

Material Transmitted:

HHS Instruction 351-1, Reduction in Force, dated January 29, 2009.

Material Superseded:

HHS Instruction 351-1, Reduction in Force, dated October 25, 1995.

Background:

The purpose of this instruction is to update current policy consistent with changes in Office of Personnel management (OPM) regulations and guidance; clarify roles and responsibilities; and promulgate Departmental policy on discretionary provisions.

This issuance is effective immediately. Implementation of this issuance must be carried out in accordance with applicable laws, regulations, bargaining agreements, and Departmental policy.

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for Human Resources

INSTRUCTION 351-1

**SUBJECT: REDUCTION IN FORCE (RIF)**

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**351-1-00      PURPOSE AND AUTHORITY**

This Instruction sets forth the Department's policies and procedures on reduction in force (RIF). The Instruction supplements 5 CFR Part 351 and Office of Personnel Management (OPM) guidance on RIF and other downsizing initiatives. The Instruction must be used in conjunction with references (A) through (K) (See section 351-1-20), pertinent Merit System Protection Board (MSPB) and other third party decisions, and collective bargaining agreements.

Specifically, this Instruction addresses Departmental policy and procedures for releasing competing employees from their competitive levels by furlough for more than 30 consecutive days or 22 workdays if done on a discontinuous basis, but not more than 1 year; separation, demotion, or reassignment requiring displacement, when the release is required because of 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 when such action will take effect after the Department or OPDIV has formally announced a RIF in the competitive area, and the RIF will become effective within 180 days.

Consistent with OPM, HHS, and applicable collective bargaining agreements, employees shall be released based on their tenure of employment, veteran preference, length of service, and performance. The Department will ensure that all available options are used to minimize the adverse impact of RIF on employees.

### **351-1-10      COVERAGE AND EXCLUSIONS**

#### A.      Coverage

The provisions of this Instruction apply to Department of Health and Human Services (HHS) employees in the competitive and excepted services.

#### B.      Exclusions

This Instruction does not apply to employees of the U.S. Public Health Service (PHS) Commissioned Corps, the Senior Executive Service (SES), an employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of the Senate, or positions located in foreign countries that are filled by non-U.S. citizens.

Note: Operating Divisions (OPDIVs) must satisfy their bargaining obligations under Title 5 United States Code (USC), Chapter 71. Accordingly, unions must receive advance notice of changes, and the impact of changes generally must be negotiated prior to implementation. Where changes conflict with existing negotiated agreements, the agreement takes precedence over this Instruction for covered employees.

### **351-1-20      REFERENCES**

- A.      5 USC § 3501 - 3504 (Employment and Retention)
- B.      Public Law 93-638 (1979 - Indian Self-Determination Act)
- C.      Public Law 96-135 (1979 - Reassignment of non-Indians within the Indian Health Service)
- D.      5 CFR 213.3101 (Excepted Appointment Authority for persons entitled to Indian preference (OPM No. 213.3116(B)(8))
- E.      5 CFR 302 (Reemployment Priority for Excepted Service Employees)
- F.      5 CFR 330 (Reemployment Priority for Competitive Service Employees and Career Transition Assistance Programs)
- G.      5 CFR 351 (RIF regulations)
- H.      5 CFR 752 (Adverse Actions)
- I.      5 CFR 550 (Severance Pay)
- J.      HHS Instruction 430-1 (Performance Management Appraisal Program)
- K.      HHS Instruction 330-2 (Career Transition and Assistance Program)

### **351-1-30      DEFINITIONS**

- A. Assignment rights. The rights granted to an eligible competitive service employee in group I or II, when he or she is released from a competitive level to displace a lower retention standing employee in a lower tenure group and is no more than three grade intervals or equivalent below the position from which the employee was released (bumping); or to displace a lower retention standing employee in the same tenure group and subgroup and is no more than three grade intervals or equivalent below the position from which the employee was released, except for a preference eligible with a 30 percent or more service connected disability for which the limit is five (5) grades or intervals or equivalent (retreating).
- B. Competing employee. An employee in tenure group I, II, or III.
- C. Competitive area. An organizational unit or subdivision of the Department in a defined geographic area(s) in which eligible employees compete in a RIF.
- D. Competitive level. The level established by HHS which consists of all positions in 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 schedules, and working conditions so that the Department may reassign the incumbent of one position to any of the other positions in the level without undue disruption. Separate competitive levels must be established for: Positions of supervisors and managers because of difference in duties and responsibilities; competitive and excepted service positions; positions in different pay schedules, work schedules, and trainee status.
- E. Days. Calendar days unless indicated otherwise.
- F. Function. All or a clearly identifiable segment of an agency's mission (including all integral parts of that mission), regardless of how it is performed.
- G. Furlough. 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 not more than 1 year.
- H. Local commuting area. The geographic area that usually constitutes one area for employment purposes; any population center and surrounding localities in which people live and can be reasonably expected to travel back and forth daily to their place of employment, generally within a 50-mile radius.
- I. Modal rating. The summary rating level assigned most frequently among the actual ratings of record that are: (1) assigned under the summary level pattern that applies to the employee's position of record on the date of the RIF; (2) given within the same competitive area of the employee; and (3) on record for the most recently completed

appraisal period prior to the date of issuance of the RIF notices or the cutoff date for including any new ratings in the record.

- J. Operating Human Resources Organizations (OHROs): Includes the Atlanta Human Resources Center, Baltimore Human Resources Center, Rockville Human Resources Center, National Institutes of Health (NIH), Indian Health Service (IHS).
- K. Rating of record. The performance rating prepared at the end of an appraisal period for the performance of assigned duties over the entire period, and the assignment of a summary level rating.
- L. Reemployment Priority List (RPL). The mechanism used to give reemployment consideration to former competitive and excepted service employees separated by reduction in force (RIF) or fully recovered from a compensable injury after more than 1 year.
- M. Retention Register. The ranking of employees in the competitive level after the agency applies the four retention factors of tenure of employment (i.e., type of appointment); Veterans' preference; total creditable Federal civilian and uniformed service; and performance ratings.
- N. Retention Standing. The order that employees appear on a retention register on the basis of their tenure of employment, veteran preference, length of service, and performance in descending order by tenure group I, group II, group III, and within each group by veteran preference categorized as subgroup AD, subgroup A, and subgroup B; and within each subgroup by years of service adjusted by credit for performance, beginning with the earliest service date.
- O. Tenure Groups. Competing employees are placed in groups for retention purposes. The groups are defined as group I, II and III and within each group by veteran preference categorized as subgroup AD, subgroup A, subgroup B; and within each subgroup by years of service as augmented by credit for performance under 5 CFR 351.504. Group I includes each career employee who is not serving a probationary period or otherwise covered. Group II includes career conditional and employees serving a probationary period and others as determined by OPM regulations. Group III includes all employees serving indefinite appointments, temporary appointments pending establishment of a register, status quo appointments, term appointments, and any other non-status non-temporary appointments which meet the definition of provisional appointments in 5 CFR 316.401 and 316.403.
- P. Transfer of function. The transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to the functions already being performed in the

other competitive area(s) affected; or the movement of the competitive area in which the function is performed to another commuting area.

- Q. Undue disruption. A degree of interruption that would prevent the completion of required work by the employee 90 days (allowable limits of time, quality, and other demands) after the employee has been placed in a different position under this Instruction.

### **351-1-40 ROLES AND RESPONSIBILITIES**

- A. The Deputy Assistant Secretary for Human Resources (DASHR), Office of Human Resources (OHR), shall oversee the development, implementation, and administration of policies and procedures for reduction in force, reorganizations, and related matters and is responsible for:
1. Approving all requests to the Office of Personnel Management (OPM) for approval of Voluntary Early Retirement Authority (VERA) and/or Voluntary Separation Incentive Payments (VSIP) in order to minimize the impact of a downsizing and/or reshaping.
  2. Approving any waivers or exceptions to this Instruction.
  3. Authorizing the OHROs to conduct reviews of reorganizations, reductions in force, and other downsizing initiatives as needed.
- B. OPDIV Heads are responsible for:
1. Authorizing and approving furloughs and RIFs, and revising competitive areas in their organizations with written notification to the OHR, DASHR. However, OPDIVs must examine the feasibility of all available options before determining that a RIF is unavoidable and necessary.
  2. Determining the categories, the numbers and kinds of positions needed to support the mission, where they are located, when they will be filled, abolished or vacated, and when there is a surplus of employees in a particular line of work.
  3. Continually assessing workforce requirements consistent with the Department's strategic plan and human capital goals.
  4. Defining competitive areas in conjunction with the OHRO and notifying OHR in writing prior to establishment of any new competitive area(s). In addition, when an OPDIV wishes to change a competitive area prior to 90 days of the effective date of a RIF, the respective OPDIV must submit the request through OHR to OPM for approval.
  5. Developing restructuring plans which include descriptions of the modified organization, along with an identification of the surplus positions. When a surplus of employees exist, ensuring that all available alternatives are explored prior to advising OHR of the need to conduct a RIF.

6. Allocating funds and resources to conduct the RIF or reshaping initiative, to include designating funds for training and retraining staff as appropriate, career transition assistance, facilities, equipment, materials, and other expenses.
7. Consulting with the OHRO as early in the process as possible to fully develop options and strategies for conducting the downsizing or reshaping initiative. Notifying OHR in writing as early as possible when a RIF is planned and before the RIF is announced.
8. According appropriate organizations and recognized labor organizations advance notice, consultation and bargaining rights to which they are entitled, including those contained in agreements. Establishing and maintaining a forum during the RIF process for continuing dialogue on negotiable RIF subjects.
9. With advice and assistance from the OHRO, developing a communications plan for disseminating information, and communicating with employees, unions and other stakeholders on a regular basis.
10. Supporting the RPL, Career Transition Assistance Plan (CTAP), and other mechanisms available to maximize placement opportunities for affected employees.
11. Submitting written requests with pertinent justification for approval of VERA and/or VSIP through the OHR for endorsement to OPM for approval.
12. Requesting OHR approval of RIFs when 50 or more employees in a competitive area will receive separation notices.
13. Ensuring, with advice and assistance from the OHRO, that written notification is concurrently issued to the following organizations when 50 or more employees within a competitive area receive specific notices of separation: The Federal or state entity that is charged with carrying out rapid response activities under Title I of the Workforce Investment Act of 1998; the chief elected official of the local commuting area where the separations will occur; and OPM.

C. The OHROs are responsible for:

1. Advising top management of the HR implications involving all phases of planning, analyzing, and determining whether a RIF is unavoidable.
2. Preparing written requests for approval of VERA and/or VSIP approval through OHR to OPM along with pertinent documentation to support the request(s).
3. Assessing their internal ability to conduct a RIF or major reshaping initiative including an assessment of personnel records and data systems used to conduct a RIF or knowledge of HR staff in conducting a RIF.
4. Developing competitive levels for each competitive area under the serviced OPDIV's jurisdiction.

5. Working with management in developing a restructuring plan that identifies the new organizational requirements, placement options, skills imbalances, training and retraining options, and a communications strategy.
  6. Developing, assisting or conducting briefings on the RIF or reshaping initiative for supervisors and managers, employees, labor organizations, management organizations, and other stakeholders as required or appropriate (e.g. OMB, Congress, OPM).
  7. Counseling employees who are adversely affected regarding their entitlements and benefits to help lessen the impact of actions being contemplated or taken.
  8. Taking reasonable steps to assist each employee designated for separation from the Department's rolls to secure a satisfactory position elsewhere. This includes use of vacant positions which are funded and intended to be filled.
  9. In consultation with OPDIV hiring manager(s), waiving qualifications in order to place surplus or displaced employees into vacant positions, when available information indicates that the employee will be able to successfully perform the duties of the vacant position.
  10. Consulting with recognized labor organizations on negotiable subjects to secure cooperation on planned actions and agreement on negotiable issues.
  11. Ensuring that personnel records of employees impacted by the RIF are accurate and that employees are provided the opportunity to review their records and retention registers that affect them.
  12. Assigning dedicated HR staff to conduct the mechanics of the RIF and provide attendant support to management and employees during this process.
  13. Ensuring that employees are advised of the full benefits of the RPL, Department of Labor training and retraining opportunities, and the Department's Career Transition Assistance Plan as soon as it is known that a RIF is probable. Such actions may forestall the necessity of a RIF or reduce its severity.
  14. Preparing reports on VERA/VSIP, RIF, and any other actions associated with downsizing or reshaping authorized under this Instruction for submission to the OHR and/or OPM as required.
- D. Supervisors and managers are responsible for:
1. Taking ownership of the reshaping or RIF initiative by explaining the reasons for the action, explaining what actions will be taken to assist affected employees, and keeping employees informed of any changes on a regular and recurring basis.
  2. Ensuring that employees are informed at the earliest possible time that they will or may be affected by the RIF process.
  3. In conjunction with the HR staff, answering employees' questions about the RIF process.



4. Ensuring that employees receive annual performance ratings at the end of the appraisal cycle, or a summary rating if the employee or supervisor leaves his or her position prior to the end of the appraisal cycle.
  5. Encouraging employees to verify that information in their OPF is correct and current.
  6. Ensuring that position descriptions of employees in their organization are current.
  7. Encouraging employees to apply for priority placement benefits and to adhere to RPL, CTAP and ITCAP requirements for priority selection eligibility.
  8. Excusing employees, subject to mission requirements, to take advantage of career transition assistance available in order to maximize placement opportunities.
- E. Employees are responsible for:
1. Attending an orientation session on eligibility for the RPL, career transition, and other benefits available to affected employees.
  2. Submitting a timely application for placement on the RPL for priority selection consideration.
  3. Using the career transition assistance facilities, resources, and opportunities that are made available.
  4. Applying for vacancies in the commuting area and exploring other employment options.
  5. Taking advantage of training and retraining opportunities offered by the OPDIV, HR staff, and the Department of Labor through the appropriate state employment office.

### **351-1-50 ALTERNATIVES TO RIF**

Prior to announcing a major reorganization, transfer of function, or reduction in force that will adversely impact a significant segment of an OPDIV's workforce, top level management should consider the following alternatives to RIF and determine that the options are impracticable, infeasible, or do not address the circumstance(s) sufficiently to warrant implementation:

- A. Hiring freezes using internal placements to fill vacancies, with or without exceptions to fill from outside sources only for rare or exceptional qualifications requirements.
- B. Requesting voluntary early retirement authorization (VERA) and/or voluntary separation incentives (VSIP) to reduce the number of employees on the rolls.
- C. Furloughing employees for a specified number of continuous or discontinuous basis to reduce payroll costs for salaries.
- D. Hiring temporary or term employees when the workload requirements are unpredictable or are expected to last for a short period of time.

- E. Arranging details within and outside the OPDIV and or Department to fill critical shortfalls on a time limited basis. (Details outside the Department must be made on a reimbursable basis.)
- F. Reducing the span of control of supervisors to employees.
- G. Reassigning surplus employees to continuing positions or retraining surplus employees for new or different jobs.
- H. Establishing and implementing an aggressive placement assistance program using internal and external Federal, state and local government resources, including the Department of Labor and private industry.

### **351-1-60 DISCRETIONARY OPTIONS**

- A. **Records Update.** To provide adequate time to determine retention standing during a RIF or related action, OHROs shall establish a cut-off date for employees to submit updated personnel information for inclusion in their electronic Official Personnel Files (e-OPF). OHROs shall ensure that the cut-off date is widely publicized at least 30 days prior to the deadline for receipt of information.
- B. **Filling Vacancies.** Vacant positions will be used to satisfy RIF assignment rights to the extent practicable.
- C. **Waiver of Qualifications.** Qualifications may be waived to place an employee in a vacant position provided the employee meets minimum educational requirements and has the capacity to perform the duties and responsibilities of the position.
- D. **Exceptions to Order of Release.** In addition to the mandatory exceptions to the order of release (i.e. Armed Forces restoration rights; use of annual leave under 5 USC Chapter 63 to reach initial eligibility for retirement and/or to establish initial eligibility to continue health benefits coverage into retirement), the following discretionary exceptions may be authorized by the head of the OHRO:
  - 1. **Sick leave.** An employee on approved sick leave that has made application for disability retirement as of the effective date of the RIF may be temporarily retained until the date his or her sick leave has been exhausted.
  - 2. **Annual leave.** An employee who is not covered by leave under 5 USC Chapter 63 may use annual leave under another Federal leave system to reach initial eligibility for retirement and/or to establish initial eligibility to continue health benefits coverage into retirement.
  - 3. **Continuing exceptions.** An exception may be made to retain an employee on duties that cannot be assumed by another employee with higher retention standing without undue disruption to the mission.
  - 4. **Other exceptions.** OHROs must submit a written request with appropriate documentation to the OHR for approval of other exceptions on an individual basis.

E. Assignment Rights.

1. Competing employees in tenure groups I and II will not be permitted to displace employees with lower retention standing in the same subgroup, unless an exception is authorized by the DASHR or applicable negotiated agreement.
2. Competing employees in the excepted service will not be afforded assignment rights outside of their competitive levels.
3. Temporary employees and reemployed annuitants are employed at the will of the agency and as such do not have any assignment rights.
4. When all positions within a competitive area are being abolished within 180 days, employees may be released by group order without regard to subgroup order, except when mandatory or discretionary exceptions are applicable to the order of release.

F. Transfer of Function

1. OPM regulations do not prescribe a notice period for informing employees about a transfer of function. However, it is the policy of this Department that when a transfer of function involves the movement of employees to another commuting area, employees will be notified at least 30 calendar days in advance of the proposed effective date of the transfer and must be given at least 15 calendar days to respond.
2. No prior approval is required to effect personnel actions resulting from transfers of function. However, when the transfers involve the movement of employees to other commuting areas, the DASHR must be informed in writing before affected employees are notified of the decision to transfer their function.
3. OHROs shall canvass employees in writing to determine whether the employee wishes to transfer with the function when the function is transferring to a different commuting area. An employee may change his or her mind on an initial acceptance of an offer to transfer, but may not rescind an initial rejection of an offer to transfer with the function.
4. When a RIF is being conducted concurrently with a TOF in the same commuting area, an employee who declines to transfer with his or her function may be allowed to compete in the RIF subject to approval of the OHRO Director.

G. Tie Breaking Procedures. The following procedures will be applied to break ties when two or more employees have identical retention standing.

1. If an automated system(s) is used to run the RIF, the tie breaking system that is built into the system to break ties will be used (i.e. random selection based on Social Security Number).
2. If a manual system is used to run the RIF, ties will be broken the following methods respectively.
  - a.) Length of service with the Department of Health and Human Services (HHS).
  - b.) Length of service in present grade.

- c.) Random selection based on last digit of social security number.
- H. Trainee status. The following positions are formally designated as trainee or developmental positions for the purpose of establishing separate competitive levels:
1. Emerging Leaders Program. Employees may be appointed to grades GS-9 or GS-11.
  2. SES Candidate Development Program. Employees are appointed to grade GS-15.
  3. Presidential Management Fellows Program. Employees are appointed at the GS-9 or 11 level.
  4. Specific OPDIV formal training programs, e.g. NIH Career Opportunities Program.
  5. Federal Career Intern Program. Employees may be appointed to grades GS-5, GS-7 or GS-9.

### **351-1-70 HHS COMPETITIVE AREAS**

- A. Competitive Areas. Separate competitive areas are established for the following organizations in each commuting area: (Note: For purposes of this instruction, Washington and Baltimore are considered separate commuting areas.)
1. Office of the Secretary (excluding the Office of the Inspector General)
  2. Office of the Inspector General
  3. Administration for Children and Families
  4. Administration on Aging
  5. Centers for Disease Control and Prevention
  6. Centers for Medicare and Medicaid
  7. Food and Drug Administration
  8. Health Resources and Services Administration
  9. Agency for Health Care Research and Quality
  10. Indian Health Service
  11. National Institutes of Health
  12. Substance Abuse and Mental Health Services Administration
  13. The Program Support Center
- B. Each OHRO must define the activities or installations in each commuting area under its jurisdiction and make the information available for inspection by the OHR, regulatory agents, or other appropriate personnel having a need to know.

- C. OHR must be notified in writing immediately upon the establishment of new competitive areas.
- D. When a competitive area will be in effect less than 90 days prior to the effective date of a RIF, a description of such competitive area must be forwarded through OHR to the OPM for approval.

### **351-1-80 HHS COMPETITIVE LEVELS**

- A. OHROs shall establish and implement a plan for assigning a competitive level to all positions at the time of classification.
- B. Competitive level determinations should be reviewed whenever there is a change in classification or change to the position description (i.e. duties, responsibilities, qualifications, etc.) that changes the competitive level assigned.
- C. OHROs shall ensure that competitive levels are accurate prior to conducting a RIF.
- D. Competitive level codes shall be documented on the OF-8 of the position description (PDs) and any system, manual or automated system used to maintain PDs.
- E. Competitive levels must be defined to document the basis for competitive level determinations.
- F. Narrative justification for competitive level determinations must be developed and recorded when:
  - 1. There are positions in the same series and grade with similar duties and qualification requirements that are on different PDs are assigned to the same CL.
  - 2. Positions in the same series and grade that are assigned to different CLs.

### **351-1-90 CREDITING PERFORMANCE**

- A. Performance Credit. The Department will comply with the following requirements in crediting performance to establish an employee's service computation date (SCD) for retention standing during a reduction in force.
  - 1. Ratings of record shall be used as the basis for granting additional retention service credit in a RIF.
  - 2. Ratings of record and summary level patterns are used as defined in Exhibit A of this Instruction.

3. A performance summary rating of record is defined as one that is assigned at the end of the appraisal period that was signed, approved, and issued to the employee by an appropriate management official or a rating of record assigned following completion of a performance improvement period.
  4. Additional service credit shall be based on an employee's three (3) most recent ratings of record within a four (4) year period of time within and outside the Department in accordance with Exhibit A.
  5. An employee who has received one but fewer than three (3) previous ratings of record during the 4-year period shall receive credit for the sum of each rating of record received divided by the number of actual ratings of record received (fractional rating rounded to the next higher whole number).
  6. An employee who did not receive any ratings of record during the 4-year period shall receive performance credit based on the modal rating as indicated below:
    - (a) Assigned for the summary level that applies to the affected employee's position.
    - (b) Given within the employee's competitive level.
    - (c) On record for the most recently completed appraisal period prior to the cutoff date for receipt of any new ratings prior to issuance of a RIF notice.
- B. Cut-off Date for Receipt of New Ratings of Record.
1. In order to provide sufficient time to compute additional service credit for performance, all ratings of record must be received by the OHRO, at least 30 days prior to the issuance of RIF notices. Appraisals received after the cut-off date will not be used to determine retention standing.
  2. The three (3) most recent performance ratings of record within the 4-year period ending on the cut-off date for receipt of ratings of record will be used for performance credit.

**351-1-100 REDUCTION IN FORCE IN THE INDIAN HEALTH SERVICE**

- A. When a RIF is conducted in the Indian Health Service (IHS), retention registers for employees in the competitive service are merged with those for employees appointed under the Schedule A, 5 CFR § 213.3116(b)(8) authority. Retention registers for employees appointed under other authorities are kept separate.
- B. On the merged registers, employees entitled to Indian preference are placed ahead of other employees in a particular subgroup.
- C. Non-Indians may bump Indians in lower subgroups without prior approval. However, the placement of a non-Indian in a vacant position requires prior ASAM approval under the provisions of Public Law 96-135.

- D. When determining whether an employee may displace another employee by retreat, Indian employees are placed above non-Indian employees in the same subgroup. Thus, a non-Indian employee may not displace an Indian employee in the same subgroup.

### **351-1-110 PRIORITY PLACEMENT ASSISTANCE**

- A. OHROs shall ensure that employees who will or are expected to be adversely impacted by a RIF, TOF or other downsizing initiative are advised of all the benefits to which they are entitled in accordance with OPM, Departmental and applicable collective bargaining agreements.
- B. OHROs in conjunction with authorized management officials shall issue Certifications of Expected Separation (See HHS Reemployment Priority List (RPL) Instruction) or specific RIF notice as soon as possible in order to enable the employee to register on the RPL and to receive priority selection consideration, training and retraining under the Workforce Investment Act of 1998 administered by the Department of Labor.
- C. Employees shall be counseled on HHS' Career Transition Assistance Program (CTAP) and Interagency Transition Assistance Program (ICTAP) and advised of vacancies in their commuting area in addition to assistance in finding continuing employment in other Federal, state, local and private industry.
- D. Preference eligible veterans from restricted positions (i.e. custodians, elevator operators, guards, and messengers) who have been displaced as a result of A-76 contracting out must be provided placement assistance in accordance with 5 CFR 330, Subpart D. Non preference eligibles that will or have been adversely impacted by outsourcing or other A-76 initiatives shall be provided placement assistance consistent with OPM regulations and applicable collective bargaining agreements.
- E. Employees shall be provided a description of benefits that they are entitled to as a result of involuntary separation and individual counseling on options that are applicable to them to include, but are not limited, to the following: Discontinued retirement, voluntary early retirement and/or separation incentive payments if authorized, optional/disability retirement, health and life insurance benefits, sick leave and annual leave lump sum benefits, JTPA training benefits, severance pay, unemployment insurance, grade and pay retention, reemployment priority, repromotion eligibility, and priority placement consideration. (See HHS Instruction 330-2, Career Transition and Assistance Program)

### **351-1-120 APPEALS AND CORRECTIVE ACTION**

- A. Right to Appeal to MSPB. An employee who has been furloughed for more than 30 days, separated, or demoted by a reduction in force action has the right to appeal to the Merit Systems Protection Board (MSPB) if he or she believes the Department did not properly follow the RIF regulations. The appeal must be filed during the 30-day period beginning the day after the effective date of the RIF action. OHROs will advise affected employees of their appeal rights to MSPB when the specific RIF notice is issued.
- B. Right to Grieve. An employee who is in a bargaining unit covered by a negotiated grievance procedure that does not exclude RIF must use the negotiated grievance procedure and may not appeal the RIF action to MSPB unless the employee alleges the action was based on discrimination. The time limits for filing a grievance under a negotiated grievance are outlined in the collective bargaining agreement.
- C. When it is decided that an action under this Instruction was unjustified or unwarranted and an individual is restored to the former grade or rate of pay held or to an intermediate grade or rate of pay, the restoration shall be made retroactively effective to the date of the improper action.

### **351-1-130 RECORDS**

- A. OHROs are responsible for maintaining correct personnel records that are used to determine retention standing under this Instruction.
- B. Employees who have received a specific RIF notice, their representatives, and an authorized OPM or HHS official are entitled to inspect the retention register and related records.
- C. OHROs shall retain all retention registers and records pertaining to a RIF for at least one (1) year after the date a specific RIF notice is issued unless a third party dispute has not been resolved. In such a case, the records will be retained until the appeal/dispute has been adjudicated.



**EXHIBIT 351-1-A GUIDE TO CREDITING PERFORMANCE**

<b>Multiple Patterns of Summary Levels</b>		
<b>Rating levels</b>	<b>Rating Pattern</b>	<b>Years of Service for Retention Credit</b>
	<b><u>Pattern A</u></b>	
3	Pass	16
1	Fail	0
	<b><u>Pattern B</u></b>	
5	Outstanding	20
3	Fully Successful	12
1	Unacceptable	0
	<b><u>Pattern C</u></b>	
4	Exceeds Fully Successful	16
3	Fully Successful	12
1	Unacceptable	0
	<b><u>Pattern D</u></b>	
3	Fully Successful	16
2	Minimally Successful	0
1	Unacceptable	0
	<b><u>Pattern E</u></b>	
5	Outstanding	20
4	Exceeds Fully Successful	16
3	Fully Successful	12
1	Unacceptable	0
	<b><u>Pattern F (HHS employees)</u></b>	
5	Outstanding	20
4	Fully Successful	12
3	Minimally Successful	0
1	Unacceptable	0
	<b><u>Pattern G</u></b>	
4	Exceeds Fully Successful	16
3	Fully Successful	12
2	Minimally Successful	0
1	Unacceptable	0
	<b><u>Pattern H</u></b>	
5	Outstanding	20
4	Exceeds Fully Successful/Exceeded	16
3	Fully Successful/Met	12
2	Minimally Successful	0
1	Unacceptable/Not Met	0