UNITED STATES PATENT AND TRADEMARK OFFICE REDUCTION IN FORCE (RIF), TRANSFER OF FUNCTION, AND FURLOUGH HANDBOOK

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I. PURPOSE

This Handbook establishes the United States Patent and Trademark Office's (USPTO or Agency) policy and procedures concerning a reduction in force (RIF) subject to Title 5, Code of Federal Regulations (CFR), Parts 302, 330, 351, 353, 536, and 550 (Subpart G).

II. AUTHORITY

Title 5, United States Code (U.S.C.) § 3502
Title 5, CFR, Parts 302, 330, 351, 353, 536, and 550 (Subpart G)

III. SCOPE

A. COVERED

This Handbook applies to:

1. General Schedule (GS) and Federal Wage System (FWS) employees on career, career-conditional, and term appointments in the competitive service, as well as employees in the excepted service (see exception below in III.B.5); and

2. Employees in Senior Scientific and Professional (ST) positions and employees in Senior Level (SL) positions; and

3. Employees in Administrative Patent Judge (APJ) and Administrative Trademark Judge (ATJ) positions.

B. EXCLUDED

This Handbook does not apply to:

1. Senior Executive Service (SES)

   Employees in the Senior Executive Service (SES) are excluded from coverage under this Handbook.

   This exclusion also applies to employees whose appointments are required by Congress to be confirmed by, or made with, the advice and consent of the U.S. Senate (5 CFR 351.202(b)).

2. Employees in excepted service positions are only excluded from coverage under the Assignment Section of this Handbook. However, the Agency may administratively grant assignment rights to excepted service employees for positions under the same appointing authority, consistent with 5 CFR 351.705(a)(3).

IV. INTRODUCTION

A. DEFINITIONS

1. Adjusted RIF SCD. The constructed date that reflects an employee's total creditable Federal service as augmented by service credit for performance.

2. Assignment Right. The regulatory right of an eligible competitive service Tenure Group I or II employee to be assigned (through bumping or retreating) in the second round of competition to a position in a different competitive level held by another employee with lower standing on a retention register, within the same competitive area.

3. Best Offer. A bona fide offer of a position with no reduction in grade or pay, or with the least reduction possible in consideration of positions available, employee qualifications, and the retention standing of other competing employees.

4. Bump Rights. The right of a competitive service Tenure Group I or II employee reached for release from their competitive level to displace another employee in a different competitive level in a lower tenure group or lower tenure subgroup within the same tenure group in the same competitive area. This right is limited to three grades or grade intervals (in two-grade-interval jobs, bumping could be as much as six actual grades).

5. Competing Employee. An employee in Tenure Group I, II, or III whose position is involved in a RIF.

6. Competitive Area. The geographical and organizational limits of RIF competition. It is defined solely in terms of business unit(s) and geographic location(s). The competitive area may not be established based on grade levels or occupational series definitions. The minimum competitive area is an organization that is separate from other organizations in a local commuting area by virtue of differences in operation, work function, staff, and personnel management authority. The USPTO requires separate competitive area(s) for positions covered by career paths from those not covered by career paths.

   Competitive areas for the USPTO are contained in Appendix B of this Handbook, "Competitive Areas."

7. Competitive Level. Interchangeable positions within the same service (competitive or excepted) in a competitive area, in the same grade/pay plan and series having similar duties and qualifications, and the same work schedule (full-time, part-time, seasonal, or intermittent). Competitive levels are based on the employees' official position description, not on employees' personal qualifications. Employees are placed in the same competitive level when their official position descriptions indicate the incumbent of one position can successfully perform the key duties of another position

within 90 days without loss of productivity or undue interruption beyond that which is normally expected in the orientation of any new, fully qualified employee.

8. Competitive Service. All civilian positions in the Federal Government that are not specifically excepted from the competitive service by or pursuant to statute or by the Office of Personnel Management (OPM) under Rule VI, and that are not in the Senior Executive Service.

9. Day. Calendar day, unless otherwise indicated.

10. Excepted Service. Civil service positions that are not in the competitive service or the Senior Executive Service.

11. 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 back and forth daily to their usual employment (5 CFR 351.203).

12. Look Back Period. The 4-year period prior to the date of issuance of RIF notices or from an identified cutoff date after which no new ratings of record will be used for performance credit.

13. Modal Rating. The summary rating level assigned when an employee has no ratings for the period under review. It is determined by identifying the most frequently assigned summary level among ratings of record for the most recent appraisal period within the competitive area.

14. Preference Eligible. Veterans, spouses, widows/widowers, or parents who meet the definition of "preference eligible" in 5 U.S.C. § 2108. Preference eligibles are accorded a higher retention standing in the event of a RIF (see 5 U.S.C. § 3502).

    Note: Except for an employee who is a retired member of the Armed Forces, an employee who is eligible for veterans' preference for purposes of initial appointment to Federal service is also eligible for veterans' preference under RIF regulations. A retired member of the uniformed service is preference eligible for a RIF if the criteria in 5 CFR 351.501(d) are met.

15. Qualified. Meets OPM's qualification standards for a position, including any minimum education requirement, physical requirement (including providing reasonable accommodation to persons with disabilities who demonstrate that they can perform the work of the position to be filled), and is able to perform the duties and requirements of a position within 90 days without undue interruption.

16. Rating of Record. The performance rating (1) prepared at the end of an appraisal period for performance of agency-assigned duties over the entire period and the assignment of a summary level within a pattern as specified in 5 CFR 430.208(d) or

(2) that results because of a within-grade increase decision as authorized by 5 CFR 531.404(a)(1).

17. Reemployment Priority List (RPL). A list, maintained by the USPTO by local commuting area, which provides placement priority to current and former competitive service employees who will be or were separated by RIF or former competitive service employees who have recovered from a compensable work-related injury after more than 1 year. Employees who register with the RPL will be given priority placement for most competitive service vacancies before hiring someone from outside of the USPTO's permanent competitive service workforce.

18. Reorganization. The planned elimination, addition, or redistribution of functions or duties in an organization.

19. Representative Rates. The hourly rates used to compare pay in different pay schedules to ascertain best offers: the fourth step of the grade for GS positions (using the authorized locality rate), the prevailing rate for wage grade positions, and agency-designated rates for other positions (using the authorized locality rate).

20. Retention Register. A list of employees classified in descending order within a competitive level after the four retention factors (tenure, veterans' preference, length of service, and performance) are applied.

21. Retention Standing. An employee's relative standing on a retention register based on tenure, veterans' preference, and length of service augmented by performance credit.

22. Retreat Rights. The right of a competitive service Tenure Group I or II employee, reached for release from their competitive level, to displace another employee in a different competitive level with lower retention standing in the same tenure group and subgroup when the position is one that the released employee once held (does not have to be held within the same agency), or one determined to be essentially identical. Retreating is limited to three grades or grade intervals (in two-grade-interval jobs, retreating could be as much as six actual grades).

    Exception: For preference eligible employees with a compensable service-connected disability of 30 percent or more, the limit is five grades or grade intervals.

23. Rounds of Competition. The different stages of competing for retention in a RIF. In the first round of competition, employees compete to stay in their competitive level. In the second round of competition, employees with assignment rights (bump and retreat) compete for assignment to positions in different competitive levels.

24. Specific Notice. A written notice that must be provided to an employee identified for release from a competitive level at least 60 full days before the effective date of release. The notice period may be shortened to 30 days with approval from the Office of Personnel Management (OPM).

25. Competitive Service Tenure Groups:

A. Group I – Career employees who are not serving a probationary period for appointment to a competitive position. A supervisory or managerial employee serving a probationary period required under an initial appointment to a supervisory or managerial position (under 5 CFR Part 315 Subpart I) is in Group I if the employee is otherwise eligible to be included in this group.

B. Group II – Career-conditional employees and career employees serving a probationary period for initial appointment to a competitive position. A supervisory or managerial employee serving a probationary period required under an initial appointment to a supervisory or managerial position (under 5 CFR Part 315 Subpart I) is in Group II if the employee has not completed a probationary period under initial appointment to a competitive position.

C. Group III – Employees serving under an indefinite appointment; a temporary appointment pending establishment of a register (TAPER); a term appointment; a status quo appointment; a provisional appointment; or any other nonstatus, nontemporary appointment. An employee serving under a temporary-limited appointment is not in Tenure Group III and is not a competing employee.

26. Undue Interruption. A degree of interruption that would prevent the completion of required work by the employee 90 days after the employee has been placed in a different position in first or second-round RIF competition. The 90-day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if an employee needed more than 90 days after the RIF to perform the optimum quality or quantity of work. The 90-day standard may be extended if placement is made in first or second-round RIF competition to a low priority program or to a vacant position.

27. Tenure Subgroups. Within each of the three tenure groups on a retention register, employees are listed by veterans' preference tenure subgroups. The subgroups are as follows:

a. Subgroup AD – Preference eligible employees who have a compensable service-connected disability of 30 percent or more (CPS).

b. Subgroup A – Preference eligible employees who are not in Subgroup AD (CP, XP, TP), including all employees eligible for "derivative preference" under 5 U.S.C. §§ 2108(3)(D)–(G).

c. Subgroup B – Employees who are not entitled to veterans' preference (NV), under the RIF regulations.

B. **WHEN TO USE RIF PROCEDURES**

These procedures must be used when one or more employees will be separated or downgraded due to reorganization, lack of work, shortage of funds, insufficient personnel ceiling, or the exercise of certain reemployment or restoration rights. In addition, RIF procedures must be used for a furlough of more than 30 consecutive days, or of more than 22 discontinuous workdays. (A furlough of less than 30 consecutive calendar days, or no more than 22 discontinuous workdays is an adverse action and is covered by 5 CFR Part 752. These procedures may not be used to take performance-based or conduct-based adverse actions.

C. **RIF ALTERNATIVES**

The USPTO's policy is to avoid or mitigate, when possible, the impact of a RIF. When anticipating a RIF, management should consider various alternatives to lessen the likelihood of a RIF and if this is not possible, prepare employees for the RIF. Alternatives may include the Agency requesting Voluntary Early Retirement Authority (VERA) and/or Voluntary Separation Incentive Payments (VSIP) authority from OPM by forwarding a request through the Director of Human Capital Management for review and approval; implementing a hiring freeze; not filling positions that are vacated; and reducing discretionary spending. In some cases, implementing some or all of these alternatives to RIF may accomplish substantial savings and avoid the necessity for a RIF or reduce the number of employees affected.

V. RESPONSIBILITIES

A. **MANAGERS**

1. Ensure the maintenance of performance ratings in accordance with applicable USPTO policy and regulations regarding retention of records, as well as ensure ratings are accurate, current, and timely submitted.

2. Ensure that all position descriptions are complete and accurate.

3. Identify positions in their organization that will become surplus due to program cuts, lack of funds, reorganization, reduction in personnel allocation, or any other causes that will result in a reduction in the size of their workforce.

4. Strategically decide which positions to abolish that will enable and/or enhance the organization's ability to accomplish their mission.

5. Reassign, as appropriate, qualified employees from surplus positions to vacant existing positions within its organization.

6. Submit requests for personnel actions to appropriate approving officials. The submission must contain all necessary documentation to support RIF actions affecting employees.

Management retains the discretion to fill all, some, or no vacant positions within a competitive area, as well as whether to offer any vacant position(s) in the RIF. Management is committed to ensuring that permanent employees who are impacted by a RIF action receive every reasonable opportunity to be placed in suitable permanent vacant positions within their competitive area. To the extent possible, vacant continuing positions will be used to lessen the impact of RIF. If a business unit determines to fill a vacancy by an employee who has been reached for release from a competitive level, it will be filled with a qualified employee in accordance with retention standing (5 CFR 351.201(b)). In offering vacant positions in lieu of RIF separation, or downgrade, the business unit will include both full-time and part-time positions for which an employee (either full-time or part-time) qualifies.

B. DIRECTOR, HUMAN CAPITAL MANAGEMENT (DHCM)

The DHCM is to be consulted when management is considering an organizational change. This consultation is especially important in cases where the abolishment of encumbered positions is proposed or where bargaining unit employees will be affected. Business units facing office closings and staff reductions are responsible for keeping the DHCM and Chief Financial Officer (CFO) informed of future workload, staffing plans, and other material planning decisions. Specific information is to be provided on numbers, grade/band levels, occupational categories, geographic locations, and dates the positions are expected to be surplus.

Establish a RIF team. The DHCM, upon learning that a reorganization or other staff changes requiring the implementation of RIF regulations may occur, will establish a RIF team. The team shall consist of Human Resources (HR) Specialists who have been formally trained in the implementation of the RIF regulations, HR Specialists specializing in Employee and Labor Relations, and other HR representatives that are appointed by the DHCM. The DCHM **must** request support from the USPTO Office of General Counsel (OGC) and/or USPTO Office of Equal Employment Opportunity (OEEO) as needed. The purpose of the RIF team is to collaborate in the planning and implementation of a RIF action; implement the RIF; advise managers; and assist affected employees with placement assistance.

The DCHM and the RIF team are responsible for:

1. Advising managers on alternatives to RIF.

2. Advising managers on the required RIF procedures.

3. Providing RIF policy guidance.

4. Accomplishing workforce mission adjustments in an orderly and timely manner through careful and advance planning. Plans should seek to achieve the minimum disruption and dislocation of employees while maintaining organizational efficiency and productivity. Every reasonable effort should be made to avoid a RIF.

5. Advising on and implementing, as appropriate, pre-RIF placements of impacted employees in positions for which they qualify in their local commuting area for those organizations conducting regular recruitment.

6. Ensuring, along with managers and supervisors, that position descriptions of all positions involved in the RIF are accurate and properly classified, as these form the basis for establishing competitive levels and determining qualifications for positions.

7. Ensuring that ratings in the National Finance Center (NFC) system are accurate.

8. Ensuring the RIF notice effective dates will be completed in accordance with 5 CFR 351.801.

9. Advising on whether positions and grade levels can be supported as workload and responsibilities diminish.

10. Assisting managers with coordinating and communicating downsizing efforts among the business units.

11. Ensuring the RIF is carried out in accordance with 5 CFR Part 351, the provisions of this Handbook, and provisions of applicable CBAs.

12. Completing all labor relations obligations required by 5 U.S.C., Chapter 71 and any applicable CBAs with the exclusive representative(s) of the bargaining unit employees.

13. Establishing and maintaining complete retention registers with each employee's name and tenure group/subgroup in the event an employee who has received a specific RIF notice or the employee's representative wish to inspect the retention records.

14. Identifying employee(s) affected by RIF and determining rights to other positions. Ensuring that the DCHM is notified at least 30 calendar days prior to the issuance of a RIF notice when 50 or more employees in a competitive area are to receive RIF separation notices. The notice must include the number of employees to be separated by RIF (broken down by geographic area or other basis specified by OPM) and the effective date of the separations.

15. Counseling employees who are eligible for discontinued service retirement and advising employees of their appeal or grievance rights, as applicable.

16. Advising affected employees about available outplacement programs and assisting with requests for participation in these programs.

17. Processing personnel, position, and pay actions resulting from the reorganization.

18. Preserving all registers and records relating to a RIF for 2 years after the last issuance of a specific RIF notice (Reference – General Records Schedule 1, Transmittal No. 12, July 2004).

C. OFFICE OF HUMAN RESOURCES (OHR)

When 50 of more employees in a competitive area receive separation notices, USPTO OHR will provide written notification of the RIF action to the State, or the entity designated by the State to carry out rapid response activities under Title I of the Workforce Investment Act of 1998; the chief elected official of local government(s) within which 50 or more employees will be separated by RIF; and OPM. The notification will include the number of employees to be separated from the USPTO by RIF (broken down by geographic area or other bases specified by OPM), the effective date of the separations, and any other information specified by OPM. The Agency will notify the three organizations above at the same time that it issues the separation notices to the employees.

D. AFFECTED EMPLOYEES

Employees are responsible for providing up-to-date information and supporting documentation as appropriate on veterans' preference, education, and experience; verifying information to be used by the OHR in establishing retention registers; and notifying the OHR of errors or omissions.

VI. RIF PROCEDURES

A. USE OF RIF PROCEDURES

The provisions of 5 CFR Part 351 and this Handbook **do not apply** to:

1. The termination of a temporary or term promotion or the return of an employee to the position held before the temporary or term promotion or to one of equivalent grade and pay.

2. A change to lower grade based on the reclassification of an employee's position due to the application of new classification standards or the correction of a classification error.

3. A change to lower grade based on reclassification of an employee's position due to erosion of duties. An exception is a reclassification action that will take effect after a business unit has formally announced a RIF in the employee's competitive area and the reduction will take effect within 180 days (5 CFR 351.201(a)(1)). This exception ends at the completion of the RIF.

4. Placement of an employee serving on an intermittent, part-time, or seasonal basis in a non-pay and nonduty status in accordance with conditions established at the time of appointment.

5. A change in an employee's work schedule from other-than-full-time to full-time.

   Management may reassign an employee without regard to RIF procedures, if they have not been reached for release, to a vacant position at the same grade or rate of pay regardless of whether the position is in the same or a different competitive level, competitive area, or local commuting area. Additionally, the need to apply RIF procedures does not suspend the USPTO's authority and responsibility to take other legitimate personnel actions, such as reassignments and changes to lower grade for unacceptable performance, before, after, or during a RIF.

6. A reduction in rank (for example, a reassignment of an employee from a supervisory position to a nonsupervisory position).

7. A constructive demotion (for example, an employee's position is reclassified to a higher grade because of a new classification error and the employee is not promoted even though the employee is qualified for the higher-graded position)

8. A furlough of 30 or fewer continuous days, or of 22 or fewer discontinuous workdays.

B. APPLICABILITY

Competitive service employees designated in Tenure Group I, II, and III.

Employees on temporary-limited appointments in the competitive service should be removed before any employee covered by 5 CFR 351.202 is reached for a RIF action in a competitive level

C. COMPETITIVE LEVELS

No RIF action may be taken until every position in the affected competitive area is assigned to a competitive level. A retention register must be prepared for each affected competitive level in a competitive area.

The USPTO OHR will establish competitive levels by grouping positions within a competitive area in the same grade/pay band and occupational series, having similar

duties and qualifications, and the same work schedule (full-time, part-time, seasonal, intermittent). Competitive levels are based on employees' official position descriptions for all positions, not on employees' personal qualifications.

Employees are placed in the same competitive level when their official position description indicates that the incumbent of one position can successfully perform the significant key duties of another position within 90 days from placement without any loss of productivity or undue interruption beyond that which is normally expected in the orientation of any new, fully qualified employee.

Supervisory and managerial positions will usually be placed in separate competitive levels from other positions, as it is unlikely that the duties of supervisory and non-supervisory positions would be similar enough to be placed in the same competitive levels. Serving a supervisory or managerial probationary period is not a basis for establishing a separate competitive level.

D. RETENTION REGISTERS

A retention register listing each employee affected in a distinct competitive level will be developed by applying the following four factors: tenure group, veterans' preference, length of service, and performance. The list will be in descending order within the following groups: Group I, Group II, Group III. Once established, this list aids the HR Specialist in determining the proper order for releasing employees from their competitive level and for applying assignment rights. Employees are released in inverse order of their retention standing, from the lowest to the highest-standing employee. The name of each employee in receipt of a written decision of removal due to unacceptable performance will be listed at the bottom of the respective retention register. These employees do not compete in RIF. An employee in receipt of a written decision to demote due to unacceptable performance will compete in RIF from the position to which they will be demoted. A competing employee who has not received a written decision of removal or demotion due to unacceptable performance is listed on the retention register, not apart from it.

E. PERFORMANCE FACTORS

Additional service credit for performance is assigned in accordance with 5 CFR 351.504, as applicable. Regardless of whether an employee's service occurred in the USPTO or another Federal agency, the employee's actual ratings of record are used to the extent they are available.

1. Official Rating of Record
   The official rating of record is the performance rating prepared at the end of a performance appraisal period or as a result of a within-grade increase decision. The rating is established by combining the individual ratings on each element to arrive at an overall evaluation of an employee's performance for the appraisal period.

2. United States Patent and Trademark Office Appraisals

   Performance evaluations issued under the current five-level summary rating pattern (Level 5 (Outstanding), Level 4 (Commendable), Level 3 (Fully Successful), Level 2 (Marginal), and Level 1 (Unacceptable)) of the USPTO performance appraisal system are ratings of record for RIF purposes. These ratings will be used to calculate additional service credit.

3. Appraisals from Other Federal Departments/Agencies

   Ratings of record received within the last 4 years from Federal departments/agencies covered by 5 CFR Part 430 and those from departments, agencies, or organizations not subject to these regulations, which are determined by the USPTO to be equivalent ratings of record, shall be used to grant additional service credit.

4. Ratings of Record

   Annual ratings of record may not be prepared retroactively to cover periods for which no rating is available. A supervisor may not prepare a rating for a prior appraisal period at the time a subsequent rating is due. An employee may not be assigned to a new rating of record for the sole purpose of affecting their retention standing.

   To be creditable for RIF purposes, approved ratings must have been issued to the employee, be on record, and available to the OHR in order to prepare retention registers. For official ratings of record issued by business units of the USPTO, the ratings must be final and have been entered into the National Finance Center system. For ratings from prior agencies, the ratings must be available in the employee's personnel records. If not available, the OHR will give the employee a reasonable opportunity to provide any missing ratings. Documentation of the actual rating or a duplicate must be provided. Certified statements will not be accepted. If missing ratings are not provided, performance credit will be determined as outlined under Section F, Crediting Performance, below.

   Only official ratings of record may be used. A cutoff date of 30 days prior to the issuance of specific RIF notices will be used to allow time to establish retention registers. No new ratings of record will be recorded or used for RIF purposes after that date.

5. Assignment Rights

   An employee with an excepted service appointment has no assignment rights under OPM's RIF regulations. However, at its discretion an agency may elect to provide its excepted service employees with RIF assignment rights.

   Employees who currently have Level 1 ratings forfeit their right of assignment under RIF. Those rated Level 2 can only retreat to positions held by employees with the same or lower ratings.

F. CREDITING PERFORMANCE

1. Official ratings of record will be used to calculate additional service credit for RIF retention, in accordance with 5 CFR 351.504. The current USPTO performance appraisal system provides for five summary rating levels. They are Level 5 (Outstanding), Level 4 (Commendable), Level 3 (Fully Successful), Level 2 (Marginal), and Level 1 (Unacceptable).

   The value assigned to each annual rating is 20 years for Level 5, 16 years for Level 4, and 12 years for Level 3. No additional credit is given for Level 2 or Level 1 ratings. A current rating of Level 3 will be presumed when an employee has been demoted for unacceptable performance and, as of the date a specific RIF notice is issued, has not received a performance-based rating in the position to which demoted.

2. An employee's entitlement to additional service credit for performance is based on the average of the employee's last three annual ratings of record, received during the 4-year "look-back" period prior to either the date the organization issues the specific RIF notices or the identified cutoff date, after which no new ratings of record will be used for performance credit.

3. An employee who has received at least one but fewer than three previous ratings of record during the prior 4-year "look-back" period for crediting performance shall receive credit based on the value of the ratings of record divided by the number of ratings received (i.e., average). If an employee has received only two ratings of record during the period, the value of the ratings is added together and divided by two. If an employee has received only one rating of record during the period, its value is the amount of additional retention service credit provided in the applicable performance plan. If an employee has more than three annual ratings of record during the 4-year period, the three most recent ratings of record will be averaged.

   Note: Mathematical averaging of the ratings is rounded up to the next higher whole number.

4. An employee who has received no ratings of record during the 4-year "look back" period will receive credit for performance based on the modal rating.

5. The value assigned to official annual ratings outside USPTO's five summary level ratings from other federal agencies are as follows:

   a. Employees Covered by Pass/Fail System prior to reporting to USPTO within the "look back" will receive 20 years of credit for a Pass rating. No credit is given for a fail rating.
   b. Employees covered by an appraisal program with fewer than five summary levels will receive 20 years for a rating equivalent to Level 5, 16 years for a rating equivalent to Level 4, and 12 years for a rating equivalent to Level 3, based on the patterns described in 5 CFR 430.208(d).

G. **COMPETITION**

1. Prior to Competition
   Non-competing employees are released before any competing employee in a competitive level.

2. First Round of Competition
   Once it is determined by USPTO management how many employees are needed at each competitive level, the first round of competition is conducted. During the first round of competition, competing employees whose retention standing was previously determined by applying the four factors are released from their competitive level in the inverse order of their retention standing.

3. Second Round of Competition
   A competing employee released from their competitive level during the first round of competition may be assigned to another competitive level within the same competitive area according to bump or retreat rights as applicable, in the manner that will result in the least possible loss of grade or pay.

   An employee is entitled to only one offer of assignment. An employee with a current annual performance rating of Unacceptable has no assignment right.

   When bump or retreat is used, the promotion potential of the offered position is not a consideration.

   Bump: A Tenure Group I or II employee is placed into a position held by another employee in a lower tenure group, or in a lower subgroup within the same tenure group, that is not more than three grades or grade intervals (in two-grade-interval jobs, bumping could be as much as six actual grades) below the position from which the employee is released. Bumping must be to a position in the same competitive area but different competitive level. An employee may bump someone in a lower subgroup but may not bump an individual in the same subgroup. Tenure Group III employees do not have bump rights as they cannot displace other employees.

   Retreat: A Tenure Group I or II employee is placed into a position held by another employee with a lower retention standing in the same tenure group and subgroup that is no more than three grades or grade intervals (in two-grade-interval jobs, retreating could be as much as six actual grades) below the position from which the employee is released. In order to retreat, the position must be the same as, or essentially identical to, a position previously held by the released employee in the Federal service on a permanent basis. Tenure Group III employees do not have retreat rights.

Subgroup AD Employees – Preference eligible employees with a 30 percent or more compensable service-connected disability may retreat up to five grades or grade intervals.

Note: Employees with a minimally successful performance rating may only retreat to a position held by another minimally successful or lower employee.

4. Mandatory Exceptions to the Regular Order of Release
Following restoration after military service, an employee is given retention priority over other employees in the same subgroup to employees in Groups I or II for 6 months (if the period of uniformed service was for more than 30 days but less than 180 days) or 1 year (if the period of uniformed service was more than 180 days) after restoration.

Business units shall make a temporary exception to retain an employee who is being involuntarily separated under RIF procedures and who elects to use **annual** leave to remain on the rolls after the date the employee would have been separated, in order to establish eligibility for retirement and/or to establish initial eligibility to continue health benefits' coverage into retirement. An employee cannot be retained past the date they first become eligible for retirement or continuation of health benefits. The exception may not exceed the date the employee first becomes eligible for immediate retirement and/or for continuation of health benefits into retirement and may exceed 90 days. Other types of paid leave such as sick leave, compensatory leave, credit hours, etc. cannot be used to remain on the rolls.

5. Permissive Exceptions to the Regular Order of Release

Continuing exception – Is permitted when necessary to retain an employee in a position that no higher-standing employee can take over within 90 days without undue interruption to the agency.

Temporary exceptions – Can be made in order to retain an employee after the effective date of the RIF:

- To be granted for a maximum of 90 days if necessary to continue an activity without undue interruption.
- To retain a lower standing employee on sick leave who was on approved sick leave on the effective date of the RIF until the employee's sick leave is exhausted, even if this exceeds 90 days.
- To satisfy a government obligation.
- To benefit the employee 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.

6. Qualification Requirement for Position Change
A competing employee released from their competitive level is entitled to placement in a position for which they are qualified in another competitive level, consistent with

RIF competition and assignment provisions (bump and retreat). An employee must meet the OPM qualification standard, including minimum education requirements, and any selective placement factors established; be physically qualified with or without a reasonable accommodation, where appropriate, to perform the duties of the position; and possess the skills needed to satisfactorily perform the essential duties of the position upon entry without undue interruption to the USPTO.

An employee on a leave of absence due to a compensable injury cannot be denied assignment solely due to not being physically qualified if the disqualification resulted from the compensable injury. Such an employee must be afforded assignment rights, subject to recovery.

When an employee gains new qualifications during a RIF notice period that would entitle them to a better position offer, that better offer must be made and the original offer of position or notice of separation must be amended.

A right of assignment to a sensitive position may not be delayed or denied solely because the employee does not have the appropriate security clearance, or it is in the process of obtaining the clearance. When the USPTO determines that an employee has a right of assignment to a sensitive position and that the employee's lack of security clearance will not result in an undue interruption, the employee must be placed in the sensitive position on the date of the RIF. While the clearance process is pending, the sensitive duties may be temporarily given to another qualified employee, or other appropriate arrangements made.

To be qualified to bump or retreat into a trainee position, an employee must meet all of the conditions required for selection and entry into the formal intern development program. An employee who has completed a course of training of development in a specific occupation, or who is otherwise fully trained and qualified, may not bump or retreat into a formal USPTO intern or development program in that occupation.

7. Offer of Position

Whenever an employee is released from their competitive level, they are entitled to be placed in a position that results in the least possible reduction in grade or pay. This is what is meant by "best" offer. However, placement is dependent upon many variables, including the employee's qualifications and retention standing versus those of other competing employees, and the availability of positions.

Assignments across pay plans, for example, Federal Wage Schedule (FWS) or General Schedule (GS), will be determined by representative rates. Employees may not be assigned in a RIF to a position with a higher representative rate.
When assignment rights can be satisfied by more than one position with the same representative rate, OHR will make its assignment determination based on the needs of the organization. An employee may be offered assignment to a position with greater promotion potential.

An employee is entitled to only one offer of assignment and is entitled to no further offer when they accept an offer, reject an offer, or fail to reply within a reasonable time. However, even though an employee is entitled to only one offer of assignment, the agency must make a better offer of assignment (i.e., to a position with a higher representative rate) to a released employee if a position becomes available before, or on, the effective date of the RIF. The released employee is entitled to any better offers of assignment regardless of whether the employee previously accepted or declined an offer of assignment. After determining an employee's assignment right, an alternative offer of a vacant position with the same or lower representative rate than that of the position to which the employee was entitled, may be provided in order to permit the employee to remain in the commuting area or in the same line of work.

A vacant part-time position may be offered to a full-time employee, and a vacant full-time position may be offered to a part-time employee in lieu of separation or demotion by a RIF.

H. SPECIFIC RIF NOTICE

Management must provide each competing employee selected for release from a competitive level a specific written notice 60 days before the effective date of release (5 CFR 351.801(a)(1)). This period may be shortened to 30 days with OPM approval. Management must provide a notice to the exclusive representative(s) of each affected employee at the time it issues the specific notice to the employee (5 CFR 351.801 (a)(2)).

A Saturday, Sunday, legal holiday, or other non-workday will not be counted as the last day of the notice period. In such a case, the last day of the notice period will be the next regular business day. A similar policy will be used in reply periods. The notice period begins on the day after the date the employee receives the written notice.

During the specific RIF notice period, the notice may be amended without extending the notice period if the amendment results in a more favorable action than the one originally proposed. However, if the amendment results in a more severe action for the employee, a new specific notice period must be given to the employee.

Specific RIF notices must contain the information required by 5 CFR 351.802(a). This includes:

1. The action to be taken, the reasons for the action, and its effective date;
2. The employee's competitive area; competitive level; subgroup; service computation date; and 3 most recent annual performance ratings of record received during the last 4 years;
3. The location where the employee may inspect the regulations and records pertinent to their case;
4. The reasons for retaining a lower-standing employee in the same competitive level;
5. Information on selection priority (CTAP and the ICTAP) and the USPTO's RPL; and

6. The employee's right to appeal/grieve and applicable time limits governing that right.

If requested, employees will be provided access to 5 CFR Part 351. Employees being separated will be provided information on the CTAP/ICTAP, and the RPL, as well as information on applying for unemployment insurance (5 CFR 351.803(a)).

Employees ordinarily continue to occupy their original positions and remain in a pay and duty status during the entire notice period unless the employee resigns, or requests and is granted annual leave, sick leave, or leave without pay. However, in an emergency, when there is a lack of work or funds for all or part of the notice period, the employee may be placed on annual leave with or without their consent, leave without pay with their consent, or in a non-pay status without their consent. The Agency may also place employees on administrative leave in its discretion consistent with 5 CFR 630.1403.

I. REPLIES TO JOB OFFERS

Specific RIF notices will provide employees with three workdays within which to accept or decline an offer of continuing employment. Extension of the reply period may be permitted when time is available, or when it can be shown that employees were prevented by circumstances beyond their control from replying within the prescribed time. Employees should be informed that declining a position offer may result in separation.

When an employee accepts an offer of a position within the local commuting area, it is recommended that a courtesy meeting be set up with the gaining supervisor. RIF placements, however, are mandatory and may only be objected to on the grounds of undue interruption. Undue interruption (5 CFR 351.203) means a degree of interruption that would prevent the completion of required work by the employee 90 days after the employee has been placed in a different position in accordance with this policy.

VII. GRIEVANCES AND APPEALS

Section 3 of USPTO Agency Administrative Order (AAO) 202-18 excludes RIF from the scope of the administrative grievance procedure. The appeal rights of non-bargaining employees separated or demoted in RIF is to the U.S. Merit Systems Protection Board (MSPB).

Employees in a bargaining unit must use their applicable negotiated grievance procedure (NGP) unless the NGP specifically excludes RIF from the scope of the NGP. In that case, the employee's appeal rights are to the MSPB. If the scope of the NGP does not specifically exclude RIF, but the employee alleges discrimination, the employee has the option under 5 U.S.C. § 7121(d) to use the NGP or the MSPB (i.e., "mixed case"). In addition, higher standing employees released from their competitive level out of retention order because of a decision to retain a lower standing employee as an exception may appeal this action to the MSPB or grieve under the applicable NGP as appropriate.

The employee is deemed to have made their choice when they first timely file a written grievance under the NGP, or timely file a formal appeal under the applicable appeal procedure, whichever occurs first. Note: The U.S. Equal Employment Opportunity Commission's (EEOC) regulations consider the employee to have made an election of the NGP if they file a written grievance, even if the grievance is an informal grievance. If the employee raises an allegation of prohibited discrimination, the employee can request further review of the final decision of the NGP by either the MSPB or the EEOC. The MSPB reviews the final decision of the NGP (i.e., (1) management's final decision on the grievance if no arbitration is invoked; (2) the arbitrator's award if no exception to the award is filed with the Federal Labor Relations Authority (FLRA) by the union or management; or (3) the final decision of the FLRA on exceptions filed to the arbitration award) on the issue (RIF) while the EEOC reviews the final decision of the NGP only as it pertains to the allegation of prohibited discrimination.

If the bargaining unit employee believes the separation or demotion in a RIF involved a prohibited personnel practice other than prohibited discrimination, the employee may appeal the RIF and the allegation of a prohibited personnel practice to the U.S. Office of Special Counsel, the MSPB, or through the NGP. The employee is deemed to have made their choice when they first timely file a written grievance under the NGP, or timely file a formal appeal under the applicable appeal procedure, whichever occurs first.

Employees receiving grade or pay retention because of a RIF may not appeal nor use the NGP to challenge the RIF (5 U.S.C. § 5366(b)). Employees who accept an offer of assignment to another position at the same grade or representative rate have no right to appeal the RIF to MSPB. An appealable RIF action may be appealed to the MSPB anytime during the period beginning with the day after the effective date of the action, and ending no later than 30 days after that effective date. The terms of the applicable CBA control the time limits to grieve under the NGP.

VIII. RETENTION OF RECORDS

A. DISCLOSURE OF RETENTION RECORDS

Retention registers and records must be shown to employees who have received specific RIF notices upon request. Disclosure of records may include disclosure to the employees' designated representatives. Before exhibiting such records, dates of birth and social security numbers must be redacted. Employees and their representatives are also entitled to see descriptions of competitive areas and levels, and the dates these were established or changed.

B. CONTENT OF RETENTION RECORDS

Retention registers for each competitive level will contain the minimum information necessary to establish standing for each employee, such as name; position title; series;

grade; organization; tenure group and subgroup; service computation date adjusted for additional service credit; and the last performance rating of record. Other useful information, such as expiration date of mandatory retention after return from military duty, date of expected conversion to career, etc., can be added. Personal data should not be made a part of retention registers except as necessary to identify employees. Each retention register will include notations regarding what happened to the position (abolished, downgraded, etc.) as well as the effect on the incumbent (separated, reassigned to "X" position, etc.).

C. **RECORDS**

All records, registers, and worksheets sufficient to depict the conduct of a RIF will be maintained for 2 years from the issuance date of specific RIF notices.

IX. APPROVAL

Users, Schad, Carolyn

Digitally signed by Users, Schad, Carolyn
Date: 2025.07.17 11:13:18 -04'00'

_____ _____

Carolyn Schad — Date

Acting Director, Human Capital Management

APPENDIX A – PROCEDURES FOR REQUESTING PRIOR APPROVAL AND REPORTING REQUIREMENTS

A business unit may initiate a RIF or a furlough using RIF procedures only with advanced approval of the Office of Under Secretary and USPTO Chief Administrative Officer. Requests must be submitted in writing as soon as the need for a RIF is determined. The form and content of the request may be prescribed by the Office of Under Secretary and Chief Administrative Officer.

Changes to existing competitive areas also require advanced approval of the Office of Under Secretary and USPTO Chief Administrative Officer prior to submission for OPM approval. Requests must be submitted in writing. The form, content, and timing of the request may be prescribed by the Office of Under Secretary and USPTO Chief Administrative Officer.

The USPTO must obtain prior approval from OPM to change an existing competitive area or establish a new competitive area within 90 days of the effective date of a RIF (5 CFR 351.402 (c)). Without OPM approval, requests must be submitted to the Director, Human Capital Management no later than 135 days prior to the effective date of a RIF, in accordance with the requirements listed below. If no RIF is planned, the request and all supporting documentation must be submitted to the DHCM at least 45 days prior to the effective date of the requested change.

The request must include:

1. Identification of the proposed competitive area, including the organizational segment, Geographic location, and limits on the local commuting area;

2. A description of how the proposed area differs from the one previously established for the same unit and geographic area;

3. An organizational chart of the agency showing the relationship between the organizational components within the competitive area and other components in the commuting area;

4. The number of competing employees in the proposed competitive area;

5. A description of the operation, work function, staff, and personnel administration of the proposed area, and, where appropriate, a description of how the area is distinguished from others in these respects;

6. A discussion of the circumstances that led to the proposed changes; and

7. If applicable, a statement certifying all obligations under Title 5, U.S.C., Chapter 71 have been satisfied.

REPORTING REQUIREMENTS

Management must send a written report to the DHCM no later than 40 days after the effective

date of a RIF action. The report must provide the following:

1. The effective date of the RIF;
2. The number of specific RIF notices issued;
3. The number of downgrades, separations, RPL registrations, discontinued service retirements, optional retirements, and reassignments that resulted; and
4. Information on any RIF appeals.

Should the RIF action be cancelled, management must inform the DCHM in writing within 7 days of the cancellation. Should the RIF action be delayed, management must notify the DCHM in writing of the delay and provide a revised target effective date.

APPENDIX B – COMPETITIVE AREAS

a. United States Patent and Trademark Office employees in the Us And Dir–Under Secretary and Director of the USPTO (Agency Code = 56-11)

b. United States Patent and Trademark Office employees in the Us And Dir–Office of the Ombudsman (Agency Code = 56-11)

c. United States Patent and Trademark Office employees in the Pat–Commissioner for Patents (Agency Code = 56-15)

d. United States Patent and Trademark Office employees in the Pat–Deputy Commissioner for Patents (Agency Code = 56-15)

e. United States Patent and Trademark Office employees in the Pat–Assistant Commissioner for Patents (Agency Code = 56-15)

f. United States Patent and Trademark Office employees in the TM–Commissioner for Trademarks (Agency Code = 56-13)

g. United States Patent and Trademark Office employees in the TM–Deputy Commissioner for Trademark Examination Policy (Agency Code = 56-13)

h. United States Patent and Trademark Office employees in the TM–Deputy Commissioner for Trademark Administration (Agency Code = 56-13)

i. United States Patent and Trademark Office employees in the TM–Deputy Commissioner for Trademark Operations (Agency Code = 56-13)

j. United States Patent and Trademark Office employees in the TM–Trademark Services (Agency Code = 56-13)

k. United States Patent and Trademark Office employees in the TM–Group Director – A (Agency Code = 56-13)

l. United States Patent and Trademark Office employees in the TM–Group Director – B (Agency Code = 56-13)

m. United States Patent and Trademark Office employees in the TM–Group Director – C (Agency Code = 56-13)

n. United States Patent and Trademark Office employees in the TM–Group Director – D (Agency Code = 56-13)

o. United States Patent and Trademark Office employees in the PTAB–Patent Trial & Appeal Board (Agency Code = 56-11)

p. United States Patent and Trademark Office employees in the PTAB–Vice Chief Judge for Operations – Division 1 (Agency Code = 56-11)

q. United States Patent and Trademark Office employees in the PTAB–Vice Chief Judge for Operations – Division 2 (Agency Code = 56-11)

r. United States Patent and Trademark Office employees in the PTAB–Vice Chief Judge for Operations – Division 3 (Agency Code = 56-11)

s. United States Patent and Trademark Office employees in the PTAB–Vice Chief Judge for Operations – Division 4 (Agency Code = 56-11)

t. United States Patent and Trademark Office employees in the PTAB–Board Executive Board Operations Division (Agency Code = 56-11)

u. United States Patent and Trademark Office employees in the TTAB–Chief Administrative Trademark Judge (Agency Code = 56-11)

v. United States Patent and Trademark Office employees in the TTAB–Judge Division Administrative Trademark Judges (Agency Code = 56-11)

w. United States Patent and Trademark Office employees in the TTAB–Interlocutory Attorney and Paralegal Division (Agency Code = 56-11)

x. United States Patent and Trademark Office employees in the TTAB–Board Operations Division (Agency Code = 56-11)

y. United States Patent and Trademark Office employees in the OPIA–Chief Policy Officer and Director for International Affairs (Agency Code = 56-14)

z. United States Patent and Trademark Office employees in the Office of the Deputy Chief Policy Officer – Patent, Economic, & Innovation Policy (Agency Code = 56-14)

aa. United States Patent and Trademark Office employees in the Office of the Deputy Chief Policy Officer – Creative Works and Global Outreach (Agency Code = 56-14)

bb. United States Patent and Trademark Office employees in the Office of the Deputy Chief Policy Officer – Education and International Engagement (Agency Code = 56-14)

cc. United States Patent and Trademark Office employees in the CIO–Chief Information Officer (Agency Code = 56-28)

dd. United States Patent and Trademark Office employees in the CIO–Office of the Chief Information Security Officer (Agency Code = 56-28)

ee. United States Patent and Trademark Office employees in the CIO–Resource Management Office (Agency Code = 56-28)

ff. United States Patent and Trademark Office employees in the CIO–Business Product Delivery Office (Agency Code = 56-28)

gg. United States Patent and Trademark Office employees in the CIO–Enterprise Infrastructure Delivery Office (Agency Code = 56-28)

hh. United States Patent and Trademark Office employees in the CIO–End User Services Office (Agency Code = 56-28)

ii. United States Patent and Trademark Office employees in the CIO–Information Technology Transformation Office (Agency Code = 56-28)

jj. United States Patent and Trademark Office employees in the CFO–Chief Financial Officer (Agency Code = 56-18)

kk. United States Patent and Trademark Office employees in the CFO–Office of Planning & Budget (Agency Code = 56-18)

ll. United States Patent and Trademark Office employees in the CFO–Office of Finance (Agency Code = 56-18)

mm. United States Patent and Trademark Office employees in the CFO–Office of Procurement (Agency Code = 56-18)

nn. United States Patent and Trademark Office employees in the CFO–Office of Financial Management Systems (Agency Code = 56-18)

oo. United States Patent and Trademark Office employees in the CAO–Chief Administrative Officer (Agency Code = 56-27)

pp. United States Patent and Trademark Office employees in the CAO–Office of Human Resources (Agency Code = 56-27)

qq. United States Patent and Trademark Office employees in the CAO–Office of Administrative Services (Agency Code = 56-27)

rr. United States Patent and Trademark Office employees in the CAO–Telework Program Office (Agency Code = 56-27)

ss. United States Patent and Trademark Office employees in the CAO–IT Program Office (Agency Code = 56-27)

tt. United States Patent and Trademark Office employees in the CAO–Insider Threat Program Office (Agency Code = 56-27)

uu. United States Patent and Trademark Office employees in the CAO–Records Program Office (Agency Code = 56-27)

vv. United States Patent and Trademark Office employees in the OGC–General Counsel (Agency Code = 56-12)

ww. United States Patent and Trademark Office employees in the OGC–Office of the General Law Office (Agency Code = 56-12)

xx. United States Patent and Trademark Office employees in the OGC–Office of the Solicitor (Agency Code = 56-12)

yy. United States Patent and Trademark Office employees in the OGC–Office of Enrollment and Discipline (Agency Code = 56-12)

zz. United States Patent and Trademark Office employees in the CCO–Chief Communication Officer (Agency Code = 56-22)

aaa. United States Patent and Trademark Office employees in the CCO–Digital & Creative Communication (Agency Code = 56-22)

bbb. United States Patent and Trademark Office employees in the CCO–Media and Marketing (Agency Code = 56-22)

ccc. United States Patent and Trademark Office employees in the OPE–Office of Public Engagement (Agency Code = 56-23)

ddd. United States Patent and Trademark Office employees in the OPE–Strategic Engagement Office (Agency Code = 56-23)

eee. United States Patent and Trademark Office employees in the OPE–Community Engagement Office (Agency Code = 56-23)

fff. United States Patent and Trademark Office employees in the EEO–Office of Equal Employment Opportunity (Agency Code = 56-21)

ggg. United States Patent and Trademark Office employees in the Midwest Elijah J. McCoy Regional Outreach Office, Detroit, Michigan (Agency Code = 56-23-032)

hhh. United States Patent and Trademark Office employees in the Rocky Mountain Regional Outreach Office, Denver, Colorado (Agency Code = 56-23-034)

iii. United States Patent and Trademark Office employees in the Southwest Regional Outreach Office, Dallas, TX (Agency Code = 56-23-033)

jjj. United States Patent and Trademark Office employees in the Western Regional Outreach Office, San Jose, CA (Agency Code = 56-23-035)