

RIF

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*EMPLOYMENT LAW FOR FEDERAL EMPLOYEES . . .
PERIOD!!*

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RIF

- When an Agency must abolish positions, the RIF regulations determine whether an employee keeps his or her present position, or whether the employee has a right to a different position.
- The regulatory requirements governing reduction in force are contained in Title 5, Code of Federal Regulations, Part 351.

RIF

Defining the Competitive Area

- When preparing for a RIF, the agency defines the "**Competitive Area**" that establishes the geographical and organizational limits for RIF competition.
- A competitive area may consist of all or part of an agency. The minimum competitive area is an organization in a local commuting area that is separate from other agency organizations because of differences in operation, work function, staff, and personnel administration. Separate personnel administration is the authority of managers to authorize personnel actions (i.e., establishing positions, abolishing positions, etc.), not just process personnel actions. For example, a single personnel office may potentially process actions for multiple competitive areas.

RIF

Defining the Competitive Area

- At its option, an agency may establish a competitive area larger than the minimum standard. The regulations do not define the maximum size of a competitive area (e.g., a competitive area may potentially be nationwide or even worldwide).
- If an agency wants to redefine a competitive area within 90 days of the RIF effective date, the agency must obtain OPM's approval for the change.

RIF

- ❑ Federal agencies must follow the procedures contained in the Code of Federal Regulations when conducting a RIF. The law provides that OPM's RIF regulations must give effect to four factors in releasing employees:
 - ❑ tenure of employment (e.g., type of appointment);
 - ❑ veterans' preference;
 - ❑ length of service; and
 - ❑ performance ratings.

RIF

Tenure of employment (e.g., type of appointment)

Beginning with Group I, the agency ranks competitive service employees on a retention register in three groups according to their types of appointment:

- ❑ **Group I** - Includes career employees who are not serving on probation. A new supervisor or manager who is serving a probationary period that is required on initial appointment to that type of position is not considered to be serving on probation if the employee previously completed a probationary period.
- ❑ **Group II** - Includes career-conditional employees, and career employees who are serving a probationary period because of a new appointment.
- ❑ **Group III** - Includes employees serving under term and similar non-status appointments.
- ❑ Retention registers for excepted positions use similar tenure groups.

RIF

Veterans' preference -Veterans' Preference for Retired Members of the Armed Forces

- ❑ By law (i.e., the Dual Compensation Act of 1964, as presently codified in section 3501(a) of title 5, United States Code), a retired member of the Armed Forces is a veteran under the RIF regulations only if the employee meets one of the following three conditions:
- ❑ The Armed Forces retirement (without regard to benefits from the Department of Veterans Affairs) is directly based upon a combat-incurred disability or injury; or
- ❑ The Armed Forces retirement is based upon less than 20 years of active duty; or
- ❑ The employee has been working for the Government since November 30, 1964, without a break in service of more than 30 days.

RIF

Veterans' preference

The agency divides each of the three tenure groups into three subgroups based upon employees' entitlement to veterans' preference for RIF purposes:

- ❑ Subgroup AD - Includes veterans who are eligible for RIF preference and who have a compensable service-connected disability of 30% or more
- ❑ Subgroup A - Includes veterans eligible for RIF preference who are not eligible for subgroup AD (including eligible spouses, widowers or widowers, and mothers of veterans).
- ❑ Subgroup B - Includes nonveterans and others not eligible for RIF preference in subgroups AD and A.

OPM's publication "Vet Guide" has additional information on eligibility for veterans' preference. Vet Guide is available on the OPM website.

RIF

Length of service

- Within each subgroup, the agency ranks employees by their respective service dates. For example, the agency places the employee with the most service at the top of the subgroup, and places the employee with the least service at the bottom of the subgroup.
- Retention service credit includes all creditable Federal civilian and military service.
- A retired member of the Armed Forces with 20 or more years of military service who is not eligible for veterans' preference under the RIF regulations receives retention credit only for Armed Forces service during a war, or service performed in a campaign or expedition for which the individual received a badge.

RIF

Performance ratings

- Employees receive extra retention service credit for performance based upon the average of their last three annual performance ratings of record received during the 4-year period prior to the date the agency either (1) issues specific RIF notices, or (2) at its option, freezes ratings before issuing RIF notices. If an employee received more than three ratings during the 4-year period, the agency uses the three most recent annual ratings of record.
- Most employees receive performance ratings of record under one of eight possible summary rating patterns required by paragraph 5 C.F.R. 430.208(d) of the performance appraisal regulations (e.g., a two-level "Pass/Fail" pattern, a traditional five-level pattern, etc.) The RIF regulations cover situations when all employees in the competitive area are covered by a single rating pattern (e.g., all employees are covered by a five-level pattern), as well as situations when employees in the competitive area are covered by more than one summary rating pattern (e.g., some employees are covered by a five level pattern, while other employees are covered by a two-level "Pass/Fail" pattern).

RIF

- Performance ratings - **Determining Retention Standing-Performance**

- **Single Rating Pattern.** An agency has a single rating pattern when all employees in the competitive area received performance ratings of record under only one of the eight possible summary rating patterns. For example, all of the employees in the competitive area have ratings of record only under a five-level pattern, or only under a two-level pattern, or under the same three-level pattern, etc. The amount of extra retention service credit with a single rating pattern is:
 - **20** additional years for each performance rating of "**Outstanding**" or equivalent (i.e., Level V);
 - **16** additional years for each performance rating of "**Exceeds Fully Successful**" or equivalent (i.e., Level IV); and,
 - **12** additional years for each performance rating of "**Fully Successful**" or equivalent (i.e., Level III).

- The agency does not give any additional service credit for performance ratings below Fully Successful or equivalent (i.e., no additional retention service credit for a rating of record below Level 3).

- For example, an employee with 3 years of Federal service has one Outstanding rating of record, (20), and two Exceeds Fully Successful (16) ratings of record. The employee would receive additional reduction in force service credit based upon the three actual ratings of record: $20 + 16 + 16 = 52$, divided by $3 = 17.3$, rounded up to 18 years of additional retention credit for performance.

RIF

Performance ratings - Determining Retention Standing-Performance

- **Multiple Rating Patterns.** If an agency has employees in a competitive area who have performance ratings of record under more than one of the eight possible summary rating patterns, at its option the agency may provide different amounts of additional retention service credit for employees who have the same summary level, but are under different patterns. The range of additional service credit is still limited from 12 to 20 years. For example, the agency may elect to provide employees who have a Level 3 (Fully Successful or equivalent) rating of record under a two-level Pass/Fail pattern with 18 years of additional retention service credit, while electing to continue providing employees who have a Level 4 (Exceeds Fully Successful or equivalent) rating of record under a five-level pattern with 16 years of additional retention service credit.
- **Less Than Three Ratings of Record.** If an employee received one or two, but not three ratings of record during the applicable 4-year period, the agency gives credit for performance on the basis of the actual rating(s) of record divided by the number of actual ratings received.

RIF

Performance ratings - Determining Retention Standing-Performance

- ❑ **Modal Rating.** If an employee did not receive any ratings of record during the applicable 4-year period, the agency gives retention credit on the basis of a single "**Modal Rating**" for the employee's summary level pattern.
- ❑ The modal rating is the summary rating level given most frequently to the summary rating pattern that applies to the employee's position. For example, if Level 4 (Exceeds Fully Successful) is the most frequent rating of record for employees covered by a five-level pattern, Level 4 is the modal rating for an employee under that pattern who did not receive any ratings of record.
- ❑ The agency determines the modal rating on the basis of its most recently completed available ratings.
- ❑ The agency also decides whether to base the modal rating upon ratings finalized throughout the agency, or upon ratings finalized in a smaller agency organization (such as the competitive area).

RIF

Release from Competitive Level

- ❑ The Agency releases employees from the retention register in the inverse order of their retention standing. For example, the agency begins with the employee who has the lowest standing in releasing employees from the competitive level as a reduction in force action.
- ❑ The Agency releases all employees in group III before releasing employees in group II, and releases all employees in group II before releasing employees in group I.
- ❑ Then within subgroups, the Agency releases all employees in subgroup B before releasing employees in subgroup A, and releases all employees in subgroup A before releasing employees in subgroup AD.
- ❑ The Agency must notify any employees reached for release out of this regular order (such as under a temporary or a continuing exception in order to retain an employee with special skills) of the reasons for the exception.



Master Labor Agreement

Article 18

Section 1: Scope. This Article governs Reduction in Force (RIF) and Transfer of Function (TOF) actions as provided in applicable laws and regulations. For purposes of this Article, the following terms are defined in law and are included for informational purposes:

A. Reduction in Force (RIF): When the Agency releases a competing employee from his or her competitive level by furlough for more than thirty (30) days, 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 rights or restoration rights, or reclassification of an employee's position due to erosion of duties when such action will take effect after the Agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within sixty (60) days or within thirty (30) days in emergency situations.

B. Transfer of Function (TOF): 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 functions already being performed in the other competitive area(s) affected; or the movement of the competitive areas in which the function is performed to another commuting area.



Master Labor Agreement

Article 18

C. Function: All or a clearly identifiable segment of any agency's mission (including all integral parts of that mission, regardless of how it is performed).

D. Competitive Area: The Agency will define the competitive area for a RIF or TOF action. The competitive area may consist of all or parts of the Agency. The competitive area will be defined solely in terms of EPA's organizational unit(s) and geographical location and will include all employees within the competitive area so defined.

E. Competitive Level: Positions in the competitive area that are in the same grade (or occupational level) and classification series that are so alike in qualification requirements, duties, responsibilities, pay schedule, and working conditions that the incumbent of one position can successfully perform the critical elements of any other position in the level upon assignment to it, without loss of productivity or undue interruption.



Master Labor Agreement

Article 18

F. 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 like and can reasonably be expected to travel back and forth daily to their usual employment.

G. Undue Interruption: A degree of interruption that would prevent the completion of required work by the employee ninety (90) days after the employee has been placed in a different position under a RIF action. However, a work program would generally not be unduly interrupted even if an employee needed more than ninety (90) days after the RIF to perform the optimum quality or quantity of work. The ninety (90) day standard may be extended if placement is made to a low priority program or to a vacant position.



Master Labor Agreement

Article 18

Section 2: Statement of Principle.

A. The Agency and the Union recognize that employees may be seriously and adversely affected by a Reduction in Force (RIF) or Transfer of Function (TOF) action. Before implementing a RIF or TOF affecting bargaining unit employees, the Agency will attempt to minimize adverse effects through such appropriate means as attrition, reassignment, furlough, hiring freeze, and early retirement. The Agency considers a RIF to be an action of last resort.

B. Before taking a final decision in the matter, the Agency will meet with the appropriate Local for the affected location(s) as soon as possible to discuss any alternatives that could alleviate adverse effects on employees.



Master Labor Agreement

Article 18 – Notice to Union

Section 3: Notice to the Union. When the Agency reaches a final decision to take a RIF or TOF action, the Council President and the affected Local will be notified in writing at the earliest possible date, but no later than ninety (90) days prior to the effective date. Notice will include the reason for the RIF or TOF, approximate number and types of positions to be affected, geographic location, and anticipated date of the planned actions.

Section 4: Retention Registers. The Agency will make current its retention registers before giving notice to affected employees. Upon request, the Agency will provide the Union with a copy of the updated retention register(s) and will meet with the Union to discuss any questions the Union has regarding the register(s). Employees will be permitted to review retention registers with the employee's name, and other retention registers for other positions that could affect the composition of the employee's competitive level and/or the determination of the employee's assignment rights.

RIF Notices – Under the Law

- An agency must give an employee at least 60 days specific written notice before the employee is released from the competitive level by a RIF action.
- If faced with an unforeseeable situation (e.g., a natural disaster), the agency may, with OPM approval, give the employee a specific RIF notice of less than 60 days, but at least 30 days, before the effective date of the RIF.





Master Labor Agreement

Article 18 – RIF Notices

Section 5: Consistent with 5 CFR 351, after notice to the Union, the Agency will provide notice of RIF or TOF action to affected employees of no less than sixty (60) full days. Individual RIF or TOF notices must include the following information:

- A. The action to be taken, the reason for the action, and its effective date;
- B. The employee's competitive area, competitive level, retention subgroup, service date, and three most recent performance ratings of record received during the last four (4) years;
- C. The place where the employee may inspect the regulations and records pertinent to this case;
- D. The reasons why any lower standing employees in the same competitive area are being retained;
- E. Grade and Pay retention information applicable to the employee receiving the notice;
- F. Information on reemployment rights;
- G. The employee's right to grieve the action under Article 38, Negotiated Grievance Procedure.
- H. The option to either grieve the action under Article 38, Negotiated Grievance Procedure or to the Merit Systems Protection Board if the employee alleges the RIF action is a Prohibited Personnel Practice under 5 USC 2302.

RIF appeals

□ MSPB



- Federal employees with appeal rights have the ability to appeal RIF decisions.
- *Employees must appeal those decisions with 30 days of the effective date of the action.*
- *Exception if covered by Master Agreement (unless it is a PPP).*



Master Labor Agreement

Article 18 – Offer of Position

Section 6: Offer of Position.

A. The Agency shall, in accordance with 5 CFR 351, if possible, offer an assignment to each employee adversely affected through the implementation of a RIF or TOF. Consistent with 5 CFR 351.701 the offer, if made, shall be of a position as close as possible to, but not higher than, the current grade of the affected employee, and the position shall be in the same competitive area. Employees adversely affected by a RIF or TOF may request, in writing, that they be assigned to a particular continuing position meeting the provisions in the previous sentence. An employee is restricted to making such a request only one time; the request can be made only after the retention registers have been completed. Such an employee request will be answered within ten (10) days. **These employee requests will not be grievable under the Negotiated Grievance Procedure if the request is rejected by the Agency.**

B. Employees will respond in writing to a best offer of employment to another position within fifteen (15) calendar days of receipt of a written offer. Failure to respond within fifteen (15) days will be considered a rejection of the offer.



Master Labor Agreement

Article 18

Section 7: Potential Waiver of Conditions

In accordance with applicable RIF and TOF regulations and to the extent feasible, if the Agency is unable to offer an assignment to an affected employee, the Agency will waive some qualifications for a vacant position which it intends to fill, which does not contain selective placement factors, provided the:

- a) Employee meets any minimum education requirement for the position;
 - b) Agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.
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Master Labor Agreement

Article 18

- **Section 8: Use of Vacancies.** To the extent possible, the Agency will not fill a vacant bargaining unit position within the organizational unit in which the RIF is taking place until it has considered all reasonable alternatives to reduce the adverse effects on bargaining unit employees who are to be displaced as a result of the RIF. In considering these alternatives, the Agency will review the possibility and feasibility of redesigning vacant positions.
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Master Labor Agreement

Article 18

Section 9: Relocation.

A. Employees who are relocated by the Agency as a result of action covered by this Article will receive relocation expenses and authorized absence as provided by law and regulations.⁵⁴

B. Employees reassigned to a different commuting area who relocate will be allowed a period of time, as appropriate on a case by case basis, to complete the move and report to work at the new work location.

C. The employee will be provided administrative time to research relocation matters such as area housing and schools in the new geographic location, disposition of their current homes, and to handle any other matters related to the move, to the extent allowable under appropriate laws and regulations.



Master Labor Agreement

Article 18 – Placement Services

Section 10: Placement Services.

A. The Agency will utilize all resources available under applicable law and regulation in efforts to place employees who are separated or reduced in grade in a RIF. This will include the Agency's Reemployment Priority List and OPM's Career Transition Assistance Program. Employees separated in a RIF will receive priority consideration to fill vacant positions at the activity where they worked for which they are qualified for in accordance with eligibility and employment restrictions per 5 C.F.R. 330.



Master Labor Agreement

Article 18 – Placement Services

Section 10: Placement Services – continued

B. Whenever technological changes cause abolishment of some jobs and the establishment of other, the Agency agrees, when feasible, to utilize the abilities and skills of the displaced employees through established re-training programs designed to qualify these employees for other jobs:

- (1) when feasible and applicable by law and regulation, and
 - (2) consistent with the abilities of the employees.
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Master Labor Agreement

Article 18 – Placement Services

Section 10: Placement Services – continued

C. Repromotion:

(1) for a period of two (2) years, an affected employee demoted by an action covered by this Article will be repromoted to vacancies the Agency determines to fill as they occur according to the following criteria:

(a) A satisfactory performance rating on his/her most recent rating which is documented in his/her official personnel file and meets other eligibility requirements of 5 C.F.R. 330.

(b) The employee has the requisite skills and abilities for the position without undue interruption.

(2) If more than one employee meets the criteria of subsection 1 and is not subject to the criteria in subsection 2, the employee who has the higher retention standing will be promoted.

(3) An employee who was previously demoted without personal cause, misconduct or inefficiency, and who meets all other eligibility criteria in 5 C.F.R. 330, will receive special consideration for repromotion.⁵⁵

D. Employees facing RIF actions will receive reasonable amounts of administrative leave to contact federal job placement officials and employment agencies.



Master Labor Agreement

Article 18

- **Section 11: Excepted Service.** In reduction in force and transfer of function actions, the Agency will apply the same procedures in this Article for both competitive and excepted service employees only as provided by applicable laws and regulations; however, excepted service employees will compete only with other excepted service employees in the same appointing authority and in the same competitive area. In no case will excepted and competitive service employees compete with each other for retention or placement.
 - **Section 12: Unemployment Compensation.** The Agency will counsel employees who are to be separated in a RIF in their eligibility and procedures for applying for unemployment compensation. Expert assistance from the relevant state will be obtained if the employee requests.
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Master Labor Agreement

Article 18

Section 13. Furloughs.

Employees who are furloughed during a lapse in appropriations will be retroactively paid and otherwise compensated to the extent provided by law and regulation.

Employees will be allowed to request a specific schedule for the furlough time. An employee's request will be honored unless management determines that mission and workload prevents approval of the request. Should an employee request be denied, the employee will be provided written reasons for the denial.

The Agency will have a liberal leave without pay (LWOP) policy during periods of furloughs but will not coerce any employee into using LWOP during a furlough. The Agency will inform employees of any differences in eligibility for unemployment compensation if the employee is placed on furlough of LWOP.

Section 14. Reemployment.

Reemployment. In accordance with applicable laws and regulations, terminated employees as a result of RIF action will be notified of Agency vacancies for which they are qualified and will receive priority consideration over non-Agency employees for a two (2) year period.



Voluntary Early Retirement Authority (VERA)

Voluntary Early Retirement Authority (VERA) allows agencies that are undergoing substantial restructuring, reshaping, downsizing, transfer of function, or reorganization to temporarily lower the age and service requirements in order to increase the number of employees who are eligible for retirement. The authority encourages more voluntary separations and helps the agency complete the needed organizational change with minimal disruption to the work force. By offering these short term opportunities, an agency can make it possible for employees to receive an immediate annuity years before they would otherwise be eligible.

An agency **must request VERA** and **receive approval from the Office of Personnel Management (OPM)** before the agency may offer early retirement to its employees. The approval from OPM will stipulate a period of time during which the option will remain available. Agencies such as the Department of Defense that have been granted agency-specific VERA are not required to seek OPM approval for their use of this option.



Voluntary Early Retirement Authority (VERA)

When an agency has received VERA approval from OPM, an employee who meets the general eligibility requirements may be eligible to retire early. The employee must:

- (1) Meet the minimum age and service requirements -
 - At least age 50 with at least 20 years creditable Federal service, OR
 - Any age with at least 25 years creditable Federal service;
 - (2) Have served in a position covered by the OPM authorization for the minimum time specified by OPM (usually 30 days prior to the date of the agency request);
 - (3) Serve in a position covered by the agency's VERA plan; and
 - (4) Separate by the close of the early-out period.
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Voluntary Early Retirement Authority (VERA) - Benefits

Health Benefits: Employees retiring in conjunction with a VERA or Voluntary Separation Incentive Payment (VSIP) authority must have been covered under the FEHB Program (1) for the last 5 years of their Federal civilian service in order to continue such coverage in retirement, or (2) if less than 5 years, for all service since the employee was eligible for these benefits unless these requirements are waived.

OPM will grant pre-approved waivers to employees who have been:

- Covered under the FEHB Program continuously since the beginning date of the agency's latest statutory VSIP authority, or OPM-approved VSIP or VERA authority; **and**
- Retire during the statutory VSIP or OPM-approved VSIP/VERA period; **and**
- Receive a VSIP; **or**
- Take early optional retirement (i.e., VERA); **or**
- Take discontinued service retirement based on an involuntary separation due to RIF, directed reassignment, reclassification to a lower grade, or abolishment of position.
- Coverage as an annuitant is identical to coverage as an employee, but premiums are not paid on a pre-tax basis.

Life Insurance: Federal Employees Group Life Insurance can be continued through the retirement system provided the employee has carried the coverage for at least five years prior to retirement. Value and cost depend on elections made at retirement.



Voluntary Separation Incentive Payment (VSIP)

The Voluntary Separation Incentive Payment Authority, also known as buyout authority, allows agencies that are downsizing or restructuring to offer employees lump-sum payments up to \$25,000 as an incentive to voluntarily separate.

When authorized by the Office of Personnel Management (OPM), an agency may offer VSIP to employees who are in surplus positions or have skills that are no longer needed in the workforce who volunteer to separate by resignation, optional retirement, or by voluntary early retirement, if approved.



Voluntary Separation Incentive Payment (VSIP)

The Voluntary Separation Incentive Payment Authority allows employees to volunteer to leave the Government, agencies can minimize or avoid involuntary separations through the use of costly and disruptive reductions in force (RIFs).

Agencies such as the Department of Defense that have been granted agency-specific VSIP authority are not required to seek OPM approval for their use of this option



Voluntary Separation Incentive Payment (VSIP)

Employee Coverage

When an agency has received approval from OPM to offer VSIPs, any employee (as defined in 5 U.S.C. 2105) who meets these general eligibility requirements may receive an offer. The employee must:

- ❑ Be serving in an appointment without time limit;
 - ❑ Be currently employed by the Executive Branch of the Federal Government for a continuous period of at least 3 years;
 - ❑ Be serving in a position covered by an agency VSIP plan (i.e., in the specific geographic area, organization, series and grade);
 - ❑ Apply for and receive approval for a VSIP from the agency making the VSIP offer; and
 - ❑ Not be included in any of the ineligibility categories listed below.
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Voluntary Separation Incentive Payment (VSIP)

Employee Exclusions

Employees in the following categories are not eligible for a VSIP:

- Are reemployed annuitants;
 - Have a disability such that the individual is or would be eligible for disability retirement;
 - Have received a decision notice of involuntary separation for misconduct or poor performance;
 - Previously received any VSIP from the Federal Government;
 - During the 36-month period preceding the date of separation, performed service for which a student loan repayment benefit was paid, or is to be paid;
 - During the 24-month period preceding the date of separation, performed service for which a recruitment or relocation incentive was paid, or is to be paid; and
 - During the 12-month period preceding the date of separation, performed service for which a retention incentive was paid, or is to be paid.
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Voluntary Separation Incentive Payment (VSIP)

Computation of Incentive Payment

- ❑ An agency computes a Voluntary Separation Incentive Payment on the basis of the lesser of:
 - ❑ An amount equal to the amount of severance pay the employee would be entitled to receive, as computed under 5 U.S.C. 5595(c), without adjustment for any previous payment made; or
 - ❑ An amount determined by the agency head, not to exceed \$25,000.
 - ❑ The amount that the employee actually receives is less than the amount determined using the above computations because of the deduction of taxes, including Federal, state, social security, and Medicare, as appropriate.
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Voluntary Separation Incentive Payment (VSIP)

Repayment Requirement

- An employee who receives a VSIP and later accepts employment for compensation with the Government of the United States within 5 years of the date of the separation on which the VSIP is based, including work under a personal services contract or other direct contract, must repay the entire amount of the VSIP to the agency that paid it - before the individual's first day of reemployment.
 - If the proposed employment is with an agency other than the General Accounting Office, the United States Postal Service, or the Postal Rate Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if:
 - The proposed reemployment is with an executive branch agency;
 - The individual involved possesses unique abilities and is the only qualified applicant available for the position; or
 - In case of emergency involving a direct threat to life or property, the individual:
 - Has skills directly related to resolving the emergency; and
 - Will serve on a temporary basis only as long as the individual's services are made necessary by the emergency.
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