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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 316, 330, 351, 353, 359, 362, and 430

[Docket ID: OPM-2025-0107]

RIN 3206–AO86

Reduction in Force

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to revise its reduction-in-force (RIF) regulations. The proposed rule would make the RIF regulations more streamlined, efficient, and merit-based by prioritizing performance over tenure and length of service when determining which employees will be retained in a RIF and modifying the types of employees who are excluded from RIF competition. OPM also proposes to revise its regulations regarding the reemployment priority list (RPL), career transition assistance program (CTAP), the interagency career transition assistance program (ICTAP), transfers of function, and furloughs.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by using the Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions for submitting comments.

All submissions must include the agency name and docket number or RIN for this *Federal Register* document. Please arrange and identify your comments about the regulatory text by subpart and section number. If your comments relate to the supplementary information, please reference the heading and page number in the supplementary section. All comments must be received by the end of the comment period for them to be considered. All comments and other submissions received generally will be posted at https://regulations.gov as they are received,

without change, including any personal information provided. However, OPM retains discretion to redact personal or sensitive information, including but not limited to personal or sensitive information pertaining to third parties. As required by 5 U.S.C. 553(b)(4), a summary of this rule may be found in the docket for this rulemaking at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Noah Peters at (202) 606-0960 or by e-mail at employ@opm.gov.

SUPPLEMENTARY INFORMATION: OPM is proposing to revise its regulations governing a RIF and make related changes to its regulations under statutory authority found at 5 U.S.C. 1103, 1104, 1302, 3304, 3320, 3330, 3502, 3503, 3596, 4305, and 4315.

I. Agency Authority and History to Engage in RIFs

For approximately 150 years, Congress has recognized Federal agencies' authority to engage in RIFs. The first such statute, enacted in 1876, required that veterans receive a preference over other employees when such reductions were undertaken. 19 Stat. 169 (Aug. 15, 1876); see also *Hilton v. Sullivan*, 334 U.S. 323, 336-39 (1948) (summarizing history of veterans' preferences in reductions in force). A subsequent enactment precluded agencies from discharging or reducing the rank or salary of honorably discharged veterans. 37 Stat. 413 (Aug. 23, 1912). Interpreting this statutory framework, courts repeatedly rejected challenges to RIFs, recognizing that such reductions were a matter of executive discretion. See *Medkirk v. United States*, 45 Ct. Cl. 395, 401(Ct. Cl. 1910) ("The matter of qualification as between the persons then employed in the service was an administrative function which the courts could neither supervise nor inquire into after the exercise of the discretion of the proper official in dispensing with the services of those adjudged to be least qualified under the law which required a reduction in the force."); *Keim v. United States*, 177 U.S. 290, 295 (1900) (provision authorizing reductions in force "do[es] not contemplate the retention in office of a clerk who is inefficient, nor attempt to transfer the power of determining the question of efficiency from the heads of departments to the courts").

Later, the Executive Branch implemented a system whereby employees were placed into classes for purposes of determining which positions would be eliminated in a RIF. In 1921, President Harding issued an executive order directing demotions and dismissals of employees with the lowest ratings in each class, with a preference provided to veterans. Executive Order (E.O.) 3560. A subsequent executive order issued by President Coolidge in 1929 detailed how to categorize employees during a RIF. E.O. 5068. The Civil Service Commission then issued regulations that codified the various requirements governing RIFs. United States Civil Service Commission, Departmental Circular No. 372 (Sept. 4, 1942). These regulations recognized that a RIF may be "necessary because of insufficient appropriations, consolidation of functions, diminution of work, or other reason, whereby one or more employees serving in other than temporary appointments will be required to be dropped from the rolls."

As World War II concluded, a widespread understanding emerged that the Federal Government would need to shrink dramatically as the nation shifted from a wartime footing to a peace-time posture. President Roosevelt recognized that agencies may need to undertake reductions in personnel: "Veterans should be accorded special consideration in connection with any reductions in total personnel which it may be necessary for Federal agencies to work out from time to time." H.R. Rep. No. 78-1289 (1944). Congress then enacted the Veterans' Preference Act of 1944. The intent of the statute was to "give legislative sanction to existing veterans' preference, to the rules and regulations in the executive branch of the Government. . . ." *Hilton*, 334 U.S. 323 at 338 (quotation marks omitted). The statute provided, inter alia, that "[i]n any reduction in personnel in any civilian service of any Federal agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency ratings." Veterans' Preference Act of 1944, sec. 12, Pub. L. 78-359, 58 Stat. 387, 390.

Similarly, in enacting the Federal Employee Pay Act of 1945, Congress recognized the Executive Branch's authority to reduce the size of the Government. A Senate Committee Report

preceding enactment of the Act stated: "It was the feeling of the committee that the interests of efficiency and economy could best be served a policy of reduction of force in many Government agencies. By this proposal, authority of the Director of the Bureau of the Budget to fix ceilings for agencies within the executive branch is extended to all employees of executive agencies, including the Postal Service, Wage Board employees as well as employees subject to the Classification Act." S. Rep. No. 79-265, at 6 (1945).

In 1944, the Civil Service Commission exercised the authority delegated by the Veterans' Preference Act of 1944 to enact regulations governing reductions in force. See 9 FR 9575 (Aug. 8, 1944). The regulations encouraged agencies to proactively manage the size of their workforce. "Looking ahead for changes in workloads, available funds and employee turnover, and restricting appointments in certain lines of work may prevent a surplus in workers which would otherwise occur. It is better practice to keep a working staff down to the number required than to cut down an oversize staff of employees." *Id*. at 9576-77. Since the regulations were promulgated in 1944, they have been periodically amended and are codified at 5 CFR part 351.

In the 1966 recodification of Title 5, Congress amended the Veterans' Preference Act of 1944. Pub. L. 89-554, 80 Stat. 428 (1966). The amended statute provided: "[t]he Civil Service Commission shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to" four specified factors. The current version of the statute is substantively the same, with OPM substituted for the Civil Service Commission. 5 U.S.C. 3502. It provides that OPM "shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to--(1) tenure of employment; (2) military preference, subject to section 3501(a)(3) of this title; (3) length of service; and (4) efficiency or performance ratings." 5 U.S.C. 3502(a)(1)-(4).

In addition, the RIF statute provides that a preference eligible employee with a compensable service-connected disability of 30 percent or more whose performance has not been rated "unacceptable" is entitled to be retention preference ahead of other veterans. *Id*. 3502(b).

Other preference eligibles (that is, veterans) whose performance has not been rated "unacceptable" are entitled to retention preference ahead of other competing employees. *Id*. 3502(c). The statute goes on to prescribe the content of the required RIF notice and specifies that such notice must be provided to the employee and the employee's exclusive bargaining representative 60 days before the employee's release. *Id*. 3502(d). Pursuant to an amendment added as part of the Workforce Investment Act of 1998, if the RIF "would involve the separation of a significant number of employees," certain state and local government entities and officials must also be notified of the RIF. *Id*. In addition, the President may shorten the required notice period from 60 to 30 days (this authority has since been delegated to OPM). *Id*. 3502(e), E.O. 12828 (Delegation of Certain Personnel Management Authorities), 58 FR 2965. Under current regulations, agencies may invoke RIF authority when the release of competing employees is necessitated by a lack of work, shortage of funds, an insufficient personnel ceiling, reorganization, the exercise of reemployment rights or restoration rights, or reclassification of an employee's position due to erosion of duties. 5 CFR 351.201. In the context of a RIF, the term "reorganization" refers to the planned elimination, addition, or redistribution of functions or duties in an organization. *Id*. § 351.203.

The regulations acknowledge agencies' discretion when deciding that a RIF is necessary. An agency conducting a RIF must determine the categories within which positions are required, where those positions are to be located, and when those positions are to be filled, abolished, or vacated. § 351.201(a)(1). These agency decisions include determining when there are too many employees at a particular location in a particular line of work. The regulations further emphasize that, when an agency determines a RIF is necessary, the agency is responsible for following and applying the RIF regulations. § 351.204.

On numerous occasions since the Veterans' Preference Act of 1944 was enacted, the Federal Government has exercised its authority to conduct RIFs. As noted, widespread reductions in the Federal workforce were necessary after World War II ended. See 64 Ann. Rep.

U.S. Civil Service Comm'n 10 (1946-1947). President Truman acknowledged the widespread reductions in force and expressed hope that separated employees would be able to compete for other Federal positions. President Truman also noted that "[i]t is unrealistic to expect . . . that all these employees can be placed in current vacancies in the Federal service, which very properly is contracting in size." Harry S Truman, Statement by the President on Federal Employees Displaced by the Reduction-in-Force (Sept. 3, 1949), https://www.trumanlibrary.gov/library/publicpapers/201/statement-president-federal-employees-displaced-reduction-force.

The 1980s also featured Executive Branch-led efforts to reduce the Federal workforce, including through RIFs. These efforts were undertaken under the Reagan Administration's policy of reducing the size of Government. As President Reagan explained in a radio address, "[f]ifteen departments, agencies, and commissions have been able to reduce their payroll numbers by 20 percent or more." Ronald Reagan, Radio Address to the Nation on Federal Civilian Employment (Aug. 20, 1983), https://www.reaganlibrary.gov/archives/speech/radio-address-nation-federal-civilian-employment.

In the 1990s, the Clinton Administration maintained the policies of the Reagan Administration, both in terms of reducing the number of Federal employees and in exercising control over agencies to ensure that they were responsive to the President's policy goals. To promote the goal of reducing the size of the Federal Government, President Clinton issued E.O. 12839 the month after he took office. E.O. 12839, 58 FR 8515 (Feb. 10, 1993). The order outlined a plan to reduce 100,000 Federal positions. E.O. 12839 relied upon the President's authority under the Constitution and U.S. statutes, including 3 U.S.C. 301, 5 U.S.C. 3301, and 31 U.S.C. 1111. The order required each executive department or agency with over 100 employees to eliminate at least 4 percent of its civilian personnel positions (on a full-time equivalent (FTE) basis) over 3 fiscal years. It further instructed that the eliminated positions were to be vacated through attrition or "early out programs" established at the discretion of the agency heads. The

E.O. also required at least 10 percent of the reductions to come from the Senior Executive Service, GS-15 and GS-14 levels or equivalent. Target dates for the reductions were 25 percent of total reductions by the end of fiscal year (FY) 1993 and 62.5 percent by the end of FY 1994, with the reductions complete by the end of FY 1995. Finally, the E.O. created a role for OMB in the implementation of these cuts, instructing the Director of OMB to issue guidance directing agencies on how to implement the order and allowing OMB to create exemptions as necessary to ensure the continued delivery of essential services and compliance with applicable law.

Later in 1993, President Clinton signed a presidential memorandum entitled "Streamlining the Bureaucracy" in which he directed each executive agency head to submit a streamlining plan to the OMB Director as part of a goal to reduce the executive branch civilian work force by 252,000. 58 FR 48583 (Sept. 11, 1993). Also in 1993, President Clinton signed a presidential memorandum directing executive agencies to appoint officials responsible for, among other things, overseeing agency-specific application of personnel reductions. Implementing Management Reform in the Executive Branch, 58 FR 52393 (Oct. 1, 1993). Ultimately, during the Clinton Administration, there was a substantial reduction in the number of Federal employees, approximating 400,000, due in part to the implementation of RIFs.

More recently, under President Trump, agencies prepared RIF and reorganization plans pursuant to E.O. 14210, *Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative*. 90 FR 9669 (Feb. 14, 2025) (directing agencies, *inter alia*, to "promptly undertake preparations to initiate large-scale reductions in force (RIFs), consistent with applicable law"). In addition, RIFs were undertaken pursuant to E.O. 14242, *Improving Education Outcomes by Empowering Parents, States, and Communities*, E.O. 14217 *Commencing the Reduction of the Federal Bureaucracy*, and E.O. 14238, *Continuing the Reduction of the Federal Bureaucracy*. See, respectively, 90 FR 13679 (March 25, 2025) (directing the Secretary of Education to "to the maximum extent appropriate and permitted by law, take all necessary steps to facilitate the closure of the Department of Education"), 90 FR

10577 (Feb. 25, 2025) (directing that several government entities "be eliminated to the maximum extent consistent with applicable law"), and 90 FR 13043 (March 20, 2025) (same, except as to a different set of government entities).

In 2025, the Trump Administration oversaw the largest peacetime reduction in the size of the Federal workforce ever, some 317,000 employees (for a net reduction of about 250,000 employees). However, the overwhelming majority of these departures (over 92.5%) were due to voluntary programs like the Deferred Resignation Program, Voluntary Early Retirement Authority, Voluntary Separation Incentive Payments, and other voluntary resignations. Only a very small percentage of departures resulted from RIFs.

II. OPM's Role

Since RIF rules were codified in the Veterans' Preference Act of 1944, Congress has given OPM (and its predecessor agency the Civil Service Commission) broad authority to establish regulations necessary for agencies to effectuate reductions in force. Despite statutory amendments necessitating revisions to these regulations over the years, the amount of discretion provided to OPM by Congress remains broad.

The applicable statute (5 U.S.C. 3502) directs OPM to prescribe regulations "for the release of competing employees in a reduction in force" that give "due effect" to four factors: tenure of employment; military preference, length of service; and efficiency or performance ratings. *See* 5 U.S.C. 3502(a). The statute does not further define "reduction in force" or "competing employees."

Through its years of administering RIF rules, which include adjudicating requests for recognition of new competitive areas under 5 CFR 351.402 and shortened notice periods under 5 CFR 351.801, as well as providing extensive guidance, technical assistance, and RIF services to agencies on a reimbursable basis, OPM has accrued a deep knowledge and unique perspective on the application of these provisions by Federal agencies and their impact on the Federal workforce. In the 21st century these rules have become cumbersome and inflexible. Congress

has granted agencies broad powers to reorganize and restructure their workforce and has granted OPM broad regulatory authority to implement appropriate RIF procedures (see 5 U.S.C. chapter 35, subchapter II). But current RIF rules have calcified to the extent that they impede timely, if not effective, agency restructuring efforts due to the considerable investment in agency resources needed to invoke them. Over the decades, this disparity has been grinding against the changing needs of agencies which oftentimes include large-scale and urgent workforce restructurings.

For example, one author (an experienced former Federal employee and consultant for Federal agencies) called the current OPM RIF regulations "the ultimate bureaucratic poison pill." Fred Mills, *Civil Disservice: Federal Employment Culture and the Challenge of Genuine Reform*, at p. 42 (iUniverse 2010). He explained: "the RIF rules and regulations are so complex and cumbersome, the process so time-consuming and demoralizing, and the outcome so haphazard and invariably negative, that it's the absolute last option any sane organization would want to consider." *Id*.

OPM has seen these inefficiencies play out over the past year. OPM has seen how the current regulatory framework has not always supported agency downsizing efforts in an efficient manner. In 2025, OPM provided technical policy advice on, as well as provided advice and assistance and ran (on a reimbursable basis) numerous RIFs for Federal agencies. The cumbersome and intricate rules make RIFs more time-consuming and resource intensive than necessary and create the possibility of more errors when agencies attempt implementation. Further, the current rules prioritize tenure and length of service over performance ratings, meaning that high-performing employees may be separated while lower-performing, but more senior employees, may be retained in a RIF. As a result, agencies need a more streamlined and merit-based regulatory framework to support their workforce reshaping requirements.

In light of this, OPM is proposing these changes to improve the efficiency of the RIF process to effect better outcomes with less burden on agencies invoking these rules, and to increase the focus on merit in determining retention standing. The current regulatory framework

has been in place for decades and emphasizes tenure and length of service, non-merit factors, over employee performance. As discussed in more detail in section IV.A., RIF rules have become outdated and lack the flexibility that agencies need when downsizing in the modern environment. Simply put, the current regulations are antiquated and no longer reflect the needs of agencies operating in the 21st century. This framework may have been appropriate for an earlier time but has not kept pace with changes in the size, scope, and organizational complexity of Federal agencies, or the development and establishment of many positions those agencies rely upon. Instead, the current regulatory framework resembles the one in place in the late 1940s.

OPM is addressing this challenge by proposing a more efficient and merit-based set of RIF rules that agencies can use in conjunction with other modern downsizing tools, such as Voluntary Early Retirement Authority (i.e., "early outs" or VERA) and Voluntary Separation Incentive Payments (i.e., "buyouts" or VSIP), to address downsizing needs. The proposed revisions make the RIF process more clearly focused on merit by giving performance ratings a much more central role in determining retention in a RIF. These proposed changes will better assist agencies in retaining their top performers, which will leave agencies better positioned to carry out their missions after a RIF occurs. These proposals will also facilitate carrying out a RIF in an efficient manner that will best serve the American public and with less burden than under the current regulatory scheme.

III. Proposed Changes

OPM, under its statutory authority in 5 U.S.C. 3502, is proposing, in accordance with the procedural requirements under 5 U.S.C. 1103(b), to amend its regulations at subparts B, C, E, and H of 5 CFR part 351 and to make corresponding changes to part 316, subpart I, part 330, subparts A, B, D, F, and G, part 351, subparts D, F, and G, part 362, subpart B, and part 430, subpart B, to streamline, consolidate and revise tenure groups I, II, III into a "competitive service tenure group" and an "excepted service tenure group," along with two subgroups for each tenure group, as well as to prioritize performance over tenure and length of service in a RIF. OPM is

also proposing changes in parts 351 and 359 under its statutory authority in 5 U.S.C. 3502 and 3596 to streamline and improve the process for conducting RIFs, transfers of function, and furloughs in the Federal government. The proposed changes will assist agencies in executing more timely and efficient RIF actions and provide more flexibility for agencies in reshaping their workforces consistent with Federal law.

Part 351, Subpart B

OPM proposes to modify § 351.201(a)(2) to remove from the list of actions that require agencies to use RIF procedures reclassification of an employee's position due to erosion of duties if the action would take effect after an agency had formally announced a RIF in the employee's competitive area and the RIF would take effect within 180 days.

In 1986 revisions to its regulations, OPM generally removed reclassifications due to erosion in duties from among the categories of actions subject to RIF procedures. *See* 51 FR 319 (1986). In response to concerns expressed by commenters at that time that agencies could engage in RIF manipulation using erosion-of-duties reclassifications, however, OPM specified that erosion-of-duties reclassifications would continue to be subject to RIF procedures in one circumstance: when the reclassification action would take effect after an agency had formally announced a RIF in the employee's competitive area and the RIF would take effect within 180 days. *Id*.

Upon review, OPM considers it unreasonable and impracticable to require agencies to follow RIF procedures, including building a retention register, when they reclassify an employee's position based on erosion of duties within 180 days of an announced RIF. Indeed, OPM is not aware of any agency actually executing an erosion-of-duties reclassification action using RIF procedures since the 1986 revision to its regulations. It is therefore confusing to include erosion-of-duties reclassifications within 180 days of an announced RIF as one of the categories of actions that require agencies to follow RIF procedures, and OPM thus proposes to remove this category from § 351.201(a)(2).

To address the earlier-expressed concern of commenters about agencies using erosion-of-duties reclassifications to engage in RIF manipulation, OPM proposes to revise § 351.202(c)(3) to straightforwardly bar agencies from undertaking an erosion-of-duties reclassification action between the time an agency has formally announced a reduction in force in the employee's competitive area and the completion of the reduction in force, where the reclassification action would adversely affect an employee's retention standing in the proposed reduction in force.

Proposed § 351.202(b) and (c) rename these paragraphs 'Employees exempted' and 'Actions exempted' because covered individuals and actions described therein are not subject to part 351.

Proposed § 351.202(d), *Removal of excluded employees*, addresses the employees encumbering the positions that are otherwise excluded from the RIF mechanisms covered in part 351. Individuals in occupations covered under proposed § 351.202(d) are not competing employees for purposes of a RIF and may be retained, furloughed, separated, demoted or reassigned without following RIF procedures. That is, an agency may choose to retain or terminate an employee in an excluded position at its discretion when the agency has determined that a lack of work, shortage of funds, insufficient personnel ceiling, reorganization, or reclassification of the employee's position exists which would otherwise require the agency to invoke reduction in force procedures. This will give agencies more flexibility regarding whether to retain or terminate these employees and will streamline the process of conducting a RIF.

Proposed new § 351.202(d) establishes the list of employees excluded from RIF procedures, as they fall outside the definition of "competing employees" under 5 U.S.C. 3502(a) whose release due to furlough, separation, demotion, or reassignment due to lack of work, shortage of funds, insufficient personnel ceiling; reorganization, or the exercise of reemployment rights or restoration rights is subject to RIF procedures. Since U.S.C. 3502 does not define "competing employees," OPM has for many years supplied by regulation a definition of the

categories of "competing employees" whose release is subject to RIF procedures. *See* 5 CFR 351.203.

OPM has long defined "competing employees" by reference to tenure groups, differentiated by such factors as whether the employee has competitive status and has completed a probationary period, whether the employee has career or career-conditional status, and whether the employee is serving a temporary, term or indefinite appointment. The statutory term "competing employees" most naturally refers to employees in the competitive service whose appointment has been finalized; i.e., who have successfully completed a probationary period. *See* 5 U.S.C. 3321(a) (allowing the President to "take such action, including the issuance of rules, regulations, and directives" to "provide . . . for a period of probation . . . before an appointment in the competitive service becomes final."); 5 U.S.C. 7511 (excluding individuals serving probationary and trial periods under an initial appointment from the statutory definition of the term "employee"); 5 CFR 11.5 (requiring that an agency certify that continuing a probationary or trial period employee in the Federal service would "advance[] the public interest" before "finalization of their appointment to the Federal service.").

Congress has broadly directed that appointments to the excepted service also follow the principle of veterans' preference, *see* 5 U.S.C. 3320, and has delegated the responsibility for implementing that policy to OPM, *see* 5 U.S.C. 1302(c) (directing OPM to implement this congressional policy with respect to "retention" in the excepted service). Thus, OPM's RIF regulations have also traditionally encompassed some categories of excepted service employees. However, OPM's regulations give agencies discretion in providing assignment rights to excepted service employees, see 5 CFR 351.705.

OPM is now updating its definition of "competing employees," and, in proposed § 351.202(d), is specifying expressly the categories of employees who fall outside RIF competition. OPM's revised definition of "competing employees" includes employees in the competitive service tenure group and the excepted service tenure group. The competitive service

tenure group includes all employees in the competitive service with a career who, as of the date of the applicable RIF notice, are not serving an initial probationary period or a temporary or time-limited appointment of 1 year or less under subpart C or subpart D of part 316 of this chapter. The competitive service tenure group is further divided between tenure subgroup I (consisting of all career employees, as that term is used in part 315 of this chapter [typically those employees with more than 3 years of creditable service]) and subgroup II (all other competitive service employees who have completed an initial probationary period and are not serving under a temporary or time-limited appointment of 1 year or less).

The excepted service tenure group is defined as all employees occupying a career position (as defined in part 213 of this chapter) in the excepted service who is not serving a trial period pursuant to 5 CFR 11.3. The excepted service tenure group is further divided into tenure subgroups: subgroup I (consisting of all career [i.e., not Schedule C or G] excepted service employees who are not serving a trial period and whose employment carries no restriction or condition such as conditional, indefinite, or specific time limit), and subgroup II (consisting of all other excepted service employees who are not serving a trial period and who are not serving in a temporary or time-limited appointment of 1 year or less).

OPM is also providing a formal definition of "reduction in force": the release of a competing employee from his or her competitive level by furlough for more than 30 days, separation, or demotion, or reassignment requiring displacement, when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; or the exercise of reemployment rights or restoration rights. This definition closely tracks the longstanding coverage of OPM's RIF regulations, as reflected in 5 CFR 351.201(a)(2). Since the procedures specified in 5 U.S.C. 3502(d) only apply to employees who are released "due to a reduction in force," employees who are not "competing employees" may be retained or separated independent of "competing employees," and they do not require the notice set for in 5 U.S.C. 3502(d) when they are separated, furloughed, released, or reassigned.

Under OPM's revised definition of "competing employees," and its definition of "reduction in force," several enumerated groups of employees would be excluded from RIF competition. Proposed § 351.202(d) specifies that the provisions of this part do not apply to these groups of employees. Thus, an employee holding one of these appointments may be retained, furloughed, separated, demoted or reassigned without regard to the provisions of this part. They include employees on time-limited appointments of 1 year or less and employees serving probationary and trial periods. These are typically more junior, less-tenured employees who have historically been the first ones separated in a RIF. Specifying that the retention, furlough, separation, demotion or reassignment of these employees is not subject to RIF procedures would streamline RIF processes and the management of these positions without unduly disadvantaging these employees. Exempting these employees from RIF procedures would in fact make it more likely that they could continue Federal employment, as it would enable agencies to retain such employees without regard to their standing in a retention register.

Under OPM's definition of "competing employees," employees in the competitive service who are serving an initial probationary period would be excluded from RIF procedures. OPM is making this change for several reasons. *First*, these employees will typically not have a rating of record, meaning that they cannot yet be evaluated based on their performance, and OPM intends to make performance the primary consideration for whether an employee is retained in a RIF. It would not be fair to include such employees in RIF competition. *Second*, employees who have not completed an initial probationary period are not considered to have finalized appointments to their positions. *Third*, employees serving an initial probationary period have traditionally had the lowest retention standing, and it is administratively burdensome to continue including them on retention registers and to require their separation in an agency undergoing restructuring to be done according to complicated RIF procedures. *Fourth*, these employees are unlikely to be unduly disadvantaged by being excluded from RIF procedures. That is because employees serving an initial probationary period are typically the first ones

separated in a RIF. Allowing the decision to retain these employees to be separate from their standing in a retention register would make it more likely that they could be retained in an agency or agency component that was reducing positions. *Fifth*, 5 CFR 11.5 allows employees serving an initial probationary period to be terminated based on the needs and interests of the agency and the organizational goals of the agency and the Government, which would encompass termination due to lack of work and organizational restructuring. There is no need to require agencies to undergo more cumbersome procedures to terminate employees whose appointments to the competitive service have not been finalized and whom agencies must evaluate to determine whether their permanent employment would advance the public interest. *Sixth*, employees serving an initial probationary period are also excluded from adverse action procedures pursuant to 5 U.S.C. 7511 and the corresponding definition of "employee" in that section, indicating that Congress meant for agencies to have great flexibility regarding the employment of these employees. Requiring employees to be subject to cumbersome and inflexible RIF procedures would be contrary to Congress's intent in excluding employees serving an initial probationary period from adverse action procedures.

OPM notes that, however, a supervisory or managerial employee with career tenure but who is only on probation with respect to those supervisory or managerial functions (i.e., is entitled to be returned to a nonsupervisory or non-managerial position rather than being subject to removal; see 5 CFR part 315, subpart I) would be included in the RIF in the supervisory or managerial position. Further, an employee who is serving both an initial probationary period and a supervisory probationary period simultaneously is exempt from RIF procedures. OPM proposes to add a definition of *Initial probationary period* to § 351.202 to clarify this point. It is also adding a definition of *Trial period*—defining it in the same manner as it is defined in 5 CFR 11.3—to add further clarity.

The proposed paragraph (d) also enumerates many exclusions for excepted service positions from the RIF procedures. For example, employees holding a career position (as

defined in part 213 of this chapter, i.e. not a Schedule C or G employee) in the excepted service who are serving a trial period would not be subject to the RIF procedures. The exclusion for trial period employees in the excepted service is supported by similar logic to that supporting the exclusion of probationary employees in the competitive service: these employees do not have a finalized appointment to their position and frequently will not have received a performance review. Further, 5 CFR 11.5 allows trial period employees to be terminated based on the needs and interests of the agency and the organizational goals of the agency and the Government, which would encompass termination due to lack of work and organizational restructuring.

In addition, competitive and excepted service employees who are serving temporary or time-limited appointments of 1 year or less would be excluded from RIF competition. In the case of employees serving temporary or time-limited appointments of 1 year or less, it is unnecessarily burdensome to require agencies to undergo RIF procedures to separate such employees before their expected end date. OPM has traditionally excluded at least some categories of employees on temporary appointments of less than a year from RIF competition. For example, in its regulations at 5 CFR 316.911, OPM recognizes that employees "whose initial appointment [is] for a period of 1 year or less are not assigned a tenure group and do not compete with other employees in a RIF."

Excluding these categories of employees would streamline the operation of a RIF, while making it more likely that an agency would be able to retain these employees, as the decision to retain or separate these employees would no longer depend on their retention standing. Employees holding such appointments could be retained or separated without regard to RIF procedures. In addition, Schedule C and Schedule G appointments would expressly not be subject to RIF procedures. (It is doubtful that any agencies have ever actually used RIF procedures when retaining or terminating such non-career employees.) OPM is making corresponding changes to 5 CFR part 351, subpart E – Retention Standing.

OPM expects that agencies undergoing restructuring will appropriately account for these categories of employees (that is, employees serving initial probationary periods or trial periods, employees serving temporary or time-limited appointments of 1 year or less, and Schedule C and G employees) in their workforce planning efforts, consistent with budgetary constraints and mission needs.[1] OPM is additionally specifying that, for an agency to utilize the procedures under proposed 5 CFR 351.605 (abolishment of a competitive area), it must abolish the positions of these employees as well. However, OPM believes that removing these categories of employees from formal RIF procedures will enhance efficient and flexible workforce management, allowing for agencies to retain or separate from these employees without having to follow complex RIF procedures.

Proposed § 351.203 modifies the definition of the term *Competing employee* to mean an employee in the competitive service tenure group or the excepted service tenure group consistent with changes in proposed § 351.202 and the proposed definitions of the tenure groups in § 351.502. It also adds a definition of *Competitive service tenure group* to mean all employees within competitive service tenure subgroups I and II; that is, all employees in the competitive service who, as of the date of the RIF notice, are not serving an initial probationary period or a temporary or time-limited appointment of 1 year or less under subpart C or subpart D of 5 CFR part 316. OPM also proposes to define the *Excepted service tenure group* as all employees within excepted service tenure subgroups I and II; that is, all excepted service appointees serving in a career position (that is, not in Schedule C or G) who, as of the date of the RIF notice, are not serving a trial period or in a temporary or time-limited appointment of 1 year or less.

Proposed § 351.203 also modifies the current definitions for *current rating of record* and *rating of record*. The revision to *current rating of record* updates the cross reference within part

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[1] If the agency chooses to separate these employees as part of its workforce restructuring efforts, they must receive such notice as is required un, they must receive such notice as is required under other parts of the Civil Service Rules and regulations pursuant to their employment status and appointing authority, and as may be provided for under the terms of agency regulations (along with other applicable sources of law). See, e.g., 5 CFR 11.5.

351. The revision to *rating of record* clarifies that only the annual performance evaluation – and not a mid-year within-grade evaluation – can be used when computing the performance credit, which is used for determining standing on the retention register.

Proposed § 351.203 also modifies the definition of the term *furlough* to exclude an emergency shutdown furlough caused by a lapse in congressional appropriations where the ultimate duration of the furlough is not known by the agency at the outset of the furlough and is instead dependent entirely on congressional action, rather than agency action. This change in the definition of *furlough* aligns with longstanding OPM guidance, which explains that OPM's "RIF furlough regulations. . . contemplate planned, foreseeable, money-saving furloughs that, at the outset, are planned to exceed 30 days," not emergency shutdown furloughs caused by lapses in congressional appropriations where the length of the furlough is not known in advance.[2] In practical terms, this change is meant to relieve agencies from the burden of having to send successive furlough notices where a lapse in appropriations lasts more than 30 days—a burden that is especially acute when employees may be temporarily forced to work without pay during an extended government shutdown. Finally, proposed § 351.203 modifies the definition of *transfer of function* to adhere to the text of the applicable statute enacted by Congress to govern transfers of function, 5 U.S.C. 3503. That statute only applies to a situation "[w]hen a function is transferred from one *agency* to another . . . ." (emphasis added). Nonetheless, OPM's current regulations require an agency to proceed under transfer-of-function procedures whenever a function is transferred from one competitive area to another—even if both competitive areas are

[2] OPM, *Guidance for Shutdown Furloughs*, at pp. 44-45 (revised September 2025), *available at* https://opm.gov/policy-data-oversight/pay-leave/reference-materials/guidance-for-shutdown-furloughs-sep-28-2025/; OPM, *Answers to Frequently Asked Funding Lapse Questions*, at p. 2 (Jan. 18, 2019), available at https://www.opm.gov/chcoc/transmittals/2019/answers-frequently-asked-funding-lapse-questions_508.pdf.

within a single agency. These regulations unjustifiably deviate from the plain text of 5 U.S.C. 3503, which speaks clearly of transfers of functions *between* agencies, not *within* agencies.[3]

In addition to not being required by the statutory text, the requirement to follow elaborate transfer-of-function procedures whenever a function is transferred *within* an agency imposes unnecessary burdens on agencies seeking to reorganize and realign functions to keep up with evolving mission needs; inhibits agencies from undertaking internal movements of personnel that would benefit the government; and generates litigation costs for agencies without meaningfully advancing merit principles.[4] Notably, the regulations governing transfers of function applicable to the Senior Executive Service (SES) apply only to "the transfer of the performance of a continuing function from one *agency* to one or more other *agencies*." 5 CFR 359.608 (emphasis added); *see also* 5 U.S.C. 3595 (providing to the SES rights comparable to those provided by 5 U.S.C. 3503). The changed definition of "transfer of function" in proposed § 351.203 would ensure a consistent application of "transfer of function" provisions between the regulations governing SES and non-SES employees.

OPM is also proposing to modify § 351.203 *Definitions* by adding meanings for *agency*, *Government obligation* and *military spouse*.

OPM is defining *agency* to mean an "Executive agency" as defined in 5 U.S.C. 105, along with the Government Publishing Office (GPO) except that it does not include the U.S. Government Accountability Office (GAO). At present, part 351 applies to the Executive Branch of the Federal Government and those parts of the Federal Government outside the Executive Branch which are subject to the competitive service requirements. The GPO has competitive service employees; GAO does not. *See* 4 CFR 3.1.

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[3] *See*, *e.g.*, *Bondi v. VanDerStok*, 604 U.S. 458, 477 n. 4 (2025) (statutory interpretation requires "interpret[ing] the words Congress enacted consistent with their ordinary meaning.") (internal quotation marks omitted); *Brown v. Gardner*, 513 U.S. 115, 122 (1994) ("A regulation's age is no antidote to clear inconsistency with a statute," especially where the regulatory text "flies against the plain language of the statutory text").

[4] *See*, *e.g.*, *Cross v. Dep't of Transp.,* 127 F.3d 1443, 1449 (Fed. Cir. 1997)*; Roche v. U.S. Postal Serv*., No. NY-0752-93-0178-I-1, 1995 WL 132671 (M.S.P.B. Mar. 20, 1995), *aff'd*, 80 F.3d 468 (Fed. Cir. 1996); Neilson v. Fed. Highway Admin., 21 M.S.P.R. 178, 180 (1984); *Prince v. Dep't of Transp*., 11 M.S.P.R. 584, 586 (1982).

OPM is defining *Government obligation* for purposes of § 351.608(c) to mean a legal or moral duty or action whether the duty or action is imposed by law, contract, promise, social relations, courtesy, kindness, or morality. A Government obligation may include, but is not limited to, retaining an employee to enable the employee to maintain and utilize his or her health insurance during pregnancy until the birth of a child or utilizing paid parental leave following the birth or placement of a child for adoption purposes. OPM is establishing this definition to help clarify the types of circumstances for which an agency may grant a temporary exception under § 351.608(c). Finally, OPM is defining *military spouses* for purposes of proposed § 351.608(f) to mean a spouse of a member of the armed forces or service member as defined in 5 CFR 315.612(b)(4)(i).

OPM is correcting a typo in § 351.204 to change "reduction force" to "reduction in force."

Part 351, Subpart C

The proposed revisions substitute the word "agency" for "competitive area" throughout subpart C and make other conforming changes, so as to align with the text of the statute Congress enacted governing transfers of functions (5 U.S.C. 3503), which applies to transfers of functions *between* agencies, not *within* agencies.[5] In addition, these revisions remove unnecessary burdens on agencies transferring functions within a single agency, allowing agencies to adapt to changing mission needs, better perform statutory functions, and more efficiently manage employees without having to undergo cumbersome procedural requirements to allow employees to transfer alongside their associated function whenever functions are transferred within an agency. The proposed revisions also align the definition of "transfer of function" in § 351.203 with the usage of the same phrase in 5 CFR 359.608, which is applicable to the SES. Transfers and reassignments of employees in the competitive service within agencies

[5] *See* footnote 3, *supra*, and sources cited therein.

would continue to be governed by 5 CFR part 335; transfers and reassignments of employees within agencies in the excepted service would continue to be governed by 5 CFR parts 213 and 302.

OPM proposes to revise § 351.302(b) to remove the unclear term "liquidation" and make the meaning of this section more plain by adapting language from OPM's *Workforce Reshaping Handbook* explaining its practical operation.[6] The revised § 351.302(b) explains, in accordance with the *Workforce Reshaping Operations Handbook*, that when an employee who is transferred is identified with a function or functions that will be terminated in the gaining agency within 60 days, the transferred employee is not a competing employee for other positions in the agency gaining the function, and does not have a right to any continuing positions in the agency gaining the function or functions.

The proposed revision to § 351.302(g) clarifies the procedures that agencies must follow in asking employees whether they wish to transfer with the function, when functions are transferred between agencies. It clarifies that this procedure applies only to employees who have been identified with the transferring function via § 351.303. It also clarifies that agencies may require the employee to respond to the canvass letter asking the employee whether he or she wishes to transfer with the function within a set period of time but must give the employee at least 30 days to consider the offer. The revision specifies that an agency may treat a failure to respond to the canvass letter as a declination of the offer to transfer with the function, unless the employee establishes that the failure to respond within the specified timeframe was due to circumstances beyond the employee's control such as the employee not receiving the letter or employee or family member illness. OPM also proposes to remove some of the provisions of § 351.302 regarding allowing and disallowing employees to change their initial decisions whether to transfer with the function (depending on whether the employee is seeking to change from

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[6] OPM, *Workforce Reshaping Operations Handbook* (p. 100), available at https://www.opm.gov/policy-data-oversight/workforce-restructuring/reductions-in-force-rif/workforce_reshaping.pdf

initial acceptance of the transfer to subsequent declination, versus initial declination to subsequent acceptance). OPM's intention in proposing this change is to allow the agency flexibility and discretion as to whether to allow an employee to change his or her mind or not.

OPM's proposed revision to § 351.303 significantly simplifies the process for identifying which employees are identified with the transferring function. In place of "Identification Method One" (paragraph (c)), "Identification Method Two" (paragraph (d)), and paragraph (e), which allows employees to volunteer to transfer with the function in place of employees identified by Identification Method One and Identification Method Two, OPM proposes a single, simple method of identifying which positions are identified with the transferring function: whether the agency determines that an employee performs the transferring function during at least half of his or her work time, as determined by such sources as the employee's position description, work reports, organizational time logs, work schedules, and information obtained from supervisors.

Part 351, Subpart D

Proposed § 351.402(b) redefines and simplifies the definition of a competitive area to provide additional clarity for agencies in managing their reduction in force activities and to remove confusing and outdated language in the current regulation. The proposed language will allow agencies to designate a competitive area as being any organizational unit, or combination of organizational units, on an agency's official organizational chart. Organizational charts must be available on the agency's public facing web page or otherwise appropriately documented by the agency.[7] An organizational unit for these purposes must be designated/approved by the head of the agency, or designee, and the designation or approval cannot be redelegated to an official below the agency's headquarters level.

[7] The flexibility to not post the organizational chart on a public-facing website would be particularly important for agencies and sub-agencies in the Intelligence Community or whom otherwise have national security missions, as posting an organizational chart on a public-facing website might be problematic for these agencies.

In addition, OPM proposes to revise § 351.402(b) to require that an organizational unit for purposes of a RIF must be clearly distinguished from other organizational units with regard to its operation, work function, staff, and supervisory oversight. OPM believes this terminology—drawn in part from OPM's *Workforce Reshaping Operations Handbook*[8]—is clearer than the present language in § 351.402(b) that "[t]he minimum competitive area is a subdivision of the agency under separate administration within the local commuting area," while addressing the same concern: that an agency will seek to identify a competitive area solely for RIF purposes that does not align with its bona fide organizational structure. OPM's experience is that the phrase "under separate administration" is vague and generates unnecessary confusion. Further, OPM believes the current terminology is not aligned with the operational realities of Federal agencies, where many components may be "under separate administration" in some important respects, but under centralized administration in other important respects. OPM believes its proposed alternative language, by contrast, is clearer and more specific, and more aligned with the ways in which organizational units within an agency may be properly differentiated from one another.

In addition, OPM proposes that field or regional offices officially established by the agency as discrete organizational units and shown on the agency's official organizational chart may be their own competitive area(s). For example, an agency may have an officially established headquarters office and officially established regional offices (e.g., North region, South region, East region, and West region). In this example, each region could be its own competitive area.

If an employee works from an approved alternate location, then the employee must be assigned to the competitive area for the organizational unit to which they are formally assigned within the organization. For example, an employee working at an alternate location as a result of

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[8] OPM, *Workforce Reshaping Operations Handbook*, at pp. 30, 32, available at https://www.opm.gov/policy-data-oversight/workforce-restructuring/reductions-in-force-rif/workforce_reshaping.pdf.

a reasonable accommodation or an agency-approved exemption to the "Return to In-Person Work" Presidential Memorandum of January 20, 2025 (90 FR 8251) would compete with the assigned organizational unit and could not be placed in a competitive area based on the geographic location where he or she works. An agency may create a separate competitive area for employees who are assigned to a geographic location, such as a national park or a county. For example, four employees assigned to the same geographic location or territory may be treated as one competitive area, even if they are in separate organizational units. When applying this provision, geographic location is the competitive area. This provision does not include employees who happen to work from different geographic locations as a part of a reasonable accommodation or Return to In-Person Work exemption, as those employees must be assigned to the competitive area for the organizational unit to which they are officially assigned, without regard to their geographic location.

Part 351, Subpart E

OPM is proposing to revamp 5 CFR part 351, subpart E "Retention Standing," with revised and reorganized content in §§ 351.501 through 351.504. As an initial matter, OPM is proposing to renumber current § 351.505 *Records* and § 351.506 *Effective date of retention standing* to § 351.506 *Records* and § 351.507 *Effective date of retention standing*, respectively. In addition, OPM is proposing to modify the order of retention at 5 CFR 351.501. Specifically, when determining the order in which employees are placed on a RIF retention register, agencies will do so on the basis of whether the employee is in the competitive service tenure group or excepted service tenure group. Within each group, employees will be ranked based on performance, as augmented by additional points for veterans' preference. Where employees are tied, the employee in the higher tenure subgroup (with subgroup I ranked ahead of subgroup II) will be ranked ahead, as outlined in further detail below. When employees are still tied, the employee with the longer service will be ranked ahead.

Proposed § 351.501 *Order of retention* would establish the order that competing employees in a RIF would be classified on a retention register. OPM is proposing to delete current § 351.502 Order of retention – excepted service and cover these provisions in proposed § 351.501. Section 351.501 would also be reframed to clarify that the order of retention provisions apply to employees in both the competitive and excepted services.

Under current regulations at 5 CFR 351.501 (entitled "Order of retention – competitive service"), the order of retention for classifying competing employees on a retention register is (in descending order): 1) tenure of employment, 2) veterans' preference, 3) length of service, and 4) performance. Length of service is augmented by performance; an employee receives additional retention service credit (i.e., additional years of service) based on the employee's applicable ratings of record. OPM is proposing to modify the order of retention to make performance ratings a more significant factor. The United States deserves a federal workforce that is high-quality, efficient, and dedicated to the public interest. By elevating performance in the order of retention, the employees who are best contributing to the mission will be more likely to be retained during restructuring.

In proposing to place performance and veterans' preference ahead of tenure and length of service in determining retention standing, OPM is also guided by the experience of the Department of Defense (DOD). Section 1101 of the National Defense Authorization Act (NDAA) for Fiscal Year 2016 (Pub. L. 114-92), enacted on November 25, 2015, directed that the Secretary of Defense establish procedures to provide that, in any reduction in force of civilian positions in the competitive or excepted service, the order of retention will be based primarily on performance. In implementing this statutory mandate, DOD implemented procedures for RIFs that placed performance ahead of tenure, veterans' preference, and length of service. The operative statute was amended in December 2021 to remove the directive that employee performance be the "primary" factor in determining which employees are to be separated by a RIF—instead, it is one factor that the Secretary may consider. *See* 10 U.S.C. 1597(e). However,

DOD has continued to adhere to a performance-first system for determining which employees are separated in a RIF,[9] as DOD believes that prioritizing performance over tenure and other factors in RIFs supports mission readiness and a high-performing workforce. OPM has studied DOD's procedures and, while it does not adopt them in whole, it is convinced by DOD's experience that prioritizing performance is the right approach and that a performance-first approach is facilitated by prioritizing performance ratings, as augmented by veteran's preference, ahead of tenure and length of service in determining RIF retention standing.

Under the current regulations at 5 CFR 351.504, credit for performance is used to supplement an employee's length of service for purposes of determining an employee's standing on a retention register (both of these retention factors are expressed in years). An employee receives additional retention service credit based on his or her performance as reflected in up to three ratings of record and their assigned summary levels received within the last four years. This additional credit is added to the employee's length of service to determine that employee's retention standing within the employee's appropriate tenure group and veterans' preference subgroup. The additional credit for performance is: 20 additional years of service for each rating of record with a Level 5 (Outstanding or equivalent) summary level; 16 additional years of service for each rating of record with a Level 4 (Exceeds Fully Successful or equivalent) summary level; and 12 additional years of service for each rating of record with a Level 3 (Fully Successful or equivalent) summary level, in accordance with the summary levels described in 5 CFR 430.208. The additional years of service are added together, divided by 3, and rounded up to a whole number, if necessary, to determine the number of years that will be used to adjust an employee's actual service computation date and arrive at an adjusted service computation date for RIF purposes.

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[9] See DOD Instruction 1400.25, Volume 351, DoD Civilian Personnel Management System: Reduction in Force (June 24, 2021).

OPM is proposing to elevate performance above tenure and length of service in the RIF order of retention. Under this proposal, employees competing in a RIF will first be sorted into: their appropriate tenure group (competitive service versus excepted service); then within each tenure group, by performance in descending order based on values assigned for the employee's three most recent ratings of record (i.e., performance credit—see discussion of proposed § 351.503). Then, performance credits would be augmented by additional points based on veterans' preference, as discussed in proposed § 351.504. Where two employees have the same performance credit, as augmented by veterans' preference, the tie would be broken according to which employee is in the higher tenure subgroup (with subgroup I ranked ahead of subgroup II). If the employees are still tied, the tie would be broken based on length of service based on each employee's actual service computation date. Thus, length of service will be used as a tie-breaker for employees with the same performance credit (as augmented by veterans' preference) and in the same tenure group and subgroup.

In proposed § 351.502 *Tenure of employment*, OPM is proposing to redefine the tenure groups for both the competitive and excepted services, based on proposed changes to § 351.202(b) *Employees excluded*, and the new definitions of "competitive service tenure group" and "excepted service tenure group" proposed in § 351.202. The proposed competitive service tenure group would consist of all competitive service employees (in accordance with the provisions of § 315.201) who are not (as of the date of the RIF notice) serving an initial probationary period or a temporary or time-limited appointment of 1 year or less under 5 CFR part 316. The proposed excepted service tenure group would consist of excepted service employees occupying a career position (as defined in § 213.101) who are not serving a trial period and are not serving in a temporary or time-limited appointment of 1 year or less.

OPM also proposes to identify two tenure subgroups within both the competitive service tenure group and the excepted service tenure group, in alignment with proposed changes proposed changes to § 351.202(b) *Employees excluded*, and the new definitions of "competitive

service tenure group" and "excepted service tenure group" proposed in § 351.202. Competitive service tenure subgroup I would include each career employee in the competitive service who, as of the date the agency issues a specific reduction in force notice, is not serving an initial probationary period. This definition is substantially the same as the current competitive service tenure group I.

Competitive service tenure subgroup II would consist of every other competitive service employee who, as of the date of the RIF notice, is not serving an initial probationary period or a temporary or term appointment of 1 year or less. OPM is proposing to exclude employees serving an initial probationary period and a temporary or time-limited appointment of 1 year or less from competitive service tenure subgroup II, and the competitive service tenure group, for the reasons explained above in connection with proposed changes to § 351.202(b): that is, to give agencies undergoing workforce restructuring additional flexibility in determining whether to retain or separate these employees (to the extent that these employee are not otherwise covered under the proposed competitive service tenure subgroups I and II). OPM believes that streamlining and simplifying current competitive service tenure groups I, II and III into two tenure subgroups, with exclusions for employees serving an initial probationary period or a time-limited or temporary appointment of 1 year or less, will aid in making RIF procedures more streamlined and merit-based by reducing the importance of tenure in the RIF process.

Excepted service tenure subgroup I would include all employees occupying a career position (that is to say, not in Schedule C or G) in the excepted service who, as of the date the agency issues a specific reduction in force notice, are not serving a trial period and whose appointment carries no restriction or condition such as conditional, indefinite, or specific time limit. This definition is substantially the same as current excepted service tenure group I. Excepted service tenure subgroup II would consist of all other career employees in the excepted service (that is to say, not in Schedule C or G) who are not serving a trial period or a temporary or time-limited appointment of 1 year or less. OPM is proposing to exclude trial period

employees from the excepted service tenure subgroup II for reasons explained above in connection with proposed changes to § 351.202(b), and notes that excepted service employees serving temporary appointments of 1 year or less are generally excluded from RIF competition under current regulations. OPM believes that streamlining and simplifying current excepted service tenure groups I, II and III into two tenure subgroups, with exclusions for employees serving a trial period or a time-limited or temporary appointment of 1 year or less, will aid in making RIF procedures more streamlined and merit-based by reducing the importance of tenure in the RIF process.

Proposed § 351.503 *Performance* establishes that an agency will list employees on a RIF retention register (within the same tenure group) based on each employee's calculated performance credit. Generally, the three most recent ratings of record received during the 4-year period prior to the date of issuance of reduction in force notices may be considered; however, an agency may establish a cut-off date after which no new rating of record will be considered. See proposed paragraph (c)(2) of § 351.503. See also the subsequent discussion of § 351.503(f) regarding situations in which an employee does not have three ratings of record.

We are proposing that an agency calculate a value to represent an employee's performance credit. Ratings of record will be assigned a numerical value in conjunction with the patterns of summary level in 5 CFR 430.208(d) as follows:

- 7 for a Level 5 (Outstanding or equivalent) summary level,
- 5 for a Level 4 (Exceeds Fully Successful or equivalent) summary level,
- 3 for a Level 3 (Fully Successful or equivalent) summary level,
- 0 for a Level 2 (Minimally Successful or equivalent) summary level,[10] and
- 0 for a Level 1 (Unacceptable) summary level.

[10] In a separate rulemaking (91 FR 8780, Feb. 24, 2026), OPM has proposed to remove the Level 2 summary level. OPM would make conforming edits to part 351 based on the changes finalized in that rulemaking, such as removing the references to the Level 2 summary level in §§ 351.503 and 351.701.

Agencies will list competing employees on the retention register in descending order (within the same tenure group) based on each employee's performance credit, which is the sum of the values assigned for their three most recent ratings of record received during the 4-year period prior to the issuance of RIF notices. OPM believes listing employees in descending order (i.e., highest to lowest) based on their total summary level rating for three most recent ratings of record is the most objective methodology for these purposes and best implements the principle of emphasizing performance over length of service. Employees would then receive additional performance credit based on veteran status: each preference eligible veteran with a compensable service-connected disability of 30 percent or more receives an additional 5 points added to their total performance credit, while every other preference eligible veteran would then receive an additional 3 points added to their total performance credit.

For example, the employees below are covered under a pattern H five-summary level rating performance appraisal system as described in 5 CFR 430.208(d). Their ratings and totals are:

Employee	**Ratings**	**Performance credit**	**Total**
Alice:	5/4/4	7/5/5	17
Bill:	4/3/3	5/3/3	11
Carol:	4/4/3	5/5/3	13
Fred:	3/4/5	3/5/7	15

These employees would be listed on the retention register in the following order: Alice, Fred, Carol, then Bill.

Proposed § 351.503(b) *Ratings used* establishes which ratings of record may be used as the basis for calculating an employee's performance credit. For most employees, an employee's ratings of record are those recorded pursuant to subpart B of 5 CFR part 430. This paragraph also explains how an agency determines an employee's performance credit for RIF purposes for

employees not covered under subpart B of 5 CFR part 430 and in other special circumstances. Paragraph (b) of § 351.503 remains largely unchanged from the provisions currently in § 351.504(a)(1)-(3), though we are removing the reference to 'additional retention service credit' currently found in § 351.504(a)(1).

Proposed § 351.503(c) *Consideration of performance* includes language currently in § 351.504(b) but modifies this language by removing the reference to "additional retention service credit" (i.e., credit for performance will no longer be added to an employee's length of service). Performance will now be the primary basis for rating employees within each tenure group. Performance will be measured based on performance credit, i.e., the total of each employee's summary level ratings for the employee's three most recent ratings of record for performance consistent with § 351.503(a), which would then be augmented by additional credit for veterans' preference status as set forth in proposed § 351.504. Proposed § 351.503(c)(1) removes the reference to 'awarding additional retention service credit' currently found in § 351.504(b)(4).

New paragraph § 351.503(d) *Single rating pattern* describes how agencies list employees who have been covered under the same rating pattern of summary levels during the 4-year period prior to the date of issuance of the reduction in force notice or the agency-established cutoff date. Paragraph (d) proposes that, for employees covered under a summary level appraisal system in which the highest summary level is a level "3" rating (i.e., a pattern A ('pass/fail'), or pattern D system), the agency may, in its sole and exclusive discretion, give additional credit for employees who have documented exceptional performance to give more weight to certain performance-related actions than others for purposes of listing some level "3" employees ahead of other employees on a retention register. This paragraph explains that evidence of exceptional performance may include documentation showing an agency has awarded: an employee with the highest Agency or Departmental award (such as a Secretary's or Chairman's award), a special act or service award, a quality step increase (QSI), or other performance awards or bonuses (e.g.,

a “time-off” award for demonstrated performance above expectations). OPM is proposing this change to support the elevation of performance over tenure and length of service and to provide a method by which an agency may make meaningful distinctions among employees in a pattern A or D performance appraisal program (i.e., the highest summary level rating is a “3” or satisfactory) who have documented performance above expectations in these appraisals systems.

For example, an agency could, instead of assigning a value of “3”, assign a value of “7” for all employees who received the agency’s highest sustained performance award in a particular year, a value of “5” for all employees who received an organizational or component-specific award in a particular year, and a value of “4” for all employees who received a time off award. An agency that chooses this option must specify and document, in advance of any RIF, how it will prioritize performance awards for these purposes. OPM believes this option is consistent with the principle of elevating performance over tenure and length of service, and that it provides an agency with a method for making meaningful distinctions among employees with a fully successful rating when some of these employees were recognized for exceptional performance.

For example, the employees below are covered under a three-summary level pattern as described in 5 CFR 430.208(d). Their agency has an established policy of providing enhanced performance credit by assigning 7 points for agency awards, 5 points for organizational awards, and 4 points for various performance awards. (An agency award is designated by “A”; a component-level award is designated by “O”; and a performance award or QSI is designated by “P”.) Their ratings and totals are:

Employee	**Ratings**	**Performance credit**	**Award(s)**	**Assigned Values for awards**	**Total**
Alice:	3/3/3	3/3/3	A/-/P	7/0/4	3+3+3+7+4=23
Bill:	2/3/3	0/3/3	-/-/P	0/0/4	0+3+3+0+0+4=10
Carol:	3/3/3	3/3/3	O/O/A	5/5/7	3+3+3+5+5+7=17

Fred:	3/3/3	3/3/3	-/-/-	0/0/0	3+3+3+0+0+0=9

New paragraph § 351.503(e) *Multiple rating patterns* addresses situations in which an agency has employees in a competitive area who have ratings of record under more than one pattern of summary levels, as described in 5 CFR 430.208(d). This paragraph explains that an agency may, in its sole and exclusive discretion, choose to provide enhanced performance credit to employees under disparate pattern summary levels under certain circumstances. To do this OPM is proposing that an agency may transmute or assign an employee a higher summary level rating than what he or she received under a previous rating system only when there is documented evidence of exceptional or higher-level performance consistent with the criteria in proposed § 351.503(d). If an agency chooses to recognize higher-level performance in this way, it must transmute the rating of an employee who meets this requirement to the highest summary level of the pattern summary level being used during the RIF (i.e., a level "4" rating if the agency conducting the RIF uses a pattern C or G summary level appraisal system, or a level "5" rating if the agency uses a pattern B, E, F, or H summary level appraisal system). Documented evidence of exceptional or higher-level performance for these purposes includes award or receipt of the highest Agency or Departmental award (such as a Secretary's or Chairman's award), a quality step increase, or an annual performance appraisal bonus. For example, an employee was covered by a pattern A (pass/fail) appraisal program for two years and a pattern H (5 summary level) appraisal program for the one year prior to a RIF. While covered under the pattern A appraisal program the employee received his agency's highest award for excellent performance in the second year. Under the five-summary level system he received a level "4" rating. Under this proposal the agency must assign the employee a higher rating level; so, in this instance, the employee's performance ratings for the three-year period would be 3/5/4 (his level 3 rating for the second year would be transmuted to a level 5) and his performance credit for the three-year period would be 15 for purposes of § 351.503(a).

OPM is also proposing that, where an employee who goes from an appraisal system which uses a higher pattern of summary levels to a lower one (e.g., an employee who goes from a 5 summary level appraisal program to two level system (i.e., pass/fail system)), an agency may adopt policies which would allow employees with ratings above the highest summary level of the lower pattern system to be listed ahead of any employee on the retention register who does not have documented evidence of exceptional performance as described above.

Lastly, this proposed section requires an agency that seeks to recognize outstanding performance in this way in conducting a RIF to 1) specify the basis on which it will consider exceptional or higher-level performance as described in § 351.503(d) and transmute or assign an employee a higher rating in accordance with the pattern of summary level used during the RIF, 2) make this information readily available for review prior to running a reduction in force, and 3) apply this criteria consistently to all competing employees. OPM is proposing to allow agencies to provide enhanced performance credit to competing employees in this manner in order to implement the policy that an agency emphasize performance over tenure and length of service in a RIF. OPM recognizes that performance awards should be used by agencies to reward high performers and that managers and supervisors are expected to make decisions regarding award determinations consistent with the applicable regulations and agency polices. This method allows agencies to adopt policies that would prevent exceptional performers from being disadvantaged because they may be covered under two or more patterns of summary rating levels which may not make meaningful distinctions for performance among employees. However, OPM is not requiring agencies to adopt such policies. OPM believes that agencies may reasonably choose to prioritize administrability in determining an employee's performance credit, instead of seeking to award additional performance credit in this manner.

Paragraph (f) *Missing ratings* of § 351.503 describes how an agency should factor performance ratings into the RIF process when an employee does not have three actual ratings of record during the 4-year period prior to the date of issuance of RIF notices, or the 4-year period

prior to the agency-established cut-off date. Proposed § 351.503(f) uses the modal rating concept for employees with no ratings during the 4-year period prior to the RIF, as currently found in § 351.504(c)(1), but modifies the current provisions by removing the reference to "additional retention service credit" consistent with the aim of E.O. 13839 (i.e., credit for performance will no longer be added to an employee's length of service). The term 'modal rating' is currently defined in § 351.203 and would remain unchanged. For employees with at least one rating of record but less than three, this section proposes that an agency total the performance credit for each summary level for the ratings that exist, divide by the number of ratings, and use this value for the missing ratings. For example, an employee in five-level pattern H summary level appraisal system has summary level rating of "3" fully successful and "4" exceeds fully successful but is missing a third rating. The agency would add 3 + 5, then divide by 2, for a value of 4 to represent the performance credit for the missing rating. The agency then adds the performance credit for each of the three ratings of record: 3, 5, and 4 for a total of 12 and enters the employee on the retention register accordingly.

Proposed § 351.504 *Veterans' preference* defines how veterans' preference would be applied in a RIF in both the competitive and excepted services. It gives effect to the requirements in 5 U.S.C. 3502(b) and (c) that veterans with compensable service-connected disability receive retention preference ahead other veterans, and that veterans receive retention preference ahead of other competing employees in a RIF. Each preference eligible employee with a compensable service-connected disability of 30 percent or more would receive an additional 5 points added to their performance credit, while every other preference eligible employee would receive an additional 3 points added to their performance credit. Non-preference eligible employees do not receive any additional points added to their performance score. The proposed rule also identifies veterans' preference subgroups of AD for preference eligible employees with a compensable service-connected disability of 30 percent or more;

subgroup A for other preference eligible employees; and subgroup B for non-preference eligible employees.

Order of Retention Examples

The following examples illustrate and contrast the impact of performance ratings of record and their summary levels on a retention register under the current rules and the proposed rules. Consider the following employees in a General Schedule (GS) 201-12 position:

Name	Tenure Group	Vets Pref Subgroup	Rating of Record Summary Levels	Service Comp Date
Al	I	A	3 / 3 / 3	01/01/1998
Barb	I	A	5 / 4 / 5	01/01/2020
Carl	II	A	3 / 4 / 4	01/01/2022
Dave	I	A	4 / 5 / 4	01/01/1990
Emma	II	A	3 / 4 / 4	01/01/2024

Example 1: Current Rules

Under the current rules, a retention register constructed in 2018 for these employees would look like this, based on retention factors considered in this order: Tenure | Vets Pref | Adjusted Service Computation Date (ASCD) — i.e., the service computation date (SCD) adjusted for additional service credit (ASC) based on ratings of record summary levels:

Name	Tenure Group	Veterans' Preference Subgroup	Rating of Record Summary Levels	SCD	ASC	ASCD
Dave:	I	A	4 / 5 / 4	01/01/1990 –	18 years *[(16+20+16)/3]* =	01/01/1972
Al:	I	A	3 / 3 / 3	01/01/1998 –	12 years *[(12+12+12)/3]* =	01/01/1986
Barb:	I	A	5 / 4 / 5	01/01/2020 –	19 years *[(20+16+20)/3]* =	01/01/2001

Carl:	II	A	3 / 4 / 4	01/01/2022 –	14 years *[(12+16+12)/3]* =	01/01/2007
Emma:	II	A	3 / 4 / 4	01/01/2024 –	15 years *[(12+16+16)/3]* =	01/01/2009

Example 2: Proposed Rule

Under the proposed rule, the retention register for these same competing employees would look like this, based on considering retention factors in this order: Tenure, Performance based on the total of the employee's summary levels augmented by Veterans' Preference, and Service Computation Dates:

Name	Tenure Group	Veterans' Preference Subgroup	Rating of Record Summary Levels	Performance Credit Totals	Tenure Subgroup	Service Computation Date
Barb:	CS	A	5 / 4 / 5	7+5+7+3 = 22	I	01/01/2020
Dave:	CS	A	4 / 5 / 4	5+7+5+3 = 20	I	01/01/1990
Al:	CS	A	3 / 3 / 3	3+3+3+3 = 12	I	01/01/1998
Carl:	CS	A	3 / 4 / 4	3+5+5+3 = 16	II	01/01/2022
Emma:	CS	A	3 / 4 / 4	3+5+5+3 = 16	II	01/01/2024

Example 3 Proposed rule

The following illustrates how veterans' preference and length of service apply under the proposed rules. Assume the same group of employees but with one difference: Emma receives additional performance credit based on status as a veteran with a compensable service-connected disability, as follows:

Name	Tenure Group	Vets Pref Subgroup	Rating of Record Summary Levels	Performance Credit Totals	Tenure Subgroup	Service Comp Date
Al	CS	A	3 / 3 / 3	12	I	01/01/1988
Barb	CS	A	5 / 4 / 5	22	I	01/01/2020
Carl	CS	A	3 / 4 / 4	16	II	01/01/2010
Dave	CS	A	4 / 5 / 5	20	I	01/01/1990
Emma	CS	AD	3 / 4 / 4	18	II	01/01/2024

Under the proposed rule, the retention register for these employees would look like this, based on considering retention factors in this order: Tenure | Performance based on the total of the employee's summary levels | Vets Pref | Service Computation Date. In this example Emma is listed ahead of Carl because she receives additional performance credit as a veteran with a compensable service-connected disability, despite being in the same tenure subgroup and having less service credit than Carl.

Name	Tenure Group	Vets Preference Subgroup	Rating of Record Summary Levels	Performance Credit Totals	Tenure Subgroup	Service Comp Date
Barb:	CS	A	5 / 4 / 5	22	I	01/01/2020
Dave:	CS	A	4 / 5 / 4	20	I	01/01/1990
Al:	CS	A	3 / 3 / 3	12	I	01/01/1998
Emma:	CS	AD	3 / 4 / 4	18	II	01/01/2024
Carl:	CS	AD	3 /4 / 4	16	II	01/01/2010

OPM is modifying proposed § 351.506(c) to attune these provisions with proposed changes in § 351.505.

OPM is proposing to revise § 351.507 to make clear that the effective date of retention standing is measured as of the date the employee receives a specific reduction in force notice, not the date a RIF separation actually occurs. This will make it more administratively feasible for agencies to conduct a RIF in instances where the actual date of RIF separation is delayed due to litigation or other unforeseen factors. Measuring retention standing as of the date of RIF separation would require an agency to undergo the costly and time-consuming task of re-running the retention register whenever a RIF separation is delayed, without undermining merit or fairness.

Part 351, Subpart F

OPM is proposing to modify § 351.601 for consistency with how retention standing is to be calculated under Subpart E of part 351.

OPM proposes to modify § 351.602 to remove the prohibition on retaining an employee serving a specifically limited temporary appointment in a competitive level while releasing a competing employee from that level. OPM believes that agencies should have the flexibility to retain or terminate a temporary employee without regard to RIF procedures.

OPM is proposing to simplify and streamline its regulations in § 351.604 regarding furloughs of more than 30 consecutive calendar days (or more than 22 workdays if done on a discontinuous basis over a period not exceeding 1 year). The present regulations require agencies to always furlough employees based on retention standing, and to always recall employees to duty from furlough based on retention standing. This means that agencies must presently undergo the time-consuming and expensive process of building a retention register before conducting a furlough or recalling employees from duty (unless *all* employees within a competitive area are furloughed and then recalled back to duty at the same time). OPM's experience is that the requirements imposed by § 351.604 (including to build a retention register and recall employees based on retention standing) means that agencies rarely use the furlough procedures articulated in § 351.604. This inhibits agencies from using the furlough flexibility in

cases where an agency faces a funding shortfall or other exigency that might necessitate a furlough, depriving agencies of a potentially useful option that would allow agencies to temporarily furlough employees (either fully or partially) for a set period of time, instead of separating them entirely.

OPM proposes to allow agencies additional leeway to furlough employees and recall employees from furlough. Instead of building a retention register, agencies must communicate to competing employees, in writing and in advance of the furlough, the criteria by which employees will be furloughed and subsequently recalled to duty. In determining which competing employees will be furloughed and the order in which they will be recalled to duty, the agency's policy may consider the agency's operational and mission needs, along with normal retention factors like an employee's tenure group and subgroup; an employee's performance as reflected in the employee's most recent rating of record; veteran preference; and the employee's length of service.

OPM is proposing to revamp and clarify § 351.605 *Liquidation provision*. The revised language relabels this section as *Abolishment of a competitive area* to more accurately describe its purpose. The revised language explains that the appropriate use of this provision is when an agency is abolishing all positions (including the positions of employees otherwise excluded from the provisions of part 351 under § 351.202(d)) in a competitive area within 180 days. Because all positions in the competitive area will be eliminated, an agency will not be required to release competing employees in order of retention standing (i.e., in accordance with subparts E and F), as is currently the case. Also, an agency would be required to apply the mandatory exceptions under § 351.603. And it may release employees at different times by invoking the permissive temporary exceptions under § 351.608(c)-(f), as appropriate. Since employees are not being ranked on a retention register, OPM proposes that agencies need not provide notice to employees with higher retention standing under § 351.603(a)(4) when invoking the permissive temporary exceptions under § 351.608(c)-(f). The revised section explains that an agency may not use the

assignment right provisions in subpart G because all positions in the competitive area will be abolished. When using these provisions an agency must follow § 351.801, *Notice period*. In addition, an agency is required to follow the provisions of § 351.802(a)(1), (3), (5), (6) and (b) when applying § 351.605. At a minimum, an agency must provide any released employee with the following: the action being taken and its effective date; the competitive area being abolished; a link to 5 CFR part 351 and access to the agency's records pertinent to the RIF being run to abolish the competitive area; and the employee's appeal rights.[11] In addition, in compliance with 5 U.S.C. 3502(d)(2), the agency must provide a statement that, because all positions in the competitive area are being abolished pursuant to 5 CFR 351.605, the employee was not ranked relative to other competing employees in the reduction in force. OPM believes that requiring agencies to build a full retention register when all positions in a competitive area are being abolished imposes unnecessary costs and burdens on agencies (and ultimately the taxpayers whose money funds those agencies), and that doing so is not required by 5 U.S.C. 3502.

OPM proposes to modify § 351.606(a) to clarify its meaning and to align its provisions with other changes in this rulemaking. Under this provision, an agency would be required to give retention priority to a competing employee restored to duty following uniformed service who is entitled to retention under § 351.209(b) for either 6 months or 1 year after reemployment. In addition, OPM proposes to modify § 351.606(c) because employees released under § 351.603 (where all positions in a competitive area are being abolished in 180 days) no longer must be released in order of retention standing.

OPM is proposing to modify and clarify current § 351.607 *Permissive continuing exceptions*. OPM is relabeling this section as *Discretionary continuing exceptions* to modernize this section with other provisions in this chapter for which agency use is optional. OPM is also adding explanatory language for the convenience of the reader. This language explains that an

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[11] See the subsequent discussion regarding a proposed change to § 351.802(a)(6) in a different rulemaking in the section "Other Regulatory Changes."

agency may use this exception when needed to retain an employee to avoid a lapse in a work activity that cannot be performed by another employee within 90 days without undue interruption that would otherwise occur if the employee was released on the effective date of the RIF.

OPM is proposing to modify and clarify § 351.608 *Permissive temporary exceptions*. OPM proposes to rename this section *Discretionary temporary exceptions* to modernize the section title consistent with other provisions in this chapter for which agency use is optional. It also creates new flexibilities for an agency to retain an employee past the effective date of a RIF due to a government obligation. Proposed § 351.608(a) clarifies the purpose of this section and reflects that the provisions of paragraph (a) apply to each of the exceptions provided for in paragraphs (b)-(g). Current paragraph (g) of § 351.608 would be moved to a new paragraph (a)(4).

Proposed § 351.608(c) modifies the existing government obligation provision to include examples of situations in which the exception may be used, such as when an employee, or spouse of employee, is pregnant on the effective date of a RIF or an employee has not used all available paid parental leave to care for a recently born child or a child recently placed with the employee for adoption purposes. This paragraph proposes that an employee must sign a written agreement in which the employee understands or attests to limitations established by the agency and § 351.608. OPM is proposing these changes to provide agencies with additional flexibilities to recognize a Government obligation, as newly defined in § 351.203 to assist Federal employees who otherwise would face a lapse or termination of their Federal health insurance upon the effective date of a RIF.

Paragraph (d) of § 351.608 would expand the existing exception to allow employees with medical conditions or other circumstances that would qualify for use of sick leave to use other appropriate leave (paid or unpaid) or other paid time off in addition to sick leave, subject to a 90-day cap and provided that the leave is used continuously.

Proposed § 351.608(e) labels this provision "annual leave" to make clear the type of leave appropriate for an exception under this paragraph, which has been expanded to include not only employees covered by a Federal leave system under an authority other than 5 U.S.C. chapter 63 but also employees covered by a retirement law not referenced in § 351.606(b) or a health benefits law other than 5 U.S.C. chapter 89.

The exception at the current § 351.608(f) would be moved to paragraph (g) with minor edits for consistency with the language elsewhere in this section.

A new § 351.608(f) establishes a temporary exception for military spouses as defined in § 351.203. An agency may retain an eligible military spouse for up to 60 days beyond the effective date of a RIF. OPM is proposing this action to further enhance the Administration's on-going support for military spouses. On May 9, 2018, the President signed Executive Order E.O. 13832 (83 FR 22343) to "improve military spouse employment by enhancing job opportunities within the Federal Government, expanding licensure portability, and increasing remote and flexible job options that provide continuity and financial stability for military spouses." In early 2025, the President exempted military spouses from the return-to-office directive for Federal civilian employees. In a May 9, 2025, proclamation honoring Military Spouses the President noted that employment is a critical challenge for military spouses. "Military spouses face a 21 percent unemployment rate — one of the highest demographics in the country — and a 25 percent wage gap compared to their civilian counterparts." (Proclamation 10936, 90 FR 20359) This proposal provides an additional flexibility for military spouses facing separation through a reduction in force.

Part 351, Subpart G

Proposed § 351.701(a) replaces tenure groups I and II with the competitive service tenure group. In addition, OPM notes that it is proposing in a separate rulemaking to remove the Level

2 summary rating,[12] and OPM would make conforming edits to part 351 based on the changes finalized in that rulemaking, including removing the references to the Level 2 summary rating in § 351.701(a).

OPM proposes to consolidate § 351.701(b) and (c). Based on the new method of defining tenure groups and assigning retention standing based on performance credit as augmented by veterans' preference, with tenure subgroup and length of service as tiebreakers, subgroups would no longer play a predominant role in determining retention standing, and thus there is no longer a need for the separate concepts of an employee "bumping" another employee in a lower subgroup, and "retreating" to the position of a lower-ranked employee in the same subgroup. OPM proposes instead that a released employee be assigned to a position held by another employee with lower retention standing in the same tenure group, who is not more than three grades below the position from which the employee was released, and for which the released employee is qualified, pursuant the criteria set forth in § 351.702 and § 351.703.

OPM proposes to eliminate § 351.701(d) "Limitation." This provision meant to prohibit an employee with a current annual performance rating of record of Level 2 or "minimally successful" from obtaining assignment to a position held by an employee with a higher performance rating. However, with the new method of calculating retention standing proposed in this rulemaking, which emphasizes performance over length of service, OPM believes that this provision is no longer necessary. Further, OPM is proposing to award no performance credit for employees who have received a Level 2 rating (or equivalent), further rendering this provision unnecessary. OPM also recognizes that 5 U.S.C. § 3502(b) and (c) requires that veterans' preference in retention standing be awarded to preference eligibles "whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title," and a Level 2 rating under current OPM regulations is "minimally satisfactory," not

[12] 91 FR 8780 (Feb. 24, 2026).

"unacceptable." Thus, this section is not consistent with the new method of calculating retention standing, which simplifies the process of determining assignment rights.

Proposed § 351.702(a)(4), pertaining to qualifications for assignment, is modified to include language clarifying that in determining qualifications for reassignment an agency must use an assessment that allows for demonstration of job-related skills, abilities, knowledge, and competencies; is based on a job analysis; and does not rely on a self-assessment from an automated examination. Paragraph (a)(4) also provides examples of the types of assessments an agency may use, which include: structured interviews; a work-related exercise; a custom or generic procedure for measuring an employee's employment or career-related qualifications and interests; a structured resume review; or another assessment (such as a USA Hire assessment) provided it demonstrates job-related technical skills, abilities and knowledge, and is relevant for the position for which the assessment is developed.[13] OPM is conforming this section to 5 U.S.C. 3304.

OPM is proposing to modify current § 351.705 *Administrative assignment* in alignment with the proposed changes to §§ 351.501-351.505 and 351.701. Specifically, OPM is proposing to eliminate references to optional agency flexibilities to allow employees with lower retention standing to displace an employee with higher standing in the same subgroup under certain circumstances. With the more merit-based and straightforward order of retention proposed in this rulemaking, OPM believes that there should no longer be a need for these exceptions. OPM proposes to retain, and renumber, current § 351.705(c), which provides that agencies may, at their discretion, provide competing employees in the excepted service with assignment rights to other positions under the same appointing authority on the same basis as assignment rights provided to competitive service employees under § 351.701

Part 351, Subpart H

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[13] OPM expects that agencies would administer these assessments in accordance with applicable law, including providing reasonable accommodations where legally required to do so based on disability.

OPM proposes to modify § 351.802(a)(2) to substitute "veterans' status" for "subgroup," and to add references to notifying employees of their tenure group and subgroup. OPM proposes to update language in § 351.802(a)(3) by requiring agencies to provide competing employees with a link to 5 CFR part 351 and access to the agency's records pertinent to the RIF being run.

Part 316, Subpart I

OPM proposes to revise § 316.911, which specifies how RIF procedures apply to employees hired under the post-secondary student hiring authority under 5 U.S.C. 3116 and part 316, subpart I, of this chapter, to comport with the changes that part 351 that OPM is elsewhere proposing.

Under the proposed revisions to part 351, it continues to be the case that, as before, "[s]tudents whose initial appointment was for a period of 1 year or less are not assigned a tenure group and do not compete with other employees in a RIF." However, students whose initial appointment is for a period expected to last more than 1 year would no longer be placed in tenure group III for purposes a RIF, as OPM is proposing to abolish tenure group III. Instead, under OPM's proposed revisions to part 351, students whose initial appointment was for a period expected to last more than 1 year are placed in the competitive service tenure group for purposes of part 351 of this chapter only upon completion of an initial probationary period.

Part 330, Subpart A

OPM proposes to change the "definitions" section of § 330.101 to accommodate the modifications of tenure groups I, II and III proposed elsewhere in this rulemaking. Specifically, OPM would eliminate the definition of "tenure groups" and, in its place, include the definition of the "competitive service tenure group" in 5 CFR 351.502(a). OPM also proposes to change the definition of "permanent competitive service workforce" and "permanent competitive service employees" to encompass all employees serving under career or career-conditional appointments in the competitive service tenure group, no longer tenure groups I and II. OPM would modify the definition of "Agency" to align with the definition of the same term proposed in § 351.203, to

encompass all Executive agencies plus GPO, but excluding GAO, on the ground that GPO has competitive service employees and GAO does not.

The provisions of 5 CFR part 330 relating to the Reemployment Priority List (RPL), Career Transition Assistance Program (CTAP) and Interagency Career Transition Program (ICTAP) relate closely to RIFs, as these programs are designed to assist employees who have been or are about to be displaced by a RIF in finding continued Federal employment. Unsurprisingly, the current regulations regarding these programs cross-reference 5 CFR part 351 in several places. Thus, OPM believes it to be appropriate to update its 5 CFR part 330 regulations so that definitions and concepts align with similar definitions and concepts in 5 CFR part 351.

Part 330, Subpart B

OPM proposes to change the definition of "qualified" in § 330.202 to align with OPM's definition of that same term in § 351.702 (in the content of assignment rights in a RIF). To be qualified for a position, an RPL registrant, just like an employee competing in a RIF, would be required to have the capacity, adaptability, and special skills necessary to satisfactorily perform the duties of the position without undue interruption. And just like an employee competing in a RIF, OPM proposes that such capacity, adaptability, and special skills must be demonstrated through an assessment that allows for demonstration of job-related skills, abilities, knowledge, and competencies; is based on a job analysis; and does not solely include or principally rely on a self-assessment of the candidate's own abilities. As in § 351.702, OPM proposes to provide acceptable examples of such assessments. OPM is retaining the additional requirement in § 330.202 that, to be qualified for a position, an RPL registrant must meet any other applicable requirements for competitive service appointment, and it is providing a specific example of such an additional requirement: that the RPL registrant meet suitability requirements specified under part 731 of this chapter.

OPM also proposes to amend § 330.203 to substitute "the competitive service tenure group" for the previous terms "tenure group I or II." OPM understands that it is defining the term "the competitive service tenure group" differently from how it previously defined "tenure group I or II"; in particular, it is excluding employees who had been serving an initial probationary period from the competitive service tenure group, where such employees had previously been included in competitive service tenure group II.

It is OPM's intention that this change not be applied retroactively to employees who are currently registered on the RPL. Therefore, it is adding that employees who hold another qualifying competitive service appointment, as determined by OPM, will be eligible for the RPL. OPM intends by this provision to ensure that its definition of "the competitive service tenure group" will not be applied retroactively to disadvantage employees who previously received a RIF notice before the effective date of the new rules, or who previously became eligible for the RPL due to a qualifying injury or disability that predated the effective date of the new rule.

OPM proposes to modify § 330.206 to remove a reference to tenure groups I and II and replace it with a reference to the competitive service tenure group. OPM also proposes to modify § 330.212(c), under the heading "Agency flexibilities," to remove the reference to RPL registrants having the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position, as determined by the agency. Instead of being part of the criteria for modifying an OPM or OPM-approved qualification standard, OPM is moving this provision so that it is part of the definition of a "qualified" RPL applicant, so as to align the definition of "qualified" in § 351.702 with the definition of the same term in § 330.202. OPM additionally believes that the reference to having "the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position" more appropriately describes what should be required of a qualified applicant for a vacant position, as opposed to a criteria for an exception from an OPM or OPM-approved qualification standard. OPM is removing the reference to an RPL registrant having to meet any minimum educational

requirements for the position, notwithstanding an agency's decision to modify a qualification standard, to give agencies more flexibility in waiving educational requirements for RPL applicants. This flexibility aligns with Executive Order 13932, *Modernizing and Reforming the Assessment and Hiring of Federal Job Candidates* (June 26, 2020), which directs that Federal agencies prescribe minimum educational requirements only where such qualifications are legally required to perform the duties of the position in the State or locality where those duties are to be performed. The only standard for modifying an OPM or OPM-approved qualification standard, OPM believes, should be that the exception is applied consistently and equitably.

In addition, OPM proposes to modify § 330.213(b) to remove references to tenure groups I and II and subgroups, both of which are being modified by changes to Part 351. Instead, an agency using this selection method must only place qualified RPL candidates in retention standing order and may not pass over a candidate with a higher retention standing to select a candidate with a lower retention standing.

OPM proposes to modify § 330.213(c), which prescribes a method for selecting qualified RPL placement priority candidates based on numerical scoring. Instead of rating and ranking candidates based on job experience and education, OPM proposes that an agency using this method must instead rate and rank candidates based on their job-related skills, knowledge, and competencies as a measured by an assessment. The assessment must be based on a job analysis, and agencies cannot rely principally on a candidate's self-assessment of their own skills, abilities, knowledge, and competencies. Agencies using the numerical scoring method would be required to rate and rank qualified RPL placement priority in a fair and consistent manner and would be required to assign additional points to candidates based on veterans' preference.

The changes to the numerical scoring method align with the Federal government's move towards skills-based hiring, as measured by validated assessments, and away from educational requirements. This process was initiated by Executive Order 13932 that has continued with the Chance to Compete Act of 2024 (Public Law 118-188), Executive Order 14170 (*Reforming the*

Federal Hiring Process and Restoring Merit to Government Service) of January 20, 2025, and the Merit Hiring Plan,[14] each of which require the government to move towards implementing technical and alternative assessments to the maximum extent possible when competitively selecting candidates for employment.

Part 330, Subpart D

OPM proposes to amend § 330.404 to revise an outdated reference to the "Government Printing Office," and to substitute the term "the competitive service tenure group" for "tenure group I or I."

Part 330, Subpart F

OPM proposes to amend the definitions section in § 330.602 remove references to "tenure group I or I" and add in their place "the competitive service tenure group" in describing employees eligible for CTAP. OPM does not intend this change to apply retroactively so as to deprive employees who received a RIF separation notice, declined a directed geographic reassignment, or received a notice of expected separation before the effective date of the rule of CTAP eligibility. OPM is therefore adding that an employee holding another qualifying competitive service appointment, as determined by OPM, would be CTAP eligible.

OPM proposes grammatical and formatting changes to the list in § 330.609 of permitted personnel actions that may be taken as an exception to CTAP selection priority. It also proposes to add a new permitted personnel action: to retain, or finalize the appointment of, an employee serving a probationary or trial period pursuant to Civil Service Rule 11.

Part 330, Subpart G

OPM proposes to amend the definitions section in § 330.702 to remove references to "tenure group I or I" and add in their place "the competitive service tenure group" in describing employees eligible for ICTAP. OPM does not intend this change to apply retroactively and so is

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[14] Assistant to the President for Domestic Policy & OPM, *Merit Hiring Plan* (May 29, 2025), *available at* https://www.opm.gov/chcoc/latest-memos/merit-hiring-plan.pdf.

adding that an employee holding another qualifying competitive service appointment, as determined by OPM, would be ICTAP eligible.

OPM proposes a grammatical revision to § 330.705 to correct a typo: an agency must not appoint any candidate from outside its permanent competitive service workforce *into a vacancy* if there is a qualified ITCAP selection priority candidate available for the vacancy, unless an exception in § 330.707 applies.

OPM proposes grammatical and formatting changes to the list in § 330.707 of permitted personnel actions that may be taken as an exception to ICTAP selection priority. It also proposes to add a new permitted personnel action: to retain, or finalize the appointment of, an employee serving a probationary or trial period pursuant to Civil Service Rule 11.

Part 353, Subpart C

OPM proposes to remove a reference to tenure group III in § 353.301(a). Instead of "tenure group III," OPM proposes to substitute "term or indefinite appointment," which encompasses the categories previously included in tenure group III.

Part 359, Subpart H

Consistent with the proposed changes to the definition of "furlough" in § 351.203, OPM proposes to revise the definition of "furlough" in § 359.802 (regulating furloughs in the SES) to align with OPM's longstanding guidance that "SES competitive furlough requirements are not applicable to emergency shutdown furloughs because the ultimate duration of an emergency shutdown furlough is unknown at the outset and is dependent entirely on Congressional action, rather than agency action."[15]

Part 362, Subpart B

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[15] OPM, *Guidance for Shutdown Furloughs*, at pp. 44-45 (revised September 2025), *available at* opm.gov/policy-data-oversight/pay-leave/reference-materials/guidance-for-shutdown-furloughs-sep-28-2025/; OPM, *Answers to Frequently Asked Funding Lapse Questions*, at p. 2 (Jan. 18, 2019), *available at* https://www.opm.gov/chcoc/transmittals/2019/answers-frequently-asked-funding-lapse-questions_508.pdf.

OPM proposes to modify § 362.205 of its regulations regarding the Pathways Program by removing references to how RIF procedures apply to Pathways interns, as those references would no longer be accurate or necessary given OPM's proposed changes to Part 351. Pursuant to proposed § 351.502(b), the termination of a Pathways intern would only be covered by RIF procedures if the intern had completed a trial period under 5 CFR 11.3. Otherwise, Pathways interns could be retained or separated by an agency without regard to RIF procedures.

Other Regulatory Changes

OPM notes that it is engaged in three additional rulemakings that include proposals to modify 5 CFR part 351. Reduction in Force Appeals (RIN 3206-AO99) would amend subpart I, which this rulemaking does not address.[16] Managing Senior Professional Performance (RIN 3206-AO88) amends part 430, to which this rulemaking makes numerous references.[17] Both RIN 3206-AO88 and this rulemaking involve the movement and renumbering of provisions. OPM proposes to make conforming edits to parts 351 and 430 to ensure that cross-references are maintained. For example, senior professionals are currently subject to the performance appraisal regulations in subpart B of part 430, which are referenced in part 351. If RIN 3206-AO88 were finalized as proposed, part 351 would need to be revised to reflect that the relevant performance appraisal regulations are in both subpart B and subpart E of part 430.

OPM is also proposing to modify § 430.208(d) to remove the current reference to assigning additional retention service credit to align this provision with the proposed changes in 5 CFR part 351. Paragraph (d)(5) of § 430.208 would be revised to remove the reference to "the number of years of additional retention service credit" and replace it with a general reference to proposed § 351.503 *Performance*.

In the third rulemaking, Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees (RIN 3206-AP06), OPM has also proposed amendments to part

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[16] 91 FR 5861 (Feb. 10, 2026).
[17] 91 FR 8763 (Feb. 24, 2026).

430.[18] In this RIF rule, OPM proposes to make appropriate conforming changes to part 351 following the finalization of that rule. Based on the current language, OPM would make conforming changes to proposed 5 CFR 351.503 to adjust the calculations for an employee's performance credit by removing Level 2 from the list of summary levels and removing references to summary level patterns that would be eliminated under this rulemaking.

IV. Expected Impact of This Proposed Rule

A. Statement of Need

The proposed changes are needed because current RIF rules are outdated and no longer address the needs of agencies in the twenty first century. The current regulatory framework has been in place since the middle of the twentieth century with few modifications since then. The current rules have become cumbersome and inefficient. The proposed changes offer a more streamlined RIF structure that emphasizes performance over other factors in the downsizing process. These changes promote the general principle that employees should be retained *on the basis of merit*. The proposed changes incorporate this principle, which will assist Federal agencies in retaining their best performing employees when conducting RIF actions. Agency missions and the workers they employ to carry out these missions have become more complex since the mid-twentieth century when the current rules were developed. So have the positions agencies seek to fill to meet these changing needs. The skill sets of many existing positions have changed, and new positions addressing rapidly evolving skills, such as those for scientific and technical positions, have emerged. At the same time, organizational structures within agencies have evolved. Moreso than ever before, many organizations are characterized by multiple funding sources, complex supervisory and oversight structures, and employees serving on a variety of work schedules and under a number of different hiring authorities. Competition to recruit the most in-demand talent and then retain top performers possessing this talent has never

[18] 91 FR 8780 (Feb. 24, 2026).

been tighter. Oftentimes, doing so comes at considerable agency investment in recruiting and then developing this talent. The current RIF rules, however, have not kept pace with these needs and changes.

The proposed rules would also allow agencies more flexibility in moving functions internally without also reassigning employees, and in furloughing employees. Current rules impose unnecessary burdens and requirements and do not allow for the flexibility that many agencies need.

B. Impact

OPM expects the impact of this proposed rule, once finalized, will be a more efficient and more merit-based RIF process than is currently the case. The proposed rule modernizes a number of existing provisions. By prioritizing performance over tenure and length of service in a RIF the proposed rule aims to increase in the likelihood that top or higher-level performers will be retained over employees with lower performance ratings or those who have merely been on the job for longer periods of time. This proposed change will increase the impact of merit in the RIF process which currently prioritizes non-merit factors such as tenure and length of service. OPM also believes that its changes to the regulations governing the RPL, CTAP and ICTAP will similarly enhance efficiency and merit in administering the selection priority for employees who have been impacted by restructuring actions.

C. Costs

This proposed rule, once finalized and in effect, will affect RIFs run by most Federal agencies—ranging from cabinet-level departments to small independent agencies. OPM will provide updated guidance on implementing this rulemaking in the form of frequently asked questions and updates to OPM's workforce policy guidance, and the RIF landing page. OPM estimates that this rulemaking will require individuals employed by these agencies to modify RIF policies and procedures to implement the rulemaking and train human resources (HR) practitioners and hiring managers on its use. For this cost analysis, the assumed average salary

rate of Federal employees performing this work will be the rate in 2025 for GS–14, step 5, from the Washington, DC, locality pay table ($161,486 annual locality rate and $91.02 hourly locality rate). We assume that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of $182.04 per hour.

To comply with the regulatory changes in this Notice of Proposed Rulemaking, affected agencies will need to review the rule and update their policies and procedures. We estimate that, in the first year following publication of the final rule, doing so will require an average of 300 hours of work by employees with an average hourly cost of $143.76. This work would result in estimated costs in that first year of implementation of about $43,128 per agency, and about $3,450,240 in total Governmentwide. Some agencies may incur additional costs to ensure they have staff with the necessary assessment measurement expertise to use these proposed procedures.

We do not believe this rulemaking will substantially increase the ongoing administrative costs to agencies (including the administrative costs of using these new procedures and training new staff) because the rulemaking modernizes existing procedures and processes.

D. Reliance Interests

OPM seeks comment on any reliance interests that could be impacted by this rule and will address them with particularity in any final rule that it issues.

E. Benefits

The proposed rules offer several positive improvements to the RIF process. Agencies will benefit by having an increased ability to retain their better-performing employees in a RIF. This outcome will help agencies more effectively and efficiently meet their mission-critical responsibilities in the aftermath of a RIF and thus provide a higher level of service to the public than would otherwise be the case.

OPM expects that modernized rules will be less cumbersome and more flexible than current rules in their application. The rule provides agencies more flexibility in moving functions internally without also reassigning employees, and in furloughing employees for more than 30 days.

OPM expects these rules will result in cost savings for an agency running a RIF under part 351. These rules exclude individuals serving probationary and trial periods from the coverage of RIF procedures, along with competitive service tenure group and the excepted service tenure group, plus two tenure subgroups, which OPM believes will simplify and streamline RIF procedures. OPM is also modifying the definition of competitive areas by providing agencies with more clarity in recognizing competitive areas. Lastly, OPM is also modifying the rules to give agencies greater flexibility when abolishing all positions in a competitive area. The revised rules alleviate an agency from having to compile a retention register and apply the assignment rights (i.e., 'bump and retreat') provisions and provide agencies with more flexibility with respect to the content of employee notices when an agency is abolishing all positions in a competitive area. OPM believes the net effect of these changes will be fewer employees competing during a RIF, which will reduce the overall resource burden on the agency running the RIF.

A RIF is a complex operational endeavor comprised of several phases, and actions within each phase. Preparing for and running a RIF is oftentimes a protracted process which can last as long as 14 months from planning through completion. Two of the more time-consuming parts of the RIF process occur during the notification and preparation phase (this phase usually lasts 4-6 months). These parts include reviewing employee position descriptions for accuracy, validating competitive levels, verifying employee retention data (i.e., veterans' preference, service computation dates, etc.), updating employee qualifications data; and creating the RIF retention register from which employees will be released. This rule impacts these steps by potentially reducing the number of employees competing in a given competitive area. Under current rules,

we estimate the costs of these two steps to be (based on a GS-14, step 5 in Washington DC, with an hourly rate (salary and benefits cost) of $106/hour, rounded down to $100/hour for illustrative purposes):

- employee data/record review, validation, and correction - $20,000 based on 2 hours review time for a 100-person competitive area, and
- retention register creation – $2,000 based on 20 hours for a 100-person competitive area.

Procuring a vendor or shared-service provider may result in higher costs to the agency running the RIF due to the price paid for the vendor's or provider's specialized expertise in delivering these services, something many agencies lack. Agencies will realize significant savings with respect to these processes. The proposed changes will result in significant time and cost savings to an agency running a RIF under part 351.

The rule will also result in cost savings for agencies moving or reassigning functions within the agency, as they will not have to undergo cumbersome processes for identifying employees associated with the function and then giving those employees the opportunity to be reassigned within the agency. It will also result in cost savings for agencies who choose to furlough employees for more than 30 consecutive days, as they will no longer be required to do so strictly based on retention standing.

F. Regulatory Alternatives

OPM considered several alternatives to the proposed rulemaking. One option was to make no changes to the current reduction in force regulations. OPM did not deem this to be a viable alternative. As documented in the preamble, the current regulations do not address the challenges facing many agencies in the twenty-first century. OPM determined that it has an opportunity to revise these rules with the aim of making the reduction in force process more efficient and streamlined while providing agencies with greater flexibility to retain its top performers by emphasizing performance over tenure and length of employment.

Another alternative was to reissue the proposed rulemaking published in the Federal Register on December 17, 2020 (85 FR 81839). OPM determined this alternative was too narrow in scope based on feedback from agencies that have attempted to conduct RIFs. Current regulatory provisions are decades old and difficult, if not inefficient, to apply, resulting in needless costs and delays that hurt agencies, taxpayers, and employees. OPM also determined that the current definition of excluded employees creates an inefficiency for agencies to implement when preparing and working through retention registers and release of employees. The current definition does not include certain appointments and positions which are most likely to be the first to be released (i.e., at the bottom of the retention register), such as employees serving initial probationary periods or trial periods, and employees serving temporary or time-limited appointments of 1 year or less. OPM determined these and the other changes proposed in this rule were needed to make reductions in force less burdensome, more efficient, and better focused on assisting agencies in retaining their top-performing employees.

G. Severability

OPM proposes that, if any of the provisions of this proposed rule as finalized is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it shall be severable from its respective section(s) and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances. In enforcing civil service protections and merit system principles, OPM will comply with all applicable legal requirements.

V. Regulatory Compliance

1. Regulatory Review

OPM has examined the impact of this rule as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive

impacts, and equity). A regulatory impact analysis must be prepared for rules that have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rulemaking does not reach that threshold but has otherwise been designated as a "significant regulatory action" under section 3(f) of Executive Order 12866, as supplemented by Executive Order 13563. This rulemaking is not expected to be considered an Executive Order 14192 regulatory action because it imposes no more than de minimis costs.

2. Regulatory Flexibility Act

The Director of the Office of Personnel Management certifies that this rule will not have a significant economic impact on a substantial number of small entities because it only affects Federal agencies and employees.

3. Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

4. Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

5. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

6. Paperwork Reduction Act

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, as amended (44 U.S.C. Chapter 35).

List of Subjects

5 CFR Part 316

Employment, Government employees.

5 CFR Part 330

Administrative practice and procedure, Armed forces reserves, District of Columbia, Government employees.

5 CFR Part 351

Administrative practice and procedure, Government employees.

5 CFR Part 353

Administrative practice and procedure, Government employees.

5 CFR Part 362

Administrative practice and procedure, Colleges and universities, Government employees.

5 CFR Part 430

Decorations, Government employees.

Signing Statement

The Director of OPM, Scott Kupor, reviewed and approved this document and has authorized the undersigned to electronically sign and submit this document to the Office of the Federal Register for publication.

Office of Personnel Management.

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Jerson Matias

Federal Register Liaison

Accordingly, for the reasons stated in the preamble, OPM proposes to amend 5 CFR parts 316, 330, 351, 353, 359, 362, and 430 as follows:

PART 316—TEMPORARY AND TERM EMPLOYMENT

1. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 19 FR 7521, 3 CFR, 1954-1958 Comp., p. 218; E.O. 14284, 90 FR 17729; 5 CFR 2.2(c).

Subpart I—Hiring Authority for Post-Secondary Students

2. Revise § 316.911 to read as follows:

§ 316.911 Reduction in force.

Post-secondary students are covered by part 351 of this chapter for purposes of a reduction in force (RIF) as follows:

(a) Students whose initial appointment was for a period of 1 year or less are not assigned a tenure group and do not compete with other employees in a RIF.

(b) Students whose initial appointment was for a period expected to last more than 1 year are placed in the competitive service tenure group for purposes of part 351 of this chapter upon completion of an initial probationary period.

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

3. The authority citation for part 330 is revised to read as follows:

Authority: 5 U.S.C. 1104, 1302, 3301, 3302, 3304, and 3330. E.O. 10577, 19 FR 7521, 3 CFR, 1954-58 Comp., p. 218.

Section 330.103 also issued under 5 U.S.C. 3327.

Section 330.104 also issued under sec. 2(d), Pub. L. 114-137, 130 Stat. 312 (5 U.S.C. 3318 note).

Subpart B also issued under 5 U.S.C. 3315 and 8151.

Section 330.401 also issued under 5 U.S.C. 3310.

Subparts F and G also issued under Presidential Memorandum on Career Transition Assistance for Federal Employees, September 12, 1995.

Section 330.609 also issued under 5 U.S.C. 3115.

Subpart G also issued under 5 U.S.C. 8337(h) and 8456(b).

Section 330.707 also issued under 5 U.S.C. 3115 and 3116.

Section 330.1301 also issued under 5 U.S.C. 9201-9206; sec. 1122(b)(1), Pub. L. 116-92, 133 Stat. 1607 (5 U.S.C. 9201 note).

Subpart A—Filling Vacancies in the Competitive Service

4. Amend § 330.101 in paragraph (a) by:

a. Revising the definitions of "Agency";

b. Adding, in alphabetic order, a definition of "Competitive service tenure group";

c. Revising the definitions of "Permanent competitive service workforce and permanent competitive service employee"; and

d. Removing the definition of "Tenure groups".

The addition and revisions read as follows:

§ 330.101 Definitions.

(a) * * *

Agency means an Executive agency as defined in 5 U.S.C. 105, along with the Government Publishing Office, but does not include the Government Accountability Office.

Competitive service tenure group has the meaning given that term in § 351.203 of this chapter.

* * * * *

Permanent competitive service workforce and *permanent competitive service employees* mean agency employees serving under career or career-conditional appointments in the competitive service tenure group.

* * * * *

Subpart B—Reemployment Priority List (RPL)

5. Amend § 330.202 in the definition of "Qualified" by:

a. Removing the word "and" at the end of paragraph (4);

b. Revising paragraph (5); and

c. Adding paragraph (6).

The revision and addition read as follows:

§ 330.202 Definitions.

* * * * *

Qualified * * *

(5) Has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position. In determining these qualifications an agency must use an assessment that:

(i) Allows for demonstration of job-related skills, abilities, knowledge, and competencies;

(ii) Is based on a job analysis; and

(iii) Does not solely include or principally rely on a self-assessment from an automated examination.

(iv) Acceptable examples of the types of assessments include: structured interviews; a work-related exercise; a custom or generic procedure for measuring an employee's employment or career-related qualifications and interests; a structured resume review; or another assessment provided:

(A) It demonstrates job-related technical skills, abilities and knowledge; and

(B) Is relevant for the position for which the assessment is developed; and

(6) Meets any other applicable requirements for competitive service appointment (including employment suitability requirements under part 731 of this chapter).

* * * * *

6. Amend § 330.203 by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 330.203 RPL Eligibility.

* * * * *

(a) * * *

(1) Must be serving in an appointment in the competitive service in the competitive service tenure group (or another qualifying competitive service appointment, as determined by OPM);

* * * * *

(b) * * *

(1) Must be serving in, or separated from, an appointment in the competitive service in the competitive service tenure group (or another qualifying competitive service appointment, as determined by OPM);

* * * * *

7. Amend § 330.206 by revising paragraph (b)(1) to read as follows:

§ 330.206 RPL registration timeframe and positions.

* * * * *

(b) * * *

(1) Have a representative rate no higher than the position from which they were, or will be, separated unless the eligible was demoted in a previous RIF. If the eligible was so demoted as a competitive service tenure group employee in a previous RIF, the eligible can register for positions with a representative rate up to the representative rate of the position held on a permanent appointment immediately before the RIF demotion was effective;

* * * * *

8. Amend § 330.212 by revising paragraph (c)(1) to read as follows:

§ 330.212 Agency flexibilities.

* * * * *

(c)(1) Modify the OPM or OPM-approved qualification standard used to determine if an RPL eligible is qualified for a position, provided the exception is applied consistently and equitably in filling a position.

* * * * *

9. Amend § 330.213 by revising paragraphs (b) and (c)(1) to read as follows:

§ 330.213 Selection from an RPL.

* * * * *

(b) *Retention standing order.* For each vacancy to be filled, the agency places qualified RPL placement priority candidates in order of retention standing in accordance with part 351 of this chapter. In making a selection, an agency may not pass over a candidate with a higher retention standing to select a candidate with lower retention standing.

(c) * * *

(1) For each vacancy to be filled, the agency rates RPL placement priority candidates according to their job-related skills, abilities, knowledge, and competencies, as measured by an assessment that does not principally rely on a self-assessment from an automated examination. The assessment must be based on a job analysis, and the agency must rate and rank RPL placement priority candidates in a fair and consistent manner. The agency assigns the candidates a numerical score of at least 70 on a scale of 100, based on the evaluation criteria developed under this paragraph. The agency must grant 5 additional points to veterans' preference eligibles under 5 U.S.C. 2108(3)(A) and (B), and 10 additional points to veterans' preference eligibles under 5 U.S.C. 2108(3)(C) through (G).

* * * * *

Subpart D—Positions Restricted to Preference Eligibles

10. Revise § 330.404 to read as follows:

§ 330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.

An individual agency and OPM both have additional responsibilities when the agency decides, in accordance with the Office of Management and Budget (OMB) Circular A-76, to contract out the work of a preference eligible who holds a restricted position. These additional responsibilities as described in §§ 330.405 and 330.406 are applicable if a preference eligible holds a competitive service position (other than in the Government Publishing Office) that is:

(a) A restricted position as designated in 5 U.S.C. 3310 and § 330.401; and

(b) In the competitive service tenure group, as defined in § 351.203 of this chapter.

Subpart F—Agency Career Transition Assistance Plan (CTAP) for Local Surplus and Displaced Employees

11. Amend § 330.602 by revising paragraph (1) introductory text of the definition of "Displaced" and paragraph (1) of the definition of "Surplus" to read as follows:

§ 330.602 Definitions.

* * * * *

Displaced * * *

(1) A current competitive service employee in the competitive service tenure group at grade GS-15 (or equivalent) or below (or another qualifying competitive service appointment, as determined by OPM) who:

* * * * *

Surplus * * *

(1) A current competitive service employee in the competitive service tenure group at grade GS-15 (or equivalent) or below (or another qualifying competitive service appointment, as determined by OPM) who received a Certification of Expected Separation under part 351 of this chapter or other official agency certification or notification indicating that the employee's position is surplus (for example, a notice of position abolishment or a notice of eligibility for discontinued service retirement).

* * * * *

12. Amend § 330.609 by:

a. Revising paragraphs (e), (dd), and (ee);

b. Removing the period at the end of paragraph (ff) and adding a semicolon in its place;

c. Revising paragraph (gg); and

d. Adding paragraph (hh).

The revisions and addition read as follows:

§ 330.609 Exceptions to CTAP selection priority.

* * * * *

(e) Convert an employee serving under an appointment that provides noncompetitive conversion eligibility to a competitive service appointment, including from:

(1) A Veterans Recruitment Appointment under part 307 of this chapter;

(2) An appointment under 5 U.S.C. 3112 and part 316 of this chapter of a veteran with a compensable service-connected disability of 30 percent or more;

(3) An excepted service appointment under part 213 of this chapter; and

(4) A post-secondary student appointment under 5 U.S.C. 3116 and part 316, subpart I, of this chapter;

* * * * *

(dd) Effect a transfer or a position change of an employee under part 412 of this chapter;

(ee) Convert an employee's time-limited appointment in the competitive or excepted service to a permanent appointment in the competitive service if the employee accepted the time-limited appointment while a CTAP eligible;

* * * * *

(gg) Make an appointment using the post-secondary student hiring authority under 5 U.S.C. 3116 and part 316, subpart I, of this chapter; or

(hh) Retain, or finalize the appointment of, an employee serving a probationary or trial period pursuant to Civil Service Rule 11.

Subpart G—Interagency Career Transition Assistance Plan (ICTAP) for Displaced Employees

13. Amend § 330.702 in the definition of "Displaced" by revising the introductory text of paragraph (1), the introductory text of paragraph (2), and paragraph (4) to read as follows:

§ 330.702 Definitions.

* * * * *

Displaced * * *

(1) A current competitive service employee of any agency in the competitive service tenure group at grade GS-15 (or equivalent) or below (or another qualifying competitive service appointment, as determined by OPM) whose current performance rating of record is at least fully successful (Level 3) or equivalent and who:

* * * * *

(2) A former competitive service employee of any agency who was in the competitive service tenure group at grade GS-15 (or equivalent) or below (or another qualifying competitive service appointment, as determined by OPM), and whose last performance rating of record was at least fully successful (Level 3) or equivalent who was either:

* * * * *

(4) A former competitive service employee of any agency who was in the competitive service tenure group (or another qualifying competitive service appointment, as determined by OPM) who retired with a disability annuity under 5 U.S.C. 8337 or 8451 and who has received notification from OPM that the disability annuity has been or will be terminated.

* * * * *

14. Amend § 330.705 by revising paragraph (a) to read as follows:

§ 330.705 Applying ICTAP selection priority.

(a) An agency must not appoint any candidate from outside its permanent competitive service workforce into a vacancy if there is an ICTAP selection priority candidate available for the vacancy, unless the personnel action to be effected is an exception under § 330.707.

* * * * *

15. Amend § 330.707 by revising paragraphs (v) through (y) to read as follows:

§ 330.707 Exceptions to ICTAP selection priority.

* * * * *

(v) Transfer or effect a position change of an employee under part 412 of this chapter;

(w) Retain, or finalize the appointment of, an employee serving a probationary or trial period pursuant to Civil Service Rule 11;

(x) Make an appointment using the college graduate hiring authority under 5 U.S.C. 3115 and part 315 of this chapter; or

(y) Make an appointment using the post-secondary student hiring authority under 5 U.S.C. 3116 and part 316, subpart I, of this chapter.

PART 351—REDUCTION IN FORCE

16. Revise the authority citation for part 351 to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503; E.O. 14284, 90 FR 17729; 5 CFR 2.2(c). Sec. 351.801 also issued under E.O. 12828, 58 FR 2965, 3 CFR, 1993 Comp., p. 569.

Subpart B—General Provisions

17. Amend § 351.201 by revising paragraph (a)(2) to read as follows:

§ 351.201 Use of regulations.

(a)* * *

(2) Each agency shall follow this part when it releases a competing employee from his or her competitive level by furlough for more than 30 days, separation, or demotion, or reassignment requiring displacement, when the release is required because of lack of work;

shortage of funds; insufficient personnel ceiling; reorganization; or the exercise of reemployment rights or restoration rights.

* * * * *

18. Amend § 351.202 by:

a. Revising the introductory text of paragraph (b), the introductory text of paragraph (c), and paragraph (c)(3); and

b. Adding paragraph (d).

The addition and revisions read as follows:

§ 351.202 Coverage.

* * * * *

(b) *Employees exempted.* This part does not apply to an employee:

* * * * *

(c) *Actions exempted.* This part does not apply to:

* * * * *

(3) A change to lower grade based on reclassification of an employee's position due to erosion of duties, except that an agency shall not undertake such a reclassification action between the time an agency has formally announced a reduction in force in the employee's competitive area and the completion of the reduction in force where such the reclassification action would adversely affect an employee's retention standing in the announced reduction in force.

* * * * *

(d) *Employees excluded.* The provisions of this part do not apply to the following categories of employees:

(1) In the excepted service:

(i) An employee serving under a temporary or time-limited appointment limited to 1 year or less;

(ii) An employee serving a trial period as of the date the agency issues a specific reduction in force notice;

(iii) Schedule C appointments; and

(iv) Schedule G appointments.

(2) In the competitive service:

(i) Employees on indefinite appointments serving an initial probationary period as of the date the agency issues a specific reduction in force notice;

(ii) Career-conditional employees serving an initial probationary period as of the date the agency issues a reduction in force notice; and

(iii) An employee serving on a temporary or term appointment of 1 year or less under subpart C or D of part 316 of this chapter.

(3) An employee holding one of these appointments is not a "competing employee" for purposes of a reduction in force, and such employees may be retained, furloughed, separated, demoted or reassigned without regard to the provisions of this part.

19. Amend § 351.203 by:

a. Adding a definition for "Agency" in alphabetical order;

b. Revising the definition of "Competing employee";

c. Adding a definition for "Competitive service tenure group" in alphabetical order;

d. Revising the definition of "Current rating of record";

e. Adding a definition for "Excepted service tenure group" in alphabetical order;

f. Revising the definition of "Furlough";

g. Adding definitions for "Government obligation", "Initial probationary period", and "Military spouse" in alphabetical order;

h. Revising the definition of "Rating of record";

i. Adding a definition for "Reduction in force" in alphabetical order;

j. Revising the definition of "Transfer of function"; and

k. Adding a definition for “Trial period” in alphabetical order.

The additions and revisions read as follows:

§ 351.203 Definitions.

* * * * *

Agency means an Executive agency as defined in 5 U.S.C. 105, along with the Government Publishing Office, but does not include the Government Accountability Office.

Competing employee means an employee in the competitive service tenure group or the excepted service tenure group.

Competitive service tenure group means all employees in competitive service tenure subgroups I or II (as defined in § 351.502).

Current rating of record is the rating of record for the most recently completed appraisal period as provided in § 351.503(c)(3).

* * * * *

Excepted service tenure group means all employees in excepted service tenure subgroups I or II (as defined in § 351.502).

* * * * *

Furlough means the placement of an employee in a temporary nonduty and nonpay status for more than 30 consecutive calendar days, or more than 22 workdays if done on a discontinuous basis over a period not exceeding 1 year; but it does not refer to an emergency shutdown furlough caused by a lapse in congressional appropriations where the ultimate duration of the furlough is not known by the agency at the outset of the furlough and is instead dependent entirely on congressional action, rather than agency action.

Government obligation means a legal or moral duty or action an agency takes or may take towards a competing employee, whether the duty is imposed by law, contract, promise, social relations, courtesy, kindness, or morality. A Government obligation may include, for example, retaining an employee to enable the employee to maintain and utilize his or her health

insurance during the pregnancy of the employee or employee's spouse until the birth of a child or allowing an employee to use available paid parental leave to care for a newly born child or a child newly placed with the employee for adoption purposes.

Initial probationary period means the probationary period described in § 11.2 of this chapter and does not include the probationary period applicable on initial appointment to a supervisory or managerial position, as described in subpart I of part 315 of this chapter.

* * * * *

Military spouse has the meaning of a spouse of a member of the armed forces or service member as defined in § 315.612(b)(4)(i) of this chapter.

* * * * *

Rating of record means the performance rating prepared at the end of an appraisal period assessing performance of agency-assigned duties over the entire period and the assignment of a summary level within a pattern (as specified in § 430.208(d)) of this chapter. For an employee not subject to 5 U.S.C. chapter 43 or part 430 of this chapter, it means the officially designated performance rating, as provided for in the agency's appraisal system, that is considered to be an equivalent rating of record under the provisions of § 430.201(c) of this chapter.

Reduction in force means the release of a competing employee from his or her competitive level by furlough, separation, or demotion, or reassignment requiring displacement, when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; or the exercise of reemployment rights or restoration rights.

* * * * *

Transfer of function means the transfer of the performance of a continuing function from one agency to another agency, except when the function involved is virtually identical to functions already being performed in the other agency affected.

Trial period means the trial period described in § 11.3 of this chapter.

* * * * *

20. Revise § 351.204 to read as follows:

§ 351.204 Responsibility of agency.

Each agency covered by this part is responsible for following and applying the regulations in this part when the agency determines that a reduction in force is necessary.

Subpart C—Transfer of Function

§ 351.301 [Amended]

21. Amend § 351.301 by:

a. Removing the words "competitive area" wherever they appear and adding, in their place, the word "agency"; and

b. In paragraph (b), removing the text "(*i.e.,* in the gaining competitive area, the function continues to be carried out by competing employees rather than by noncompeting employees)".

22. Revise § 351.302 to read as follows:

§ 351.302 Transfer of employees.

(a) Before a reduction in force is made in connection with the transfer of any or all of the functions of one agency to another agency, each competing employee in a position identified with the transferring function or functions must be transferred to the agency gaining the function without any change in the tenure of his or her employment.

(b) An employee whose position is transferred under this subpart and who is identified with a function or functions that will be terminated in the gaining agency within 60 days is not a competing employee for other positions in the agency gaining the function or functions and does not have a right to any continuing positions in the agency gaining the function or functions.

(c) Regardless of an employee's personal preference, a competing employee only has the right to transfer with his or her function when the alternative in the agency losing the function is separation or demotion.

(d) Except as permitted in paragraph (e) of this section, the losing agency must use the adverse action procedures found in part 752 of this chapter if it chooses to separate a competing employee who declines to transfer with his or her function.

(e) The losing agency may, at its discretion, include competing employees who decline to transfer with their function in a concurrent reduction in force.

(f) An agency may not separate a competing employee who declines to transfer with the function any sooner than it transfers competing employees who chose to transfer with the function to the gaining agency.

(g) Agencies may ask employees whose positions are identified with the transferring function pursuant to § 351.303, via a canvass letter, whether the employees prefer to transfer with the function when the function transfers to a different agency. The canvass letter must give the employee information regarding the consequences of accepting the offer to transfer, and the consequences of declining the offer to transfer. The agency may require an employee to respond to the canvass letter within a set period of time but must give the employee at least 30 calendar days to consider the offer. The agency may treat a failure to respond to the canvass letter as a declination of the offer to transfer with the function, unless the employee establishes that the failure to respond within the specified timeframe was due to circumstances beyond the employee's control such as the employee not receiving the letter or employee or family member illness.

23. Revise § 351.303 to read as follows:

§ 351.303 Identification of positions with a transferring function.

(a) The agency losing the function is responsible for identifying the positions of competing employees with the transferring function. A competing employee is identified with the transferring function on the basis of the employee's official position.

(b) A competing employee is identified with a transferring function if the agency determines that employee performs the function during at least half of his or her work time.

(c) In determining what percentage of time an employee performs a function in the employee's official position, the agency may supplement the employee's official position description by the use of appropriate records (e.g., work reports, organizational time logs, work schedules, etc.) and information obtained from supervisors.

Subpart D—Scope of Competition

24. Amend § 351.402 by revising paragraph (b) to read as follows:

§ 351.402 Competitive area.

* * * * *

(b)(1) Except as authorized in paragraph (b)(2) of this section, a competitive area must be defined in terms of the agency's organizational unit(s) and, except as provided in paragraph (e) of this section, it must include all employees within the competitive area so defined. A competitive area may consist of any organizational unit or combination of units established on the agency's official organizational chart. Organizational charts must be available on the agency's public facing web page or otherwise appropriately documented by the agency. An organizational unit for these purposes must be designated/approved by the head of the agency, or designee, and the designation or approval cannot be delegated to an official below the agency's headquarters level. In addition, an organizational unit for these purposes must be clearly distinguished from other organizational units with regard to its operation, work function, staff, and supervisory oversight.

(2) An agency may define a geographic location (e.g., a national park or county) as a separate competitive area.

(3) Notwithstanding paragraph (b)(2) of this section, for the purposes of defining a competitive area, an agency must assign employees working at an approved alternate location to the organizational unit to which they are officially assigned.

* * * * *

25. Revise subpart E to read as follows:

Subpart E—Retention Standing

Sec.
351.501 Order of retention.
351.502 Tenure of employment.
351.503 Performance.
351.504 Veterans' preference.
351.505 Length of service.
351.506 Records.
351.507 Effective date of retention standing.

§ 351.501 Order of retention.

When determining the order of retention in a reduction in force under this part, an agency must classify competing employees on the appropriate retention register on the basis of four factors (tenure of employment, performance, veterans' preference, and length of service) as follows:

(a) By tenure group, with the competitive service tenure group and the excepted service tenure group listed on separate retention registers;

(b) Within each tenure group, by performance credit in descending order as determined in § 351.503, as augmented by veterans' preference as described in § 351.504;

(c) When two or more competing employees have the same performance credit, as augmented by veterans' preference as described in § 351.504, the competing employees are further ranked in descending order by tenure subgroups (as described in § 351.502), with tenure subgroup I listed ahead of tenure subgroup II, and then by years of service beginning with the earliest service computation date, as computed under § 351.505.

§ 351.502 Tenure of employment.

(a) *Competitive service.* Tenure groups and subgroups in the competitive service are defined as follows:

(1) The competitive service tenure group includes all employees in competitive service tenure subgroups I or II.

(2) Competitive service tenure subgroup I includes each career employee (as that term is used in part 315 of this chapter) in the competitive service who, as of the date the agency issues a

specific reduction in force notice, is not serving an initial probationary period. The following employees are in competitive service tenure subgroup I as soon as the employee completes any required probationary period for initial appointment:

(i) An employee for whom substantial evidence exists of eligibility to acquire status and career tenure immediately, and whose case is pending final resolution by OPM (including cases under Executive Order 10826 to correct certain administrative errors);

(ii) An employee who acquires competitive status and satisfies the service requirement for career tenure when the employee's position is brought into the competitive service;

(iii) An administrative law judge appointed prior to establishment of excepted service schedule E and who remains in the competitive service;

(iv) An employee appointed under 5 U.S.C. 3104, which provides for the employment of specially-qualified scientific or professional personnel, or a similar authority; and

(v) An employee who acquired status under 5 U.S.C. 3304(c) on transfer to the competitive service from the legislative or judicial branches of the Federal Government.

(3) Competitive service tenure subgroup II includes each employee in the competitive service who, as of the date the agency issues a specific reduction in force notice, is not in competitive service tenure subgroup I and is not serving an initial probationary period or a temporary or time-limited appointment of 1 year or less under subpart C or D of part 316 of this chapter.

(b) *Excepted service.* Tenure groups and subgroups in the excepted service are defined as follows:

(1) The excepted service tenure group includes all employees in excepted service tenure subgroups I or II.

(2) Excepted service tenure subgroup I includes all employees occupying a career position (as defined in part 213 of this chapter) in the excepted service who, as of the date the agency issues a specific reduction in force notice, are not serving a trial period and whose

appointment carries no restriction or condition such as conditional, indefinite, or specific time limit.

(3) Excepted service tenure subgroup II includes all other employees in the occupying a career position (as defined in part 213 of this chapter) in the excepted service who, as of the date the agency issues a specific reduction in force notice, are not serving a trial period and who are not serving in a temporary or time-limited appointment of 1 year or less.

§ 351.503 Performance.

(a) *Calculation of performance credit.* Determine each competing employee's performance credit as follows:

(1) For each rating used, assign a numerical value as follows in conjunction with the patterns of summary level in § 430.208(d) of this chapter: 7 for a Level 5 (Outstanding or equivalent) summary level, 5 for a Level 4 (Exceeds Fully Successful or equivalent) summary level, 3 for a Level 3 (Fully Successful or equivalent) summary level, 0 for a Level 2 (Minimally Successful or equivalent) summary level, 0 for a Level 1 (Unacceptable) summary level.

(2) Sum the values assigned for each rating.

(b) *Ratings used.* (1) Subject to paragraph (c)(3) of this section, only ratings of record may be used as the basis for classifying an employee's performance in a reduction in force.

(2) For competing employees who received ratings of record while covered by part 430, subpart B, of this chapter, the summary levels assigned for those ratings of record must be used to establish the employee's performance credit in a reduction in force in accordance with § 351.501 (as augmented by veterans' preference in accordance with § 351.504).

(3) For competing employees who received performance ratings while not covered by the provisions of 5 U.S.C. chapter 43 and subpart B of part 430 of this chapter, those performance ratings must be considered ratings of record with summary levels for designating an employee's performance credit in a reduction in force only when the agency conducting the reduction in

force determines, in its sole discretion, that those performance ratings are equivalent ratings of record under the provisions of § 430.201(c) of this chapter.

(c) *Consideration of performance.* (1) A competing employee's entitlement to performance consideration under this subpart must be based on the employee's three most recent summary level ratings of record received during the 4-year period prior to the date of issuance of reduction in force notices, except as otherwise provided in this section.

(2) To provide adequate time to determine employee performance credit, an agency may provide for a cutoff date, a specified number of days prior to the issuance of reduction in force notices after which no new ratings of record will be put on record and used for purposes of this subpart. When a cutoff date is used, an employee's performance credit will be based on the three most recent ratings of record received during the 4-year period prior to the cutoff date.

(3) To be considered for purposes of this subpart, a rating of record and its assigned summary level (including any adjustments to performance consistent with this subpart) must have been issued to the employee, with all appropriate reviews and signatures, and must also be on record (*i.e.,* the rating of record is available for use by the office responsible for establishing retention registers).

(4) The use of performance ratings of record and assigned summary levels (including any adjustments to performance) for purposes of this subpart must be uniformly and consistently applied within a competitive area, and must be consistent with an agency's' appropriate issuance(s) that implement this part. Each agency must specify in its appropriate issuance(s):

(i) The conditions under which a rating of record is considered to have been received for purposes of determining whether it is within the 4-year period prior to either the date the agency issues reduction in force notices or the agency-established cutoff date for ratings of record, as appropriate; and

(ii) If the agency elects to use a cutoff date, the number of days prior to the issuance of reduction in force notices after which no new ratings of record will be put on record and used for purposes of this subpart.

(d) *Single rating pattern.* If all competing employees in a reduction in force competitive area have received ratings of record under a single pattern of summary levels as set forth in § 430.208(d) of this chapter, an agency must calculate performance credit as described in paragraph (a) of this section, except that an agency may, in its sole and exclusive discretion, assign additional points for performance for employees covered under a summary level appraisal system in which the highest summary level is a level "3" rating (i.e., a pattern A 'pass/fail', or pattern D system), subject to the following limitations:

(1) An agency may, in its sole and exclusive discretion, assign additional points to level "3" employees with demonstrated exceptional performance if, within the 4-year period prior to either the date the agency issues reduction in force notices or the agency-established cutoff date for ratings of record, the agency has applied performance-related criteria and taken an action that recognizes the employee's exceptional performance. Such actions may include awarding an employee: the highest Agency or Departmental award (such as a Secretary's or Chairman's award), a special act or service award, a quality step increase, or other performance awards or bonuses (e.g., a 'time-off' for demonstrated performance above expectations).

(2) An agency may determine, in its sole and exclusive discretion, whether to give more weight to the performance-related action(s) described in paragraph (d)(1) of this section for purpose of differentiating performance on a retention register. Points may be added to the value assigned for the rating of record on an annual basis or as a single addition to the calculated performance credit.

(3) An agency that chooses to assign additional credit for performance must specify and document, in advance of the reduction in force, how it will prioritize performance awards for these purposes and make this criterion readily available for review.

(e) *Multiple rating patterns*. (1) If an agency has employees in a competitive area who have ratings of record under more than one pattern of summary levels, as set forth in § 430.208(d) of this chapter, it may, in its sole and exclusive discretion, elect to provide additional retention credit for performance in accordance with the following:

(i) An agency may transmute or assign an employee a higher summary level rating than what he or she received under their previous appraisal system only when there is documented evidence of exceptional or higher level performance as evidenced by an employee who received the highest Agency or Departmental award (such as a Secretary's or Chairman's award), a quality step increase, or appraisal performance awards or bonuses (e.g., a "time-off" for demonstrated performance above expectations in lieu of a cash bonus); and

(ii) If an agency chooses to provide additional retention credit for performance in accordance with paragraph (e)(1)(i) of this section, it must specify and document, in advance of the reduction in force, the basis on which it will transmute an employee's rating; i.e., the agency must describe how it will translate evidence of documented exceptional performance to a higher performance rating under the appraisal system (i.e., pattern of summary level) being applied to the reduction in force, make this criteria readily available for review, and apply it consistently to all competing employees.

(2) An agency that elects to provide additional retention credit to competing employees in accordance with paragraph (e)(1)(i) of this section must transmute the rating of the employee who meets the criteria set forth in paragraph (e)(1)(i) to the highest summary level of the pattern summary level being applied to the reduction in force (i.e., a level "4" rating if the agency conducting the reduction in force uses a pattern C or G summary level appraisal system, or a level "5" rating if the agency uses a pattern B, E, F, or H summary level appraisal system). An agency cannot transmute a rating to a summary level which is not among those in the pattern being applied to the reduction in force.

(3) In situations in which the agency conducting the reduction in force is using a pattern summary level rating appraisal system with a summary level no higher than a level "3" (i.e., a pass/fail system) but has employees rated previously under a pattern with higher summary levels, the agency may, in its sole and exclusive discretion, elect to give more performance credit to the employees with the higher summary ratings than it gives to summary level "3" employees with no documented evidence of exceptional performance (before augmenting for veterans' preference in accordance with § 351.504).

(f) *Missing ratings.* Use of performance ratings for competing employees who do not have three actual ratings of record during the 4-year period prior to the date of issuance of reduction in force notices or the 4-year period prior to the agency-established cutoff date for ratings of record permitted in paragraph (c)(2) of this section must be determined under paragraph (c) of this section, as appropriate, and as follows:

(1) The performance credit of an employee who has not received any rating of record for any year during the 4-year period must be based on the modal rating as defined in § 351.203 for the summary level pattern that applies to the employee's official position of record at the time of the reduction in force.

(2) For an employee who has received two previous ratings of record during the 4-year period calculate the performance credit by using a proxy value for the missing rating. Calculate the proxy value by adding the assigned values for the two actual ratings of record and dividing by 2, with the result being either a whole number or a number with .5 decimal value. The performance credit is the sum of the value for the missing rating (i.e., the proxy value) and the values for the two actual ratings.

(3) For an employee with only one actual rating of record during the period, calculate the performance credit by multiplying the points assigned for that rating of record times three.

§ 351.504 Veterans' preference.

(a) Veterans' preference for both competitive and excepted service employees is applied as follows:

(1) Each preference eligible employee who has a compensable service-connected disability of 30 percent or more receives an additional 5 points added to their performance credit. These employees should be identified as being in veterans' preference Subgroup AD on the retention register.

(2) Every other preference eligible employee receives an additional 3 points added to their performance credit. These employees should be identified as being in veterans' preference Subgroup A on the retention register.

(3) Non-preference eligible employees receive 0 additional points added to their performance credit. These employees should be identified as being in veterans' preference Subgroup B on the retention register.

(b) A retired member of a uniformed service is considered a preference eligible under this part only if the member meets at least one of the conditions of the following paragraph (b)(1), (2), or (3) of this section, except as limited by paragraph (b)(4) or (5) of this section:

(1) The employee's military retirement is based on disability that either:

(i) Resulted from injury or disease received in the line of duty as a direct result of armed conflict; or

(ii) Was caused by an instrumentality of war incurred in the line of duty during a period of war as defined by 38 U.S.C. 101 and 301.

(2) The employee's retired pay from a uniformed service is not based upon 20 or more years of full-time active service, regardless of when performed but not including periods of active duty for training.

(3) The employee has been continuously employed in a position covered by this part since November 30, 1964, without a break in service of more than 30 days.

(4) An employee retired at the rank of major or above (or equivalent) is considered a preference eligible under this part if such employee is a disabled veteran as defined in 5 U.S.C. 2108(2) and meets one of the conditions covered in paragraph (b)(1), (2), or (3) of this section.

(5) An employee who is eligible for retired pay under 10 U.S.C. chapter 67 and who retired at the rank of major or above (or equivalent) is considered a preference eligible under this part at age 60, only if such employee is a disabled veteran as defined in 5 U.S.C. 2108(2).

§ 351.505 Length of service.

(a) All civilian service as a Federal employee, as defined in 5 U.S.C. 2105(a), is creditable for purposes of this part. Civilian service performed in employment that does not meet the definition of *Federal employee* set forth in 5 U.S.C. 2105(a) is creditable for purposes of this part only if specifically authorized by statute as creditable for retention purposes.

(b)(1) As authorized by 5 U.S.C. 3502(a)(A), all active duty in a uniformed service, as defined in 5 U.S.C. 2101(3), is creditable for purposes of this part, except as provided in paragraphs (b)(2) and (3) of this section.

(2) As authorized by 5 U.S.C. 3502(a)(B), a retired member of a uniformed service who is covered by § 351.503(b) is entitled to credit under this part only for:

(i) The length of time in active service in the Armed Forces during a war, or in a campaign or expedition for which a campaign or expedition badge has been authorized; or

(ii) The total length of time in active service in the Armed Forces if the employee is considered a preference eligible under 5 U.S.C. 2108 and 5 U.S.C. 3501(a), as implemented in § 351.504(b).

(3) An employee may not receive dual service credit for purposes of this part for service performed on active duty in the Armed Forces that was performed during concurrent civilian employment as a Federal employee, as defined in 5 U.S.C. 2105(a).

(c)(1) The agency is responsible for establishing the service computation date applicable to each employee competing for retention under this part. If applicable, the agency is also

responsible for adjusting the service computation date to withhold retention service credit for non-creditable service.

(2) The service computation date includes all actual creditable service under paragraphs (a) and (b) of this section.

(d) The service computation date is computed on the following basis:

(1) The effective date of appointment as a Federal employee under 5 U.S.C. 2105(a) when the employee has no previous creditable service under paragraph (a) or (b) of this section; or if applicable,

(2) The date calculated by subtracting the employee's total previous creditable service under paragraph (a) or (b) of this section from the most recent effective date of appointment as a Federal employee under 5 U.S.C. 2105(a).

§ 351.506 Records.

(a) The agency is responsible for maintaining correct personnel records that are used to determine the retention standing of its employees competing for retention under this part.

(b) The agency must allow its retention registers and related records to be inspected by:

(1) An employee of the agency who has received a specific reduction in force notice, and/or the employee's representative if the representative is acting on behalf of the individual employee; and

(2) An authorized representative of OPM.

(c) An employee who has received a specific notice of reduction in force under authority of subpart H of this part has the right to review any completed records used by the agency in a reduction in force action that was taken, or will be taken, against the employee, including:

(1) The complete retention register, if applicable, with the released employee’s name and other relevant retention information (including the names of all other employees listed on that register, their performance credit calculated under § 351.503 as augmented by veterans’ preference under § 351.504, and their service computation dates under § 351.505), so that the

employee may consider how the agency constructed the competitive level, and how the agency determined the relative retention standing of the competing employees; and

(2) The complete retention registers, if applicable, for other positions that could affect the composition of the employee's competitive level, and/or the determination of the employee's assignment rights (e.g., registers to which the released employee may have potential assignment rights under § 351.701(b) and (c)).

(d) An employee who has not received a specific reduction in force notice has no right to review the agency's retention registers and related records.

(e) The agency is responsible for ensuring that each employee's access to retention records is consistent with both the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552a).

(f) The agency must preserve all registers and records relating to a reduction in force for at least 2 years after the date it issues a specific reduction in force notice.

§ 351.507 Effective date of retention standing.

(a) The retention standing of each employee released from a competitive level in the order prescribed in § 351.601 is determined as of the date the employee receives a specific reduction in force notice.

(b) The retention standing of each employee retained in a competitive level as an exception under § 351.606(b), § 351.607, or § 351.608 is determined as of the date the employee receives a specific reduction in force notice, irrespective of when the employee would have been released had the exception not been used. The retention standing of each employee retained under any of this paragraph (b) remains fixed until completion of the reduction in force action which resulted in the temporary retention.

(c) When an agency discovers an error in the determination of an employee's retention standing, it must correct the error and adjust any erroneous reduction in force action to accord

with the employee's proper retention standing as of the effective date established by this section.

26. Revise the heading of subpart F to read as follows:

Subpart F—Release from Competitive Level

27. Amend § 351.601 by revising paragraph (c) to read as follows:

§ 351.601 Order of release from competitive level.

* * * * *

(c) When competing employees in the same tenure group have identical performance credits as calculated pursuant to § 351.503 (as augmented by veterans' preference as described in § 351.504), are in the same tenure subgroup, and have identical service dates (as calculated pursuant to § 351.505) and are therefore tied for release from a competitive level, the agency may select any tied employee for release.

28. Revise § 351.602 to read as follows:

§ 351.602 Prohibitions.

An agency may not release a competing employee from a competitive level while retaining in that level an employee with:

(a) A specifically limited temporary or term promotion; or

(b) A written decision under part 432 or 752 of this chapter of removal or demotion from the competitive level.

29. Amend § 351.604 by:

a. Revising paragraph (b); and

b. Removing paragraph (d).

The revision reads as follows:

§ 351.604 Use of furlough.

* * * * *

(b) Prior to engaging in a furlough, an agency must communicate to competing employees, in writing, the criteria by which competing employees will be furloughed and recalled to duty. In determining the criteria by which competing employees will be furloughed and the order in which they will be recalled to duty, the agency may consider the agency's operational and mission needs, along with factors such as employee's tenure group and subgroup; the employee's performance as reflected in the employee's most recent rating of record; veterans' preference; and the employee's length of service.

* * * * *

30. Revise § 351.605 to read as follows:

§ 351.605 Abolishment of a competitive area.

(a) *Appropriate use*. An agency may use this paragraph (a) to reduce the administrative burden of conducting a reduction in force when it will eliminate all positions (including the positions of employees otherwise excluded from the provisions of this part under §351.202(d)) within a competitive area within 180 days.

(b) *Abolishment of competitive area*. When an agency is abolishing all positions in a competitive area within 180 days it may release a competing employee without regard to retention standing. When invoking this paragraph (b), an agency is not required to follow §§ 351.403, 351.404, and 351.501 through 351.505. The agency must provide for the exceptions under § 351.606. The agency may provide for the exceptions under § 351.608(c) through (f) without providing notice under § 351.608(a)(4). An agency must provide any released competing employee with notification content in accordance with § 351.802(a)(1), (3), (5), and (6) and (b), along the employee's competitive area and a statement that, because all positions in the employee's competitive area are being abolished pursuant to this section, the employee was not ranked relative to other competing employees in the reduction in force. An agency may not apply assignment rights pursuant to subpart G of this part when using this paragraph (b).

31. Amend § 351.606 by revising paragraphs (a) and (c) to read as follows:

§ 351.606 Mandatory exceptions.

(a) *Armed Forces restoration rights.* When an agency applies § 351.601, it shall give retention priorities over other competing employees to each competing employee entitled under § 351.209(b) to retention for, as applicable, 6 months or 1 year after restoration.

* * * * *

(c) *Documentation.* Each agency shall record on the retention register, for inspection by each employee, the reasons for any deviation from the order of release required by § 351.601.

32. Revise § 351.607 to read as follows:

§ 351.607 Discretionary continuing exceptions.

An agency may make an exception to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee (i.e., extend an employee's separation date) on duties that cannot be taken over within 90 days and without undue interruption to the activity by an employee with higher retention standing. The agency must notify in writing each higher-standing employee reached for release from the same competitive level of the reasons for the exception.

33. Revise § 351.608 to read as follows:

§ 351.608 Discretionary temporary exceptions.

(a) *General.* (1) An agency may use one of the exceptions authorized under this section to retain an employee (i.e., extend an employee's separation date) after the effective date of a reduction in force, notwithstanding the order of release under § 351.601 or the action provisions under § 351.603. Temporary exceptions are time-limited, but the duration may vary depending on a variety of factors as provided in paragraphs (b) though (g) of this section.

(2) After the effective date of a reduction in force action, an agency may not amend or cancel the reduction in force notice of an employee retained under a temporary exception to avoid completion of the reduction in force action. This does not preclude the employee from receiving or accepting a job offer in the same competitive area in accordance with a

Reemployment Priority List established under part 330, subpart B, of this chapter, or under a Career Transition Assistance Plan established under part 330, subpart E, of this chapter, or equivalent programs.

(3) Each exception under a paragraph in this section stands alone and may not be sequenced or stacked in combination with another exception. If an agency determines that it can approve more than one exception for an employee, the agency may apply the exception that provides for the longest period of retention.

(4) When an agency makes an exception under this section for more than 30 days, it must:

(i) Notify in writing each higher standing employee in the same competitive level reached for release of the reasons for the exception and the latest date the lower standing employee's retention is projected to end; and

(ii) List opposite the employee's name on the retention register the reasons for the exception and the latest date the employee's retention is projected to end.

(b) *Undue interruption.* An agency may make a temporary exception for not more than 90 days when needed to continue an activity without undue interruption.

(c) *Government obligation.* An agency may make a temporary exception to satisfy a Government obligation to an employee. Any application of this exception is subject to the conditions and limitations established by the agency and this section. The employee must use leave (paid or unpaid) or paid time off continuously to cover all tour of duty hours during the period the exception is in effect. The use of each type of leave or paid time off must be consistent with the established rules governing its use. Administrative leave under part 630, subpart N, of this chapter (or similar authority) may not be used. The exception may not take effect unless the employee signs a written agreement in which the employee attests that he or she understands and agrees with the conditions and limitations established by the agency and this section. Authorized agency applications of this exception include the following:

(1) An exception may be approved under this paragraph (c) for an employee who is eligible for, and has not exhausted, paid parental leave under 5 U.S.C. 6382(d)(2) (or equivalent authority) based on the birth of a child of the employee before the effective date of the reduction in force. The exception may be approved through the date by which the employee would be able to use all remaining available paid parental leave to the employee's credit in connection with the birth, if the leave is used continuously starting on the effective date of the reduction in force.

(2) An exception may be approved under this paragraph (c) for an employee who is eligible for, and has not exhausted, paid parental leave under 5 U.S.C. 6382(d)(2) (or equivalent authority) based on the placement of a child with the employee for adoption purposes before the effective date of the reduction in force. The exception may be approved through the date by which the employee would be able to use all remaining available paid parental leave to the employee's credit in connection with the placement, if the leave is used continuously starting on the effective date of the reduction in force.

(3) An exception may be approved under this paragraph (c) for an employee who is pregnant, or whose spouse is pregnant, as of the effective date of reduction in force and who would be eligible for paid parental leave under 5 U.S.C. 6382(d)(2) (or equivalent authority) based on the expected birth. The exception may be approved through the date that is 12 weeks after the birth.

(d) *Leave for a sick leave purpose*. An agency may make a temporary exception to retain an employee covered by 5 U.S.C. chapter 63 (or other applicable leave system for Federal employees), who has a condition or circumstance that would warrant continuous use of sick leave during all tour-of-duty hours of the period of retention if the employee had available sick leave, provided--

(1) Such condition or circumstance continues throughout the period of retention;

(2) The employee first uses any available sick leave in accordance with the requirements part 630, subpart D, of this chapter (or other applicable sick leave system), before using any

other appropriate leave (paid or unpaid) or paid time off, consistent with any applicable requirements governing use of the leave or paid time off;

(3) The use of leave or paid time off is continuous through all tour-of-duty hours of the period of retention; and

(4) The period of retention does not exceed 90 days.

(e) *Annual leave.* (1) An agency may make a temporary exception to retain on accrued annual leave an employee who:

(i) Is being involuntarily separated under this part;

(ii) Is not covered by § 351.606(b) (because the employee is covered by a Federal leave system under an authority other than 5 U.S.C. chapter 63, the employee is covered by a retirement law not referenced in § 351.606(b), or is covered by a health benefits law other than 5 U.S.C. chapter 89); and

(iii) Will attain first eligibility for an immediate retirement benefit under 5 U.S.C. 8336, 8412, or 8414 (or other authority), and/or establish eligibility under 5 U.S.C. 8905 (or other authority) to carry health benefits coverage into retirement during the period represented by the amount of the employee's accrued annual leave.

(2) An agency may not approve an employee's use of any other type of leave after the employee has been retained under this paragraph (e).

(3) This exception may not exceed the date the employee first becomes eligible for immediate retirement or for continuation of health benefits into retirement, except that an employee may be retained long enough to satisfy both retirement and health benefits requirements.

(4) Accrued annual leave includes all accumulated, accrued, and restored annual leave, as applicable, in addition to annual leave earned and available to the employee after the effective date of the reduction in force. When approving a temporary exception under this paragraph (e), an agency may not advance annual leave or consider any annual leave that might be credited to

an employee's account after the effective date of the reduction in force other than annual leave earned while in an annual leave status.

(f) *Military spouse.* An agency may extend the separation date beyond the effective date of a reduction in force of a military spouse as defined in § 351.203. The agency may establish a maximum number of days, up to a maximum of 90 days, for which an exception may be approved.

(g) *Other exceptions*. An agency may make a temporary exception to extend an employee's separation date beyond the effective date of the reduction in force when the temporary retention of the lower standing employee does not adversely affect the right of any higher standing employee who is released ahead of the lower standing employee. The agency may establish a maximum number of days, up to 90 days, for which an exception may be approved.

34. Revise the heading for subpart G to read as follows:

Subpart G—Assignment Rights

35. Revise § 351.701 to read as follows:

§ 351.701 Assignment involving displacement.

(a) When a competitive service tenure group employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent, or higher, is released from a competitive level, an agency must offer assignment, rather than furlough or separation, in accordance with paragraph (b) of this section to another competitive position that requires no reduction, or the least possible reduction, in representative rate. The employee must be qualified for the offered position. The offered position must be in the same competitive area and have the same type of work schedule (e.g., full-time, part-time, intermittent, or seasonal) as the position from which the employee is released. Upon accepting an offer of assignment, or displacing another employee under this part, an employee retains the same status and tenure in the new

position. The promotion potential of the offered position is not a consideration in determining an employee's right of assignment.

(b) In accordance with paragraph (a) of this section, a released employee shall be assigned to a position:

(1) That is held by another employee with lower retention standing in the same tenure group; and

(2) That is not more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee was released, except that for a preference eligible employee with a compensable service-connected disability of 30 percent or more the limit is five grades (or appropriate grade intervals or equivalent) (The agency uses the grade progression of only the released employee's position of record to determine the applicable grades (or appropriate grade intervals or equivalent) of the employee's assignment right. The agency does not consider the grade progression of the position to which the employee has an assignment right.); and

(3) For which the released employee is qualified, pursuant the criteria set forth in §§ 351.702 and 351.703.

(c)(1) The determination of equivalent grade intervals shall be based on a comparison of representative rates.

(2) Each employee's assignment rights shall be determined on the basis of the pay rates in effect on the date of issuance of specific reduction-in-force notices, except that when it is officially known on the date of issuance of notices that new pay rates have been approved and will become effective by the effective date of the reduction in force, assignment rights shall be determined on the basis of the new pay rates.

(d)(1) In determining applicable grades (or grade intervals) under paragraph (b)(2) of this section, the agency uses the grade progression of the released employee's position of record to determine the grade (or interval) limits of the employee's assignment rights.

(2) For positions covered by the General Schedule, the agency must determine whether a one-grade, two-grade, or mixed grade interval progression is applicable to the position of the released employee.

(3) For positions not covered by the General Schedule, the agency must determine the normal line of progression for each occupational series and grade level to determine the grade (or interval) limits of the released employee's assignment rights. If the agency determines that there is no normal line of progression for an occupational series and grade level, the agency provides the released employee with assignment rights to positions within three actual grades lower on a one-grade basis. The normal line of progression may include positions in different pay systems.

(4) For positions where no grade structure exists, the agency determines a line of progression for each occupation and pay rate and provides assignment rights to positions within three grades (or intervals) lower on that basis.

(5) If the released employee holds a position that is less than three grades above the lowest grade in the applicable classification system (e.g., the employee holds a GS-2 position), the agency provides the released employee with assignment rights up to three actual grades lower on a one-grade basis in other pay systems.

(e) If a competitive area includes more than one local commuting area, the agency determines assignment rights under this part on the basis of the representative rates for one local commuting area within the competitive area (*i.e.*, the same local commuting area used to establish competitive levels under § 351.403(c)(4), (5), and (6)).

(f) If a competitive area includes positions under one or more pay bands, a released employee shall be assigned in accordance with paragraphs (a) and (b) of this section to a position in an equivalent pay band or one pay band lower, as determined by the agency, than the pay band from which released. A preference eligible with a service-connected disability of 30 percent or more must be assigned in accordance with paragraphs (a) and (b) of this section to a position in

an equivalent pay band or up to two pay bands lower, as determined by the agency, than the pay band from which released.

(g) If a competitive area includes positions under one or more pay bands, and other positions not covered by a pay band (e.g., GS and/or FWS positions), the agency provides assignment rights under this part by:

(1) Determining the representative rate of positions not covered by a pay band, consistent with § 351.203;

(2) Determining the representative rate of each pay band, or competitive level within the pay band(s), consistent with § 351.203; and

(3) As determined by the agency, providing assignment rights under paragraph (b) of this section, consistent with the grade intervals covered in paragraph (b)(2) of this section, and the pay band intervals in paragraph (f) of this section.

36. Amend § 351.702 by revising paragraph (a)(4) to read as follows:

§ 351.702 Qualifications for assignment.

(a) * * *

(4) Has the capacity, adaptability, and special skills needed to satisfactorily perform the duties of the position without undue interruption. In determining these qualifications an agency must use an assessment that:

(i) Allows for demonstration of job-related skills, abilities, knowledge, and competencies;

(ii) Is based on a job analysis; and

(iii) Does not solely include or principally rely on a self-assessment from an automated examination.

(iv) Acceptable examples of the types of assessments include: structured interviews; a work-related exercise; a custom or generic procedure for measuring an employee's employment or career-related qualifications and interests; a structured resume review; or another assessment provided:

(A) It demonstrates job-related technical skills, abilities and knowledge; and

(B) Is relevant for the position for which the assessment is developed.

* * * * *

37. Amend § 351.705 by revising paragraph (a) to read as follows:

§ 351.705 Administrative assignment.

(a) An agency may, at its discretion, adopt provisions that provide competing employees in the excepted service with assignment rights to other positions under the same appointing authority on the same basis as assignment rights provided to competitive service employees under § 351.701.

* * * * *

Subpart H—Notice to Employee

38. Amend § 351.802 by revising paragraphs (a)(2) and (3) to read as follows:

§ 351.802 Content of notice.

(a) * * *

(2) The employee's competitive area, competitive level, veteran status, tenure group and subgroup, service date, and three most recent ratings of record received during the last 4 years;

(3) A link to part 351 of this chapter and access to the agency's records pertinent to the reduction in force being taken;

* * * * *

PART 353—RESTORATION TO DUTY FROM UNIFORMED SERVICE OR COMPENSABLE INJURY

39. The authority citation for part 353 is revised to read as follows:

Authority: 5 U.S.C. 8151; 38 U.S.C. 4301 et seq.

Subpart C—Compensable Injury

40. Amend § 353.301 by revising paragraph (a) to read as follows:

§ 353.301 Restoration rights.

(a) *Fully recovered within 1 year.* An employee who fully recovers from a compensable injury within 1 year from the date eligibility for compensation began (or from the time compensable disability recurs if the recurrence begins after the employee resumes regular full-time employment with the United States), is entitled to be restored immediately and unconditionally to his or her former position or an equivalent one. Although these restoration rights are agencywide, the employee's basic entitlement is to the former position or equivalent in the local commuting area the employee left. If a suitable vacancy does not exist, the employee is entitled to displace an employee occupying a continuing position under a temporary, term, or indefinite appointment. If there is no such position in the local commuting area, the agency must offer the employee a position (as described in the preceding sentences) in another location. This paragraph (a) also applies when an injured employee accepts a lower-grade position in lieu of separation and subsequently fully recovers. A fully recovered employee is expected to return to work immediately upon the cessation of compensation.

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PART 359—REMOVAL FROM THE SENIOR EXECUTIVE SERVICE; GUARANTEED PLACEMENT IN OTHER PERSONNEL SYSTEMS

Subpart H—Furloughs in the Senior Executive Service

41. The authority citation for part 359, subpart H, is revised to read as follows:

Authority: 5 U.S.C. 3133, 3136, 3595a, and 3596.

42. Revise § 359.802 to read as follows:

§ 359.802 Definitions.

For the purpose of this subpart, *furlough* means the placing of an appointee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons; except it does not refer to an emergency shutdown furlough caused by a lapse in congressional appropriations where the ultimate duration of the furlough is not known

by the agency at the outset of the furlough and is instead dependent entirely on congressional action, rather than agency action.

PART 362—PATHWAYS PROGRAMS

43. The authority citation for part 362 continues to read as follows:

Authority: E.O. 13562, 75 FR 82585, 3 CFR, 2010 Comp., p. 291, as amended by E.O. 14217, 90 FR 10577.

Subpart B—Internship Program

44. Revise § 362.205 to read as follows:

§ 362.205 Termination.

(a) *Intern.* As a condition of employment an Intern appointment expires 180 calendar days after completion of the designated academic course of study or career and technical education program, unless the Participant is selected for noncompetitive conversion under § 362.204.

(b) *Intern NTE.* As a condition of employment an Intern NTE appointment expires upon expiration of the temporary internship appointment, unless the Participant is selected for noncompetitive conversion under § 362.204.

PART 430—PERFORMANCE MANAGEMENT

45. The authority citation for part 430 continues to read as follows:

Authority: 5 U.S.C. chapter 43 and 5307(d).

Subpart B—Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees

46. Amend § 430.208 by:

a. Revising paragraph (d)(4); and

b. Removing paragraph (d)(5).

The revisions read as follows:

§ 430.208 Rating performance.

* * * * *

(d) * * *

(4) The designation of a summary level and its pattern must be used to provide consistency in describing ratings of record and as a reference point for applying other related regulations, excluding enhanced performance values under § 351.503(d) and (f) of this chapter.

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