

## **DISCRETIONARY AREAS IN A REDUCTION IN FORCE**

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### **I. PURPOSE**

This chapter establishes policy and procedures and assigns responsibility for regulating discretionary areas in Reduction in Force (RIF) within CDC.<sup>1</sup> It supplements materials on RIF issued in 5 CFR Part 351 and other issuances by the U.S. Office of Personnel Management (USOPM) and the Department of Health and Human Services (DHHS). The Chapter must be used in conjunction with these issuances and related Merit Systems Protection Board (MSPB) and other third party decisions.

### **II. INTRODUCTION**

It has been the CDC policy to take all reasonable management actions to avoid the need for RIF. For example, the RIF Avoidance Employee Referral Program was implemented in July 1995 and was subsequently replaced by an expanded program, the Priority Placement Program (PPP), in February 1996. The PPP and other management actions will continue to be used to eliminate or minimize the need for RIF. Even though RIF will only be conducted if all RIF avoidance strategies are insufficient, Federal agencies must be prepared for that eventuality. Although USOPM regulations prescribe specific requirements that govern most aspects of RIF, they do provide for agency discretion in some areas. DHHS Personnel Instruction 351-1 requires that Operating Divisions (OPDIV) such as CDC establish consistent policies and procedures for regulating certain discretionary areas during a RIF. This is best accomplished when there are no immediate plans to conduct a RIF.

### **III. REFERENCES**

- A. 5 USC 3502: Order of Retention
- B. 5 CFR 351: Reduction in Force
- C. HHS Personnel Instruction 351-1: Reduction in Force (RIF)
- D. CDC HRM Manual Chapter 335-2: Priority Placement Program.

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<sup>1</sup>References to CDC also apply to ATSDR.

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REFERENCE POINT: Office of Program Support, Human Resources Management Office, Policy and Executive Management Staff

MATERIAL SUPERSEDED: None

#### **IV. REQUIREMENTS**

##### **A. Coverage**

This chapter covers positions in both the competitive and excepted service (including those employees covered by Title 38 pay provisions). It does not cover the Public Health Service (PHS) Commissioned Corps, the Senior Executive Service (SES), or the Senior Biomedical Research Service (SBRS).

##### **B. Authority**

The Director, CDC has full authority to approve RIFs and furloughs and to revise competitive areas in CDC.

##### **C. Policy**

It is the policy of CDC to take all reasonable management actions to avoid the necessity of conducting a RIF. However, if the Director determines that it is necessary to conduct a RIF, discretionary policies will be implemented to minimize employee turbulence and to ensure continued mission accomplishment.

##### **D. Discretionary Areas**

###### **1. Competitive Areas**

Competitive areas are the geographical and/or organizational boundaries in which employees compete during a RIF.

- a. All CDC and ATSDR positions within a commuting area<sup>2</sup> are in the same competitive area.
- b. Separate competitive areas are established for each commuting area.

###### **2. Filling Vacancies**

USOPM regulations provide management the discretion to use some, all, or no vacancies during RIF. Employees are not entitled to be placed into vacant positions.

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<sup>2</sup>Commuting Area is defined as the population center and the surrounding localities in which people live and can be reasonably expected to travel back and forth daily to their usual employment.

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However, CDC will use vacant positions to minimize the impact of RIF. Specifically:

- a. Vacant positions will be used to satisfy employee assignment rights before displacing other employees. A request not to use a specific vacancy must be approved by the CDC Associate Director for Management and Operations.
- b. Vacancies that remain unfilled after a RIF, typically because they did not satisfy an employee assignment right, will be offered to qualified employees in lieu of separation. When more than one employee is available for placement, positions will be offered in retention order.
- c. A vacancy not otherwise used in RIF may be offered as an "alternate offer" to an individual who has been identified for reassignment or change to lower grade. Typically, an alternate offer is made to permit an employee to remain at his/her current duty station or in the same line of work, but at a lower grade than the one to which he/she is entitled under RIF procedures. An alternate offer is made at management's discretion, but an employee need not accept such an offer. Employees who accept alternate offers at lower grades may be provided grade retention.
- d. Vacant temporary positions will be offered to qualified individuals in lieu of separation. When more than one employee is available, positions will be offered in retention order.

### 3. Waiver of Qualifications

Generally, an employee must meet all USOPM standards and requirements for assignment to a position during a RIF. However, agencies may waive normal qualification requirements under certain circumstances:

- a. Qualifications may only be waived for placement into vacant positions.
- b. When the agency has determined that the employee has the capacity, adaptability, and special skills necessary to perform the duties of the position. Minimum educational requirements for a position may not be waived.
- c. Within CDC, qualification waivers will be exercised with caution and consistency as follows:

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- (1) Waivers will only be considered to place an employee into a vacant position that was not used to satisfy a fully qualified employee's assignment right.
- (2) Waivers are generally considered to place an employee identified for separation but may be considered at any time to minimize the impact of RIF.
- (3) If enough suitable vacancies for which qualifications can be waived exist to place all employees identified for separation, management will determine the appropriate job offers.
- (4) If not enough suitable vacancies exist to place all employees identified for separation:
  - (a) The Director, HRMO will match employees with vacancies based on their overall backgrounds.
  - (b) When more than one suitable candidate is identified for a vacant position, the job offer will be made on the basis of retention standing.

#### 4. Displacement Within Subgroups

USOPM provides agencies an optional RIF mechanism to permit "bumping" within subgroups. However, this option results in more employee displacements, and it will not be used at CDC.

#### 5. Assignment Rights Outside of a Competitive Area

Assignment rights outside of an employee's competitive area will be exercised through the USOPM Interagency Career Transition Assistance Program (ICTAP) and the DHHS Career Transition Assistance Program (CTAP). Employees exercise their placement rights under CTAP through registration in the CDC PPP.

#### 6. Assignment Rights of Excepted Service Employees

Excepted service employees do not have assignment rights outside of their competitive levels. However, CDC management will attempt to identify suitable vacant positions to provide continuing employment for excepted service employees identified for separation.

#### 7. Assignment Rights of Tenure Group III Employees

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Tenure Group I (career employees) and Tenure Group II (career-conditional employees) have assignment rights outside of their competitive levels as described in USOPM regulations. Competitive service employees serving under nonstatus, nontemporary appointments (typically few at CDC) are in Tenure Group III for RIF purposes. Tenure Group III employees do not have assignment rights outside of their competitive levels. However, CDC management will attempt to identify suitable vacant positions to provide continuing employment for Tenure Group III employees identified for separation.

#### 8. Reemployed Annuitants

Reemployed annuitants serve at the will of the appointing officer and may be terminated at any time. A reemployed annuitant will be terminated when such action permits the retention of a competing employee, who would otherwise be separated by RIF.

#### 9. Exceptions to the Order of Release

USOPM regulations permit agencies under certain circumstances to grant permissive continuing and/or temporary exceptions to the normal order of release from competitive levels. CDC exceptions to retain employees who would otherwise be removed from their competitive levels are as follows:

##### a. Employee on Approved Sick Leave:

An employee who is on approved sick leave and has made application for disability retirement as of the effective date of a RIF may be temporarily retained until his/her sick leave is exhausted, unless and until USOPM disapproves the retirement request and any appeals.

##### b. Employee on Accrued Annual Leave:

An employee may be temporarily retained on accrued annual leave in order to attain first eligibility for immediate retirement and/or to meet the time requirements to carry health insurance into retirement.

##### c. Temporary Exceptions:

Individual temporary exceptions may be made for not more than 90 days, in

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order to continue an activity without undue interruption. Requests must be individually approved by the CDC Associate Director for Management and Operations and must not adversely affect an employee with higher retention. Individuals on Intergovernmental Personnel Act (IPA) assignments may be candidates for temporary retention.

d. Continuing Exceptions:

Individual continuing exceptions may be made to retain an employee on duties that cannot be taken over within 90 days and without undue interruption to the activity by an employee with higher retention standing. Such exceptions are expected to be rare and must be approved by the Director, CDC.

10. Tie Breaking Procedures

Agencies must have a tie breaking procedure to deal with situations in which two or more employees have identical retention standing.

- a. When automated systems are used for running RIFs, a tie breaking process is typically built in (e.g., random selection based on Social Security Number). If, at the time of a RIF, CDC uses an automated RIF system, the built in tie breaker will be used.
- b. If, at the time of a RIF, CDC uses a manual RIF process, retention ties will be broken by successive application of the following:
  - (1) Length of service with CDC/ATSDR.
  - (2) Length of service in present grade.
  - (3) Random selection based on last digit of Social Security Number.

11. Use of Performance Appraisals

- a. To provide adequate time to determine employee retention standing, performance appraisals must be received in HRMO before a specifically cited cut-off date. This date will be at least 30 days prior to the issuance of RIF notices. No new appraisals received after the cut-off date will be used to determine retention standing.

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- b. Only the three most recent annual appraisals within the 4-year period ending on the cut-off date for receipt of appraisals will be used for performance credit. When an employee has not received three appraisals within the 4-year period, those missing will be assumed to be "Fully Successful" ratings.

12. Acceptance of Qualification Information

- a. To provide adequate time to determine placement rights, HRMO will establish a cut-off date for acceptance of qualification-related information that employees may submit to update their Official Personnel Files (OPF). This cut-off date will be made known to the workforce as far as possible in advance. The date established will be the same as the cut-off date for receipt of performance appraisals.
- b. HRMO will date stamp all qualification information upon receipt and file the information in the employee's OPF.