

Restructuring Information Handbook Module 4

Transfer of Function

Unit B, Guidance (December 2002 version)

Introduction The U.S. Office of Personnel Management developed the **Restructuring Information Handbook** to assist Federal agencies in identifying the mandatory statutory and regulatory procedures that apply to restructuring situations.

The Handbook also offers agencies options for minimizing or even eliminating the disruption that often results from restructuring.

There is no requirement for Federal agencies to use this Handbook. Also, the United States Court of Appeals for the Federal Circuit stated in **James v. Von Zemenszky**, 284 F.3D 1310 (2002), that: “. . . OPM’s Restructuring Information Handbook is not a formal regulation, but merely an informal statement of agency views.”

The structure of the Handbook assists the user in locating as much or as little restructuring information as the user needs. Some Modules contain only one **Unit**, while other Modules have two or more Units.

For subjects with mandatory statutory or regulatory requirements, **Unit A (Mandatory Requirements)** provides the user with a crash course on the subject in Section 1, and also with detailed information, complete with citations of requirements contained in law and regulation.

When appropriate, **Unit B (Guidance)** provides the user with useful guidance, including key appeals decisions from appellate bodies such as the Merit Systems Protection Board.

The summaries of appeals decisions are guidance prepared by individual OPM employees. The appeals summaries do not represent official summaries approved by OPM, the Board, or other appellate organizations, and are not intended to provide legal counsel or to be cited as legal authority. Instead, the appeals summaries inform and help the user locate relevant appellate precedents on a specific downsizing subject.

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Unit F (Basic Index to Module) and **Unit G (Detailed Index to Module)** help the user readily locate information within a specific Module.

Other Modules may contain additional Units, such as **Unit C (Appeals Index)**, and **Unit D (Samples)**.

Finally, Module 1 contains **Unit H, (Detailed Index to the Restructuring Information Handbook)**.

We welcome comments on the Restructuring Information Handbook.

Send any comments and suggestions to the Center for Talent and Capacity Policy at (202) 606-0960; FAX (202) 606-2329; or e-mail Thomas A. Glennon at taglenno@opm.gov.

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OPM's Restructuring Information Handbook Modules contain the following topics:

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Human Resource Responsibilities in Restructuring	2	B, F, G
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Reduction in Force Furlough	5	A, B, C, F, G
Reemployment Priority List	6	A, B, C, F, G
Career Transition Assistance	7	A, F, G
Interagency Career Transition Assistance Plan	8	A, F, G
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Voluntary Separation Incentive Payments	10	A, B, C, F, G

Using the Handbook

The Modules contain many cross-references to additional pertinent material. To assist in searches, each Module features a unique index system that assists the user in readily locating information in that Module or in the other Modules.

For example, a reference to "**3-A-15-3**" refers to:

- (1) Module 3 ("**Reduction in Force**"),
- (2) Unit A ("**Required Procedures**"),
- (3) Section 15 ("**Credit for Performance in Reduction in Force**"),
- (4) Paragraph 3 ("**Time Period Covered by Employees' Performance Ratings**").

For a second example, a reference to "**3-B-6-5-(b)**" refers to:

- (1) Module 3 ("**Reduction in Force**"),
- (2) Unit B ("**Guidance**"),
- (3) Section 6 ("**Reorganization and Job Erosion**"),
- (4) Paragraph 5 ("**Use of RIF Procedures in Job Erosion Situations**"),
- (5) Subparagraph (b).

All of the Modules use the same index system.

For example, a reference to "**4-A-4-3**" refers to:

- (1) Module 4 ("**Transfer of Function**"),
 - (2) Unit A ("**Required Procedures**"),
 - (3) Section 4 ("**Determining Whether the Transfer of Function Provisions are Applicable**"),
 - (4) Paragraph 3 ("**Basis for Transfer of Function Decisions**").
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RESTRUCTURING INFORMATION HANDBOOK MODULE 4

TRANSFER OF FUNCTION

Unit B, Guidance (December 2002 version)

Introduction Restructuring Information Handbook Module 4 provides guidance on OPM's Transfer Of Function regulations published in part 351 of title 5 of the Code of Federal Regulations (5 CFR part 351). Module 4 consists of five Units: (1) Unit A, "Required Procedures," (2) Unit B, "Guidance," (3) Unit C, "Transfer of Function Appeals Index," (4) Unit F, "Basic Index to Module 4," and (5) "Detailed Index to Module 4." This is the December 2002 version of Unit B.

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RESTRUCTURING INFORMATION HANDBOOK MODULE 4

TRANSFER OF FUNCTION

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Section 2, Transfer of Function Definitions

Introduction This section contains additional guidance on the transfer of function definitions covered in Section 2 of Module 4, Unit A (4-A-2).

Contents This section contains the following topics:

Topic	See Paragraph
Transfer of Function	4-B-2-1

Additional Information When appropriate, Restructuring Information Handbook Module 4, Unit B (Guidance) has additional information on material in Unit 4-A.

To find additional information on this key paragraph in Unit 4-A,	In Unit 4-B see paragraph:
4-A-2-1	4-B-2-1

A This symbol highlights the references back to Unit 4-A.

i This symbol guides you toward more general references on the subject in Module 4 or in other Modules.

Section 2, Transfer of Function Definitions

4-B-2-1

Transfer of Function

A

[Guidance for paragraph **4-A-2-1**.]

The Merit Systems Protection Board in the decision of **Certain Former Community Services Administration Employees v. Department of Health and Human Services**, 21 M.S.P.R. at 383 (1984), stated that:

"(A) **function** has to be a clearly identifiable activity of an agency's mission which consists of substantial authorities, powers, and duties authorized by law which combine to form a segment of the agency's mission. In addition, there must be either a quantitative or qualitative method of identifying the activity as a function. This is necessary to ensure traceability when the function is transferred from one entity to another."

- For additional guidance on the definition of "**Function**" going back to 1939 as it is used under OPM's transfer of function regulations, see **McNamara v. Dick**, 323 F.2d 276 (1963, D.C. Cir.), Cert. denied 84 S.Ct. 171.
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Section 3, Applicability of the Transfer of Function Regulations

Introduction This section contains additional guidance on the application of the transfer of function regulations covered in Section 3 of Module 4, Unit A (4-A-3).

Contents This section contains the following topics:

Topic	See Paragraph
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Additional Information When appropriate, Restructuring Information Handbook Module 4, Unit B (Guidance) has additional information on material in Unit 4-A.

To find additional information on these key paragraphs in Unit 4-A,	In Unit 4-B see paragraphs:
4-A-3-1-(a)	4-B-3-1-(a)
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4-A-3-5	4-B-3-5
4-A-3-6-(b)	4-B-3-6-(b)

A This symbol highlights the references back to Unit 4-A.

① This symbol guides you toward more general references on the subject in Module 4 or in other Modules.

Section 3, Applicability of the Transfer of Function Regulations

4-B-3-1 The Two Situations When the Regulations Apply

A [Guidance for subparagraph 4-A-3-1-(a).]

- (a) OPM's transfer of function regulations do not apply when the gaining competitive area is carrying out the same class of activity as the transferring function.

- **Explanation-**In 1984 the Merit Systems Protection Board found that an employee has no right to transfer with a function when the gaining competitive area is performing the "**Same Class Of Activity**" as the losing competitive area.

The Board held in **Kentner v. National Transportation Safety Board**, 20 M.S.P.R. 595 (1984), and in **Neilson v. Federal Highway Administration**, 21 M.S.P.R. 178 (1984), that when a function is transferred to another competitive area, a transfer of function occurs only when the gaining competitive area undertakes a class of activity it did not have before.

The term "**Same Class of Activity**" is not defined in OPM's transfer of function regulations, but instead was stated by the Board in the **Kentner** and **Neilson** decisions referenced above, citing **Childress v. United States**, 222 Ct. Cl. 557 (1980).

In **Blevins v. Tennessee Valley Authority**, 46 M.S.P.R. 239 (1990), the Board found that no transfer of function took place when, after a merger of function from one competitive area to a different competitive area, the gaining competitive area had a function that did not change, but instead expanded in scope with the class of activity remaining the same.

- For additional guidance, see **Whitehurst v. Tennessee Valley Authority**, 43 M.S.P.R. 486 (1990); and **Mullen v. Navy**, 76 M.S.P.R. 590 (1997).
- **Explanation- Transfer of Function when an Agency Moves a Function from One or More Competitive Areas to One or More Different Competitive Areas.**

Example 1 (4-B-3-1-(a)): Region A has responsibility for agency evaluations in six New England states while Region B in a different competitive area has responsibility for agency evaluations in five Mid-Atlantic states. After Region A is abolished, Region B has responsibility for agency evaluations in all eleven states. No transfer of function takes place in this situation because Region B was carrying out the same class of activity as Region A (i.e., agency evaluations). The fact that they were servicing different states has no bearing on whether a transfer of function occurred.

Example 2 (4-B-3-1-(a)): Agency X has responsibility for investigative functions; Agency Y has no comparable function. A statute transfers the investigative functions from Agency X to Agency Y. A transfer of function takes place because a continuing function was moved from one competitive area to another area where no identical function was being performed. The same provisions apply in the transfer of a function from one agency to another as in the transfer of a function from one competitive area to another in the same agency.

Example 3 (4-B-3-1-(a)): Organizations A, B, and C are defined as separate competitive areas. Each has responsibility for contract administration. As part of a consolidation, Organization A is renamed Organization Z. At the same time, the contract administration responsibilities of Organizations B and C are moved to the renamed Organization Z. No transfer of function takes place because Organizations B and C performed the same class of activity as Organization Z. Organization Z is simply the successor to Organization A.

Example 4 (4-B-3-1(a)): Competitive area X has responsibility for investigative functions and enters into a reimbursable agreement that new competitive area Y will perform the function. No transfer of function takes place because the agency did not abolish the function in competitive area X, and establish the function in new competitive area Y. Instead, under the reimbursable agreement new competitive area Y simply performs work for competitive area Y, which retains responsibility for the function on its mission and function statements.

A [Guidance for subparagraph **4-A-3-1-(b)**.]

(b) A transfer of function takes place when an agency moves a competitive area, and the entire function (or functions), to a different local commuting area and no other organization change takes place.



- This situation also meets the definition of "**Change Of Duty Station**" found in subparagraph **4-A-2-6-(a)**.

- **Explanation-Transfer Of Function When an Agency Moves a Competitive Area from One Local Commuting Area to a Different Local Commuting Areas and No Other Organizational Change Takes Place.**

Example 1 (4-B-3-1-(b)): A health care installation located in Cleveland, Ohio, is defined as a single competitive area. The entire health care facility ceases its operations in Cleveland and moves to Milwaukee, Wisconsin, where it is again defined as a single competitive area and where the agency has no other facilities in the local commuting area. A transfer of function takes place because the competitive area is moved to a different local commuting area.

Example 2 (4-B-3-1-(b)): An agency moves a district office, which is defined as a complete competitive area, from San Antonio, Texas, to Dallas, Texas, where it is merged with an existing competitive area at that location where the same class of activity is performed. No transfer of function takes place even though the entire competitive area moved to a different local commuting area. In the new competitive area, the function was placed in an existing competitive area that performed the same class of activity at the time of transfer.

4-B-3-3

A Transfer of Function May Be Intra- or Interagency



[Guidance for subparagraph **4-A-3-3-(a)**.]

(a) OPM's transfer of function regulations use the same procedures for both intra- interagency transfers; for additional guidance, see:

- (1) **Ainsworth v. United States**, 399 F.2d 176 (1968), 185 Ct. Cl. 110 (1968), covering the applicability of the transfer of function regulations on the same intra- or interagency basis;
- (2) **Certain Former Community Services Administration Employees v. Department of Health and Human Services**, 21 M.S.P.R. 379 (1984), 762 F.2D 978 (Fed. Cir., 1985), covering the interagency applicability of the transfer of function regulations; and
- (3) **Biter v. Interstate Commerce Commission**, 76 M.S.P.R. 82 (1997), covering the interagency applicability of the transfer of function regulations.

A [Guidance for subparagraph **4-A-3-3-(c)**.]

- (c) Congress has the authority to exempt intra- and interagency transfers of function and personnel from the transfer of function provisions found in 5 U.S.C. 3503.
 - For additional guidance on exemption from 5 U.S.C. 3503, see **Kirschner v. United States**, 172 Ct. C. 526 (1964).

Explanation-In **Kirschner** the Court of Claims found that the Foreign Assistance Act of 1961 gave the Administrator of the gaining agency full discretion to decide which employees should be transferred without regard to the transfer of function provisions based in Section 12 of the Veterans' Preference Act of 1964.

- For additional guidance on modified transfer of function procedures, see Sections 403 and 404 of Public Law 101-73.
- **Explanation**-On August 9, 1989, Congress approved Public Law 101-73 (103 Stat.360), the "Financial Institutions Reform, Recovery, and Enforcement Act of 1989."

Section 403 of the Act is titled "Determination of Transferred Functions and Employees."

Section 403(a) of the Act provided that all employees identified with the function would be transferred to several gaining agencies. Section 403(b) provided that the heads of five agencies affected by the transfer of function would jointly determine both the functions “and the number of employees. . . necessary to perform or support such function or activities. . .” in four continuing agencies and a new agency.

Section 404 of the Act is titled “Rights of Employees of Abolished Agencies.”

Section 404(1) provided that “All employees identified for transfer under subsection (b) of section 403. . . shall be entitled to the following rights:

“Each employee so identified shall be transferred to the appropriate agency or entity for employment no later than 60 days after the date of enactment of this Act and such transfer shall be deemed a transfer of function for the purpose of section 3503 of title 5, United States Code.”

Section 404(2) contained a savings provision that “guaranteed” each employee transferred under Section 404(1) with “. . . a position with the same status, tenure, and pay as that held on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for 1 year after the date of transfer, except for cause.”

Other implementing provisions in Section 404 dealt with Senior Executive Service positions, employee benefits, and voluntary early retirement.”

4-B-3-4

A Function Must Continue in Identifiable Form

A

[Guidance for subparagraph **4-A-3-4-(a)**].

- (a) In a transfer of function, the function must cease in the losing competitive area at the time of transfer. (5 CFR 351.301(b))
 - For additional guidance, see **Whitehurst v. Tennessee Valley Authority**, 43 M.S.P.R. 486 (1990).

4-B-3-5 **Movement of a Function Within a Competitive Area is not Transfer of Function**

A [Guidance for paragraph **4-A-3-5**.]

The transfer or movement of a function within a competitive area is a reorganization, not a transfer of function.

- For additional guidance, see **Prince v. Transportation**, 11 M.S.P.R. 584 (1982); and **Fields v. Treasury**, 15 M.S.P.R. 403 (1983).
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4-B-3-6 **Transfer of a Function for Liquidation is not Covered by the Regulations**

A [Guidance for subparagraph **4-A-3-6-(b)**.]

(b) The transfer of function regulations do not apply to a competing employee in a position identified with a function that will be liquidated or terminated in the gaining competitive area. (5 CFR 351.302(b))

- ① • **Explanation**-Subparagraph **4-B-3-6-(a)** covers the 60 days standard that generally defines when a function is transferred for "**Liquidation**." The "**Liquidation**" exception to OPM's transfer of function regulations applies to any function that is not specifically authorized at the time of transfer to continue in operation for more than 60 days in the gaining competitive area. An employee in a position that is transferred for liquidation has no right to compete for retention in continuing positions held by lower-standing employees in the gaining competitive area. Instead, the employee is simply transferred for reduction in force separation by the gaining competitive area from the liquidated position.

In **Dowd v. Energy**, 21 M.S.P.R. 312 (1984), 765 F.2d 156 (1985, Fed. Cir. Table), the Merit Systems Protection Board found that transfer of function rights do not apply to a terminated function even when the work continues for more than 60 days in the gaining competitive area: "In the present case, appellants' function did not reappear in another competitive area because their audit work, as the agency had

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defined it, no longer existed. The agency's determination that any post-audit report work could be accomplished in a different manner was, as previously noted, a management decision and did not result in a transfer."

Section 4, Agency Responsibility to Apply the Transfer of Function Regulations

Introduction This section contains additional guidance on agency transfer of function decisions, which is covered in Section 4 of Module 4, Unit A (4-A-4).

Contents This section contains the following topics:

Topic	See Paragraph
Basis for Transfer of Function Decisions	4-B-4-3

Additional Information When appropriate, Restructuring Information Handbook Module 4, Unit B (Guidance) has additional information on material in Unit 4-A.

To find additional information on this key paragraph in Unit 4-A,	In Unit 4-B see paragraph:
4-A-4-3	4-B-4-3

A This symbol highlights the references back to Unit 4-A.

i This symbol guides you toward more general references on the subject in Module 4 or in other Modules.

Section 4, Agency Responsibility to Apply the Transfer of Function Regulations

4-B-4-3

Basis for Transfer of Function Decisions

A

[Guidance for paragraph **4-A-4-3**.]

An agency's organizational manuals and internal delegations of authority serve as the reference point for the agency's transfer of function decisions.

- **Explanation-In Certain Former Community Services Administration Employees v. Department of Health and Human Services**, 21 M.S.P.R., 21 M.S.P.R. at 383 (1984), the Merit Systems Protection Board stated:

"Therefore, it is the functional activities that are described in an agency's enabling legislation, organizational manuals, and delegations of authority that are clearly of most significance in determining whether a function has been transferred. Such documents describe the general activities that form the nucleus of the agency missions from which all other activities stem."

The Board added:

"Once the functions of any two entities are isolated in this fashion, the function of the first entity can be traced to determine whether the function has been transferred or otherwise disposed of, as envisioned by the transfer of function regulations."

Finally, the Board noted that:

"While the enabling legislation is of some value, the performance of a particular activity is of far more relevance."

Section 5, Application of the Transfer of Function Regulations in any Situation

Introduction This section contains additional guidance to assist in deciding whether the transfer of function regulations apply to the movement of work to a different competitive area. Section 5 of Module 4, Unit A (4-A-5) covers the principles for applying the transfer of function regulations.

Contents This section contains the following topics:

Topic	See Paragraph
The Same Transfer of Function Provisions Potentially Cover All Movement of Work	4-A-5-1

Additional Information When appropriate, Restructuring Information Handbook Module 4, Unit B (Guidance) has additional information on material in Unit 4-A.

To find additional information on these key paragraphs in Unit 4-A,	In Unit 4-B see paragraph:
4-A-5-1-(a)-(1)	4-B-5-1-(a)-(1)
4-A-5-1-(a)-(2)	4-B-5-1-(a)-(2)
4-A-5-1-(a)-(3)	4-B-5-1-(a)-(3)
4-A-5-1-(a)-(4)	4-B-5-1-(a)-(4)
4-A-5-1-(a)-(5)	4-B-5-1-(a)-(5)
4-A-5-1-(a)-(6)	4-B-5-1-(a)-(6)
4-A-5-1-(a)-(7)	4-B-5-1-(a)-(7)
4-A-5-1-(a)-(8)	4-B-5-1-(a)-(8)

A This symbol highlights the references back to Unit 4-A.

① This symbol guides you toward more general references on the subject in Module 4 or in other Modules.

Section 5. Application of the Transfer of Function Regulations in Any Situation

4-A-5-1 **The Same Transfer of Function Provisions Potentially Cover All Movement of Work**

A [Guidance for paragraph **4-A-5-1**.]

The same transfer of function principles covered in Section **4-A-3** apply to the movement of work in any potential transfer of function situation.

A [Guidance for subparagraph **4-A-5-1-(a)-(1)**.]

- **Explanation-The Transfer of a Function That Supports A Different Transferring Function.**

- (1) The losing competitive area identifies with the line function a support employee who holds an official position of record in a transferring line function.
- (2) The losing competitive area identifies with the support function a support employee with an official position of record in a separate function that supports the transferring line function.
- (3) Once the losing competitive area determines the function that is the basis for the support employee's official position of record, the usual transfer of function provisions apply in determining which support positions and employees, if any, have the right to transfer with the function.

- **Example 1 (4-B-5-1-(a)-(1)):** Twelve employees hold positions in Agency A ranging from WG-4 to WS-2. The employees are responsible for the function of maintaining a building occupied by Agency B. As part of a reorganization on October 1, 2002, Agency B moves its own employees to another building.

The twelve maintenance employees have no right to move with Agency B to the new building because their maintenance function remains in Agency A; a building maintenance function does not transfer to another competitive area if the functions performed by the building's tenant move either to another competitive area, or to a

different location.

- **Example 2 (4-B-5-1-(a)-(1)):** Sixty civilian employees have responsibility for the base support and service functions at Fort Cole, which houses a purely military organization. On October 1, 2002, Fort Cole is closed and the military organization formerly housed there is moved to Fort Jones.

None of Fort Cole's civilian base support and service employees has the right to transfer to Fort Jones because they are identified with activities at Fort Cole rather than with the relocated military organization.

- **Example 3 (4-B-5-1-(a)-(1)):** A GS-4 clerk-typist holds a support position in Organization X's civil engineering function. In a transfer of function on October 1, 2002, the civil engineering activity moves from Organization X to Organization Y.

The clerk-typist is identified for transfer as part of the civil engineering function because his or her position is assigned to the transferring function, not to a separate clerical support function that services other activities along with the civil engineering function.

- **Example 4 (4-B-5-1-(a)-(1)):** A GS-12 personnel management specialist (PMS) works in an operating personnel office that is part of Area Office A. The personnel office also services Area Offices B and C, each of which is defined as a separate competitive area. On October 1, 2002, Area Office C moves to a different local commuting area and is subsequently serviced by another personnel office on a reimbursable arrangement. The operating personnel office where the GS-12 PMS works now only services Area Offices A and B. Because of the decreased responsibilities, the office is reorganized and the PMS is downgraded because of reorganization to a GS-11.

The PMS has no right to transfer to either Area Office C or its servicing personnel office; a position in a support function is not automatically identified for transfer because of a change in duties following the transfer of another function serviced by the support organization.

- For additional guidance on the application of transfer of function to support positions, see **Enos v. Macy**, 321 F.2d 747 (1963).

A [Guidance for subparagraph **4-A-5-1-(a)-(2)**.]

Explanation-The Consolidation of a Function from More than One Competitive Area into a Single Competitive Area.

- (1) The gaining competitive area must determine whether it is performing the same class of activity as the transferring function on the effective date of the transfer.
- (2) If a function transfers from one or more competitive areas and merges with an existing competitive area that is performing the same class of activity on the effective date of the transfer, no transfer of function takes place.
- (3) If a function transfers from one or more competitive areas and merges into a new competitive area that is not performing the same class of activity on the effective date of the transfer, a transfer of function takes place.
- (4) If a function transfers from one or more competitive areas and merges into a new competitive area on different dates, a transfer of function takes place if the gaining competitive area is not performing the same class of activity on the effective date of the transfer. If the transfer to the gaining competitive area is phased over time, the same principle applies (see subparagraph **4-B-5-1-(a)-(3)** below for information on phased transfer).



- **Example 1 (4-B-5-1-(a)-(2))**: The agency defines Area Offices A, B, and C as separate competitive areas. Each Area Office has responsibility for the same functions, but for a different geographic area. On October 1, 2002, the agency abolishes the three Area Offices and, on that date, merges each Office's functions into a newly-established Regional Service Center that is also defined as a new competitive area.

A transfer of function takes place because the gaining competitive area is not carrying out the same class of activity for any of the transferring functions.

- **Example 2 (4-B-5-1-(a)-(2))**: The agency defines Area Offices A, B, and C as separate competitive areas. Each Area Office has

responsibility for the same functions, but for a different geographic area. A Regional Operations Center has oversight responsibility for all of the functions performed by the three Area Offices, and also performs the functions for agencies located in the same local commuting area as the Service Center. On October 1, 2002, the Regional Operations Center is reorganized into a new Regional Service Center. Also on October 1, 2002, the agency abolished Area Offices A, B, and C and merges their functions into the new Regional Service Center.

A transfer of function does not take place because the Regional Operations Center was not abolished, but instead the gaining competitive area (the Regional Service Center) is a successor organization that carries out the same class of activity as Area Offices A, B, and C for each of the transferring functions.

Example 3 (4-B-5-1-(a)-(2)): The agency defines Area Offices A, B, and C as separate competitive areas. Each Area Office has responsibility for the same functions, but for a different geographic area. A Regional Operations Center has oversight responsibility for all of the functions performed the three Area Offices, and also performs the functions for agencies located in the same local commuting area as the Service Center. On October 1, 2002, the Regional Operations Center is abolished, and its work is moved to a new Regional Service Center in the agency's headquarters. The new Regional Service Center is part of an existing competitive area in the agency's headquarters. Also on October 1, 2002, the agency abolishes Area Offices A, and B and merges their functions into the new Regional Service Center in the agency's headquarters.

On October 1, 2002, the gaining competitive area is not carrying out any of the program functions performed by Area Offices A, B, and C; a transfer of function results for these functions because the gaining competitive area is not carrying out the same class of activity. However, on October 1, 2002, the gaining competitive area is carrying out each of the support functions (for example, personnel, payroll, etc.) that Area Offices A, B, and C perform. No transfer of function results for these support functions because the gaining competitive area performs the same class of activity at the time of transfer.

A [Guidance for subparagraph **4-A-5-1-(a)-(3)**.]

Explanation-The Fragmentation of a Function from One Competitive Area to Two or More Other Competitive Areas.

- (1) The losing competitive area must determine whether the work that is moving meets the definition of a function, or whether the work consists of job elements or tasks.
 - (2) The losing competitive area must determine that the function ceases in the losing area at the time of transfer.
 - (3) When a function transfers from one competitive area to another, the gaining competitive area must determine whether it is performing the same class of activity on the effective date of the transfer.
 - (4) If the gaining competitive area is not performing the same class of activity on the effective date of the transfer, a transfer of function takes place.
 - (5) The gaining competitive area must determine whether the work that is moving meets the definition of a function, or whether the work simply consists of job elements or tasks that were part of a fragmented former function.
- **Example 1 (4-B-5-1-(a)-(3)):** The Bureau of Trees is comprised solely of its Headquarters component located in Washington, DC. On October 1, 2002, the Bureau is dispersing its Trees Identification function from the Headquarters to five new Local Control Offices (LCO). The Bureau defines each of the LCO organizations as a separate competitive area. The LCO organizations can accommodate all of the employees presently working on the Trees Identification function at their present grade. However, the Headquarters retained all support functions (for example, personnel, payroll, legal, automated systems) for the Agency of Maps. Because of the Bureau's changed mission, the Bureau of Trees needs fewer support employees in the Headquarters and is planning for a reduction in force on October 1, 2002.

A transfer of function takes place for employees working on the

Trees Identification function because each of the five new gaining competitive areas in the LCO is not performing the same class of activity at the time of transfer. The Bureau retains the right to decide which Trees Identification function employee is transferred to any one of the five LCO competitive areas. Also, no transfer of function takes place for the support functions because the function does not cease in the losing competitive area at the time of transfer.

Example 2 (4-B-5-1-(a)-(3)): The Bureau of Trees is comprised of its Headquarters component located in Washington, DC, and five Local Control Offices (LCO) that contain the Bureau's Trees Registration function and their own support functions. On October 1, 2002, the Bureau is dispersing its Trees Identification function from the Headquarters to the five Local Control Offices (LCO). The Bureau defines each of the LCO organizations as a separate competitive area. After the Trees Identification function transfers, the five LCO organizations will need fewer employees than the Bureau presently has working on the Trees Registration function and the Trees Identification function. Also, the Headquarters is dispersing all support functions related to the Trees Identification function (for example, personnel, payroll, legal, automated systems) to the five LCO organizations.

A transfer of function takes place for employees working on the Trees Identification function because each of the five new gaining competitive areas in the LCO is not performing the same class of activity at the time of transfer. The Bureau retains the right to decide which Trees Identification function employee is transferred to any one of the five LCO competitive areas. Employees identified with the Trees Identification function compete for positions under the reduction in force regulations in the five LCO organizations on equal terms with other employees who were working in the LCOs on the date of transfer (October 1, 2001). Also, no transfer of function takes place for the support functions because the gaining competitive area is performing the same class of activity at the time of transfer.

A [Guidance for subparagraph **4-A-5-1-(a)-(4)**.]

Explanation-A Phased Transfer of Function in Which Portions of the Function Transfer to a Different Competitive Area Over a

Period Of Time.

- (1) The losing competitive area must determine whether the work that is moving meets the definition of a function, or whether the work consists of job elements or tasks.
 - (2) The losing competitive area must determine that the function ceases in the losing area at the time of transfer.
 - (3) When a function transfers from one competitive area to another, the gaining competitive area must determine whether it is performing the same class of activity on the effective date of the transfer.
 - (4) If the gaining competitive area is not performing the same class of activity on the effective date of the transfer, a transfer of function takes place.
- **Example 1 (4-B-5-1-(a)-(4))**: The Agency of Maps is comprised of its Headquarters component located in Washington, DC, and its National Processing Center (NPC) located in Reno, Nevada, which the agency defines as separate competitive areas. The NPC was established after the Headquarters. The NPC carries out the same class of activity as the Agency's Headquarters, although not on the same scope. Over a 5-year period beginning on October 1, 2002, the agency plans to transfer all of the Headquarters functions to the NPC, after which the Headquarters competitive area in Washington, DC, will be abolished.

No transfer of function takes place in the NPC because the gaining competitive area carries out the same class of activity for each of the transferring functions. When the NPC assumes the additional workload, the existing functions simply expand in scope.
 - **Example 2 (4-B-5-1-(a)-(4))**: The Agency of Maps is comprised solely of its Headquarters component located in Washington, DC. Beginning October 1, 2002, the Agency established its National Processing Center (NPC) located in Reno, Nevada, which is defined as a separate competitive area from the Agency's Headquarters. The NPC duplicates the same program functions as the Headquarters. However, the Headquarters retained all support functions (including personnel, payroll, legal, automated systems) for the Agency of Maps. Over a 5-year period beginning also

beginning on October 1, 2002, the agency plans to transfer all of the Headquarters functions to the NPC, after which the Headquarters competitive area in Washington, DC, will be abolished. During this transition, all of the program functions will be gradually shifted to the NPC, and both the Headquarters and the NPC will share the support functions.

No transfer of function takes place in the NPC for the program functions because the gaining competitive area carries out the same class of activity for each of the transferring program functions. Also, no transfer of function takes place for the support functions because the function does not cease in the losing competitive area at the time of transfer.

- **Example 3 (4-B-5-1-(a)-(4)):** The Agency of Maps is comprised solely of its Headquarters component located in Washington, DC. Beginning October 1, 2000, the Agency established its National Processing Center (NPC) located in Reno, Nevada, which is defined as a separate competitive area from the Agency's Headquarters. The NPC duplicates the same program functions as the Headquarters. However, the Headquarters retained all support functions (including personnel, payroll, legal, automated systems) for the Agency of Maps.

Over a 5-year period beginning on October 1, 2002, the agency plans to transfer all of the Headquarters functions to the NPC, after which the Headquarters competitive area in Washington, DC, will be abolished. During this transition, all of the program functions will be gradually shifted to the NPC. Concurrently, the Headquarters will retain responsibility for the support functions, but will also establish a duty station at the NPC to gradually begin the performance of the support functions. When the Headquarters competitive area is abolished, the support functions will be transferred to the NPC.

No transfer of function takes place in the NPC for the program functions because the gaining competitive area carries out the same class of activity for each of the transferring program functions. A transfer of function takes place for the support functions because the gaining competitive area is not carrying out the same class of activity at the time of transfer.

A [Guidance for subparagraph **4-A-5-1-(a)-(5)**.]

Explanation-A Phased Transfer of Function in Which Employees Performing the Transferring Function Move to a Different Duty Site Over a Period of Time.

- (1) The gaining competitive area must determine whether it is performing the same class of activity as the transferring function on the effective date of the transfer.
 - (2) When a function transfers from one competitive area to another, the gaining competitive area must determine whether it is performing the same class of activity on the effective date of the transfer.
 - (3) If the gaining competitive area is not performing the same class of activity on the effective date of the transfer, a transfer of function takes place.
 - (4) If the losing competitive area organizationally transfers the entire function to the gaining competitive area on one date, but the gaining competitive decides to phase the physical relocation of some employees until a later date, the gaining competitive area may establish a duty station at the losing competitive area.
 - (5) The procedure to later transfer employees from the former losing competitive area is no longer a transfer of function because the employees were previously organizationally transferred with their function.
 - (6) If the losing competitive area organizationally transfers part of the function to the gaining competitive area, but both the losing and the gaining competitive areas share responsibility for the function, no transfer of function takes place because the function did not cease in the losing competitive area at the time of transfer.
- **Example 1 (4-B-5-1-(a)-(5)):** The agency defines Area Offices A, B, and C as separate competitive areas. Each Area Office has responsibility for the same functions, but for a different geographic area. On October 1, 2002, the agency abolishes the three Area Offices and, on that date, merges their functions into a newly-established Regional Service Center that is also a new

competitive area. The new Regional Service Center will be fully operational on October 1, 2002, but the consolidated operation will require fewer employees than the number of employees who presently work on the functions in the three Area Offices.

A transfer of function takes place because the gaining competitive area is not carrying out the same class of activity for any of the transferring functions. All of the employees in Area Offices A, B, and C who wish to transfer with the function have the right to compete under the reduction in force regulations for positions in the gaining competitive area. The new Regional Service Center plans to conduct the reduction in force on October 1, 2002, the effective date of the transfer of function.

- **Example 2 (4-B-5-1-(a)-(5))**: Area Offices A, B, and C are defined as separate competitive areas. Each Area Office has responsibility for the same functions, but for a different geographic area. On October 1, 2001, the agency abolishes the three Area Offices and merges their functions into a newly-established Regional Service Center that is also a new competitive area. The new Regional Service Center will be partially fully operational on October 1, 2002, when it will actually begin performing the functions of Area Office A.

Also on October 1, 2002, the agency plans to transfer the functions of Area Offices B and C to the new Regional Service Center. On October 2, 2002, the agency will establish duty stations at the sites of former Area Offices B and C because at the time of organizational transfer of the functions the consolidated operation will not be able to physically accommodate all of the employees who presently work on the functions in the three Area Offices.

The agency plans to abolish the duty stations of the former Area Offices B and C on October 1, 2003, (which is the following year), and at that time to move as many of these employees as are needed to perform the work to the site of the new Regional Service Center.

A transfer of function takes place because the gaining competitive area (the new Regional Service Center) is not carrying out the same class of activity for any of the transferring functions on October 1, 2002. The agency conducts a transfer of function on paper that transfer the functions for Area Offices A, B, and C to the new Regional Service Center. However, before the initial October

1, 2001, transfer of function, the losing competitive area issues canvass letters only to employees of Area Office A, who are faced with a physical move at the same time that the function transfer to the new Regional Service Center.

The employees of Area Offices B and C transferred on paper with their function to the new Regional Service Center on October 1, 2001. However, before the paper transfer of function, the losing competitive area did not canvass the employees concerning whether or not they wanted to transfer with their function because the employees would not be faced with a physical move until the following year (October 1, 2003). When the employees of Area Offices B and C are faced with a physical move or other action because of the abolishment of their two duty stations, the transfer of function provisions would not apply because the transfer of function took place on the prior October 1 (October 1, 2002).

- **Example 3 (4-B-5-1-(a)-(5)):** The agency defines Area Offices A, B, and C as separate competitive areas. Each Area Office has responsibility for the same functions, but for a different geographic area. On October 1, 2002, the agency abolishes Area Office A and transfers its functions into a newly-established Regional Service Center that is also a new competitive area. The movement of work from former Area Office A to the new Regional Service Center is a transfer of function because the gaining competitive area is not carrying out the same class of activity at the time of transfer.

The agency plans to abolish Area Offices B and C on October 1 of the following year (October 1, 2003), and at that time to move as many of these employees as are needed to perform the work to the site of the new Regional Service Center. No transfer of function takes place for Area Offices B and C because the gaining competitive area (the new Regional Service Center) is carrying out the same class of activity for each of the transferring functions at the time of transfer.

A [Guidance for subparagraph **4-A-5-1-(a)-(6)**.]

Explanation-The Closure of an Activity Under the Jurisdiction of One Agency (Or Subagency), With a Different Agency or Subagency Assuming Responsibility for a Successor Activity at the Same Duty Site.

- (1) The losing competitive area must determine whether the work that is moving meets the definition of a function, or whether the work consists of job elements or tasks.
 - (2) The losing competitive area must determine that the function ceases in the losing area at the time of transfer.
 - (3) When a function transfers from one competitive area to another, the gaining competitive area must determine whether it is performing the same class of activity on the effective date of the transfer.
 - (4) If the gaining competitive area is not performing the same class of activity on the effective date of the transfer, a transfer of function takes place.
- **Example 1 (4-B-5-1-(a)-(6))**: The Wilco Air Force Base closes on September 30, 2001, when all Air Force functions at Wilco AFB must cease. Before closure, Air Force is solely responsible for support functions at Wilco such as grounds maintenance and firefighting.

At Wilco AFB, the Department of the Navy has a tenant organization from Navy's David Naval Air Station, which is located in the same local commuting area as Wilco AFB and is defined as a separate competitive area from Wilco AFB. On October 1, 2002, the David NAS expands its operations on the site of the former Wilco AFB, and also begins certain support function such as grounds maintenance and firefighting that were formerly performed by the Wilco AFB.

No transfer of function takes place because under the conditions for closure, all Air Force functions ceased at Wilco AFB on September 30, 2002. On October 1, 2002, David NAS expanded its existing competitive area located at Wilco AFB to begin performing functions related to its mission, including grounds maintenance and firefighting.

Example 2 (4-B-5-1-(a)-(6)): The MacDow Army Depot closes on September 30, 2002, when all Army Depot functions at MacDow must cease. On the same date, certain of MacDow's depot functions transfer to Fort Barrel, another Army activity that is a different competitive area. Because of additional work resulting from the movement of MacDow's functions, Fort Barrel area finds that it must hire additional maintenance employees to deal with its increased

workload and the number of employees that require services.

No transfer of function takes place for Fort MacDow's civilian base support and service employees, who are identified with activities at Fort MacDow rather than with the transferred depot functions. In any case, the gaining competitive area (Fort Barrel) is performing the same class of activity as Fort MacDow with the civilian base support and depot functions.

A [Guidance for subparagraph **4-A-5-1-(a)-(7)**.]

Explanation-The Transfer of One of Several Functions Performed by Manager or Supervisor.

- (1) A manager or supervisor with an official position of record in a single transferring line function is identified with the line function.
 - ① (2) A manager or supervisor with an official position of record in more than one function is identified in the same manner as covered in subparagraph **4-B-5-1-(a)-(1)** above for a support employee with an official position that covers the performance of more than one transferring function.
 - (3) Once the losing competitive area determines which function the manager or supervisor's official position of record is identified with, the usual transfer of function provisions apply in determining which managerial and supervisory positions and employees, if any, have the right to transfer with the function.
- **Example 1 (4-B-5-1-(a)-(7)):** The Rail Regulatory Agency (RRA) is consolidating its five regional offices into its Washington, DC, headquarters effective October 1, 2002. The five regional offices perform three line functions which are not performed in headquarters at the time of transfer: the dining car inspection function, the overhead signal safety function, and the track ballast packing function. Only the dining car inspection function will be performed in the headquarters because the agency is contracting out performance of both the overhead signal safety function and the track ballast packing function.

RRA has five GS-15 regional directors who perform supervisory work

on all three line functions. After the consolidation from the five regions, RRA plans to supervise the dining car inspection function with a single GS-15 position.

Because the gaining competitive area at headquarters is not performing the dining car inspection function when the function is transferred October 1, 2002, all of the five regional directors could potentially claim a right to transfer with the function. In determining which regional directors would have transfer of function rights, the agency uses the transfer of function identification procedures covered in Sections **4-A-6** through **4-A-8**.

A [Guidance for subparagraph **4-A-5-1-(a)-(8)**.]

① **Explanation-Other Situations.** The movement of work from one or more competitive areas to one or more other competitive areas may involve several of the situations covered in subparagraphs **4-B-5-1-(a)-(1)** through **-(6)** above, or even other situations.

- ① (a) As noted in subparagraphs **4-A-5-1-(a)** and **-(b)** above, the same transfer of function principles covered in Section **4-A-3** apply to the movement of work in any potential transfer of function situation.
- (b) Regardless of the situation, each agency can determine whether the transfer of functions are applicable to a specific situation by:
- (1) Referring to the applicable competitive area definitions in the losing and in the gaining competitive areas;
 - (2) Isolating the function as it appears in the mission statement of the losing competitive area;
 - (3) Determining whether the function or the same class of activity is present in the gaining competitive area at the time of transfer; and

Determining whether the other conditions for transfer of function are met (for example, the function must cease in the losing competitive area the time of function, the function is not transferred solely for liquidation, the function will continue to be performed by Federal employees after transfer, etc.).

Section 6, Identification of Employees and Positions with a Transferring Function-General

Introduction This section contains additional guidance on the procedures the agency uses to identify employees and positions with a transferring function. Section 6 of Module 4, Unit A (4-A-6) provides an overview of the identification procedures.

Contents This section contains the following topics:

Topic	See Paragraph
Using the Position Description to Identify Employees for Transfer	4-B-6-5
Supplementing the Position Description to Identify Employees for Transfer	4-B-6-6

Additional Information When appropriate, Restructuring Information Handbook Module 4, Unit B (Guidance) has additional information on material in Unit 4-A.

To find additional information on these key paragraphs in Unit 4-A,	In Unit 4-B see paragraphs:
4-A-6-5	4-B-6-5
4-A-6-6	4-B-6-6

A This symbol highlights the references back to Unit 4-A.

i This symbol guides you toward more general references on the subject in Module 4 or in other Modules.

Section 6, Identification of Employees and Positions with a Transferring Function-General

4-B-6-5 Using the Position Description to Identify Employees for Transfer

A [Guidance for paragraph **4-A-6-5**.]

The losing competitive area identifies each competing employee with a transferring function on the basis of the employee's official position description. (5 CFR 351.303(a))

(a) For additional guidance, see:

- (1) **Certain Former Community Services Administration Employees v. Health and Human Services**, 21 M.S.P.R. 379 (1984), 762 F.2d 978 (1985, Fed. Cir.), which provides an overview of tracing the line of authority for identification of positions with a transferring function;
 - (2) **Hasler v. Air Force**, 48 M.S.P.R. 207 (1991), 975 F. 2d 868 (1991, Fed. Cir. Table), which covers Identification Method One;
 - (3) **Jackson v. Transportation**, 18 M.S.P.R. 626 (1984), and **Biter v. Interstate Commerce Commission**, 76 M.S.P.R. 82 (1997), which cover Identification Method Two; and
 - (4) **Rich v. Agriculture**, 26 M.S.P.R. 228 (1985), which covers the identification of employees with a transferring function based on actual duties performed rather than position descriptions.
- **Explanation**-The 1985 **Rich** decision predates paragraph 5 CFR 351.303(a), which OPM added to the transfer of function regulations in 1995 to provide in regulation that agencies identify employees for transfer with a function based on the employees' official position descriptions).

4-B-6-6 Supplementing the Position Description to Identify Employees for Transfer

A [Guidance for paragraph **4-A-6-6**.]

In identifying employees for transfer on the basis of what percentage of time an employee performs a transferring function, the losing competitive area may supplement the official position description by the use of material such as official work reports, organizational time logs, and similarly appropriate items. (5 CFR § 351.303(c)(3))

- ① • **Example 1 (4-B-6-6):** This example expands the case study used in subparagraph **4-A-5-1-(a)-(7)**, which explained that managers and supervisors working on multiple functions may have a potential right to transfer with a continuing function.

The Rail Regulatory Agency (RRA) is consolidating its five regional offices into its Washington, DC, headquarters effective October 1, 2001. The five regional offices perform three line functions which are not performed in headquarters at the time of transfer: the dining car inspection function, the overhead signal safety function, and the track ballast packing function. Only the dining car inspection function will be performed in the headquarters because the agency is contracting out performance of both the overhead signal safety function and the track ballast packing function.

The RRA has five GS-15 regional directors who perform supervisory work on all three line functions. The official position descriptions of the five GS-15 regional directors cover supervisory work on all three line functions. After the consolidation from the five regions, RRA plans to supervise the dining car inspection function with a single GS-15 position.

- ① Because the gaining competitive area at headquarters is not performing the dining car inspection function when the function is transferred October 1, 1998, all of the five regional directors could potentially claim a right to transfer with the function. In determining which regional directors would have transfer of function rights, the agency uses the transfer of function identification procedures covered in Sections **4-A-6** through **4-A-8**.

The RRA established a 1-year time frame from July 1, 2000, through June 30, 2001, to determine the amount of time the five regional directors spent on the transferring dining car inspection

function.



The RRA found that two of the regional directors performed the function during at least half of their work time. Both of these two regional directors have the right to transfer with the function under Identification Method One (see Section **4-A-7** for additional guidance on Method One), and to compete in a reduction in force in the gaining competitive area before involuntary separation or downgrading from their GS-15 positions.

- For additional guidance on the use of supplemental information to identify employees with a transferring function, see **Biter v. Interstate Commerce Commission**, 76 M.S.P.R. 82 (1997).
-

Section 7, Identification Method One

Introduction This section contains additional guidance on transfer of function Identification Method One, which is covered in Section 7 of Module 4, Unit A (4-A-7).

Contents This section contains the following topics:

Topic	See Paragraph
Identification Method One-General	4-B-7-1

Additional Information When appropriate, Restructuring Information Handbook Module 4, Unit B (Guidance) has additional information on material in Unit 4-A.

To find additional information on this key paragraph in Unit 4-A,	In Unit 4-B see paragraph:
4-A-7-1	4-B-7-1

A This symbol highlights the references back to Unit 4-A.

i This symbol guides you toward more general references on the subject in Module 4 or in other Modules.

Section 7, Identification Method One

4-B-7-1

Identification Method One-General

A

[Guidance for paragraph **4-A-7-1**.]

Under Identification Method One, the losing competitive area identifies competing employees with a transferring function if:

- (a) The employee performs the function at least 50% of work time; (5 CFR 351.303(c)(1)), or
 - (b) The function includes the employee's grade-controlling duties. (5 CFR 351.303(c)(1))
 - For additional guidance on the application of Identification Method One, see **Hasler v. Air Force**, 48 M.S.P.R. 207 (1991), 975 F.2d 868 (1992, Fed. Cir. Table).
-

Section 8, Identification Method Two

Introduction This section contains additional guidance on transfer of function Identification Method Two, which is covered in Section 8 of Module 4, Unit A (4-A-8).

Contents This section contains the following topics:

Topic	See Paragraph
Identification Method Two-General	4-B-8-1
Developing Retention Registers	4-B-8-2

Additional Information When appropriate, Restructuring Information Handbook Module 4, Unit B (Guidance) has additional information on material in Unit 4-A.

To find additional information on these key paragraphs in Unit 4-A,	In Unit 4-B see paragraphs:
4-A-8-1	4-B-8-1
4-A-8-3	4-B-8-3

A This symbol highlights the references back to Unit 4-A.

i This symbol guides you toward more general references on the subject in Module 4 or in other Modules.

Section 8, Identification Method Two

4-B-8-1 **Identification Method Two-General**

A [Guidance for paragraph **4-A-8-1**.]

An agency uses Identification Method Two to identify competing employees with a transferring function when the employees work on the function, but Identification Method One is not applicable. (5 CFR 351.302(d))

- For additional guidance, see **Biter v. Interstate Commerce Commission**, 76 M.S.P.R. 82 (1997).
-

4-B-8-3 **Developing Retention Registers**

A [Guidance for paragraph **4-A-8-3**.]

Under Identification Method Two, the retention registers include the names of only competing employees who perform the function and are not covered by Identification Method One. (5 CFR 351.302(d))

- For additional guidance, see **Jackson v. Transportation**, 18 M.S.P.R. 626 (1984).
-

Section 9, Employees of the Losing Competitive Area

Introduction This section contains additional information on the rights of employees in the losing competitive area when an agency implements a transfer of function. Section 9 of Module 4, Unit A (4-A-9) covers basic transfer of function rights in the losing competitive area.

Contents This section contains the following topics:

Topic	See Paragraph
Right of Employee to Transfer	4-B-9-1
Separation of Employee Who Refuses to Transfer	4-B-9-2
Use of Reduction in Force Procedures in the Losing Competitive Area	4-B-9-3

Additional Information When appropriate, Restructuring Information Handbook Module 4, Unit B (Guidance) has additional information on material in Unit 4-A.

To find additional information on these key paragraphs in Unit 4-A,	In Unit 4-B see paragraphs:
4-A-9-1	4-B-9-1
4-A-9-2	4-B-9-2
4-A-9-3	4-B-9-3

A This symbol highlights the references back to Unit 4-A.

① This symbol guides you toward more general references on the subject in Module 4 or in other Modules.

Section 9, Employees of the Losing Competitive Area

4-B-9-1 Right of Employee to Transfer

A [Guidance for paragraph **4-A-9-1**.]

A competing employee who is identified for transfer with a function has the right to transfer to the gaining competitive area if the alternative is separation or downgrading by reduction in force in the losing competitive area. (5 CFR 351.302(c))

- The losing competitive area has the right to transfer to the gaining competitive area any employee properly identified for transfer with the function
- For additional guidance, see **Demoret v. Consumer Product Safety Commission**, 24 M.S.P.R. 466 (1984).

4-B-9-2 Separation of Employee Who Refuses To Transfer

A [Guidance for paragraph **4-A-9-2**.]

The losing competitive area may use adverse action procedures to separate an employee who declines to transfer with the function. (5 CFR 351.302(d))

- For additional guidance, see **Alvarez v. Veterans Administration**, 12 M.S.P.R. 548 (1982); **McLean v. Army**, 55 M.S.P.R. 414 (1992), 988 F.2d 129 (Fed. Cir. Table, 1992); and **Di Sera v. Army**, 71 M.S.P.R. 120 (1996).
- (a) In order to avoid or minimize involuntary separations, OPM encourages each agency conducting a transfer of function to undertake a positive outplacement program to assist employees faced with separation because the employee:
- (1) Chose not to transfer with the function to a different local commuting area; or
 - (2) Did not receive a reduction in force offer of a position in the

gaining competitive area.

- (b) These placement efforts may include:
- (1) The **Career Transition Assistance Plan (CTAP)**.
 - Restructuring Information Handbook Module 7 covers the "**Career Transition Assistance Plan**."
 - (2) Specific placement efforts aimed to place the employee in present or future vacancies in either the losing local commuting area or at other worksites; and
 - (3) Job fairs to increase the chances of separated employees being hired by other Federal agencies or potential nongovernmental employers in the community.
 - Agency outplacement activities are particularly important when a transfer of function will have a significant economic impact on the community.
- (c) Agencies' initiatives in this situation have included:
- (1) Helping to attract new businesses into the region;
 - (2) Planning with the community for the use of vacated property; and
 - (3) Working with other Federal agencies as well as local governmental organizations in dealing with the revised economic structure of the losing local commuting area where the function was formerly located.

4-B-9-3

Use of Reduction in Force Procedures in the Losing Competitive Area

A

[Guidance for paragraph **4-A-9-3**.]

The losing competitive area may not conduct a reduction in force solely for the purpose of providing retention benefits to employees who decline to transfer with their function to a different local commuting area. (5 CFR

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351.302(e))

- At its option, the losing competitive area may include employees who decline to transfer with their function as part of a concurrent reduction in force conducted for other reasons.
 - For additional guidance, see **Colbath v. United States**, 341 F.2d 626 (1965), 169 CT. CL. 414 (1965); **Smith v. Commerce**, 19 M.S.P.R. 589 (1984); and **Kimsey v. Interior**, 24 M.S.P.R. 528 (1984).
-

Section 10, Employees of the Gaining Competitive Area

Introduction This section contains additional information on the rights of employees in the gaining competitive area when an agency implements a transfer of function. Section 10 of Module 4, Unit A (4-A-10) covers basic transfer of function rights in the gaining competitive area.

Contents This section contains the following topics:

Topic	See Paragraph
Rights of Transferred Employees in the Gaining Competitive Area	4-B-10-3
Status of Competitive Service Positions	4-B-10-6

Additional Information When appropriate, Restructuring Information Handbook Module 4, Unit B (Guidance) has additional information on material in Unit 4-A.

To find additional information on these key paragraphs in Unit 4-A,	In Unit 4-B see paragraphs:
4-A-10-3	4-B-10-3
4-A-10-6	4-B-10-6

A This symbol highlights the references back to Unit 4-A.

① This symbol guides you toward more general references on the subject in Module 4 or in other Modules.

Section 10, Employees of the Gaining Competitive Area

4-B-10-3 Rights of Transferred Employees in the Gaining Competitive Area

A [Guidance for paragraph **4-A-10-3**.]

A competing employee identified by the losing competitive area for transfer with a function has a right to transfer to the gaining competitive area and compete for positions in a reduction in force in lieu of separation or downgrading by reduction in force in the losing competitive area.

- For additional guidance, see **Certain Former Community Service Administration Employees v. Health and Human Services**, 21 M.S.P.R. 379 (1984), 762 F.2d 978 (1985, Fed. Cir.); **Demoret v. Consumer Product Safety Commission**, 24 M.S.P.R. 466 (1984); and **Cross v. Transportation**, 127 F.3d 1493 (1997, Fed. Cir.).

4-B-10-6 Status of Competitive Service Positions

A [Guidance for paragraph **4-A-10-6**.]

When the position of an employee who is in the competitive service and has competitive status is moved to a new organization as part of a reorganization or transfer of function, the position remains in the competitive service during the employee's incumbency. (5 CFR 212.401)

- **Example 1 (4-B-10-6)**: The Secretary of the cabinet level "Department of Research" orders the transfer of the records function from the competitive service "Bureau of Data Collection" to the existing "Bureau of Investigative Tabulations," which is statutorily excepted from the competitive service. At the time of transfer, the excepted service Bureau of Investigative Tabulations was not performing the records function. Both Bureaus are located in the same local commuting area.

The competitive service employees in positions that the Bureau of

Data Collections identifies with the function have the right to transfer to the gaining Bureau of Investigative Tabulations in lieu of involuntary separation in Data Collections. However, because Investigative Tabulations is by statute an excepted service organization, OPM's transfer of function regulations do not provide the competitive service employees in Data Collections with a transfer right to the excepted service positions in Investigative Tabulations.

The transfer of function regulations provide that the competitive service employees in Data Collections have the right to transfer on the basis of their positions of record to Investigative Tabulations. On the date Data Collections transfers the positions, the excepted service Investigative Tabulations could separate the employees from the competitive service positions by reduction in force on at the close of business of the same day. OPM's reduction in force regulations do not provide a competitive service employee with rights to an excepted service position (or vice versa).

In lieu of reduction in force separation, Investigative Tabulations could voluntarily offer excepted service positions to the transferred competitive service employees from Data Collections. The gaining competitive area, Investigative Tabulations, would make these offers to the competitive service employees prior to the transfer of function date. Any competitive service employees of Data Collections who received a separation notice because of reduction in force would be eligible for selection priority throughout the Department of Research through the agency's Career Transition Assistance Plan.

- **Example 2 (4-B-10-6)**: A new statute transfers the bedrock evaluation function and its personnel from the independent "Foreign Minerals Resources Agency" to another agency, the "International Geological Management Agency."

The agency losing the function, the Foreign Minerals Resources Agency, is a competitive service agency. The agency gaining the function, the International Geological Management Agency, is established by statute as an excepted service agency. Both positions are in the same local commuting area.

All of the employees identified by the losing Foreign Minerals Resources Agency for transfer with the function hold competitive

service positions and have competitive status. Because all of the positions in the gaining International Geological Management Agency are in the excepted service, none of the competitive service employees from the Foreign Minerals Resources Agency have a right to the excepted service positions through OPM's transfer of function or reduction in force regulations.

In passing the legislation that transferred the function, Congress provided a "grandfather" clause allowing the transferred employees from the Foreign Minerals Resources Agency to retain their competitive status in the International Geological Management Agency. For example, because of this specific legislative provision, a GS-1313-12 Bedrock Analyst from the Foreign Minerals Resources Agency would retain competitive status even though all positions in the International Geological Management Agency are excepted by statute. If the GS-1313-12 Bedrock Analyst changes positions (for example, promotion to a GS-1313-13 Bedrock Analyst position), the employee would no longer have competitive status, but would instead hold an excepted position in the International Geological Management Agency.

Section 11, Transfer of Positions for Liquidation

Introduction This section contains additional guidance on the coverage of the transfer of function regulations when a transferred function will not continue in the gaining competitive area. The transfer of positions for liquidation is covered in Section 11 of Module 4, Unit A (4-A-11).

Contents This section contains the following topics:

Topic	See Paragraph
No Right to Transfer With Terminated Function	4-B-11-1

Additional Information When appropriate, Restructuring Information Handbook Module 4, Unit B (Guidance) has additional information on material in Unit 4-A.

To find additional information on this key paragraph in Unit 4-A,	In Unit 4-B see paragraph:
4-A-11-2	4-B-11-2

A This symbol highlights the references back to Unit 4-A.

i This symbol guides you toward more general references on the subject in Module 4 or in other Modules.

Section 11, Transfer of Positions for Liquidation

4-B-11-2

No Right to Transfer With Terminated Function

A

[Guidance for paragraph **4-A-11-2**.]

The transfer of function regulations do not apply to the transfer of a terminated function to a gaining competitive area for final termination. (5 CFR 351.302(b))

- For additional guidance, see **Dowd v. Energy**, 21 M.S.P.R. 312 (1984).
-

Section 12, Transfer of Function Canvass Letters

Introduction This section contains additional guidance on optional transfer of function canvass letters covered in Section 12 of Module 4, Unit A (4-A-12).

Contents This section contains the following topics:

Topic	See Paragraph
Purpose of Canvass Letter	4-B-12-1
Content of Canvass Letters-General	4-B-12-4

Additional Information When appropriate, Restructuring Information Handbook Module 4, Unit B (Guidance) has additional information on material in Unit 4-A.

To find additional information on these key paragraphs in Unit 4-A,	In Unit 4-B see paragraph:
4-A-12-1	4-B-12-1
4-A-12-4	4-B-12-4

A This symbol highlights the references back to Unit 4-A.

i This symbol guides you toward more general references on the subject in Module 4 or in other Modules.

Section 12, Transfer of Function Canvass Letters

4-B-12-1

Purpose of Canvass Letter

A

[Guidance for paragraph **4-A-12-1**.]

The losing competitive area, at its option, may use a transfer of function canvass letter to ask each competing employee identified with the transferring function whether the employee will actually transfer with the function to the gaining competitive area at a different local commuting area.

- For additional guidance on the purpose and use of a transfer of function canvass letter, see **Di Sera v. Army**, 71 M.S.P.R. 120 (1996).
 - Example 1 is a sample transfer of function canvass letter involving one different local commuting area.
 - Example 2 is a sample transfer of function canvass letter involving more than one different local commuting area.
-

Section 12. Transfer of Function Canvass Letters

Sample Canvass Letter - One Location

MEMORANDUM

TO: (TYPED EMPLOYEE NAME)
FROM: (AGENCY OFFICIAL)
SUBJECT: Notice of Transfer of Function Right

We are issuing this notice because your position is identified with a function being transferred from Biloxi, Mississippi, to Baltimore, Maryland.

(State what function is moving; from where; to where; when. Example: The Bureau of Paper Management is consolidating the Forms Management function from the various field locations into a central location in Baltimore, Maryland. The consolidation will be effective on or about October 1, 2001.)

You have a right to transfer with your function to Baltimore, Maryland. You have this right because we cannot guarantee you another position in your current location.

Although you have a transfer right to Baltimore, we may not have enough positions for all employees having transfer rights who elect to move. If this occurs, we will use reduction in force (RIF) procedures under Title 5, Code of Federal Regulations (CFR), Part 351, to determine employees' placement rights in the Baltimore office. The Baltimore human resources office will consolidate employee records, conduct the RIF, and issue specific notices before any employees actually relocate to Baltimore.

We need to know if you want to exercise your transfer right. Once all employees have responded, we will know if a RIF is required. If you choose to transfer and receive a job offer, transportation expenses for you and your dependents, including costs for moving your household goods, will be paid as allowed under the Federal Travel Regulations.

If you choose NOT to transfer, YOUR ELECTION IS CONSIDERED FINAL AND MAY NOT BE CHANGED. Unless another position becomes available, you may be separated from the Federal service under the adverse action procedures at Title 5, CFR, Part 752. If you decline to transfer, your eligibility for placement programs and other benefits will be based on your current local commuting area. If you accept but no position is available in the Baltimore office, your eligibility for placement programs and other benefits will be based on the Baltimore office.

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You have 10 calendar days from the date you receive this notice to decide if you will transfer with your function. Please indicate your decision on the attached form. If you do not respond in writing within 10 calendar days, we will consider your non-response as a declination.

You should carefully consider all aspects of this important decision. **(Human Resources Office Representative)** can answer questions about your rights.

We appreciate your service with the Bureau of Paper Management and we encourage you to consider pursuing your career with the new activity in Baltimore.

(Agency Representative)

Attachment

Signature: _____ Date: _____
(Typed Employee Name)

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Transfer of Function Election Form

TO: Human Resources Office

FROM: (Typed Employee Name)

SUBJECT: Transfer of Function Election Decision

I understand I have a right to transfer with my function from Biloxi, Mississippi, to Baltimore, Maryland. I have indicated below whether I will or will not transfer.

I elect to transfer with my function to Baltimore, Maryland. I understand that my placement rights have not been determined yet and that I will be informed in writing when a final decision is made.

I elect NOT to transfer with my function to Baltimore, Maryland. I understand that, by this election, I forfeit any further employment consideration in the Baltimore office and that I may be separated from Federal service under adverse action procedures.

Signature: _____
(Typed Employee Name)

Date: _____

Transfer of Function Canvass Letter - Multiple Locations

1. General. The losing competitive area in a transfer of function may canvass employees identified with the function to determine if they want to transfer or not (see Module 4, Transfer of Function, for more information). (5 CFR 351.302(g))

2. Sample Canvass Letter.

Memorandum

To: (Typed Employee Name)
From: (Agency Official)
Subject: Transfer of Function Canvass Letter

We are issuing this notice because your position is identified with a function being transferred from Biloxi, Mississippi, to either Dayton, Ohio, or Denver, Colorado. We need to know if you want to transfer with your function and, if so, to which location.

(State what function is moving; from where; to where; when. Example: The Bureau of Paper Management is consolidating the Forms Management function from the various field locations into two regional locations in Dayton, Ohio, and Denver, Colorado. The consolidation will be effective on or about October 1, 2001.)

You have a right to transfer with your function and to choose one of the locations. You have this right because we cannot guarantee you another position in your current location.

Although you have a transfer right, we may not have enough positions in your selected location for all employees with transfer rights who want to move there. If this happens, we will use reduction in force (RIF) procedures under Title 5, Code of Federal Regulations (CFR), Part 351, to determine employees' placement rights in the new locations. The appropriate human resources office will consolidate employee records, conduct the RIF, and issue specific notices before any employees actually relocate to gaining commuting area.

We are giving this notice to all employees with a transfer right. Once all employees have responded and identified which location they prefer, we will know if RIF's are required. If you choose to transfer and receive a job offer, transportation expenses for you and your dependents, including costs for moving your household goods, will be paid as allowed by the Federal Travel Regulations. The appropriate human resources office will provide you with information about the new location.

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If you choose not to transfer, your decision is considered final. You may not change your decision later. Unless another position becomes available, you may be separated from the Federal service under the adverse action procedures at Title 5, CFR, Part 752. If you decline to transfer, your eligibility for placement programs and other benefits will be based on your current local commuting area. If you accept the transfer but no position is available in your selected location, your eligibility for placement programs and other benefits will be based on the selected location.

You have 10 calendar days from the date you receive this notice to decide if you will transfer with your function and to select a location. Please indicate your decision on the attached form. If you do not respond in writing within 10 calendar days, we will consider your non-response as a declination.

You should carefully consider all aspects of this important decision. **(Human Resources Office Representative)** can answer questions about your rights and eligibility for various benefits.

We appreciate your service with the Bureau of Paper Management and we encourage you to consider pursuing your career with one of the new organizational locations.

(Agency Representative)

Attachment

Signature: _____
(Typed Employee Name)

Date: _____

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Restructuring Information Handbook Module 4
Transfer of Function
Unit B, Guidance (December 2002 version)

Transfer of Function Election Form

TO: Human Resources Office

FROM: (Typed Employee Name)

SUBJECT: Transfer of Function Election Decision

I understand I have a right to transfer with my function from Biloxi, Mississippi. My decision about transferring with my function is indicated below.

___ I want to transfer with my function. I understand that my placement rights have not been determined yet and that I will be informed in writing when a final decision is made. I will accept a transfer to (select one):

_____ Dayton, Ohio

_____ Denver, Colorado

___ I do NOT want to transfer with my function from Biloxi, Mississippi. I understand that, by this election, I forfeit any further employment consideration in both the Dayton, Ohio, and Denver, Colorado, offices and that I may be separated from Federal service under adverse action procedures in 5 CFR, Part 752.

Signature: _____ Date: _____
(Typed Employee Name)

4-B-12-4 **Content of Canvass Letters-General**

A [Guidance for subparagraph **4-A-12-4-(a)**.]

The losing competitive area should coordinate the transfer with the gaining competitive area and use the canvass letter to provide employees identified for transfer with available information on the position that is located in a different local commuting area.

- (a) If possible, the canvass letter should provide employees identified with the function information about:
 - (1) The new local commuting area where the position will be located;
 - (2) The timing of the transfer (for example, when the employee is actually expected to report to the new duty site);
 - (3) The gaining competitive area's structure and mission;
 - (4) Whether the position will be changed in the gaining competitive area;
 - (5) Information on the availability and cost of housing in the gaining competitive area;
 - (6) Relocation and travel expenses; and
 - (7) Other pertinent information, such as whether information in the canvass letter is subject to change.

 - (b) When a function is dispersed to more than one location, the agency may, by using canvass letters, offer identified employees a choice of:
 - (1) Geographic locations for transfer with the function; or
 - (2) Reassignment to other geographic areas not affected by the transfer of function.
-

Section 13, Volunteers for Transfer

Introduction This section contains additional guidance on the agency option of allowing additional employees to transfer with a function in some situations. Section 13 of Module 4, Unit A (4-A-13), covers volunteers for transfer.

Contents This section contains the following topics:

Topic	See Paragraph
Use of Volunteers-General	4-B-13-1

Additional Information When appropriate, Restructuring Information Handbook Module 4, Unit B (Guidance) has additional information on material in Unit 4-A.

To find additional information on this key paragraph in Unit 4-A,	In Unit 4-B see paragraph:
4-A-13-1	4-B-13-1

A This symbol highlights the references back to Unit 4-A.

i This symbol guides you toward more general references on the subject in Module 4 or in other Modules.

Section 13, Volunteers for Transfer

4-B-13-1

Use of Volunteers-General

A

[Guidance for paragraph **4-A-13-1**.]

At its option, the losing competitive area may allow employees not identified with the function to volunteer for transfer, provided that no employee who is identified with the function is subsequently separated or downgraded because of the use of volunteers.

- The use of volunteers who prefer transfer and relocation to a different locating commuting area in lieu of employees identified with the transferring function, may reduce the number of involuntary separations by freeing up positions for placement in the losing competitive area.
 - For additional guidance, see **Lockard v. Interior**, 74 M.S.P.R. 576 (1997).
-

Section 14, Transfer of Function Appeals and Grievances

Introduction This section contains additional guidance on employees' transfer of function appeals and grievances, which is covered in Section 14 of Module 4, Unit A (4-A-14).

Contents This section contains the following topics:

Topic	See Paragraph
No Basic Right to Appeal a Transfer of Function	4-B-14-1

Additional Information When appropriate, Restructuring Information Handbook Module 4, Unit B (Guidance) has additional information on material in Unit 4-A.

To find additional information on this key paragraph in Unit 4-A,	In Unit 4-B see paragraph:
4-A-14-1	4-B-14-1

A This symbol highlights the references back to Unit 4-A.

i This symbol guides you toward more general references on the subject in Module 4 or in other Modules.

Section 14, Transfer of Function Appeals and Grievances

4-B-14-1 **No Basic Right to Appeal a Transfer of Function**

A [Guidance for paragraph **4-A-14-1**.]

An employee has no right to appeal a transfer of function to the Merit Systems Protection Board except as an issue in a reduction in force, adverse action, or other appeal under the appellate jurisdiction of the Board. (5 CFR 1201.3(a))

- For additional guidance, see **Brown v. Air Force**, 4 M.S.P.R. 221 (1980), and **Owen v. Army**, 74 M.S.P.R. 71 (1997).
 - An employee may claim in a reduction in force appeal that, in lieu of the present reduction in force action, the individual had a right to transfer with a function that previously moved to a different competitive area.
 - For additional guidance on the right to allege in a reduction in force appeal that a potential transfer of function right accrued as the result of a prior personnel action, see **Seidel v. Agriculture**, 26 M.S.P.R. 605 (1985), and **McLean v. Army**, 55 M.S.P.R. 414 (1992), 988 F.2d 129 (1992, Fed. Cir.).
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