

HHS Transmittal 96.12
Personnel Manual
Issue Date: 5/24/96

Material Transmitted:

HHS Instruction 352-1, Actions Relating to Employees with Reemployment Rights

Material Superseded:

HHS Instruction 352-1, Legal and Regulatory Requirements and Department Policy and Procedure, dated August 2, 1963 (all)

Background:

This Instruction has been streamlined in accordance with National Performance Review Recommendations and in support of HHS administrative initiatives calling for more streamlined rules.

Any reference to "OPDIV" in this Instruction now includes the PHS agencies, the Office of the Secretary, the Program Support Center, HCFA, ACF, and AOA.

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

Filing Instructions:

Remove superseded material and file new material. Post receipt of this transmittal to the HHS Check List of Transmittals and file this transmittal in sequential order after the check list.

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INSTRUCTION 352-1

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HHS PERSONNEL INSTRUCTION 352-1
ACTIONS RELATING TO EMPLOYEES WITH REEMPLOYMENT RIGHTS

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352-1-00 PURPOSE

This Instruction sets forth the Department's policy and procedures concerning assignment, transfer, or detail of employees with reemployment rights and the release of these employees.

352-1-10 COVERAGE

- A. This Instruction applies to employees of this Department (other than the commissioned Corps of the Public Health Service) who enter on duty in:
 - 1. a position with the State Department Foreign Service;
 - 2. a position under the authority of sections 625(b) and 233(d) of the Foreign Assistance Act of 1961, as amended;
 - 3. a position outside the United States as an "employee" with the Peace Corps;
 - 4. a position with an international organization;
 - 5. a position in another agency covered by a "Letter of Authority" issued by the Office of Personnel management (OPM); and
 - 6. a position under another statutory authority which may or may not be regulated by OPM but provides for reemployment rights.

For information concerning the detail and/or transfer of officers of the

Commissioned Corps to international organizations, contact the Officer Development Branch, Division of Commissioned Personnel, PHS.

352-1-20 POLICY

It is important that persons with the highest qualifications available for assignment to positions such as those set forth 352-1-10 above. This Department can contribute to this goal giving consent to requests for release of its employees for assignment to such positions. Such consent shall be withheld only when compelling reasons make such release not feasible (not merely inconvenient) or when the assignment is primarily in the interest of the employee rather than the Government (e.g., employee has received notice of separation for any reason).

352-1-30 REFERENCES

- A. 5 U.S. Code 3597 (law - reemployment following limited appointment in the Foreign Service)
- B. 22 U.S. Code 2385(d) (law - Foreign Assistance Act of 1961, as amended)
- C. 22 U.S. Code 2506(a)(1) (law - Peace Corps Act of 1961)
- D. 5 U.S. Code 3581 (law - reemployment after service with an international organization)
- E. 22 U.S. Code 2385(b) (law - Act for International Development of 1961)
- F. 22 U.S. Code 2025(c) (law - International Atomic Energy Agency Participation Act of 1957)
- G. Public Law 93-638 (Indian Self-Determination Act)
- H. Public Law 96-8 (Taiwan Relations Act)
- I. Public Law 96-70 (Panama Canal Act of 1979)
- J. Executive Orders 12137 and 12163 as amended by Executive Order 12292 implementing 22 U.S. Code 2385 and 2506
- K. 5 CFR Part 352 (regulations - reemployment rights)

352-1-40 ASSIGNMENT TO FOREIGN SERVICE OF STATE DEPARTMENT, AND POSITIONS OUTSIDE THE UNITED STATES WITH AGENCY FOR INTERNATIONAL DEVELOPMENT AND THE PEACE CORPS

- A. Authority
 - 1. Foreign Service, Department of State--Section 310 of the Foreign Service Act of 1980 (5 U.S. Code 3597) provides for limited appointments to the Foreign Service. Federal employees assigned under this authority with the consent of their agency are entitled to reemployment rights as provided in 5 U.S. Code 3597 and 5 CFR Part 352.
 - 2. Agency for International Development--Section 625(b) and of the Foreign Assistance Act of 1961, as amended provides for the assignment of Federal

employees to positions outside the United States in the Agency for International Development (AID). According to the Act and Executive Orders 12163 (September 29, 1979) and 12292 (February 23, 1981), employees of other Federal agencies who are selected by AID for an assignment not to exceed thirty months,*or for a longer period when agreed by the agency in which such benefits will be exercised,*in positions outside the continental United States are entitled to the same reemployment rights as are provided in section 310 of the Foreign Service Act of 1980 (5 U.S. Code 3597).

3. Peace Corps--Section 7(a) of the Peace Corps Act of 1961 (U.S. Code 2506(a)) provides for the assignment of Federal employees outside the United States in the Peace Corps. According to the Act and Executive Orders 12137 (May 16, 1979) and 12292 (February 23, 1981), personnel of other Federal agencies who are selected as "employees" by the Peace Corps for assignments not to exceed thirty months*or for a longer period when agreed by the agency in which such benefits will be exercised,*outside the United States are entitled to the same benefits as are provided by section 310 of the Foreign Service Act of (5 U.S. Code 3597). "Volunteers," "volunteer leaders," and other "employees" are not entitled to the provisions of section 310 of the Foreign Service Act of 1980.

B. Consent to Transfer

When a written request for transfer with reemployment rights is received, the OPDIV Head or his designee must consider the request in accordance with the policy stated in 352-1-20 in the following instances:

1. Foreign Service--All transfers to positions with the Foreign Service require consent in order to be entitled to reemployment rights provided in section 310 of the Foreign Service Act of 1980, (5 U.S. Code 3597 and 22 U.S. Code 3950).
2. Agency for International Development and Peace Corps--When the period of employment is not to exceed thirty months, either upon initial assignment or by subsequent extension, no clearance or consent is needed to entitle the assigned employee to reemployment rights. When the assignment is to extend beyond thirty months, clearance with consent is required for that period which will extend beyond thirty months.

- C. Reemployment--Under section 310 of the Foreign Service Act of 1980, an employee has a right to return to his/her former position, or one of like seniority, status, and pay, or to a higher position. He/she must be given periodic step increases he/she would have been entitled to had he/she remained in his/her position, provided the employee has a certificate that indicates that he/she met the standards required.

OPDIVs should attempt to effect reemployment upon termination of the employee's appointment outside DHHS without a break in service. When this is not possible, it must be effected within 30 days after the employee applies for reemployment. He/she must apply for reemployment within 30 days following the termination of the appointment outside DHHS.

552-1-50 ASSIGNMENT TO CERTAIN POSITIONS IN THE UNITED STATES WITH THE AGENCY FOR INTERNATIONAL DEVELOPMENT

- A. Authority--Section 625(b) of the Act for International Development of 1961 (22 U.S. Code 2385(b)) provides that up to 110 officers and employees who are appointed thereunder may be entitled, upon termination, to reinstatement to the position occupied at the time of appointment, or to a position of comparable grade and salary. The losing agency's consent is not required for the employee who is appointed to have reemployment rights.
- B. Procedure--Regulations to be followed in effecting reinstatement authorized by the above authority are contained in 5 CFR Part 352.

352-1-60 TRANSFER OR DETAIL TO INTERNATIONAL ORGANIZATIONS

- A. Authority--5 U.S. Code 3581 and 5 CFR Part 352 provide for the detail and transfer of Federal employees to international organizations. The law and regulations concern reemployment rights and related Civil Service benefits to Federal employees who accept employment with international organizations. An employee who transfers with consent is entitled to reemployment rights and related benefits. The legal requirements are that an employee who meets the necessary conditions for reemployment shall be returned to his/her former position or one of like seniority, status, and pay within a specified time-frame. (See 5 CFR Part 352). DHHS officials must assure that this requirement is met.

For additional information concerning a detail or transfer to an international organization, such as the United Nations agencies or to an international assignment with the Department

of State, contact the Office of International and Refugee Health, Office of Public Health and Science, OS, DHHS.

B. Organizations Covered--OPM plans to list the approved international organizations covered by Public Law 85-795 on its Main Street Bulletin Board, but until that happens, OPDIVs with questions should contact the Office of Human Resources. 5 CFR Part 352 states that an agency must ascertain OPM approval to detail or transfer an employee to an organization that is not on the list. OPDIV Heads or their designees are authorized to request such approval from OPM directly. A copy of an approval obtained by an OPDIV will be sent to the Office of the Deputy Assistant Secretary for Human Resources and the other OPDIVs in order to avoid the same request being made to OPM again.

C. Authority to Consent to Release--In accordance with the policy stated in 352-1-20, and upon receipt of a written request:

The OPDIV Head or his/her designee is responsible for the consent to release an employee for transfer or detail to an international organization for a period not to exceed five consecutive years, except when the Secretary of State determines it to be in the national interest, the detail or transfer may be extended up to an additional three years, or the period of less than five years specified at the time of consent to transfer or detail, beginning with entrance on duty in the international organization. A detail or series of details or combination of details and transfers shall not exceed eight years in the aggregate.

D. Retirement, Health Benefits, and Life Insurance Coverage--It is Department policy to make agency contributions for retirement, health benefits, and life insurance for an employee who requests retention of coverage with resulting rights and benefits during his/her absence. The employee must make his/her own payments.

E. Procedure

1. The appropriate personnel office is responsible for:

- a. Assuring that a record of the agreement to detail an employee to an international organization is filed in the employee's Official Personnel Folder (OPF). The record may be a copy of a program official's letter agreeing to the detail.
- b. Notifying the receiving organization of the receipt of approval to transfer an employee to an international

organization and establishing an effective date that is mutually agreeable with the international organization and OPDIV program officials.

c. Journalizing transfer or LWOP of 30 days or more to serve an international organization, identifying on the SF 50 the organization and, in transfer, showing the reemployment rights.

d. In transfers with reemployment rights:

(1) Obtaining a statement of the leave account of the employee from the appropriate payroll office, forwarding it to the employee, and requesting a written statement from him/her indicating whether he/she elects to receive a lump-sum payment or retain the annual leave to his/her credit; and notifying the appropriate payroll office of the employee's decision when it is received.

(2) Requesting written notice of the employee's decision as to retirement, health benefits, and life insurance coverage; notifying him/her of the policy stated in 352-1-60D with respect to making the agency contributions; notifying the appropriate payroll office of the employee's decision when it is received.

(3) Continuing the SF 7 in an active file if the employee elects to continue retirement, health benefits, or life insurance coverage and preparing payroll change slips when periodic pay or other increases or changes in health benefits rates effect changes in salary; forwarding all except employee and personnel copies to the appropriate payroll office; filing the personnel copy in the employee's OPF; sending the employee his/her copy along with information about the effective date and amount of any increased payments to be forwarded to the appropriate payroll office.

2. The payroll office is responsible for:

- a. furnishing the personnel office with a statement of the employee's leave account;
- b. making lump-sum payments for annual leave when the employee elects to receive such payment(s) ; and

- c. collecting, accounting for, and depositing funds received for retirement, health benefits, or life insurance coverage.
3. The appropriate fiscal office is responsible for presenting vouchers to the international organization for reimbursements of expenses of employees detailed on a reimbursable basis.

352-1-70 TRANSFER UNDER OPM LETTER OF AUTHORITY

- A. Authority--5 CFR Part 352 provides for the granting of reemployment rights upon movement between executive agencies only when authorized under a "Letter of Authority" issued by OPM . Such letters are issued when an agency believes that an emergency situation is so critical as to justify reemployment rights to aid emergency recruiting situations in programs of national importance. Reemployment rights granted under a Letter of Authority, in general, expire after one year. If reemployment through the exercise of reemployment rights would cause the separation or demotion of another employee, the returning employee is considered as reemployed for the purpose of applying the Retention Preference Regulations to determine to what, if any, position he/she is entitled.
- B. Appeals with Respect to Granting Reemployment Rights--In accordance with 5 CFR Part 352, an appeal of the denial of reemployment rights must be made to OPM within 15 calendar days after receipt of notice that such rights are proposed. An appeal may be made only if the losing agency believes the grant of reemployment rights would be detrimental to the public interest. OPDIVs are responsible for making such decisions and appeals.
- C. Requests for Letter of Authority--In accordance with 5 CFR Part 352, when an agency believes that an emergency situation is so critical as to justify offers of reemployment rights, it may request OPM to issue a "Letter of Authority." Should such a situation arise in this Department, the OPDIV Head or his/her designee is responsible for requesting the Letter of Authority from the appropriate office at OPM. A copy of the request and OPM'S response must be provided to the Office of the Deputy Assistant Secretary for Human Resources.

Exhibit A

DELEGATIONS OF AUTHORITY

A. AUTHORITY DELEGATED

1. Subject to the reservations contained in B below, Heads of OPDIVs (including the PHS agencies, the Program Support Center, HCFA, ACF, and AOA), the Assistant Secretary for Management and Budget for the Office of the Secretary (OS), and the Inspector General (for OIG) are delegated the authority to:
 - a. give consent or disapproval of the assignment, transfer, detail, and release of employees with reemployment rights who are entering on duty in:
 - (1) a position with the State Department Foreign Service;
 - (2) a position under the authority of sections 625(b) and 233(d) of the Foreign Assistance Act of 1961, as amended;
 - (3) a position outside the United States as an "employee " with the Peace Corps;
 - (4) a position with an international organization;
 - (5) a position in another agency covered by a "Letter of Authority" issued by the Office of Personnel Management (OPM); and
 - (6) a position under another statutory authority which may or may not be regulated by OPM but provides for reemployment rights.
2. The above authority may be redelegated with further redelegations authorized.

B. AUTHORITY RETAINED

Authority for approval of the detail or transfer of employees of the PHS agencies to international organizations and to international assignments with the Department of State is retained in the Office of the Secretary. The Assistant Secretary for Health is the final approval authority for such assignments and the final signatory to all agreements for such assignments.

Exhibit A (Continued)

C. PRIOR DELEGATIONS

This delegation supersedes all prior delegations. To the extent that previous delegations of authority covering the above subjects are consistent with the provisions of this delegation, they may remain in effect until new redelegations are made under the authority of this delegation.

D. EFFECTIVE DATE

This delegation is effective on the date of this transmittal.