ADS Chapter 452

Reduction in Force – Civil Service

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ADS 452 – Reduction in Force – Civil Service

452.1 OVERVIEW
Effective Date: 09/18/2002

This section provides Agency policy for Reduction in Force (RIF) actions affecting Agency direct-hire Civil Service (CS) employees. This section does not apply to Senior Executive Service (SES) employees, Foreign Service (FS) employees, or employees whose appointments are required by Congress to be confirmed by, or made with the advice and consent of, the U.S. Senate.

452.2 PRIMARY RESPONSIBILITIES
Effective Date: 09/18/2002

a. Administrator (A/AID)

(1) Approves reductions in force (RIFs).

(2) Approves the establishment and abolishment of Bureaus and independent Offices and the transfer of functions between USAID/W Bureaus and independent Offices.

b. Assistant Administrator for Management (AA/M)

(1) Based on the recommendations of the Office of Human Resources (OHR), determines that a RIF is necessary. Submits specific recommendations to the Administrator for approval.

(2) Decides exceptions to discretionary Reduction In Force procedures, such as exceptions to regular order of release (**452.3.5**).

c. Deputy Assistant Administrator, Bureau for Management, Office of Human Resources (DAA/OHR)

(1) Implements a RIF when it has been authorized by the Administrator and makes recommendations to the AA/M on positions to be abolished.

d. Assistant Administrators and Office Heads

(1) Advise DAA/OHR of proposed or pending changes within their respective organization, programs, or funding that may alter the composition, disposition, or level of the workforce.

(2) Request RIF action for respective organization and recommend positions to be abolished.

e. Bureau for Management, Office of Budget, Support Budget Division (M/B/SB)

(1) Advises DAA/OHR of proposed or pending changes in any organization, program, or funding that may alter the composition, disposition, or level of the workforce.

f. Office of Equal Opportunity Programs (EOP)

(1) Provides guidance to Assistant Administrators, Office heads, and DAA/OHR concerning the potential impact of RIF on the Agency's equal employment and affirmative action goals and objectives.

452.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

Effective Date: 09/18/2002

The statements contained within the .3 section of this ADS chapter are the official Agency policies and corresponding essential procedures.

452.3.1 Actions Covered

Effective Date: 09/18/2002

Management has the right to determine whether a Reduction in Force (RIF) is necessary, which positions shall be abolished, and when the RIF shall take place. Before conducting a RIF, the Agency shall explore with the employee's exclusive representative all available alternative measures to avoid a RIF or to minimize its affects.

RIF actions shall be taken by the Agency in compliance with laws, regulations, and negotiated bargaining agreements. RIF procedures shall not be used to avoid any prescribed procedures for other situations, e.g., adverse actions.

A personnel action must be taken under reduction in force (RIF) procedures when both the action to be taken and the cause of the action meet the criteria below.

a. Action to be taken is release of an employee from a competitive level by:

(1) Separation;

(2) Furlough for more than 30 days;

(3) Demotion; or

(4) Reassignment requiring displacement.

b. Cause of the action is:

(1) Lack of work;

(2) Shortage of funds;

(3) Insufficient personnel ceiling;

(4) Reorganization;

(5) An individual's exercise of reemployment rights or restoration rights; or

(6) Reclassification of an employee's position due to erosion of duties when such action will take effect after the Agency has formally announced a RIF in the employee's competitive area and when the RIF will take effect within 180 days.

452.3.2 Reclassification

Effective Date: 09/18/2002

When the grade of a position is reduced, the Agency must decide the reason for the change. The reason determines whether RIF procedures must be followed.

452.3.2.1 Reclassification Due to Reorganization

Effective Date: 09/18/2002

If a reorganization causes the Agency to release an employee from a competitive level by furlough for more than 30 days, separation, demotion, or reassignment requiring displacement, the Agency must follow RIF procedures (e.g., the Agency must apply RIF procedures if an employee is faced with separation or downgrading as a result of any action covered in 452.3.1). The Agency retains the right to reassign an employee to a position at the same grade and avoid the use of RIF procedures. (See **452.3.7.1**)

If positions are eliminated or reduced in grade because of a reorganization, the Agency has the option to avoid RIF procedures by reassigning all affected incumbents to vacant positions at their same grades in the same or different competitive areas.

452.3.2.2 Reclassification Due to New Standards or Correction of Error

Effective Date: 09/18/2002

If the grade of a position must be reduced because of the application of new Office of Personnel Management (OPM) classification standards or the correction of a classification error, RIF procedures are not applied.

452.3.2.3 Reclassification Due to Erosion of Duties

Effective Date: 09/18/2002

RIF procedures must be followed in job erosion reclassification actions when the downgrading action will be effective after the Agency formally announces a RIF in the employee's competitive area, and the RIF will occur within 180 days after the effective date of the downgrading action.

452.3.3 Establishment of Retention Registers

Effective Date: 09/18/2002

When a RIF has been approved, the Agency shall establish competitive levels and compile a retention register including the name of each competing employee.

Before a RIF begins, the Agency defines the competitive area, groups similar positions into competitive levels, and establishes a retention register, listing employees in the order of their retention standing.

452.3.3.1 Competitive Areas

Effective Date: 09/18/2002

Competitive areas are the boundaries within 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. Employees in a competitive area compete only with each other; they do not compete with employees in another competitive area. (See **USAID Competitive Areas**)

The Agency is required to establish a separate competitive area for the Inspector General activity established under the authority of the Inspector General Act of 1978 (PL 95-452, as amended).

Competitive areas must be in effect at least 90 days prior to the effective date of a RIF. Prior OPM approval is required when changes in existing competitive areas are made or new competitive areas are established less than 90 days prior to the effective date of a RIF.

452.3.3.2 Competitive Levels

Effective Date: 09/18/2002

A competitive level consists of positions in the competitive area that are:

a. In the same grade;

b. In the same classification series; and

c. Similar enough in duties, qualifications requirements, pay schedules, and

working conditions so that the incumbent of one position can successfully perform the duties and responsibilities of any other position in the level, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.

The Office of Human Resources**,** Personnel Operations Division (OHR/POD) establishes separate competitive levels by service (competitive service or excepted service), appointing authority, pay schedule, work schedule, and trainee status (positions in a formally designated trainee or developmental program), and compiles a retention register.

452.3.3.3 Retention Register

Effective Date: 09/18/2002

When a proposed personnel action, as defined in 452.3.1, shall result in the release of a competing employee from a competitive level, OHR/POD shall establish a retention register for that competitive level. (See **452.3.1**) (See **Order on Retention Register**)

a. Except for an employee on military duty with a restoration right, the register includes the name of each competing employee:

(1) Officially assigned to a position of record in the competitive level, including employees on paid or unpaid leave, on Intergovernmental Personnel Act assignment, or on detail to another position;

(2) Temporarily promoted from the competitive level by temporary or term promotion; or

(3) Who has received a final written decision of demotion due to unacceptable performance.

b. The retention register and actions based on it must be adjusted if, between the date the specific RIF notice is issued and the effective date of the proposed action, any of the following occur:

(1) Probationary period is completed;

(2) Competitive status changes;

(3) Tenure group changes;

(4) Service date is corrected;

(5) Veteran preference is allowed or withdrawn; or

(6) Additions are made to the competitive level.

452.3.3.4 Performance Credit

Effective Date: 09/18/2002

An employee is given additional service credit for RIF competition based upon the average of the employee's three most recent annual performance ratings of record received during the four-year period prior to the issuance of a specific RIF notice. (See **Credit for Performance**)

452.3.4 Position or Personnel Changes

Effective Date: 09/18/2002

The Agency shall delay action on requests for position or personnel changes that will result in removing an employee from RIF competition before the RIF has been accomplished unless the actions make the RIF unnecessary or reduce the number of employees to be separated.

452.3.5 Release from Competitive Level

Effective Date: 09/18/2002

When RIF requires release of one or more competing employees from a competitive level, the Agency shall do so in accordance with procedures set forth in 452.3.5.

The following procedures shall be used when a RIF requires release of one or more competing employees from a competitive level.

a. Order of Release from a Competitive Level

(1) When an employee's position is abolished, the employee is not automatically released from the employee's competitive level. The Agency may not release a competing employee from a competitive level while retaining in that level an employee with:

- A specifically limited temporary appointment;
- A specifically limited temporary or term promotion; or
- A final written decision of removal or demotion because of unacceptable performance.

(2) The Agency has the option to reassign an employee holding an abolished position to a vacant continuing position in the same competitive level. Further, the Agency has the option to reassign any employee in the competitive level to a vacant position at the same grade in the same or a different competitive level. These actions may make the release of a competing employee by RIF action unnecessary.

(3) After all noncompeting employees are eliminated, selection for release from a competitive level is made in the inverse order of retention standing, beginning with the employee having the lowest standing on the

retention register. All employees in tenure Group III are released before any employee in Group II is released, and all employees in Group II are released before any in Group I is released. Within each tenure group, all employees in subgroup B are released before any employee in subgroup A is released, and all employees in subgroup A are released before any in subgroup AD. Within each subgroup, employees are released in the order of their service computation dates, beginning with the most recent service computation date (including performance credit).

(4) Breaking Ties. When two or more employees in the same retention subgroup have identical service computation dates and are tied for release from the competitive level, the tie is broken by ranking them in order of their length of service with the Agency.

b. Exceptions to Regular Order of Release

The Agency has the option to release a competing employee from a competitive level while retaining in that level another competing employee with lower retention standing only if the action is authorized as a mandatory, permissive, or liquidation exception. Such exceptions must be approved by the Assistant Administrator for Management (AA/M).

(1) Mandatory Exceptions. Employees in groups I or II entitled to retention for six months or one year after restoration from military duty shall be retained over all other employees in their subgroups until the applicable retention period expires. The exception shall be noted on the retention register.

(2) Permissive Continuing Exceptions. The Agency has the option to retain an employee whose duties cannot be assumed by another employee with higher retention standing within 90 days and without undue interruption to the work program. Each higher standing employee reached for release from the competitive level shall be provided written notification of the reason for the exception. The exception shall be noted on the retention register.

While the Agency shall not delay or deny assignments to a sensitive position solely because the employee does not have the appropriate security clearance, consideration shall be given to whether the time period required to complete the clearance shall result in undue interruption to the activity and apply that standard to the potential RIF assignment.

(3) Permissive Temporary Exceptions. The Agency retains the right to make a temporary exception to the order of release in 452.3.5, para. 1 and to the actions covered in 452.3.1, when needed to retain an employee after the effective date of a reduction in force. (See **452.3.5, para. 1** and

452.3.1) The Agency may not amend or cancel the reduction in force notice of an employee retained under a temporary exception. This does not preclude the employee from receiving and accepting a job offer in the same competitive area in accordance with a Reemployment Priority List established under 452.3.15.1 para 2. Permissive temporary exceptions may be made for the following reasons:

- **Exception not to exceed 90 days.** The Agency retains the right to make a temporary exception for not more than 90 days when needed to continue an activity without undue interruption. The Agency may make a temporary exception to satisfy a Government obligation to the retained employee without regard to the 90 day limit.

- **Other temporary exceptions**. The Agency retains the right to make a temporary exception to extend an employee's separation date beyond the effective date of the reduction in force when the temporary retention of a lower standing employee does not adversely affect the right of any higher standing employee who is released ahead of the lower standing employee.

- **Sick leave.** The Agency may make a temporary exception to retain on sick leave a lower standing employee who is on approved sick leave on the effective date of the reduction in force for a period not to exceed the date the employee's sick leave is exhausted.

- **Annual leave.** The Agency may make a temporary exception to retain on accrued annual leave a lower standing employee who will attain first eligibility for an immediate retirement benefit under 5 U.S.C. 8336, 8412, or 8414, and/or establish eligibility under 5 U.S.C. 8905 to carry health benefits coverage into retirement during the period represented by the amount of the employee's accrued annual leave. This exception may not exceed the date the employee first becomes eligible for immediate retirement or for continuation of health benefits into retirement, except that an employee may be retained long enough to satisfy both retirement and health benefits requirements.

Accrued annual leave includes all accumulated and accrued annual leave, restored annual leave, and annual leave donated to the employee as of the effective date of the reduction in force, in addition to annual leave earned and available to the employee after the effective date of the reduction in force. When approving a temporary exception under this

provision, the Agency may not advance annual leave or consider any annual leave that might be credited to an employee's account after the effective date of the reduction in force other than annual leave earned while in an annual leave status.

The Agency may not approve an employee's use of any other type of leave after the employee has been retained under a temporary exception authorized by paragraph 2c of this section.

Notice to employees. When the Agency approves an exception for more than 30 days, it must:

- Notify in writing each higher standing employee in the same competitive level reached for release of the reasons for the exception and the date the lower standing employee's retention will end; and

- List opposite the employee's name on the retention register the reasons for the exception and the date the employee's retention will end.

(4) Liquidation Exceptions. When all positions in a competitive area will be abolished within 180 days, the Agency shall release employees in group and subgroup order. However, the Agency is not required to use the employee's retention standing within the subgroup except when an employee must be retained under a mandatory exception. When the Agency releases employees pursuant to these provisions, written notification shall be provided to the employees citing this authority and the date the liquidation shall be completed.

452.3.6 Assignment Rights – Bump and Retreat

Effective Date: 09/18/2002

After employees are released from their competitive levels, they are entitled to an offer of assignment if they have bump and retreat rights.

Employees who are reached for release from the competitive level are entitled to an offer of assignment if they have bump and retreat rights to an available position in the same competitive area and they would otherwise be separated by RIF. Displacement of an employee in a lower tenure group or a lower subgroup within the same tenure group is called bumping. Displacement of an employee in the same tenure group and subgroup is called retreating.

The RIF regulations extend assignment rights to competitive service employees in tenure Groups I and II who have a current performance rating of needs improvement or higher. Employees in Groups I and II with current performance ratings of unsuccessful, and all employees in Group III have no assignment rights. Employees in excepted

service positions have no assignment rights to other positions unless the Agency, at its discretion, chooses to offer these rights to positions under the same appointing authority.

452.3.6.1 Extent of Offer

Effective Date: 09/18/2002

An available position satisfying an assignment must:

a. Be in the competitive service;

b. Be in the same competitive area;

c. Last at least three months;

d. Be a position for which the released employee qualifies, unless the Agency, at its discretion, elects to waive qualifications in offering the employee assignment to a vacant position (See **452.3.7**);

e. Have a representative rate no higher than the employee's present position;

f. Have the same type of work schedule (i.e., full-time, part-time, intermittent, seasonal, or on-call) as the position from which the employee is released; and

g. Be within three grades (or grade-intervals) of the employee's present position.

When more than one available position shall satisfy an employee's assignment right, the employee is entitled to the position with the highest representative rate. When more than one of these positions have the same representative rate, the Agency has the option to offer the employee any one of them. An employee has no right to choose among positions with the same representative rate.

The promotion potential of a position is not a consideration in the identification of an available position for satisfying an assignment right. Employees may be assigned under RIF procedures to positions with higher promotion potential and may be subsequently non-competitively promoted to the full performance level of that position.

An employee is entitled to only one offer of assignment and is not entitled to any further offers if the employee accepts an offer, rejects an offer, or fails to reply to an offer within five work days of receipt. Regardless of the employee's entitlement to only one offer of assignment, the Agency must make a better offer if a position with a higher representative rate (but not higher than the representative rate of the employee's current position) becomes available on or before the effective date of the RIF.

An employee who has no assignment right or does not accept an offer of assignment to

another position that would have satisfied the employee's assignment right shall be separated under RIF procedures.

The rejection of a reasonable offer does not constitute a basis for the separation of an employee from the rolls by RIF action at a date earlier than that specified in the RIF notice.

452.3.6.2 Bumping

Effective Date: 09/18/2002

Upon release from a competitive level, an eligible employee is entitled to bump to an available position in a different competitive level that requires no reduction, or the least possible reduction, in representative rate when the following conditions are met:

a. The occupied position is held by an employee in a lower tenure group or in a lower subgroup within the released employee's own tenure group; and

b. The occupied position is the same grade or no more than three grades or three grade-intervals (or equivalent) below the position of the released employee.

The requirement that the occupied position be held by an employee in a lower subgroup means:

a. **A subgroup I-AD employee** has bumping rights over I-A, I-B, and Groups II and III employees;

b. **A subgroup I-A employee** has bumping rights over I-B and Groups II and III employees;

c. **A subgroup I-B employee** has bumping rights over Group II and III employees;

d. **A subgroup II-AD employee** has bumping rights over II-A, II-B, and Group III employees;

e. **A subgroup II-A employee** has bumping rights over II-B and Group III employees; and

f. **A subgroup II-B employee** has bumping rights over Group III employees.

452.3.6.3 Retreating

Effective Date: 09/18/2002

Upon release from a competitive level, an eligible employee is entitled to retreat to an available position in a different competitive level that requires no reduction, or the least possible reduction, in representative rate when the occupied position is:

a. Held by another employee with less service (including additional retention credit for performance) in the same tenure group and subgroup;

b. The same grade or no more than three grades or three grade-intervals (or equivalent) below the position from which the employee is released. The position may be up to five grades or grade-intervals (or equivalent) lower if the released employee is a disabled veteran in subgroup AD; and

c. The same position as, or is essentially identical to, a position previously held by the released employee on a permanent basis in any Federal agency.

Limitation. An employee with a current annual performance rating of record of needs improvement (Level 2) or equivalent may be assigned under paragraph 6c of this section only to a position held by another employee with a current annual performance rating of record no higher than needs improvement (Level 2) or equivalent.

Although an employee may not retreat to a job in a different competitive area, the employee may retreat to a position in the current competitive area that is essentially identical to one held in the same or different competitive area in the current agency or in a different agency.

In determining employees' retreat rights, a position is considered essentially identical to one previously held if:

a. The released employee held the previous position as a competing employee; i.e., the employee was not on detail, term or temporary promotion, or temporary appointment in the position; and

b. The two positions are otherwise interchangeable on the basis of the duties, responsibilities, and qualifications, even if the two positions differ in regard to grade, classification series, type of work schedule, or type of service.

452.3.6.4 Grades, Grade-Intervals, and Equivalents

Effective Date: 09/18/2002

Employees have bump and retreat rights to positions at the same grade, or down to three grades or grade-intervals (or equivalent) below the position from which they are released. Disabled veterans in subgroup AD have retreat rights to positions at the same grade, or down to five grades or grade-intervals (or equivalent) below the position from which the employee is released. The difference between successive grades in a one-grade occupation is a grade difference, and the difference between successive grades in a multi-grade occupation is a grade-interval difference.

The lowest grade to which an employee is entitled to bump or retreat is based on the grade progression of the released employee's official position of record, regardless of how the employee progressed to that position. Once the Agency determines the lowest grade to which an employee is entitled, it must determine whether any available

positions exist within these grade limits.

452.3.6.5 Restrictions

Effective Date: 09/18/2002

An employee released from a competitive level during a leave of absence because of a compensable injury shall not be denied an assignment right solely because the employee is not physically qualified for the duties of the position when the physical disqualification resulted from the compensable injury.

If the Agency determines that a preference eligible employee with a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of a position which the employee otherwise would have been offered, the Agency must notify OPM of this determination and provide the complete medical information on which the determination was made. The Agency must also notify the employee of the determination, the reasons for the finding, and of the employee's right to respond to OPM within 15 days of the notification. The Agency shall not assign another individual to the position until OPM has made a final determination concerning the physical qualifications of the employee for the position.

452.3.7 Assignment

Effective Date: 09/18/2002

In order to be assigned to an available position or to a vacant position, an employee must meet the OPM standards and requirements for the position. For assignment to a vacancy, the Agency has the option to waive qualification requirements in accordance with 452.3.7.2

An employee must meet OPM standards and requirements for assignment to an available position or to a vacancy. In some cases, the Agency may waive qualification requirements for assignment to a vacant position, as indicated below.

452.3.7.1 Using Vacancies to Satisfy Assignment Rights

Effective Date: 09/18/2002

The Agency has the option to fill all, some, or none of the vacancies in a RIF. The Agency has the option to satisfy an employee's assignment right by assigning the employee to a vacant position in the same competitive area having a representative rate equal to a position to which the employee would be entitled on the basis of bump or retreat rights. The Agency also has the option to offer an employee assignment to a vacant position in lieu of RIF separation or other RIF action.

When the Agency decides to use a vacancy as an offer of RIF assignment, the Agency determines whether it can offer the position to the released employee by considering the impact of the offer on other competing employees' bump and retreat rights. This means that the vacant position must be in the same competitive area, be no more than three grades or three grade-intervals (or equivalent) below the position held by a

released employee, and that the right to the position is based on subgroup superiority as long as no employee has a retreat right to it.

An employee may be offered a vacant position in lieu of RIF separation or other RIF action. The grade-level limits which apply when placing employees who have bump and retreat rights do not apply when offering an employee a vacancy in lieu of RIF separation or other RIF action. This includes the option to offer a vacant other-than-full-time position to a full-time employee or offer a vacant full-time position to an other-than-full-time employee.

These voluntary offers are not RIF placements and must be made in accordance with the Agency's Merit Promotion Program if the offered position has more promotion potential than the employee's present position. Offers of vacant positions that are in the same competitive area, or in different competitive areas within the same local commuting area, must be made on the basis of subgroup superiority and cannot violate the assignment rights of any other competing employee. Offers of positions in different competitive areas which are outside the local commuting area are not subject to these restrictions.

452.3.7.2 Qualifications for Assignment

Effective Date: 09/18/2002

To be qualified for assignment to an available position or to a vacant position, an employee must meet the OPM standards and requirements for the position, including any minimum educational requirements and any selective placement factors established by the Agency. An employee must be physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position, and meet any special OPM-approved qualifying conditions for the position. Also, the employee's background must show the ability to perform the duties of the position without undue interruption.

The gender of an employee shall not be considered in determining whether an employee is qualified for a position, except for positions OPM has determined justify certification of eligibles by gender.

The Agency has the option of waiving OPM's qualifications standards and requirements in offering a released employee assignment to a vacant position if:

a. The employee meets any minimum education requirement for the position; and

b. The Agency determines that the employee has the capacity, adaptability, and special skills to satisfactorily perform the duties and responsibilities of the position.

452.3.8 RIF Notice

Effective Date: 09/18/2002

The Agency shall issue a written specific RIF notice to each competing employee reached for a reduction in force action, in accordance with procedures set forth in 452.3.8.

Employees who have received a specific RIF notice have the right to inspect retention registers related to the reduction in force action. RIF notices shall advise employees of their right to review retention registers and other materials related to the RIF action. Retention registers shall also be made available for review to the exclusive representative(s) of each affected employee.

The Agency shall issue a written specific RIF notice to each competing employee reached for a RIF action at least 60 days prior to the effective date of the release.

452.3.8.1 Informational Notice

Effective Date: 09/18/2002

The Agency has the option to issue an advance informational notice to alert employees that a RIF may be necessary. However, this does not satisfy an employee's right to a specific RIF notice, nor does an informational notice count toward the required minimum 60-day notice period.

452.3.8.2 Specific RIF Notice

Effective Date: 09/18/2002

A specific RIF notice is a written communication from an Agency official to an individual employee stating that the employee shall be reached for a RIF action. (See **Sample Specific RIF Notice**) The Agency must give competing employees a minimum of 60 days notice before the effective date of the RIF action unless OPM authorizes a notice period of less than 60 days, but at least 30 full days when a RIF is caused by unforeseeable circumstances. There is no maximum RIF notice period.

The notice period begins the day after the employee receives the RIF notice. Neither the date the notice is received, nor the effective date of the RIF action, is included in the notice period. If the last day of the minimum notice period falls on a Saturday, Sunday, or legal holiday, the next official business day shall be the last day of the minimum notice period.

A RIF action shall not be taken before the effective date in the original notice given to the employee. A RIF notice expires when it is followed by the RIF action specified in the notice.

452.3.8.3 Additional Agency Notice Requirements

Effective Date: 09/18/2002

When the Agency issues a RIF notice to an employee, the Agency must also notify the exclusive representative(s) of each affected employee at the time of the notice.

The Agency shall advise the Department of Labor, Unemployment Insurance Service, when separating any employee in a commuting area by RIF.

When any employee in a competitive area receives a notice of separation by RIF, the Agency must also notify the appropriate State dislocated worker unit, the chief elected governmental official of local government(s) within which these separations shall occur, and the appropriate OPM Service Center with jurisdiction over the worksite. This notification shall include the number of employees that the Agency shall separate by RIF and the effective date of the separations.

452.3.8.4 Certification of Expected Separation (CES)

Effective Date: 09/18/2002

The Agency has the option of issuing a certification of expected separation to a competing employee up to six months prior to the expected effective date of a RIF when the Agency determines:

a. There is a good likelihood that the employee shall be separated by RIF;

b. Employment opportunities in the same or similar position in the local commuting area are limited or nonexistent;

c. Placement opportunities within the employee's own or other Federal agencies in the local commuting area are limited or nonexistent; and

d. If eligible for optional retirement, the employee has not filed a retirement application or otherwise indicated in writing an intent to retire.

The CES permits eligible employees to participate in dislocated worker programs under the Job Training Partnership Act administered by the U.S. Department of Labor. An employee who has received a CES is also eligible for placement on the Agency's Reemployment Priority List and for career transition assistance under the Career Transition Assistance Program.

452.3.8.5 Status During Notice Period

Effective Date: 09/18/2002

When possible, the Agency shall retain the employee on active duty status during the notice period. When in an emergency the Agency lacks work or funds for all or part of the notice period, it may place the employee on annual leave with the employee's consent, on leave without pay with the employee's consent, or in a nonpay status

without the employee's consent.

452.3.9 Repromotion Consideration
Effective Date: 09/18/2002

An employee who has been reduced in grade because of RIF shall receive special consideration for repromotion to a position for which the employee is qualified at the employee's former grade. Such repromotion consideration shall be limited to three years. (See **ADS 418 – Promotion and Internal Placement**)

452.3.10 Corrective Actions
Effective Date: 09/18/2002

As the result of a decision that a RIF action was unjustified or unwarranted, the Agency shall take appropriate corrective action to restore an employee to the former grade or rate of pay.

When the Agency discovers an error in the determination of an employee's retention standing, it shall correct the error and adjust any erroneous RIF actions in accordance with the employee's actual retention standing.

If the Agency decides that a RIF action was unjustified or unwarranted, and restores the employee to the employee's former grade or rate of pay, or to an intermediate grade or rate of pay, it shall cancel the RIF action and make the restoration retroactive to the date of the improper action. Similarly, corrective action shall be taken by the Agency, if required, as the result of Merit Systems Protection Board (MSPB) adjudication of a RIF appeal or adjudication of a RIF grievance filed under the negotiated grievance procedures.

452.3.11 Appeals and Grievances
Effective Date: 09/18/2002

Employees who have been subject to separation, furlough for more than 30 days, or demotion because of RIF have the right to appeal the action to the Merit Systems Protection Board, in accordance with the Board's regulations, or to grieve the action under a negotiated grievance procedure.

Except as provided below, an employee has a right to file a RIF appeal to the Merit Systems Protection Board (MSPB) under the provisions of MSPB's regulations found in 5 CFR 1201, if the employee was separated, demoted, or furloughed for more than 30 days.

Appeals filed with the MSPB must be filed during the 30-calendar day period beginning with the day after the effective date of the RIF action being appealed. Appeals are not accepted by the MSPB on or before the effective date of the action.

Since reduction in force is not excluded from the parties' current labor agreement,

bargaining unit employees must use the negotiated grievance procedure in pursuing an appeal and are prohibited from appealing a RIF action to MSPB. (See **Grievance Procedure**) The one exception to this prohibition occurs when the employee raises an allegation of discrimination in conjunction with the RIF action. In that event, the employee has the right to file a grievance under the negotiated grievance procedure or to file a RIF appeal to MSPB, but not both.

452.3.12 Maintenance of RIF Records

Effective Date: 09/18/2002

The Agency shall maintain personnel records that are used to determine each competing employee's retention in RIF competition. The Agency shall preserve all registers and records relating to a RIF for at least one year from the date the last specific RIF notice is issued.

452.3.13 Transfer of Function

Effective Date: 09/18/2002

Employees have the right to accompany their work when it is moved to a different competitive area or geographical location only if faced with separation or down-grading within their old competitive area.

A transfer of function takes place when a function ceases in one competitive area and moves to one or more other competitive areas which do not perform the function at the time of transfer. The gaining competitive area may be in the same or a different agency.

An employee who is identified with the transferring function has the right to transfer only if faced with separation or downgrading in the competitive area that is losing the function. Adverse action procedures are used by the losing competitive area to separate any employee who elects not to transfer with the function.

In lieu of using adverse action procedures to separate the employee who refuses to transfer with the function, the Agency has the option to:

a. Reassign the employee to another continuing position under the Agency's general authority to reassign employees; or

b. Allow the employee to compete for positions in a concurrent RIF conducted in the losing competitive area for other reasons.

The competitive area losing the function is responsible for identifying positions and competing employees with the transferring function. The losing competitive area identifies each competing employee with a transferring function on the basis of the employee's official position description. Two methods are provided to identify employees with the transferring function. **Method One** must be used to identify each position to which it is applicable. **Method Two** is used only to identify positions to which

Method One is not applicable.

In Method One, a competing employee is identified with a transferring function if:

a. The employee performs the function during at least half of the employee's work time; or

b. Regardless of the amount of time the employee performs the function during the employee's work time, the function performed by the employee includes the duties controlling the employee's grade or rate of pay.

In determining what percentage of time an employee performs a function in the employee's official position, the Agency may supplement the employee's official position description by the use of appropriate records (e.g., work reports, organizational time logs, work schedules, etc.).

Method Two is applicable to employees who perform the function during less than half of their work time and are not otherwise covered by Method One. Under Method Two, the losing competitive area must identify the number of positions it needed to perform the transferring function. To determine which employees are identified for transfer, the losing competitive area must establish a retention register in accordance with this part that includes the name of each competing employee who performed the function. Competing employees listed on the retention register are identified for transfer in the inverse order of their retention standing. If, for any retention register, this procedure would result in the separation or demotion by reduction in force at the losing competitive area of any employee with higher retention standing, the losing competitive area must identify competing employees on that register for transfer in the order of their retention standing.

The losing competitive area has the option to allow employees not identified under either of these identification procedures to volunteer for transfer provided that no employee with a right to transfer is separated or downgraded because of this decision.

If the transfer of function results in a surplus of employees in the gaining competitive area, all employees who elect to transfer with the function compete under RIF regulations for positions in the gaining competitive area.

An employee has no right to appeal a transfer of function, but has the option to include transfer of function as part of an appeal or grievance of a subsequent RIF or adverse action if the employee believes such resulted from the transfer of function.

452.3.14 Voluntary Early Retirement

Effective Date: 09/18/2002

The Agency shall counsel employees on benefits including retirement (optional, discontinued service or voluntary early retirement). The Agency shall not coerce an employee into retiring early, and a statement shall be issued to employees affirming the

voluntary nature of early retirement. If management becomes aware of any coercion, appropriate corrective action shall be taken.

The purpose of voluntary early retirement is to allow eligible employees who are not facing involuntary separation (because of RIF or because of transfer to another commuting area) or immediate demotion because of RIF, to retire early, thereby creating vacancies that can be filled by employees who would otherwise be separated or downgraded.

Management has the right to determine which employees are eligible to retire early on the basis of occupation, grade, series, organization, or other non-personal factors.

The Agency must request voluntary early retirement authority (VERA) from OPM.

452.3.14.1 Eligibility of Employees to Retire Early

Effective Date: 09/18/2002

In order to be eligible to retire under VERA, an employee must:

a. Have served in a position covered by the Civil Service Retirement System (CSRS) for at least one year out of the two years immediately before retirement. This requirement does not apply to employees covered by the Federal Employees Retirement System (FERS);

b. Have completed at least 20 years of creditable service and be at least age 50, or completed at least 25 years of creditable service regardless of age;

c. Be serving under a non-temporary appointment; and

d. Have been on the Agency's rolls at least 30 days before the date of the Agency's request to OPM for VERA and remained continuously (i.e., without a break in service) on the Agency's rolls since that time.

Eligibility requirements must be met during the early retirement period specified by OPM.

452.3.14.2 Effective Date of Retirement

Effective Date: 09/18/2002

All eligible employees who elect to retire voluntarily must be off the Agency’s rolls no later than the expiration date of the authority, or the date OPM or the Agency terminates the authority.

452.3.15 Outplacement and Reemployment

Effective Date: 09/18/2002

The Agency shall establish a Career Transition Assistance Program (CTAP) to help

Agency employees about to be or who have been separated from their Federal jobs as a result of Agency work force reductions or other actions. The Plan will include:

a. Policies to provide surplus and displaced employees in the Agency with career transition services, such as skills assessment, resume preparation, counseling and job search assistance;

b. Policies and procedures for selecting well-qualified surplus or displaced Agency employees who apply for Agency vacancies in the local commuting area before any other candidate from within or outside the Agency; and

c. Operation of the Agency's Reemployment Priority List (RPL).

The Agency shall develop its own programs for outplacement and reemployment as follows.

452.3.15.1 Agency Programs

Effective Date: 09/18/2002

a. The Agency shall establish a positive placement program to assist employees in finding other jobs, including job search, counseling and registration in the Career Transition Assistance Program (CTAP).

b. OHR/POD establishes and maintains a Reemployment Priority List (RPL) that gives eligible Agency employees who are separated by RIF priority consideration over outside applicants for competitive service vacancies filled by the Agency by permanent, term, temporary, or other non-status appointment.

At the time it gives a specific RIF notice or a Certification of Expected Separation (CES), the Agency must provide each eligible employee information about the RPL, including appeal rights, and CTAP. The employee must also be given a release to authorize the release of the employee's resume and other relevant employment information for referral to State dislocated worker unit(s) and potential public and private sector employees. Group I and II employees in the competitive service who have received a current annual performance rating above unacceptable and who have not declined a RIF offer of a position at the same grade as the position from which the employee was or shall be separated are eligible to apply for the programs. In addition, the employee must be given information concerning how to apply for unemployment insurance and on benefits available under the State dislocated worker unit(s).

To be entered on the RPL, an eligible employee must complete an application form prescribed by the Agency and, within a reasonable timeframe, inform the Agency of any significant changes in the information provided. This application shall provide for the employee to specify the conditions under which the employee shall accept employment, including grade, occupation, and minimum hours of work per week, in addition to positions at the same representative rate and type of work schedule as the position from which the employee was or shall be separated.

The employee must submit the application form to OHR/POD within 30 calendar days after the RIF separation date. The Agency must register an eligible employee on the RPL no later than 10 calendar days after receipt of a timely application form. An employee who fails to submit a timely application form is not entitled to be placed on the RPL. A Group I employee is eligible for the RPL for two years, and a Group II employee is eligible for one year, from the date the employee is entered on the RPL.

An eligible employee is entitled to consideration for positions in the commuting area for which qualified and available that are at no higher grade (or equivalent), have no greater promotion potential than the position from which the employee was or shall be separated, and have the same type of work schedule. In addition, an employee is entitled to consideration for any higher grade previously held on a non-temporary basis in the competitive service from which the employee was demoted under RIF procedures.

An individual is removed from the RPL before the period of eligibility expires when the individual:

1. Requests removal from the Agency RPL in writing;

2. Receives a career, career-conditional, or excepted appointment without time limit in any agency;

3. Declines an offer of career, career-conditional, or excepted appointment without time limit or fails to respond to an inquiry from the Agency concerning a specific position having a representative rate at least as high, and with the same type of work schedule, as that of the position from which the person was or shall be separated;

4. Separates for some other reason (such as retirement, resignation, etc.) before the date the RIF separation would take effect. An employee who retires on or after the date of separation by RIF does not lose RPL eligibility; or

5. Declines an interview or fails to appear for an agreed upon scheduled interview only if notified in advance of this requirement and the subsequent consequences.

When a qualified present or former employee is available on the RPL, the Agency shall not fill a permanent or temporary competitive service position by:

1. A new appointment, unless the individual appointed is a qualified 10-point preference eligible; or

2. Transfer of an employee from another agency, or reinstatement of a former Federal employee not on the RPL, unless the individual is a veteran or

has mandatory restoration rights.

These restrictions do not apply to filling competitive service vacancies by promotion, demotion, or reassignment of any current, qualified employee on the rolls; conversion to competitive appointment of employees currently serving under appointments that carry a noncompetitive conversion eligibility; reappointment by temporary appointment of one year or less, without a break in service, to the same position currently held by an employee serving under a temporary appointment of one year or less; or extension of an employee's temporary appointment to the maximum time authorized.

Selections for vacancies to be filled from the RPL are made on the basis of RIF retention group and subgroup order. Within a retention subgroup, the Agency has the option to select an individual without regard to order of retention standing.

452.4 MANDATORY REFERENCES

452.4.1 External Mandatory References

Effective Date: 09/18/2002

a. **5 CFR 351, Reduction in Force**

b. **5 USC 3501, Definitions**

c. **5 USC 3502, Order of Retention**

d. **5 USC 3503, Transfer of Functions**

e. **5 USC 3504, Preference Eligibles**

452.4.2 Internal Mandatory References

Effective Date: 09/18/2002

a. **ADS 452maa, USAID Competitive Areas**

b. **Career Transition Assistance Program (CTAP)**

c. **Credit for Performance**

d. **Grievance Procedure**

e **Order on Retention Register**

f. **Sample Specific RIF Notice**

452.5 ADDITIONAL HELP
Effective Date: 09/18/2002

There are no Additional Help documents for this chapter.

452.6 DEFINITIONS
Effective Date: 09/18/2002

The terms and definitions listed below have been incorporated into the ADS Glossary. See the **ADS Glossary** for all ADS terms and definitions.

assignment right
The right of a competing group I or II employee, with a current annual performance rating of record of Level 2 or higher, to be offered placement in another competitive position for which that employee qualifies and which requires no reduction, or the least possible reduction, in representative rate in lieu of separation or furlough in a RIF situation. (**Chapter 452**)

bump
Occurs when a released employee displaces another employee in a lower tenure group or a lower sub-group within the same tenure group who occupies a position that is no more than three grades or grade-intervals lower than the position which the released employee occupied. (**Chapter 452**)

competing employee
An employee in tenure groups I, II, or III. (**Chapter 452**)

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. (**Chapters 452, 454, 455**)

competitive level
A grouping of all positions within a competitive area which are in the same grade (or 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 452)

See ADS 452 and ADS 454 for Civil Service and Foreign Service definitions. (**Chapters 452, 453, 454, 455**)

function

All or a clearly identifiable segment of the Agency's mission, (including all integral parts of that mission), regardless of how it is performed. (**Chapter 452**)

furlough
For the purposes of this chapter, the placement of an employee in a temporary nonduty and nonpay status for more than 30 consecutive calendar days, or more than 22 workdays if done on a discontinuous basis, but for not more than one year. (**Chapter 452**)

local commuting area
The geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities, in which people live and can reasonably be expected to travel, to their place of employment on a daily basis. (**Chapters 418, 452**)

modal rating
The summary rating level assigned most frequently among the actual ratings of record. These ratings must be assigned under the summary level pattern that applies to the employee's position of record at the time of the RIF; they must be given within the same competitive area, or at the option of the Agency, within a larger subdivision of the Agency or Agency-wide; and they must be on record for the most recently completed appraisal period prior to the issuance of the RIF notices or the cutoff date after which no new ratings will be put on the record established by the Agency prior to issuance of RIF notices. (**Chapter 452**)

official position
The actual position/position description to which an employee is assigned in the Agency. (**Chapter 452**)

performance rating of record
The summary level performance rating prepared at the end of an appraisal period for performance of Agency-assigned duties over the entire rating period (i.e., Exceptional, Excellent). (**Chapter 452**)

reduction in force
An action taken by the Agency when it has been determined that there is a surplus of employees at a particular location in a particular line of work due to lack of work, shortage of funds, insufficient personnel ceiling, reorganization, the exercise of reemployment or restoration rights, or reclassification of an employee's position due to erosion of duties which will take place after the Agency has formally announced a RIF. The result of this action is furlough for more than 30 days, separation, demotion, or reassignment requiring displacement of employees. (**Chapter 452**)

reorganization
See 5 CFR 536.102. The planned elimination, addition, or redistribution of functions or duties in an organization. (**Chapters 452**)

representative rate
The fourth step of the grade for a position subject to the General Schedule; the prevailing rate for a position under the wage-board system; and for all other positions, the rate designated by the Agency as representative of the position. (**Chapter 452**)

retention register
A listing prepared by the Agency for a specific competitive level which will be reached by RIF, listing all competing employees by tenure group, veteran preference, length of service, and performance in descending order. (**Chapter 452**)

retention standing
An individual employee's placement on the retention register at the time of release from a competitive level. (**Chapter 452**)

retreat
Occurs when a released employee displaces another employee with lower retention standing within the same tenure group and subgroup who occupies a position that is not more than three grades or grade-intervals below the position from which that employee is released. The released employee is said to "retreat" to that lower level position. (**Chapter 452**)

tenure groups
(Civil Service) One of three groups in which an employee is ranked on a retention register according to the type of appointment under which they serve (i.e., career, career-conditional, or temporary appointments). (**Chapter 452**)

transfer of functions
Transfer of a specific function with no change in the duties of the position(s) from one post to another (**Chapter 436**, **452**)

type of service
Identifies whether the position of the employee is in the competitive or excepted service. (**Chapter 452**)

undue interruption
The degree of interruption that would prevent the completion of required work by the employee 90 days after placement into a different position under RIF procedures. (**Chapter 452**)

work schedule
The regularly established tour of duty for an employee to work in a week (i.e., full-time or part-time). (**Chapter 452**)

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