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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

RIN 3206-AF00; 3206-AF42; 3206-AF63

Reduction in Force Notice-Certification of Expected Separation; Exception to 60 Days Specific Notice; Permissive Temporary Exception

AGENCY: Office of Personnel

Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing final reduction in force (RIF) regulations that authorize: an agency to issue a Certification of Expected Separation to an employee who the agency expects will be separated within 6 months by RIF; the Director of OPM to approve a (RIF) notice period of less than 60 days specific written notice in unforeseeable circumstances; and, an agency to make a permissive temporary exception for more than 90 days past the RIF effective date to satisfy a Government obligation to an employee.

DATES: Final rules effective February 10, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon or Edward P. McHugh, Workforce Restructuring Office, (202) 606–0960; FAX (202) 606–

SUPPLEMENTARY INFORMATION:

Certification of Expected Separation

On May 26, 1992, OPM published interim regulations in the **Federal Register** at 57 FR 21890 with a 60 day comment period. The regulations were inadvertently deleted by regulations published June 8, 1993 (58 FR 32046). To correct this error, the regulations were republished for information in the **Federal Register** on June 27, 1994, at 59 FR 32871.

These interim regulations allowed agencies to issue employees a Certification of Expected Separation (CES) if the agency found that the employee would likely be separated within 6 months by RIF. The CES notice allows employees to register early for outplacement and retraining services provided by the agency, OPM, and programs under the Job Training Partnership Act (JTPA) administered by the Department of Labor.

OPM received fourteen written comments on these interim regulations: Nine from agencies and five from State or local governmental units or their representatives. All of the comments favored the CES option. After consideration of the comments, the interim regulations are published without revision.

Each comment addressed employees' eligibility for the JTPA after receiving a CES

Eight recommended a minimum CES notice period longer than the 6 month limit provided in 5 CFR 351.807(a) of the interim regulations. After reviewing these comments, we left the 6 month limit unchanged because the maximum time period was consistent with the Department of Labor's policy.

Five requested broader eligibility criteria for registration in the JTPA. Again, we left the eligibility requirements unchanged because we believe 5 CFR 351.807(a) is consistent with the Department of Labor's policy.

Other comments asked that OPM issue technical guidance to clarify receipt of a CES on employees' eligibility for OPM's interagency placement programs and the reemployment priority list. We will provide this guidance to agencies through other sources.

The Discretionary Temporary Exception to the Order of Release and the Liquidation Provision

On May 27, 1994, OPM published proposed regulations in the **Federal Register** at 59 FR 27509 with a 60 day comment period. These regulations proposed elimination of the 90 day limit on the use of a permissive temporary exception to satisfy a Government obligation to an employee during a RIF. These regulations also proposed extending the time limit for use of the liquidation provision because of closure from 90 days to 120 days.

OPM received three written comments on these proposed regulations: Two from agencies, and one from an individual who suggested other changes to the RIF system.

Both agencies favored our proposed change to provide that an agency may use a permissive temporary exception without time limitation to satisfy a Government obligation to the retained employee. For example, a Department of Defense employee is entitled to 120 days written specific notice before release in a significant RIF. If the activity conducting the RIF subsequently finds that it must make a worse offer than that specified in the employee's original RIF notice, the employee is entitled to a new RIF notice period of 120 days. This means that the activity must use a permissive temporary exception to retain the released employee on its rolls past the effective date of the RIF in order to meet its notice obligation. Under a permissive temporary exception, the activity determines the released employee's retention rights on the effective date of the RIF, but the activity does not actually implement the action until it provides the employee with full specific notice of the RIF.

In conforming changes, 5 CFR 351.608(c) is redesignated as 5 CFR 351.608(d) and 5 CFR 351.608(d) is redesignated as 5 CFR 351.608(e).

One agency also requested that OPM expand the liquidation provision found in 5 CFR 351.605 from the present 90 days to 1 year. The liquidation provision in 5 CFR 351.605 allows a closing activity to release employees without regard to their respective service dates in a closure situation, provided that the employees have the same tenure and veterans' preference status.

Under the current regulations, a liquidation situation exists when an agency will abolish all positions in a competitive area within 90 days. In separating employees by RIF, the agency must release employees in group and subgroup order consistent with 5 CFR 351.601(a). (An agency may not apply this section to release an employee who is entitled to retention in the subgroup under 5 CFR 351.606 because of reemployment after military service.) However, the liquidation provision permits the agency, at its discretion, to release employees within a subgroup