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ADS Chapter 455

Reduction in Force in the Senior Executive Service

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 ADS Chapter 455 – Reduction in Force in the Senior Executive Service
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ADS Chapter 455 – Reduction in Force in the Senior Executive Service

455.1 OVERVIEW

This Chapter establishes policies and procedures for conducting a reduction in force (RIF) among career members of the Senior Executive Service (SES) in the United States Agency for International Development (USAID).

455.2 PRIMARY RESPONSIBILITIES

- a. The **Administrator or the Administrator's Designee** is responsible for:
1. Approving the need for a Reduction in Force (RIF) in the Senior Executive Service (SES);
 2. Approving placement offers or separation actions for affected SES members;
 3. Ensuring that RIFs in the SES are based on concepts of efficiency and effective mission support; and,
 4. Making certain that RIFs are carried out in accordance with governing regulations and Agency policies and procedures.
- b. The **Assistant Administrators and Heads of Independent Offices** are responsible for:
1. Identifying which SES positions are affected because of program curtailments, reduction in monetary or manpower allocations, or any other causes which shall result in a reduction in the size of their SES workforce, and initiating appropriate action as described in the following procedures;
 2. Recommending placement actions within their organizations for affected SES appointees; and,
 3. Providing requests for personnel action and appropriate data in support of RIF actions affecting subordinate SES appointees.
- c. The **Director, Office of Human Capital and Talent Management (HCTM)** is responsible for:
1. Developing, promulgating, and implementing Agency procedures for implementing RIF in the SES and related personnel management functions, consistent with appropriate law and U.S. Office of Personnel Management (OPM) regulations;

2. Maintaining liaison with OPM on RIF policy and placement offers for affected employees; and,
3. Reviewing plans to conduct a RIF in the SES and providing staff advice and recommendations and technical support for program implementation.

455.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

The following are the official Agency policies and corresponding essential procedures:

455.3.1 Senior Executive Service (SES) Appointees

If a Reduction in Force (RIF) becomes necessary, appointees in surplus SES positions and displaced SES appointees must be informed at the earliest possible time and advised of the regulations under which the RIF action is being taken and of their rights and benefits. All members must be accorded fair and equitable treatment consistent with governing regulations and Agency procedures.

455.3.2 Involuntary Reassignment of Career SES Members

When SES positions occupied by career executives are modified (such that they are no longer SES qualifying) or abolished, the executive shall be reassigned to a vacant SES position for which qualified in the Agency. If there are no vacancies, RIF procedures are applied.

At 5 U.S.C. 3395(e), the statute imposes a 120-day restriction on involuntary reassignment of career SES members following the appointment of a new head of the Agency or non-career supervisor. This restriction which is intended to allow new Agency management time to become familiar with the capabilities of career executives before taking action particular to an individual applies even in RIF situations. (See [5 USC 3395\(e\)](#))

If reassignment of a career executive becomes necessary due to RIF, the Agency has the following options:

- a) Offer reassignment and effect it during the 120-day period if it is voluntarily accepted by the executive.
- b) Issue a notice that shall result in an involuntary reassignment to be effected when the 120-day period is over.

If failure to take reassignment action would violate a law having precedence (e.g., the Anti-Deficiency Act), the Agency shall effect the reassignment despite the 120-day restriction.

455.3.3 Exclusions

Non-career appointees, limited-term appointees, and limited-emergency appointees are placed on a separate list apart from the retention register and are excluded from competitive RIF procedures. The Agency shall remove these employees at any time and in any order. The Agency must give the employee written notice prior to the effective date of removal. Actions taken against these employees are not appealable to the Merit Systems Protection Board (MSPB). However, a limited appointee who is appointed from within USAID has a right of return to a position in like status, tenure, and grade in accordance with 5 CFR 317.605(d). (See [5 CFR 317.605\(d\)](#))

These RIF procedures do not apply to an individual who is a former SES career appointee while serving under a Presidential appointment.

The Agency must issue the non-career, limited-term and limited-emergency appointees written notices prior to the effective date of removal.

455.3.4 Scope of Competition

The competitive area includes all SES positions in the Agency, except those positions in the Office of the Inspector General which are in a separate competitive area. SES employees compete for retention in the competitive area by competitive level.

455.3.5 Implementation of a Formal RIF

Career and probationary appointees who occupy surplus positions and who have not been placed by directed reassignment into vacant SES positions shall be subject to a formal RIF on the basis of retention competition.

Implementation of a formal RIF shall be conducted on the basis of retention competition. HCTM must prepare a retention register and provide staff support for the formal implementation process.

455.3.5.1 Retention Register

Career and probationary appointees who occupy positions that have been scheduled for abolishment are entitled to compete for job retention. A list, called a retention register, is compiled of the incumbents of all SES positions in the same competitive level as the affected employee(s). Incumbents of positions in each competitive level shall be listed on the retention register in accordance with the point system set forth below.

455.3.5.2 Retention Standing

A career appointee's relative standing on the retention register shall be determined by assigning points to the six factors listed below, with performance given primary consideration. Only final (annual) ratings of record received under an SES performance appraisal system are used. Probationary and career appointees who do not have an SES rating of record shall be given a presumptive rating of Fully Successful.

- 1) Credit 15 points for actual receipt of each Distinguished Executive rank award within the past five rating cycles or approval for such an award by the Administrator in those years where lack of funds precluded the granting of awards;
- 2) Credit 10 points for actual receipt of each Meritorious Executive rank award within the past five rating cycles or approval for such an award by the Administrator in those years where lack of funds precluded the granting of awards;
- 3) Credit 5 points for the actual receipt of each bonus within the past five rating cycles or approval for such a bonus by the Administrator in those years where lack of funds precluded the granting of bonuses;
- 4) Credit 10 points for each performance rating of outstanding during the past five rating cycles;
- 5) Credit 5 points for each rating of exceeds fully successful during the past five rating cycles; and
- 6) Credit 10 points for having served five or more years in the career SES.

455.3.5.3 Displacement and Consequences of Competition

- 1) If there are appointees occupying positions for which the surplus appointee is qualified and who are in a lower retention standing on the retention register, as determined through the competitive process described above, the appointee of the position scheduled for abolishment shall displace the appointee with the lowest retention standing.
- 2) If there are no appointees with lower retention standing on the retention register, no displacement is possible and the employee is entitled to assignment rights as discussed below.
- 3) When employees are tied for release from a retention register, the Agency shall select any of the tied appointees for release, except that an appointee who has

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completed the probationary period must be retained over an appointee who has not completed the probationary period if both have the same retention standing

455.3.6 Assignment Rights

Career SES Appointees and SES Probationary Employees are entitled to assignment rights for placement considerations within USAID or another agency through OPM in accordance with procedures set forth in **455.3.6.1** and **455.3.6.2**.

455.3.6.1 Assignment Rights - Career SES Appointees Who Have Completed Probation

SES career appointees who cannot displace other appointees on their retention register through the formal RIF process are entitled to be placed in a vacant SES position for which they qualify within USAID or within another agency through the OPM RIF placement assistance program. If no SES position is found, the displaced appointee is entitled to be placed in a continuing General Schedule position.

- 1) USAID Certification. If USAID is unable to place a RIF'd career appointee in a vacant SES position for which qualified because there is no such position, certification of this must be made in writing to OPM under the signature of the Administrator, with a copy to the affected appointee.
- 2) OPM Placement Offer. OPM has 45 calendar days from the date OPM acknowledges receipt of the Agency certification to locate and offer the RIFed career appointee an SES vacancy for which qualified. RIFed career appointees remain on the Agency rolls in an SES pay status during this process.
- 3) Placement in the GS Personnel System. When OPM is unable to effect placement to a vacant SES position, the affected SES appointee is entitled to be placed in a continuing civil service position that must last at least three months at grade GS-15 of the General Schedule, or equivalent, in any agency, with tenure equivalent to the tenure of the appointment held by the affected appointee at the time of entry into the SES, even if USAID must create a position for the affected appointee. If the RIFed career appointee does not have reinstatement rights in the competitive service, the Agency must use the Schedule B authority under 5 CFR 213.3202(m) or other excepted appointment authority. Placement must not be made to a position which causes the separation or reduction in grade of any other employee. (See [5 CFR 213.3202\(m\)](#))
- 4) Entitlement to Saved Pay. As stated in 5 U.S.C. 3594(c)(1), the career appointee so placed is entitled to receive pay at the highest of the following rates of basic pay (See [5 USC 3594\(c\)\(1\)](#)):

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- a. The rate of basic pay in effect for the General Schedule position in which placed;
- b. The rate of basic pay in effect at the time of the placement for the civil service position held immediately before being appointed to the SES; or
- c. The rate of basic pay in effect for the career appointee immediately before being placed in the General Schedule position upon separation from the SES.

The entitlement of saved pay will end if the employee's rate of pay falls within the pay limits of the grade in which placed. An employee's saved pay rate will be increased by 50% of the amount of any routine annual increases (i.e. pay adjustments to base salary) for the grade in which placed. If the employee's saved pay becomes equal to or lower than the maximum rate for the grade in which placed, saved pay ceases and the employee receives the maximum rate for that grade as stated in 5 U.S.C. 3594(c)(2). (See [5 USC 3594\(c\)\(2\)](#))

If placement is in another agency, the employee is still entitled to saved pay. Also, if any employee is placed in a GS-15 position, the employee will receive full locality pay, provided that the combination of locality pay and base pay does not exceed level IV of the Executive Schedule as stated in 5 CFR 359.705c.

455.3.6.2 Assignment Rights - SES Probationary Employees

SES probationary appointees who are RIFed from their position are not entitled to the placement consideration from OPM that non-probationary career appointees receive. They must be placed in any vacant SES position for which they qualify within USAID, if there is no non-probationary career appointee affected by the RIF who is entitled to the position.

- 1) SES Probationary appointees who, as of the effective date of their RIF, are still serving probation, and who were appointed to the SES from a civil service position held under a career or career-conditional, or equivalent tenure, appointment, are entitled to be placed in a continuing civil service position that shall last at least three months at grade GS-15 of the General Schedule, or equivalent, in any agency, with tenure equivalent to that of the appointment held by the affected appointment at the time of entry into the SES, even if USAID must create a position for the affected appointee. Placement must not be made to a position which causes the separation or reduction in grade of any other employee. The probationary employee so placed is entitled to receive pay at the highest of the rates of basic pay, in accordance with the above saved pay provisions. (See **section 455.3.6.1 para 4**)

- 2) Probationary SES appointees who, as of the effective date of their RIF action, are still serving probation, but who did not hold a career or career-conditional, or equivalent tenure, appointment prior to the SES appointment, are not entitled to a position at GS-15 of the General Schedule, or equivalent. Probationary SES appointees not entitled to guaranteed placement are separated from the federal service.

455.3.7 Separation

The Merit Systems Protection Board has held that the 120-day restriction at 5 U.S.C. 3592(b)(1) on involuntary removal of career SES members following the appointment of a new head of the Agency or non-career supervisor does not apply to removal under RIF. USAID must assure, however, that RIF actions, even when legally permitted, are not being used to circumvent the moratorium provisions on removals and involuntary reassignments. (See **455.3.2** and [5 USC 3592\(b\)\(1\)](#)) Therefore, to the extent possible and practicable, the Agency shall avoid RIF actions while moratorium periods are in effect to avoid even the appearance of circumvention.

Career and Probationary Employees and Re-employed Annuitants under involuntary separation are entitled to certain considerations in accordance with procedures set forth in 455.3.7. (See **455.3.7**)

- a) Career Appointees
1. Career appointees are considered involuntarily separated from the Agency rolls and entitled to discontinued service annuity (provided they meet the eligibility requirements of Part 831, Title 5, CFR) when:
 - a) They decline a reasonable OPM offer of another SES position somewhere in the federal government;
 - b) They are not placed by OPM in an SES position in another agency within 45 days from the date the Agency's certification is acknowledged by OPM; or,
 - c) They retire upon receiving a specific notice that their position shall be abolished and that they face involuntary separation from such position.
 2. A career employee who declines a directed reassignment to another SES position in the Agency within the employee's commuting area is not eligible for discontinued service annuity.

b) Probationary Appointees

Probationary appointees are considered involuntarily separated from Agency rolls and entitled to discontinued service annuity (provided they meet the eligibility requirements of Part 831, Title 5, CFR) when:

1. They decline an offer of a continuing GS-15 position upon separation from the SES; or
2. They retire upon receiving a specific notice that their position must be abolished and that they face involuntary separation from such position.

c) Career or Probationary Appointees who are not eligible for military retired pay or an immediate annuity based on optional or discontinued service retirement are eligible for severance pay provided they meet the eligibility requirements of Part 550, Title 5, CFR, and provided the employee has not refused a directed reassignment or declined an offer of a reassignment to another SES position in the Agency within the employee's commuting area.

d) Re-employed Annuitants shall be removed at any time from their SES position. However, if they are not removed prior to a RIF, they become part of the formal RIF procedures.

455.3.8 Notice Requirement for RIF-Related Actions

The Agency shall issue written notices to each affected employee for RIF-related actions, in accordance with procedures set forth in 455.3.8. (See **455.3.8**)

a) Removal of Non-Career, Limited Appointees and Re-employed Annuitants

A written notice of termination of appointment, due to the position of the appointee becoming surplus, must be issued to the appointee as soon as feasible in advance of the effective date of the action. A limited appointee who is appointed from within USAID has return rights to a position of like status, tenure and grade in accordance with 5 CFR 317.605d. (See [5 CFR 317.605d](#))

b) Removal of Probationary Appointees

Probationary appointees must receive written notification of their separation from the SES and placement in a civil service position outside the SES, removal from the Agency, as appropriate, before the effective date of the action. Notice will be given 30 days in advance, where feasible. Notice must include:

1. Whether the appointee has placement rights and, if so, the position

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to which the appointee will be assigned;

2. The effective date of the action; and
3. The appointee's appeal rights, including the time limit for appeal and the location of the Merit System Protection Board office to which an appeal should be sent.

c) Removal of Career Appointees

A career appointee who is removed from an SES position by RIF and who cannot be placed in another SES position in the Agency shall be given a specific, written notice at least 45 calendar days before the effective date of the removal. The notice must specify:

1. The action to be taken and its prospective effective date;
2. The appointee's retention standing;
3. Placement rights within the Agency and through OPM, including how the employee can apply for OPM placement assistance;
4. The place where the appointee shall inspect the regulations and records pertinent to the action; and
5. The name and telephone number of the personnel specialist who is available to provide counseling concerning the rights of the appointee;
6. The appointee's appeal rights, including the time limit for appeal and the location of the Merit Systems Protection Board office to which an appeal must be sent, and a copy of the applicable MSPB regulations and an appeals form; and,

A career appointee who has received a 45-day specific, written notice is also entitled to a second written notice at least one day before removal from the SES in accordance with 5 CFR 359.605. The notice must specify:

1. The basis for the removal;
2. The effective date of the removal;
3. Placement rights outside the SES and, when applicable, the appointee's eligibility for discontinued service retirement in lieu of placement; and
4. The appointee's appeal rights.

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d) Directed Reassignment

Career and probationary appointees are entitled to 15 calendar days advance written notice of a directed reassignment within the same commuting area, or 60 days advanced written notice of a directed reassignment outside the commuting area.

e) Removal for Failure to Accept a Directed Reassignment

Career appointees and probationary appointees who were appointed from a civil service career, career-conditional, or equivalent tenure appointment, who are removed for failure to accept a directed reassignment, are entitled to 30 calendar days written notice in advance of the effective date of such removal. The Agency must follow procedures governing separation for cause contained in Part 752, Title 5, CFR. Removal is from the Federal Service; there is no fallback provision.

455.3.9 Appeal Rights to the Merit Systems Protection Board (MSPB)

- a) Career and Probationary Appointees are entitled to appeal whether or not the RIF complies with competitive procedures established by the Agency.
- b) Non-Career and Limited Appointees have no right of appeal for separation from the SES or the Agency prior to or during a RIF.

455.3.10 Records

The Agency shall maintain current records needed to determine the retention standing of its SES appointees. The Agency shall allow the inspection of its retention registers and related records by an appointee to the extent that they have a bearing on the appointee's situation. The Agency must preserve intact all registers and records relating to a reduction-in-force action for at least two years from the effective date of the action.

455.4 MANDATORY REFERENCES

455.4.1 External Mandatory References

- a. [5 CFR 213.3202\(m\)](#)
- b. [5 CFR 317.605d](#)
- c. [5 CFR 359](#)
- d. [5 USC 3592\(b\)\(1\)](#)

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- e. [5 USC 3594\(c\)\(1\)](#)
- f. [5 USC 3594\(c\)\(2\)](#)
- g. [5 USC 3595](#)
- h. [5 USC 3395\(e\)](#)

455.4.2 Internal Mandatory References

Effective Date: 09/02/2002

There are no Internal Mandatory References for this chapter.

455.5 ADDITIONAL HELP

Effective Date: 09/02/2002

There are no Additional Help documents for this chapter.

455.6 DEFINITIONS

The terms and definitions listed below have been incorporated into the ADS Glossary. See the [ADS Glossary](#) for all ADS terms and definitions.

Abolished Position

An SES position which is surplus to the needs of the Agency due to any of the following reasons: (1) lack of work or curtailment of a function, (2) shortage of funds, (3) reorganization, (4) determination that the appointee's position no longer meets the definition for inclusion in the SES because of a change in duties or responsibilities, or (5) another action which results in the elimination or modification of an SES position. **(Chapter 455)**

Career Appointee

A career member of the SES who has completed, or was not subject to, a one-year probationary period. **(Chapter 455)**

Competitive Area

The organizational unit(s) or subdivision and geographical location within the Agency in which employees compete for retention under RIF procedures. Separate competitive areas are established for each bureau or equivalent organization listed in the USAID Competitive Areas mandatory reference. Employees in a competitive area compete only with each other; they do not compete with employees in another competitive area. **(Chapter 452, 454, 455)**

Competitive Level

A grouping of all positions within a competitive area which are in the same grade (or

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occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedule, and working conditions so that reassignment of one employee to any other position within that level may occur without undue interruption. (**Chapter 455**)

Directed Reassignment

A management decision of the Administrator to reassign a career or probationary appointee to another SES position for which qualified. (**Chapter 455**)

Performance Ratings

The final (annual) rating of record given under an SES performance appraisal system as reviewed by the Agency Performance Review Board and approved by the Administrator. SES appointees who for any reason do not have an annual performance rating of record shall be assigned a presumptive rating of Fully Successful. (**Chapter 455**)

Probationary Appointee

A career member of the SES who is subject to, but who has not completed, a one-year probationary period. (**Chapter 455**)

Reduction in Force (RIF)

The release of a career or probationary appointee from a position in the Senior Executive Service (SES) because the appointee has been displaced by a career or probationary appointee in a surplus position who has a higher retention standing, or the release of a career or probationary appointee from a surplus position in the SES when such appointee has the lowest retention standing of those occupying SES positions for which the appointee is qualified. (**Chapters [423](#), [454](#), [455](#)**)

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