 6-A-19-3).

(a) (Reference 6-A-19-3-(a)) When an agency issues a decision notice to an employee on an action that is appealable to the Merit Systems Protection Board, the agency must provide the employee with information on the time limits for appealing the action to the Merit Systems Protection Board.

o The Merit Systems Protection Board may waive the usual 30 day requirement for filing an appeal if the agency failed to advise the employee of a possible violation of the Reemployment Priority List and/or the right to appeal the agency's action to the Board; for additional information, reference WASHINGTON v. GARRETT, 10 F.3d 1421 (9th Cir, 1993); HORNER v. NAVY, 41 M.S.P.R. 20 (1989); BAXTER v. ARMY, 45 M.S.P.R. 663 (1990); and RYAN v. INTERSTATE COMMERCE COMMISSION, 70 M.S.P.R. 17 (1996).