

# Appendix J

## SES Reduction in Force

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### J-1. GENERAL INFORMATION

**a. Policy.** It is the policy of the Department to make the most effective use of all Senior Executive Service (SES) members of the Department and to aggressively pursue continuing employment in the Department for any career executive who may be adversely affected by Reduction in Force (RIF) as defined in this appendix.

**b. Scope of Appendix.** This appendix explains RIF of career appointees in the SES as provided under the Omnibus Budget Reconciliation Act of 1981 as amended by other legislation (P.L. 97-346, October 15, 1982, and P.L. 98-615, November 8, 1984). The sections of the appendix define the Department of Transportation (DOT) procedures in implementing the provisions of the Act and describe their use.

**c. Coverage.** The provisions of this appendix apply to career appointees in the SES within the Department with the exception of the Office of Inspector General. The provisions do not apply to noncareer or limited term SES employees.

**d. Use of Regulation.**

**(1) Definition of RIF.** RIF is defined under 5 USC 3595(d) as including the elimination or modification of a position due to a reorganization, due to lack of funds or curtailment of work, or due to any other factor. Any other factor would include:

(a) A determination that a position no longer meets the definition for an SES position in 5 USC 3132(a) because of a change in duties or responsibilities, or

because of finding that the position was incorrectly designated at the SES level;

(b) A withdrawal of SES spaces by the Office of Personnel Management (OPM); or

(c) A total organization shutdown. Modification of a position necessitating a RIF would be a change in the duties and responsibilities leading to a change in the qualification requirements which the current incumbent no longer meets, thus requiring the person's removal from the position.

**(2) Use of RIF procedures.** The competitive procedures established by this appendix are only required when it is necessary to determine who must be released from the competitive level. An organization must utilize the Preliminary Placement Process described in (3) below before invoking the competitive RIF procedures established in this appendix.

**(3) Preliminary Placement Process.** Once it is determined that an SES member's position will be abolished or modified in such a way that it could result in the application of the competitive RIF procedures, there will be a 30-day period during which the SES member whose actual position is affected will be given Departmentwide priority placement consideration for available SES positions for which qualified.

To invoke this Preliminary Placement Process, the organization effecting the change which would result in impact on the SES member's position must provide the Executive Secretary, Executive Resources Review Committee (ERRC), with a written discussion of the organizational changes covering the RIF situation, as well as an explanation for

nonplacement in an SES position within the employing organization.

If it is determined that the Preliminary Placement Process should be invoked based on the written discussion provided by the employing organization, then the Executive Resources Division, M-12, will review current vacancies, and on behalf of the ERRC, refer the affected SES member for positions throughout the Department for which qualified.

Nonselection of these priority referrals must be explained in writing to the ERRC.

If a nonselection is approved by the ERRC, the competitive RIF procedures established in section J-3 of this appendix will be initiated.

## **J-2. RETENTION FACTORS**

**a. Coverage of Section.** This section covers the factors used to determine the retention standing of competing employees under the RIF procedures.

### **b. Competitive Area.**

**(1) Office of the Secretary (OST).** The competitive area of OST is the entire Headquarters component located in Washington, D.C.

**(2) Operating Administrations.** Each Operating Administration is to be a separate competitive area.

### **c. Competitive Levels.**

**(1) Factors considered in establishing competitive levels.** A competitive level consists of all the positions in a competitive area that:

- (a) are in the same occupation, or are so alike in technical qualification requirements, that an employee in one position may be readily reassigned to another position without unduly interrupting the work of the program; and
- (b) have the same assigned pay level

designator prescribed in Departmental Personnel Manual, Supplement 920-1, Subchapter 6.

**(2) Factors considered in establishing retention standing.** Employees in the same competitive level are to be listed in the following groups in the descending order shown, based on the most recent official performance appraisal:

- (a) Outstanding performance rating recipients.
- (b) Exceptional performance rating recipients.
- (c) Fully Successful performance rating recipients.
- (d) Probationary employees without an SES performance rating (Fully Successful presumption).
- (e) Minimally Satisfactory performance rating recipients.
- (f) Unsatisfactory performance rating recipients.

Within each group, employees who are current Presidential Rank recipients will be listed first (Distinguished over Meritorious), current bonus recipients next, followed by nonbonus recipients. Ties will be broken by using previous year's SES performance ratings (not-to-exceed 3 previous years) beginning with the most recent. If, after utilizing the previous 3 years' performance appraisals (combined with Presidential Rank and bonus consideration), a tie still exists, it will be broken in favor of the executive with the most continuous SES service with DOT.

**(3) Approval for establishing competitive levels.** The Assistant Secretary for Administration is responsible for approving competitive levels recommended by each Operating Administration and Departmental Office.

**d. Effective Date of Performance Appraisal.** An employee's current official performance appraisal on the date of issuance of a written RIF notice is the appraisal that determines the employee's

retention standing in the competitive level. Performance appraisals not officially approved and put on record until after the date of issuance of notice do not affect determination of the employee's retention standing.

**e. Retention Registers.** Each Operating Administration and OST establishes a retention register from the current and past performance records of employees in each competitive level. Employees are listed on retention registers in the order prescribed in c. above. All competing employees officially assigned to positions in a competitive level are listed on the retention register for that level. Employees who have received RIF notices are entitled to review the retention register and any related records for their own competitive levels.

**f. Maintenance of Registers.** Each Operating Administration and OST maintains the current, official records needed to determine the retention standing of competing employees. All records are to be kept for at least 2 years from the date the employee is issued a written RIF notice.

### **J-3. RELEASE FROM COMPETITIVE LEVEL**

**a. Coverage of Section.** This section covers the release of an employee from his or her competitive level under the Department's RIF regulations.

**b. Order of Release.**

**(1) General order of release.** Each Operating Administration and OST selects competing employees for release from their competitive level in the inverse order of their retention standing beginning with the employee having the lowest standing. If employees are tied for release, the organization may release any tied employee.

**(2) Exceptions to order of release.** An organization may release a competing employee from a retention register while

retaining on that retention register an employee with lower retention standing who is covered below as an exception:

(a) When an organization will abolish all positions in a competitive area within 3 months, employees may be released regardless of their retention standing. A RIF notice must note this fact and also give the date of abolishment of all positions.

(b) A permanent exception to the order of release may be made for an employee to continue duties that cannot be taken over within 90 days, and without undue interruption to the organization.

(c) An exception may be made for an employee on a sabbatical or on an Intergovernmental Personnel Act assignment, to avoid the interruption or untimely termination of an assignment.

**(3) Requests for exception.** Any request for an exception provided in b.(2) above must be made in writing to the Executive Secretary, ERRC, for the ERRC's approval.

**(4) Notification.** Each higher-standing employee reached for release from the same retention register must be notified of reasons for use of the exception.

### **J-4. PLACEMENT RIGHTS**

**a. Coverage of Section.** This section covers the rights of eligible SES appointees to placement when they are released from their competitive levels under the Department's RIF procedures.

**b. General.** All placement rights described in this section apply, as a matter of law, only to any career appointee who has successfully completed the SES probationary period, or who did not have to complete a probationary period because the appointee was a converttee to the SES. It is the policy of the Department, however, to afford the intra-Department placement procedures to all affected SES appointees.

**c. Procedures.**

**(1) Originating organization.** It is the primary responsibility of the organization causing the displacement of an SES appointee to place the SES member in a vacant SES position for which qualified. If this is feasible, normal approval procedures governing SES reassignment actions must be followed.

**(2) Intra-Department.** A covered career appointee who cannot be placed in his or her organization is to be placed in a vacant SES position within the Department for which he or she meets the technical qualifications. The ERRC will make qualifications determinations on employees who are to be placed in vacant SES positions throughout the Department. In addition, the ERRC will decide in which vacant SES position to place an employee. When a covered career appointee must be placed outside his or her organization due to RIF procedures, the SES ceiling space allocation automatically reverts to the Departmental reserve. If needed, the organization placing the affected SES appointee will be given priority consideration for the space allocation.

**(3) OPM.** If there is no vacant SES position in the Department for which the career appointee is qualified, the Secretary must personally certify this finding in writing to OPM. OPM must then take all reasonable steps to place the appointee in a vacant SES position in another agency for which the appointee qualifies. OPM may require an agency to take any action which it considers necessary to carry out a placement. The appointee is entitled to placement unless the Head of an agency determines that he or she is not qualified for the position.

**(4) Guaranteed Placement.** If there is no vacant SES position identified by OPM, a career appointee identified for separation from the SES through RIF, who has completed the SES probationary period, must be placed in a continuing

position at the GS-15 level or above, or an equivalent position, utilizing normal reinstatement procedures. An executive who has no reinstatement eligibility to the competitive service will be appointed to a position at the GS-15 level under a Schedule B Appointing Authority in the excepted service obtained from OPM in accordance with Department policy.

**J-5. REMOVAL FROM THE SES**

**a. Coverage of Section.** This section covers procedures for removal of career SES appointees who are identified for release from their competitive level by the Department's RIF procedures and are not placed by the required placement procedures, or who decline placement in an appropriate SES position.

**b. Probationary Appointees.** A probationary SES appointee who is not placed through the intra-Department placement procedures of this appendix will be removed from the SES under 5 USC 3592(a)(1). Note, however, that 5 USC 3594(c) provides that a career appointee who was appointed from a position held under a career or career-conditional appointment (or an appointment of equivalent tenure) is, if otherwise eligible, entitled to be placed in a continuing GS-15 position.

**c. Nonprobationary Appointees.**

(1) An appointee identified for RIF by the competitive procedures of this appendix, who declines a directed reassignment approved by the Secretary or other appropriate authority to an SES position for which qualified, shall be removed from the SES under 5 USC 7543(a).

(2) An appointee identified for RIF by the competitive procedures of this appendix, who declines a reasonable offer of placement in an SES position in another department/agency through OPM placement efforts, shall be removed from the SES under 5 USC 3595(b)(4).

(3) An appointee identified for RIF by the competitive procedures of this appendix, who cannot be placed by OPM within 45 days of agency certification, shall be removed from the SES under 5 USC 3595(b)(5).

## **J-6. REINSTATEMENT RIGHTS**

**a. General.** A former career SES appointee of the Department removed by RIF may be reinstated without competition if the appointee has completed a 1-year SES probationary period.

**b. Probationary Employee.** A former probationary SES appointee removed by RIF must apply and compete under the general merit staffing procedures. There is no reinstatement eligibility until a career appointee completes the probationary period.

## **J-7. RIF APPEALS**

**a. Coverage of Section.** This section covers RIF appeals to the Merit Systems Protection Board initiated as a result of implementation of the Department's SES RIF procedures.

**b. General.** Any appointee may appeal under 5 USC 3595(c) whether the RIF complied with competitive procedures as described in this appendix.