

HHS Transmittal 95.8
Personnel Manual
Issue Date: 10/25/95

Material Transmitted:

HHS Instruction 351-1, Reduction in Force (RIF)

Material Superseded:

HHS Instruction 351-1 (all)

Background:

This Instruction has been revised consistent with recent changes in the organization of HHS, and in support of HHS administrative initiatives calling for more streamlined rules and greater delegations of authority.

Delegations of authority have been increased under this instruction. Heads of OPDIVs now have full authority to approve furloughs and RIFs, and to revise competitive areas in their organizations.

Any reference to "OPDIV" in this instruction now includes the PHS agencies, the Office of the Secretary, and the Program Support Center as well as HCFA and ACF.

This issuance is effective immediately. However, changes in conditions of employment for bargaining unit employees must be implemented consistent with labor relations responsibilities in 5 U.S.C. Chapter 71 and provisions of negotiated agreements.

Filing Instructions:

Remove superseded material and file new material. Post receipt of this transmittal to the HHS Check List of Transmittals and file this transmittal in sequential order after the check list

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INSTRUCTION 351-1

MS (PERS) HRFC-001

REDUCTION IN FORCE (RIF)

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351-1-00 PURPOSE AND AUTHORITY

This Instruction sets forth the Department's policy and procedures concerning reduction in force (RIF), furlough, and related areas. It supplements the materials on these subjects issued by the Office of Personnel Management (OPM) and 5 CFR Part 351. It must be used in conjunction with these issuances and related MSPB and other third party decisions.

351-1-10 COVERAGE

This Instruction covers positions in the competitive and excepted service. It does not cover the Public Health Service (PHS) Commissioned Corps, the Senior Executive Service (SES) or positions located in foreign countries that are filled by non-U.S. citizens.

351-1-20 REFERENCES

- A. U.S. Code 3502 and 3503 (law--RIF and transfer of function)
- B. Public Law 93-638 (Indian Self-Determination Act)
- C. Public Law 96-135 (reassignment of non-Indians within the Indian Health Service)
- D. CFR 213.3116(b)(8) (excepted appointment authority for persons entitled to Indian preference)
- E. CFR Part 302 (Reemployment Priority for Excepted Service Employees)
- F. CFR Part 330 (placement assistance programs)
- G. CFR Part 351 (RIF regulations)
- H. CFR Part 752 (adverse action)
- I. CFR 550 (Severance Pay)
- J. HHS Instructions 430-4 (performance ratings)

351-1-30 COMPETITIVE AREAS IN HEALTH AND HUMAN SERVICES

- A. Separate competitive areas are established for the following organizations in each commuting area. For purposes of this instruction, Washington and Baltimore are considered separate commuting areas:
1. Office of the Secretary (excluding the Office of the Inspector General)
 2. Office of the Inspector General
 3. Health Care Financing Administration
 4. Administration for Children and Families
 5. Administration on Aging
 6. The Program Support Center
 7. Agency for Health Care Policy and Research
 8. Substance Abuse and Mental Health Services Administration
 9. Centers for Disease Control and Agency for Toxic Substances and Disease Registry
 10. Food and Drug Administration
 11. Indian Health Service
 12. National Institutes of Health
 13. Health Resources and Services Administration
- B. Deputy Assistant Secretary for Human Resources (DASHR) must be notified in writing immediately upon the establishment of new competitive areas.
- C. If a competitive area will be in effect less than 90 days prior to the effective date of a RIF, a description of such competitive area must be forwarded to the U.S. Office of Personnel Management for approval with a copy to the Deputy Assistant Secretary for Human Resources.

351-1-40 **COMPETITIVE LEVELS**

Personnel offices have the responsibility for establishing competitive levels for positions under their appointing authority and issuing interchangeability determinations for any standard position descriptions which they issue.

351-1-50 **DEPARTMENT POLICY IN DISCRETIONARY AREAS**

OPDIVS must establish and follow consistent procedures in RIFs for regulating the following areas:

- A. Filling Vacancies in an organization undergoing RIF: rules to assure the rights of employees.
- B. Waiving Qualifications in the placement/Displacement of employees.
- C. Displacement within Subgroups
- D. Assignment Outside the Competitive Area: rights of employees to displace employees outside their competitive area, and rights of assignment.
- E. Assignment Rights of Excepted Service Employees when released from their competitive area.
- F. Intergovernmental Personnel Act (IPA) Assignees: consider the discretionary exceptions in 5 CFR 351.607. 608
- G. Employees on Sick Leave: consider disability retirement and the retention of an employee on sick leave as an exception to the order of release.
- H. Exceptions to the Order of Release
- I. Tie Breaking Procedures: These must be a matter of record prior to a RIF. Personnel offices may use previously established criteria.
- J. Use of Performance Ratings

351-1-60 **RIFS IN THE INDIAN HEALTH SERVICE**

- A. When a RIF is conducted in the Indian Health Service, retention registers for employees in the competitive service are merged with those for employees appointed under the Schedule A 5 CFR 213.3116(b)(8) authority. Retention registers for employees appointed under other authorities are kept separate.
- B. On the merged registers, employees entitled to Indian preference are placed ahead of other employees in a particular subgroup.
- C. Non-Indians may bump Indians in lower subgroups without prior approval. However, the placement of a non-Indian in vacancy requires prior ASMB approval under the provisions of Public Law 96-135.
- D. When determining whether an employee may displace another employee by retreat, Indian employees are placed above non-Indian employees in the same subgroup. Thus, a non-Indian employee may not displace an Indian employee in the same subgroup.

351-1-70 OUTPLACEMENT ASSISTANCE

- A. HHS Reemployment Priority List (RPL):
 - 1. Basic Policies
 - a. The RPL applies to the competitive service, including temporary positions, and to Indian preference appointments.
 - b. The exceptions to the RPL that OPM permits for appointment of disabled veterans from OPM registers and OPM options for the reinstatement of preference eligibles are permitted in HHS.
 - c. Thirty-day special needs appointments and 700-hour appointments of individuals with disabilities are permitted as exceptions to the RPL.
 - d. Conversions, including the reinstatement of an excepted service employee to the competitive service without a break in service, are subject to clearance of the RPL. However, conversions that are inherent in the appointing authority, such as for employees with disabilities on Schedule A appointments, are permitted.
 - e. OPM regulations require separate RPL registers for full-time and part-time employees. However, it is the Department's policy that if

there are no part-time employees on the RPL

for a part-time position, full-time employees who have indicated availability for part-time positions must be selected ahead of applicants from outside the Department, and vice versa. In these cases, selections are made in subgroup order.

2. Indian Preference Requirements:

In the Indian Health Service, employees serving on excepted appointments for Indian preference will be registered on the RPL along with employees separated from competitive service positions. Indian preference RPL candidates must be considered and appointed ahead of any non-Indian RPL candidate, regardless of the tenure group/subgroup ranking of the non-Indian RPL candidate. Indian preference RPL candidates must be considered ahead of any Indian preference candidate applying from outside of the Department. However, an outside Indian preference candidate must be considered and appointed prior to referring any non-Indian RPL candidate. Non-Indian candidates entitled to priority consideration under the agency's RPL will be considered only when there are no qualified or available Indian preference candidates.

3. The Reemployment Priority Coordinator:

- a. The reemployment priority coordinator is the personnel officer or his/her designee who maintains the RPL for a commuting area. If employees are being separated from only one competitive area in a commuting area, the personnel officer with appointing authority over those positions is the coordinator. If more than one personnel office has appointing authority over employees who are being separated, the personnel officer with the largest number is the coordinator, unless the affected personnel officers agree otherwise.

If an installation is closed and there is no longer a personnel officer, the DASHR will designate a coordinator.

- b. The reemployment priority coordinator will notify OPDIVS/STAFFDIVS whenever the RPL is activated and will distribute RPL clearance requirements to all servicing personnel

offices in the commuting area. Clearance requirements will, at a minimum, include a list of the series and grade levels that require RPL clearance. Reemployment priority coordinators have discretion to establish different operating procedures when dictated by local conditions. Servicing personnel offices must document any selections from outside the Department to show that the reemployment priority list was cleared. If the reemployment priority coordinator and another servicing personnel officer cannot resolve a disagreement concerning the qualifications of an RPL candidate for a particular vacancy, the case will be sent to next organizational level (The OPDIV Personnel Officer or the DASHR).

- c. Employees who do not comply with procedures established by the reemployment priority coordinator may be removed from the reemployment priority list, provided that the procedures are in writing and the employee has been informed in writing that his/her noncompliance will result in removal from the list.

351-1-80 STATUTORY RETENTION (REEMPLOYMENT) RIGHTS BASED ON MILITARY SERVICE

The procedures for retaining an employee with statutory retention rights are as follows:

1. When all of the positions in his or her competitive level are not being abolished, the employee is retained in that competitive level, even if employees in the same subgroup with higher standing are released.
2. If an employee is reached for release, a search is made in the following order: (a) the competitive area, (b) other competitive areas in the commuting area, (c) the Operating Division in other commuting areas, and (d) throughout other parts of the Department. The employee is entitled to displace any employee who occupies a position to which he or she had restoration rights and who has lower retention standing, provided that he or she is qualified for that position. If no position can be found, the servicing personnel officer will contact the DASHR for assistance in locating a position.

351-1-90 TRANSFER OF FUNCTION

OPM regulations contain no -prescribed notice period for informing employees about a transfer of function. It is the policy of this Department that when the transfer involves the movement of employees to another commuting area, employees must be notified at least 30 calendar days in advance of the proposed effective date of the transfer and must be given at least 15 calendar days to respond.

HHS 351-1 Exhibit A

DELEGATIONS OF AUTHORITY

A. Approval of RIF, Furlough, and Changes to Competitive Areas

Heads of Operating Divisions (including PHS agencies and the Program support Center), the Assistant Secretary for Management and Budget for the Office of the Secretary (OS), and the Inspector General (for OIG) are delegated the authority to approve RIFs, furloughs, and to make changes in competitive areas for positions in their organizations. These authorities may be redelegate.

B. Requirements

1. Notification

In cases of furloughs, or RIFs involving separation of employees , written notification of the proposed action must be received by DASHR before specific notices are issued.

2. Transfers of Function

No prior approval is required to effect personnel actions resulting from transfers of function. However, when the transfers involve the movement of employees to other commuting areas, the DASHR must be notified in writing before transfer offers are made "to employees.