Restructuring Information Handbook
Module 3 (REDUCTION IN FORCE), Unit A (REQUIRED PROCEDURES)
June 1998

Restructuring Information Handbook Module 3 is developed by OPM's Workforce Restructuring Office to provide information on reduction in force procedures.

U.S. OFFICE OF PERSONNEL MANAGEMENT

RESTRUCTURING INFORMATION HANDBOOK

MODULE 3, REDUCTION IN FORCE (June 1998 version)

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UNIT A (REQUIRED PROCEDURES)

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MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 1. OVERVIEW OF OPM'S REDUCTION IN FORCE REGULATIONS AND RELATED DOWNSIZING PROGRAMS

1. REDUCTION IN FORCE RETENTION FACTORS. OPM's reduction in force regulations are derived from the Veterans' Preference Act of 1944, as the law is codified in Sections 3501-3503 of title 5, United States Code.

(a) The law provides that OPM's reduction in force regulations give effect to four factors in releasing employees:

(1) Tenure (i.e., type of appointment);

(2) Veterans' preference;

(3) Length of service; and

(4) Performance ratings.

o Although the law does not assign a specific weight to any individual factor, the relative importance of the four factors in determining employees' retention standing is the same order listed above (e.g., tenure is the most important factor while performance is the least important factor).

o OPM implements the law through regulations published in Part 351 of Title 5, Code of Federal Regulations (i.e. 5 CFR Part 351).

2. MANAGEMENT'S RIGHT TO MAKE RIF DECISIONS (see Section 3-A-2). The agency has the right to decide whether a reduction in force is necessary, when it will take place, and what positions are abolished.

o The four retention factors, as implemented through OPM's reduction in force regulations, then determine which employee is actually reached for a reduction in force action as the result of the abolishment of a position.

3. USE OF RIF PROCEDURES (see paragraph 3-A-5-4). An agency is required to use reduction in force procedures when an employee is faced with separation or downgrading for a specific reason, including:

(a) Reorganization;

(b) Lack of work;

(c) Shortage of funds;

(d) Insufficient personnel ceiling;

(e) The exercise of certain reemployment or restoration rights; or

(f) Furlough for more than 30 consecutive days, or more than 22 discontinuous workdays (see Module 6 for Furlough). (A short furlough of 30 or less consecutive days, or 22 or less discontinuous workdays, is covered under the adverse action procedures.)

o In lieu of RIF procedures, an agency may always reassign an employee to a vacant position at the same grade or pay, regardless of where the position is located. (See paragraph 3-A-5-2)

4. APPLYING THE RIF REGULATIONS-COMPETITIVE AREA (see Section 3-A-7). The competitive area sets the limits within which employees compete for retention, and is always defined by the agency on the basis of:

(a) Organization; and

(b) Geography.

o All employees within the organizational unit and geographical location are included in the competitive area.

(c) OPM's standard for a minimum competitive area is an organization in a local commuting area that is separate from other organizations because of differences in:

(1) Operation;

(2) Work function;

(3) Staff; and

(4) Personnel management authority (i.e., the authority to take or direct personnel actions such as establishing positions, abolishing positions, assigning duties, etc.).

o An Inspector General activity covered by the Inspector General Act of 1978 (Public Law 95-452, as amended) must always be placed in its own competitive area.

o The fact that several activities may be serviced by the same personnel office does not, by itself, require that they be placed in the same competitive area.

o An agency may establish a competitive area larger than the minimum standard.

o A "LOCAL COMMUTING AREA" is a geographic area that usually includes any population center and the surrounding communities in which people live and reasonably travel back and forth to work. There is no mileage standard to determine when two duty stations would be included in the same local commuting area.

o An agency must obtain OPM approval before changing a competitive area definition within 90 days of a reduction in force.

o Some examples of a possible competitive area include:

-The entire headquarters of an agency in the same local commuting area.

-A single bureau in the headquarters in the same local commuting area.

-All components of a bureau nationwide.

-All components of a regional office in the same local commuting area.

-A one-person duty station in a field location.

-All components of an organization in one or more States.

5. APPLYING THE RIF REGULATIONS-COMPETITIVE LEVEL (see Section 3-A-8). Within each competitive area, the agency groups interchangeable positions into competitive levels based upon similarity of:

(a) Grade;

(b) Series;

(c) Qualifications;

(d) Duties; and

(e) Work tour (i.e., full-time, part-time, seasonal, intermittent, or on-call).

o Competitive and excepted service positions are never placed in the same competitive level.

o Separate competitive levels are then established for positions that are:

(1) Full-time;

(2) Part-time;

(3) Intermittent;

(4) Seasonal;

(5) On-call; or

(6) Filled as part of a formally designated trainee or developmental program.

o The competitive level is based on each employee's position description, not on the employee's personal qualifications.

o Two positions that are similar (e.g., same grade, series, work schedule, etc.), but are not identical, may be placed in the same competitive level if the position descriptions show that each employee would need less than 90 days to perform the key tasks of the other position.

o Employees with temporary time-limited appointments in the competitive service are not listed in the competitive level since these employees serve at the will of the agency. These employees are terminated before any employee covered by OPM retention regulations is reached for a reduction in force action. Excepted employees with temporary appointments are included in the competitive level after completing more than 1 year of continuous service.

o Only occupied positions are included in a competitive level.

6. APPLYING THE RIF REGULATIONS-RETENTION REGISTER (see Section 3-A-9). After grouping interchangeable positions into competitive levels, the agency applies the four retention factors in establishing separate retention registers for each competitive level that may be involved in the reduction in force.

o In practice, the terms "COMPETITIVE LEVEL" and "RETENTION REGISTER" generally have the same meaning and refer to the competitive level after an employee's retention standing is determined.

o The name of each employee is listed on the retention register in the order of his or her retention standing (i.e., the employee with the highest standing is at the top of the register and the employee with the lowest standing is at the bottom of the register). The retention register includes the name of each employee who:

(a) Holds a position in the competitive level;

(b) Holds another position because of a temporary promotion from the competitive level; or

(c) Is detailed from the competitive level.

o The four retention factors are considered in this manner:

7. APPLYING THE RIF REGULATIONS-DETERMINING EMPLOYEES' RETENTION STANDING (see Section 3-A-10). The four retention factors required in 5 U.S.C. 3502(a) are implemented in the following order on the retention register:

(a) TENURE (see Section 3-A-11). Competitive service employees are ranked on a retention register in three groups according to their types of appointment:

(1) GROUP I- Career employees who are not serving on probation. (A new supervisor or manager who is serving a probationary period that is required on initial appointment to that type of position is not considered to be serving on probation if the employee previously completed a probationary period.)

(2) GROUP II- Career employees who are serving a probationary period, and career-conditional employees.

(3) GROUP III- Employees serving under term and similar non-status appointments. (An employee serving under a temporary appointment in the competitive service is not a competing employee under OPM's reduction in force regulations and is not listed on the retention register.

o Retention registers for excepted positions use similar tenure groups:

(1) GROUP I- Includes permanent positions not subject to a time limitation.

(2) GROUP II- Includes employees serving a trial period.

(3) GROUP III- Includes employees serving on time limited appointments of more than 1 year, or who hold a temporary appointment limited to 1 year and have completed more than 1 year of continous service on similar temporary appointments.

(b) VETERANS' PREFERENCE (see Section 3-A-12). Each of these groups is divided into three subgroups reflecting their entitlement to veterans' preference for retention purposes:

(1) SUBGROUP AD- Veterans with a compensable service-connected disability of 30% or more.

(2) SUBGROUP A- Veterans not included in subgroup AD.

(3) SUBGROUP B- Nonveterans.

o By law (i.e., the Dual Compensation Act of 1964, as presently codified in Section 3501(a) of title 5, United States Code, a

retired member of the Armed Forces is considered to be a veteran for RIF purposes only if one of the following conditions is met:

(1) The ARMED FORCES RETIREMENT (i.e., not benefits from the Department of Veterans Affairs) is directly based upon a combat-incurred disability or injury;

(2) The Armed Forces retirement is based upon less than 20 years of active duty;

(3) The employee has been working for the Government since November 30, 1964, without a break in service of more than 30 days. However, if the employee meets condition (3), but retired at the rank of major or higher (or equivalent), the employee must also meet the general definition of disabled veteran in Section 2108(2) of Title 5, United States Code, in order to be a veteran for reduction in force purposes.

(c) LENGTH OF SERVICE (see Section 3-A-13). Employees are ranked by service dates within each subgroup (i.e., the employee with the most service is listed at the top of the subgroup, the employee with the least service at the bottom of the subgroup).

o The service includes creditable civilian and military service, and additional service credit for certain performance ratings.

(d) PERFORMANCE (see Section 3-A-15, and Appendix Section 3-A-A). Employees receive extra retention service credit for performance based upon the average of their last three annual performance ratings of record received during the 4-year period prior to the date the agency issues specific reduction in force notices, or the date the agency freezes ratings before issuing reduction in force notices.

Single Rating Pattern. The amount of extra retention service credit if all employees in a competitive area have received ratings under a single pattern of summary levels (e.g., all of the employees in the competitive area have ratings only under a five-level pattern, or only under a two-level pattern, or under the same three level pattern, etc.) is:

(1) 20 additional years for each performance rating of "Outstanding" or equivalent (i.e., Level V);

(2) 16 additional years for each performance rating of "Exceeds Fully Successful" or equivalent (i.e., Level IV); and,

(3) 12 additional years for each performance rating of "Fully Successful" or equivalent (i.e., Level III).

o No additional service credit is given for performance ratings below "Fully Successful" or equivalent (i.e., Level III)

o For example, an employee with 3 years of Federal service has one "Outstanding" rating of record, (20), and two "Exceeds Fully Successful" (16) ratings of record. The employee would receive additional reduction in force service credit based upon the three actual ratings of record: 20 + 20 + 16 = 56, divided by 3 = 18.7, rounded up to 19 years of additional retention credit for performance.

Multiple Rating Patterns. If an agency has employees in a competitive area who have performance ratings under more than one pattern of summary levels, the agency must consider the mix of patterns and may provide different amounts of additional retention service credit for employees who have the same summary level, but are under different patterns. The range of additional service credit is still limited from 12 to 20 years.

(For example, the agency may elect to provide employees who have a Level III "Fully Successful" rating under a two-level "Pass/Fail" pattern with 18 years of additional retention service credit, while electing to continue providing employees who have a Level IV "Exceeds Fully Successful" under a five-level pattern with 16 years of additional retention service credit.)

o Regardless of the basis that the agency computes the additional service credit for retention, an employee is given additional service credit based on the mathematical average (rounded in the case of a fraction to the next whole number) of the value of the employee's last three annual ratings.

o If an employee received more than three ratings during the 4-year period, the three most recent annual ratings are used.

o If an employee received one or two, but not three ratings of record during the applicable 4-year period, credit is given for performance on the basis of the actual rating(s) of record divided by the number of actual ratings received. (For example, an employee who received two ratings of record of "Fully Successful" receives the appropriate amount of additional retention service credit divided by the two ratings.

o If an employee received only one rating of record during the applicable 4-year period, credit is given for performance on the basis of the value of that one actual rating of record.

8. APPLYING THE RIF REGULATIONS-RELEASE FROM THE COMPETITIVE LEVEL (see Section 3-A-17). Employees are released from the retention register in the inverse order of their retention standing (i.e., the employee with the lowest standing is the first individual reached for a reduction in force action).

o All employees in Group III are released before employees in Group II, and all employees in Group II are released before employees in Group I.

o Then within subgroups, all employees in Subgroup B are released before employees in Subgroup A, and all employees in Subgroup A are released before employees in Subgroup AD.

o Any employees reached for release out of this regular order (such as under a temporary or a continuing exception in order to retain an employee with special skills) must be notified of the reasons for the exception.

9. APPLYING THE RIF REGULATIONS-ASSIGNMENT RIGHTS (see Sections 3-A-18 and 3-A-19). Competitive service employees in Groups I or II with current performance ratings of at least "Minimally Successful" who are reached for release from the competitive level are entitled to an offer of assignment if they have "bump" or "retreat" rights to an available position in the same competitive area, and they would otherwise be separated by reduction in force.

o The existence of an available position does not oblige an agency to offer an employee a particular position; however, it does establish the employee's right to be offered a position at the same grade of the available position.

o An "AVAILABLE POSITION" must:

(1) Last at least 3 months;

(2) Not be a temporary time-limited position;

(3) Be in the competitive service;

(4) Be one the released employee qualifies for;

(5) Have a pay rate which requires no reduction, or the least possible reduction, in the employee's present grade. (However, an available position may not have a higher grade than the employee's present position.);

(6) Have the same type of work schedule (i.e., full-time, part-time, seasonal, intermitent, on-call) as the employee's present position;

(7) Be within three grades (or grade-intervals) of the employee's present position ("Grade-Intervals" are discussed below); and

(8) Be held by an employee (i) in a lower retention subgroup who is subject to "BUMP" rights, or (ii) in the same subgroup, but with less service, and who holds a position which the employee formerly occupied on a permanent basis (or an essentially identical position) that is subject to "RETREAT" rights.

o Promotion potential is not a consideration in filling a position under OPM's reduction in force regulations. A reduction in force offer may have the less, more, or the same potential.

o An employee with an excepted service appointment has no assignment rights under OPM's reduction in force regulations. However, an agency may elect to establish its own system of reduction in force assignment rights for its excepted employees.

o BUMP. Bumping means displacing an employee in a lower tenure group, or in a lower subgroup within the released employee's own tenure group. Although the released employee must be qualified for the position, it may be a position that he or she has never held.

o Total service is not a consideration in determining an employee's bumping rights.

o RETREAT. Retreating means displacing an employee with less service within the released employee's own tenure group and subgroup. The position may be up to five grades (or grade-intervals) lower than the position held by the released employee if he or she is a disabled veteran in Subgroup AD. The position must also be the same position or essentially identical to a position held by the released employee in any Federal agency on a permanent basis.

o An employee with a current annual performance rating of "Minimally Successful" only has retreat rights to positions held by employees with the same or lower ratings.

o GRADE INTERVALS (see Sections 3-A-22 and 3-A-23). The grade limits of an employee's assignment rights are determined by the position the employee holds at the time of the reduction in force, regardless of how the employee progressed to the position. For example, an employee released from a GS-11 position that progresses GS-5-7-9-11 has bump and retreat rights to positions at GS-5. An employee released from a GS-9 position has bump and retreat rights to positions at GS-6.

o The difference between successive grades in a one-grade occupation is a grade difference, and the difference between successive grade in a multi-grade occupation is a grade-interval difference.

o VACANT POSITIONS (see Section 3-A-21). An agency is not required to offer vacant positions in a reduction in force, but may choose to fill all, some, or none of them.

o When an agency chooses to fill a vacancy with an employee reached for a reduction in force action, it must follow subgroup retention standing (i.e., the "Bumping" principle applies to the offer of the vacant position, in that the released employee in the highest group and subgroup must receive the offer of a position before an employee in a lower group and subgroup).

o The agency is not required to consider total service in offering positions to employees in the same group and subgroup unless the employee with the most service also formerly held the position on a permanent basis (i.e., the "Retreating" principle applies to the offer of the vacant position.)

o An employee's right reduction in force assignment rights is met if the agency offers the employee a vacant position at the grade to which he or she has bump or retreat rights.

o An agency may choose to waive qualifications in offering an employee reduction in force assignment to a vacant position. However, the agency may not waive a minimum educational requirement.

o A reduction in force offer of a vacant position can only be in the same competitive area, and must be within three grades (or grade-intervals) of the employee's present position.

10. APPLYING THE RIF REGULATIONS-RIF NOTICES (see Sections 3-A-28 and 3-A-29). An agency must give each employee at least 60 days specific written notice before he or she is reached for a reduction in force action.

o Employees in the Department of Defense are entitled to 120 days specific written notice in a significant reduction in force.

o If faced with an unexpected situation, the agency may, with OPM approval, give the employee a specific reduction in force notice of less than 60 days or 120 days, as appropriate, but at least 30 days, before the effective date of the reduction in force.

11. RIF APPEALS AND GRIEVANCES (see Sections 3-A-31 and 3-A-32). An employee who has been separated, downgraded, or furloughed for more than 30 days by RIF has the right to appeal the Merit Systems Protection Board (MSPB) if the employee believes that the agency did not properly follow the reduction in force regulations.

o The appeal must be filed during the 30-day period beginning the day after the effective date of the reduction in force action.

o An employee in a bargaining unit covered by a negotiated grievance procedure that does not exclude reduction in force must use the negotiated grievance procedure and may not appeal the reduction in force action to the Board unless the employee alleges the action was based upon discrimination. The time limits for filing a grievance under a negotiated grievance procedure are set forth in the collective bargaining agreement.

12. TRANSFER OF FUNCTION (see Module 4). A Transfer of Function takes place when a function ceases in one competitive area and moves to one or more other competitive areas that do not perform the function at the time of transfer.

o A transfer of function also takes place when the entire competitive area moves to another local commuting area and is not merged with another competitive area that performs the function at the time of transfer.

o The gaining competitive area may be in the same or a different agency.

o The movement of work within a competitive area is a reorganization.

o An employee who is identified with the transferring function has the right to transfer only if faced with separation or downgrading in the competitive area that is losing the function.

o The losing competitive area may use adverse action procedures to separate any employee who chooses not to transfer with his or her function.

o An agency may not conduct a reduction in force solely to place employees who chose not to transfer with the function to a different local commuting area.

o If the transfer of function results in a surplus of employees in the gaining competitive area, all employes who elected to transfer with the function compete under RIF regulations for positions in the gaining competitive area.

13. PLACEMENT ASSISTANCE AND EMPLOYEE BENEFITS. Competitive service employees in Groups I and II who have received a specific notice of separation by RIF are presently eligible for three types of placement assistance in finding other positions:

(a) REEMPLOYMENT PRIORITY LIST (see Module 6). The RPL is primarily a post-RIF program administered by individual agencies that gives separated employees priority consideration over outside applicants for positions filled by their agency.

o Provided that the separated employee did not refuse a reduction in force offer of assignment to a position at the same grade, a separated Group I employee is placed on the RPL for 2 years; a separated Group II employee is placed on the RPL for 1 year.

o Excepted service employees who are eligible for veterans' preference and who are separated by reduction in force are eligible to have their names placed on a reemployment list that gives them future consideration for excepted positions filled by their former agency.

o Employees may also qualify for placement assistance through programs maintained by their agencies.

(b) CAREER TRANSITION ASSISTANCE PLAN (Possible new Module 7). CTAP is a placement program authorized under Subpart 5 CFR 330-F of OPM's regulations. Through CTAP, each agency must actively assist its surplus and displaced employees, particularly employees who may be reached for separation by reduction in force, or by adverse action because the employee is unable to relocate to a different local commuting area. CTAP also provides special selection priority to well-qualified surplus or displaced employees who apply for agency vacancies in the local commuting area before the agency may select any other candidate from either within or outside the agency.

(c) INTERAGENCY CAREER TRANSITION ASSISTANCE PLAN (Possible new Module 10). ICTAP is a placement program authorized under Subpart 5 CFR 330-G of OPM's regulations. Through ICTAP, an employee who applies for a position in a different agency after being separated by reduction in force, or by adverse action because the employee was unable to relocate to a different local commuting area, has employment priority over other outside candidates. The displaced employee must be rated well-qualified, and also must apply for the position.

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 2. BASIC MANAGEMENT RIGHTS IN REDUCTION IN FORCE

1. SCOPE OF THIS SECTION. Section 3-A-2 summarizes management's basic right to make final decisions in the development and implementation of reduction in force policy.

o The cited provisions in Section 3-A-2 do not place limitations on management's right to make other final decisions concerning reduction in force or related issues. (5 CFR 351.201(a)(1))

2. BASIC RIGHT TO ORGANIZE WORKFORCE (see 3-B-2-2 for additional information). The agency has the responsibility to plan the work and to organize the workforce to accomplish agency objectives within available resources. (5 CFR 351.201(a)(1))

3. RIF DECISIONS (see 3-B-2-3 for additional information). Each agency is responsible for deciding what positions are abolished, whether a RIF or transfer of function is necessary, and (if applicable) when a reduction in force or transfer of function will take place. (5 CFR 351.201(a)(1))

o This also includes the right of the agency to decide which positions are required after a reorganization or other organizational change, where the positions are located, and when the positions are to be filled, abolished, or vacated.

4. GENERAL RIGHT OF AGENCY TO CARRY OUT OTHER PERSONNEL ACTIONS (see 3-B-2-4 for additional information). An agency's need to apply reduction in force (or transfer of function) procedures does not suspend the agency's authority and responsibility to take other personnel actions such as reassignment, promotion, change of duty station, or demotion for cause or unacceptable performance. (5 CFR 351.201(a)(1))

o An agency may effect other personnel actions before, during, or after a reduction in force, or transfer of function.

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 3. COMPLIANCE WITH OPM'S RETENTION REGULATIONS

1. AGENCY RESPONSIBILITY (see 3-B-3-1 for additional information). Each agency must insure that reduction in force actions are taken in compliance with laws, regulations, and the terms of any negotiated bargaining agreements. (5 CFR 351.204)

o Each agency is responsible for assuring that the provisions of OPM's retention regulations found in 5 CFR Part 351 (that are derived from applicable statutes and case law) are uniformly and consisently applied in any one reduction in force. (5 CFR 351.204)

o The use of reduction in force procedures to avoid required procedures for other situations (e.g., conducting a reduction in force rather than adverse action procedures to release an employee with a history of conduct problems) is improper and reflects unfavorably on the credibility of agency management and on the RIF system.

2. OPM REVIEW OF AGENCY'S RIF PLANS. OPM may examine an agency's preparation for reduction in force at any stage. (5 CFR 351.205)

o If OPM finds that an agency's reduction in force preparations are contrary to the express provisions or the spirit and intent of the applicable regulations or would violate employee rights or equities, OPM may recommend corrective action with respect to those preparations. (5 CFR 351.205)

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 4. REDUCTION IN FORCE DEFINITIONS

1. DEFINITIONS IN THIS MODULE. Terms used in Module 3 are defined as follows:

a. ASSIGNMENT RIGHT means the right of an employee to be assigned (by bump or retreat) in the second round of competition to a position in a different competitive level held by an employee with lower standing on a retention register.

b. BUMP is the assignment of an employee to a position held by another employee in a lower group, or in a lower subgroup within the same tenure group.

c. COMPETING EMPLOYEE means an employee in tenure group I, II, or III in either the competitive or the excepted service. (5 CFR 351.203)

d. COMPETITIVE AREA means the organizational and geographical boundaries in which employees compete in a reduction in force.

e. COMPETITIVE LEVEL means a group of positions in the same grade and classification series that have similar duties and other requirements.

f. COMPETITIVE SERVICE has the meaning given in 5 U.S.C. 2102.

he employee in tenure group I, II, or III in either the competitive or the excepted service.

g. DAYS mean calendar days. (5 CFR 210.102(b)(3))

h. EXCEPTED SERVICE has the meaning given in 5 U.S.C. 2103.

i. FURLOUGH under reduction in force procedures 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 noncontinuous basis, but not more than 1 year when the action is based on one of the reduction in force reasons and is not in accordance with preestablished conditions of employment. (5 CFR 351.203) (Section 5 CFR 351.604 covers reduction in force furloughs; Section 5 CFR 752, Subpart D covers adverse action furloughs of 30 days or less, or 22 workdays or less on a noncontinuous basis.)

j. LOCAL COMMUTING AREA means the geographic area that usually constitutes one area for employment purposes, as determined by the agency. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people

live and can reasonably be expected to travel back and forth daily to their usual employment. (5 CFR 351.203)

k. NOTICE means a written communication from an agency official to an individual employee stating that the employee will be reached for a reduction in force action.

l. RATING OF RECORD, for an employee subject to 5 U.S.C. Chapter 43 or 5 CFR Part 430, means the performance rating (1) prepared at the end of an appraisal period for performance of agency-assigned duties over the entire period and the subsequent issuance of a summary level either within a pattern (as authorized by 5 CFR 430.208(d)), or (2) a rating of record that results because of a within-grade increase decision (as authorized by 5 CFR 531.404(a)(1)).

For an employee not subject to 5 U.S.C. Chapter 43 or 5 CFR Part 430, RATING OF RECORD 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 5 CFR 430.201(c). (5 CFR 351.203

m. REORGANIZATION means the planned elimination, addition, or redistribution of functions or duties in an organization. (5 CFR 351.203)

n. REPRESENTATIVE RATE means the fourth step of the grade for a position under the General Schedule (except for the single rate for GS-18); the prevailing rate as defined by FPM supplement 532-1 for a position under the Federal Wage System or similar wage-determining procedure; and for other positions, the rate designated by the agency as representative of the position. (5 CFR 351.203)

o. RETENTION REGISTER is a list of competing employees within a competitive level who are grouped by tenure, veterans preference, and length of service augmented by performance credit.

p. RETENTION STANDING means an employee's relative standing on a retention register based on tenure, veterans preference, and length of service augmented by performance credit.

q. RETREAT is the assignment of an employee to a position held by another employee with lower retention standing in the same subgroup in a different competitive level.

r. ROUND OF COMPETITION means the different stages of competing for retention. In first round competition, employees compete to stay in the competitive level. In the second round of competition, employees compete for assignment to positions in different competitive levels.

s. SUBGROUP STANDING means the employee's relative standing on a retention register based on tenure group and veteran preference subgroup. It does not take into account length of service and performance credit.

t. TENURE means the period of time an employee may reasonably expect to serve under a current appointment.

u. TRANSFER OF FUNCTION means: (1) the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s); or (2) the movement of the competitive area in which the function is performed to another local commuting area. (5 CFR 351.203)

v. UNDUE INTERRUPTION means a degree of interruption that would prevent the completion of required work by the employee 90 days after the employee has been placed in a different position in first or second round reduction in force competition. The 90-day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if an employee needed more than 90 days after the reduction in force to perform the optimal quality or quantity of work. The 90-day standard may be extended if placement is made in first or second round reduction in force competition to a low priority program, or to a vacant position. (5 CFR 351.203)

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 5. COVERAGE OF OPM'S REDUCTION IN FORCE REGULATIONS

1. OBLIGATION OF THE AGENCY TO USE RIF REGULATIONS (see 3-B-5-1 for additional information). An agency is required to use OPM's retention regulations only if the employee is separated, downgraded, or placed in a nonpay status because of a reason covered in paragraph 4 below. (5 CFR 351.201(a)(2))

2. AGENCY AUTHORITY TO REASSIGN (see 3-B-5-2 for additional information). At its discretion, an agency may reassign an employee, without regard to reduction in force procedures, to a vacant position at the same grade and rate of pay. The position may be in the same, or a different: (5 CFR 335.102)

(a) Competitive level;

(b) Competitive area; or

(c) Local commuting area.

3. OPTIONAL USE OF RIF OR REASSIGNMENT. At its discretion, an agency may provide an offer of a position at the same grade and pay to an employee who is reached for a reduction in force action by either:

(a) Offering the employee assignment under the retention regulations to an encumbered or a vacant position; (5 CFR 351.704(a)(1)), or

(b) Reassigning the employee to a vacant position. (5 CFR 335.102)

4. RIF ACTIONS AND REASONS FOR A RIF (see 3-B-5-4 for additional information). A personnel action must be effected under reduction in force procedures when both (1) the action to be taken, and (2) the reason for the action, are covered by the retention regulations. (5 CFR 351.201(a)(2))

o An action that meets one, but not both, conditions, is not a reduction in force action and must be taken under other appropriate authority.

(a) ACTION TO BE TAKEN is release of an employee from a reduction in force competitive level by:

(1) Separation; (5 CFR 351.201(a)(2))

(2) Furlough for more than 30 days; (5 CFR 351.201(a)(2))

(3) Demotion; (5 CFR 351.201(a)(2)), or

(4) Reassignment requiring displacement. 5 CFR 351.201(a)(2))

(b) REASON FOR THE ACTION is:

(1) Lack of work; (5 CFR 351.201(a)(2))

(2) Shortage of funds; (5 CFR 351.201(a)(2))

(3) Insufficient personnel ceiling; (5 CFR 351.201(a)(2))

(4) Reorganization; (5 CFR 351.201(a)(2))

(5) An individual's exercise of reemployment rights or restoration rights; (5 CFR 351.201(a)(2))
or

(6) Reclassification of an employee's position due to erosion of duties when this action:

(i) will take effect after an agency has formally announced a reduction in force in the employee's competitive area (5 CFR 351.201(a)(2)), and

(ii) when the reduction in force will take effect within 180 days. (5 CFR 351.201(a)(2))

5. ACTIONS EXCLUDED FROM RIF COVERAGE (see 3-B-5-5 for additional information). OPM's retention regulations do not apply to:

(a) The termination of a temporary or term promotion, or the return of an employee to a position held before the temporary or term promotion, or one of equivalent grade and pay; (5 CFR 351.202(c)(1))

(b) A change to lower grade based on the reclassification of an employee's position due to the application of new classification standards or the correction of a classification error; (5 CFR 351.202(c)(2))

(c) A change to lower grade based on the reclassification of an employee's position due to erosion of duties, except that this exclusion does not apply to such reclassification actions that will take effect after an agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within 180 days; (5 CFR 351.202(c)(3))

o This exception ends at the completion of the reduction in force.

(d) Placement of an employee serving on an on-call or seasonal basis in a nonpay, nonduty status in accordance with conditions established at time of appointment; (5 CFR 351.202(c)(6))

(e) A change in an employee's work schedule from part-time to full-time; (5 CFR 351.202(c)(7))

o An involuntary change from full-time to part-time is covered by reduction in force procedures; (5 CFR 351.202(c)(7), or

(f) A reduction in the number of scheduled hours within a part-time tour of duty (e.g., from 32 to 16 scheduled hours per week). (5 CFR 351.403(b)(4))

6. EMPLOYEES COVERED BY OPM'S RIF REGULATIONS. Except as noted in paragraphs 3-A-5-7 and 3-A-5-8 below, OPM's retention regulations apply to each Federal civilian employee:

(a) In the executive branch of the Federal Government; (5 CFR 351.202(a)(1), and

(b) In a position outside the executive branch that is subject by statute to competitive service requirements or is determined by the appropriate legislative or judicial administrative body to be covered by the retention regulations. (5 CFR 351.202(a)(2))

7. MODIFICIATIONS TO GENERAL COVERAGE UNDER OPM'S RIF REGULATIONS (see 3-B-5-7 for additional information).

(a) Administrative law judges are subject to the modified procedures in 5 CFR 930. (5 CFR 351.202(a)(2))

(b) Certain positions covered by Indian preference are subject to modified RIF procedures pursuant to Section 472a of title 25, United States Code.

(c) Employees of the U.S. Postal Service who are eligible for veterans' preference are covered by OPM's reduction in force regulations under authority of Section 1005(a)(2) of the Postal Reorganization Act of 1970.

o Postal Service employees who are not eligible for veterans' preference are not covered by OPM's reduction in force regulations.

8. EMPLOYEES EXCLUDED FROM COVERAGE UNDER OPM'S RIF REGULATIONS (see 3-B-5-8 for additional information). OPM's retention regulations do not apply to:

(a) A National Guard technician. (5 CFR 351.202(c)(5))

o The release of a National Guard Technician is covered under Section 709 of Title 32, U.S.C. (5 CFR 351.202(c)(5))

(b) A member of the Senior Executive Service (5 CFR 351.202(b)(1))

o The reduction in force regulations do apply to an employee who holds a Senior-level (SL) position classified above GS-15 under authority of 5 U.S.C. 5376. (5 CFR 534.501)

(c) An employee in a position outside the executive branch, except for a position that is subject by statute to competitive service requirements, or is determined by the appropriate legislative or judicial administrative body to be covered by the retention regulations. (5 CFR 351.202(a)(2))

(d) An employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of, the United States Senate. (5 CFR 351.202(b)(2))

(e) (For additional information, see 3-B-5-8-(e)) A reemployed civil service annuitant, unless the appointing officer determines that an annuitant may compete under reduction in force procedures. (5 U.S.C. 3323(b))

o Under section 3323(b) of title 5, United States Code, an annuitant serves at the will of the appointing officer and thus may be separated at any time at the discretion of the appointing officer.

o If the agency does not separate the annuitant prior to a reduction in force, the annuitant's retention standing is determined in the same manner as other employees' standing is determined and the employee competes in the reduction in force.

(f) A foreign national employee appointed under programs authorized by section 408 of the Foreign Service Act of 1980 (22 U.S.C. 3968), which may include special plans for reduction in force.

o In these plans an agency may give effect to local labor laws and practices by supplementing the factors in the retention regulations to the extent consistent with the public interest.

o There is no right to appeal actions taken under these under these special plans to the Merit Systems Protection Board.

(g) (For additional information, see 3-B-5-8-(g)) Health care personnel of the Department of Veterans Affairs, Veterans Health Services and Research Administration, who are appointed under the authority of 38 U.S.C. 4104(1) or 38 U.S.C. 4114.

o Under Title 38, U.S.C., there are a group of employees in the Department of Veteran Affairs (VA) designated as "hybrids." The "hybrids" are excepted service employees appointed either under 38 U.S.C. 7401(3) (i.e., full-time permanent employees), or under 38 U.S.C. 7405 (i.e., part-time permanent employees). The hybrids compete under OPM's reduction in force regulations as excepted service employees.

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 6. REORGANIZATION

1. DEFINITION (see 3-B-6-1 for additional information). "REORGANIZATION" means the planned elimination, addition, or redistribution of functions or duties in an organization. (5 CFR 351.203)

o The agency may implement a reorganization when organization changes actually take place, or at a later date such as during a classification survey.

2. USE OF RIF PROCEDURES IN REORGANIZATION (see 3-B-6-2 for additional information). If a reorganization results in an employee being reached for separation or downgrading, the agency must follow OPM's reduction in force regulations, but only at the time of actual separation or downgrading. (5 CFR 351.201(a)(2))

o The agency may always reassign an employee to another position at the same grade and avoid the use of reduction in force procedures in a reorganization. (5 CFR 335.102)

3. RECLASSIFICATION DUE TO NEW CLASSIFICATION STANDARDS OR CORRECTION OF CLASSIFICATION ERROR (see 3-B-6-3 for additional information). If the grade of a position must be reduced because of the application of new OPM classification standards or the correction of classification error, reduction in force procedures are not applied. (5 CFR 351.202(c)(2))

o In these situations, the duties of the position do not change; the grade of the position changes because of new classification standards or the correction of classification error.

4. RECLASSIFICATION DUE TO JOB EROSION (see 3-B-6-4 for additional information). "JOB EROSION" describes a situation where the grade of a position must be reduced because duties have gradually drifted away through an extended erosion process. (5 CFR 351.202(c)(3))

(a) In job erosion cases, there is no record of:

(1) The reason why the grade-supporting duties of a position are no longer being performed; and

(2) The time frame when the change to grade-controlling duties actually occurred.

(b) Job erosion contrasts with a reclassification due to reorganization, where the agency carries out a planned change in duties when the record shows:

(1) A direct or indirect management decision resulted in the deletion of the grade-supporting duties of a position; (5 CFR 351.201(a)(2), and

(2) The time frame when management made this decision. (5 CFR 351.201(a)(2)

5. USE OF RIF PROCEDURES IN JOB EROSION SITUATIONS (see 3-B-6-5 for additional information). OPM's reduction in force regulations apply to job erosion reclassification actions when: (5 CFR 351.202(c)(3))

(a) The job erosion downgrading action will take effect after an agency has formally announced a reduction in force in the employee's competitive area; (5 CFR 351.202(c)(3)), and

(b) The reduction in force will occur within 180 days after the effective date of the downgrading action. (5 CFR 351.202(c)(3))

o In deciding whether job erosion is an option, the agency must consider whether a reduction in force has been announced, and will take effect within 180 days, in the employee's competitive area. (5 CFR 351.202(c)(3))

MODULE 3 (RIF), UNIT A (REQUIRED PROCEDURES), SECTION 7. COMPETITIVE AREA

1. GENERAL. Each agency must establish competitive areas that are the boundaries within which employees compete for retention under reduction in force procedures. (5 CFR 351.402(a))

(a) Employees in a competitive area compete for retention under OPM's reduction in force regulations only with other employees in the same competitive area. (5 CFR 351.402(b))

o Employees do not compete for retention with employees of the agency in another competitive area. (5 CFR 351.402(b))

(b) The competitive area includes all employees within the organizational unit(s) and geographical location(s) that are included in the competitive area definition. (5 CFR 351.402(b))
o Each employee competes with all other employees in the competitive area for positions under OPM's retention regulations. (5 CFR 351.402(b))

(c) In any one reduction in force, an agency may not use one competitive area for the first round of competition and a different competitive area for second rounds of competition. (5 CFR 351.402(b))

(d) There is no minimum or maximum number of employees in a competitive area. (5 CFR 351.402(b))

2. BASIS FOR COMPETITIVE AREA (see 3-B-7-2 for additional information). An agency must define each competitive area solely in terms of organizational unit(s) and geographical location(s). (5 CFR 351.402(b))

3. COMPETITIVE AREA STANDARD FOR HEADQUARTERS ACTIVITIES (see 3-B-7-3 for additional information). (5 CFR 351.402(b)) A minimum headquarters competitive area may consist of any organizational unit under separate administration within the local commuting area. (5 CFR 351.402(b))

o "Separate administration" means that the organizational unit is separately organized and clearly distinguished from other headquarters organizational units within the same local commuting area in regard to operation, work function, staff, and personnel management. (5 CFR 351.402(b))

o "Separate Administration" for purposes of establishing competitive areas applicable to both headquarters and field organizations recognizes that individual organizational components may be under separate administration even though many

agencies reserve final approval of certain personnel actions to a higher level in the agency (e.g., classification of positions, filling of higher-graded positions, processing of personnel actions, etc.; additional information is found in 3-A-7-6 below). (5 CFR 351.402(b))

4. COMPETITIVE AREA STANDARD FOR FIELD ACTIVITIES (see 3-B-7-4 for additional information). The minimum competitive area in the field is an activity under separate administration within the local commuting area. (5 CFR 351.402(b))

o If two or more field activities are grouped at the same field installation, but are organizationally independent and separate from each other in operation, work function, staff, and personnel management, each activity may properly be designated a competitive area. (5 CFR 351.402(b))

o The same general standard of "separate administration within the local commuting area" is used to establish competitive areas for both headquarters and field components. (5 CFR 351.402(b))

5. INSPECTOR GENERAL ACTIVITY. An agency must establish a separate competitive area for an Inspector General activity established under authority of the Inspector General Act of 1978 (Public Law 95-452, as amended). This competitive area only includes employees of the Inspector General activity. (5 CFR 351.402(d))

6. SEPARATE ADMINISTRATIVE MANAGEMENT AUTHORITY IN COMPETITIVE AREA DETERMINATIONS (see 3-B-7-6 for additional information). As used for purposes of establishing a minimum competitive area, "SEPARATE ADMINISTRATION" is the administrative authority to take or direct personnel actions (i.e., the authority to establish positions, abolish positions, assign duties, etc.) rather than the issuance or processing of the documents by which these decisions are effected. (5 CFR 351.402(b))

(a) "Separate Administration" is evidenced by the agency's organizational manual and delegations of authority that document where, in the organization, final authority rests to make decisions such as establishing positions, abolishing positions, assigning duties, etc. This is the standard for a minimum competitive area in a local commuting area, in either a headquarters organization or field component. (5 CFR 351.402(b))

(b) The fact that several activities may be serviced by the same personnel office does not, of itself, require that they be placed in the same competitive area. The personnel office merely processes personnel actions rather than having final responsibility to make decisions on whether to establish position, abolish positions, assign duties, etc. (5 CFR 351.402(b))

7. COMPETITIVE AREAS LARGER THAN THE MINIMUM STANDARD (see 3-B-7-7 for additional information). A competitive area may be larger than the minimum standard covered in paragraphs 3-A-7-5 and 3-A-7-6 above. (5 CFR 351.402(b))

o A competitive area may not be smaller than the minimum standard covered in 3-A-7-5 and 3-A-7-6 above. (5 CFR 351.402(b))

8. LOCAL COMMUTING AREA DEFINITION (see 3-B-7-8 for additional information). "LOCAL COMMUTING AREA" means the geographic area that usually includes one area for employment purposes, as determined by the agency. (5 CFR 351.203)

(a) The Local Commuting Area includes any population center (or two or more neighboring centers) and the surrounding localities in which people live and can reasonably be expected to travel back and forth every day to their usual employment. (5 CFR 351.203)

o This definition is also found in 3-A-4-1-k.

(b) Each agency has the right and the responsibilty for defining local commuting areas and applying this definition. (5 CFR 351.204)

o There is no OPM mileage standard to determine when two local duty stations would be included in the same local commuting area.

9. LOCAL COMMUTING AREA IN COMPETITIVE AREA DEFINITION. When an organization has components in more than one local commuting area, each commuting area may be designated as a separate competitive area. (5 CFR 351.402(b))

o When different organizations of the same agency are located in the same local commuting area, the agency then refers to its personnel management authority to determine what is the minimum competitive area (see paragraph 3-A-7-6).

10. PUBLICATION OF COMPETITIVE AREA DEFINITION. When an agency establishes or changes competitive areas, it must publish descriptions of the areas or otherwise make them readily available for review by employees and OPM. (5 CFR 351.402(c))

11. REQUIREMENT THAT COMPETITIVE AREA DEFINITION MUST REMAIN UNCHANGED FOR 90 DAYS PRIOR TO RIF. Agencies must establish competitive areas at least 90 days prior to a reduction in force. (5 CFR 351.402(c))

o Section 3-A-8 covers an agency's request to OPM for an exception to the 90 day competitive area requirement.

MODULE 3 (RIF), UNIT A (REQUIRED PROCEDURES), SECTION 8. REQUEST FOR OPM APPROVAL OF A COMPETITIVE AREA CHANGE

1. OPM PRIOR APPROVAL OF CHANGES TO THE COMPETITIVE AREA WITHIN 90 DAYS OF RIF-GENERAL. When an agency changes an existing competitive area or establishes new competitive areas less than 90 days prior to the effective date of a reduction in force, the agency must receive OPM approval of the change before the effective date of the reduction in force. (5 CFR 351.402(c))

o A new competitive area does not result from changes within an existing competitive area such as the transfer of a function from another competitive area prior to the effective date, or the updating of the competitive area definition to document other organizational changes that have taken place since the competitive area definition was last updated.

2. OPM PRIOR APPROVAL OF CHANGES TO THE COMPETITIVE AREA WITHIN 90 DAYS OF RIF-INFORMATION IN REQUEST TO OPM. The agency should submit the request to OPM as soon as possible, and should include the following information:

(a) Identification of the proposed competitive area including the organizational segment, geographic location, and limits of the local commuting area;

(b) A description of how the proposed area differs from the one previously established for the same unit and geographic area;

(c) An organizational chart of the agency showing the relationship between the organizational components within the competitive area and other components in the commuting area;

(d) The number of competing employees in the proposed competitive area;

(e) A description of the operation, work function, staff, and personnel administration of the proposed area and, where appropriate, a description of how the area is distinguished from others in these respects; and

(f) A discussion of the circumstances which led to the proposed changes less than 90 days before a proposed reduction.

3. OPM PRIOR APPROVAL OF CHANGES TO THE COMPETITIVE AREA WITHIN 90 DAYS OF RIF-OPM ADDRESS FOR REQUEST. The agency should send the request to:

Associate Director
Employment Service
Office of Personnel Management
Washington, DC 20415

o For expedited service, agencies may FAX requests to

Office of Personnel Management
Workforce Restructuring Office
Room 6500
Washington, DC 20415

FAX- 202-606-2329; voice- 202-606-0960

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 9. COMPETITIVE LEVEL

1. GENERAL. After establishing the competitive area, the agency establishes competitive levels that include groups of interchangeable positions. (5 CFR 351.403(a))

o When the four retention factors are applied (tenure, veterans' preference, length of service, and performance ratings), the competitive level becomes a retention register which lists employees in the order of their relative retention standing. (5 CFR 351.401)

o The terms "COMPETITIVE LEVEL" and "RETENTION REGISTER" are generally used in reference to a final retention register without regard to this distinction.

2. POSITION DESCRIPTIONS ARE USED TO ESTABLISH COMPETITIVE LEVELS (see 3-B-9-2 for additional information). The agency establishes competitive levels on the basis of each employee's official position of record. (5 CFR 351.403(a)(2))

o Positions are not placed in competitive levels on the basis of personal qualifications or performance levels of individual employees. (5 CFR 351.403(a)(2))

3. ESTABLISHING COMPETITIVE LEVELS. A competitive level consists of positions in the competitive area that are: (5 CFR 351.403(a)(1))

(a) In the same grade (or occupational level); (5 CFR 351.403(a)(1))

(b) In the same classification series; (5 CFR 351.403(a)(1)), and

(c) Similar enough in duties, qualifications requirements, pay schedules, and working conditions, so that an agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption. (5 CFR 351.403(a)(1))

o "Undue Interruption" for purposes of establishing competitive levels is covered in paragraph 3-A-9-5 below.

4. INTERCHANGEABLE POSITIONS ARE PLACED IN THE SAME COMPETITIVE LEVEL. Positions in the same competitive level are so similar that the agency may readily assign an employee in one position to any of the other positions in the competitive level: (5 CFR 351.403(a)(1))

(1) Without changing the terms of the employee's appointment, (5 CFR 351.403(a)(1)), and

(2) Without undue interruption to the agency's work program. (5 CFR 351.403(a)(1))

o "Undue Interruption" for purposes of establishing competitive levels is covered in paragraph 3-A-9-5 below.

5. UNDUE INTERRUPTION EXPLAINED (see 3-B-9-5 for additional information). "UNDUE INTERRUPTION" is defined in 3-A-4-v as a degree of interruption that would prevent the completion of required work within the agency's allowable limits of time and quality. (5 CFR 351.203)

o A work program would be subject to undue interruption if an employee required more than 90 days after displacing a lower-standing employee to successfully perform the essential duties and responsibilities of the position. (5 CFR 351.203)

o The agency may also determine whether undue interruption would be a consideration in 90 days or less as the result of special work priorities or deadlines. (5 CFR 351.203)

6. SEPARATE COMPETITIVE LEVELS REQUIRED (see 3-B-9-6 for additional information). In conjunction with paragraphs 3-A-9-3 and 3-A-9-4 above, the agency must establish separate competitive levels for certain positions:

(a) COMPETITIVE AND EXCEPTED SERVICE. The agency must establish separate competitive levels for positions in the competitive service, and for positions in the excepted service. (5 CFR 351.403(b)(1))

o Competitive service positions which are filled by employees who hold excepted service appointments (e.g., Veterans Readjustment Appointments) compete for retention in the excepted service. (5 CFR 351.403(b)(1))

(b) EXCEPTED SERVICE APPOINTMENT AUTHORITY. The agency establishes separate competitive levels for excepted service positions filled under different appointment authorities. (5 CFR 351.403(b)(2))

(c) PAY SYSTEM. The agency establishes separate competitive levels for positions filled under different pay systems or pay schedules. (5 CFR 351.403(b)(3))

(d) WORK SCHEDULE. The agency establishes separate competitive levels for positions filled on different work schedules:

(1) Full-time; (5 CFR 351.403(b)(4))

(2) Part-time; (5 CFR 351.403(b)(4))

(3) Intermittent; (5 CFR 351.403(b)(4))

(4) Seasonal; (5 CFR 351.403(b)(4)), or

(5) On-call. (5 CFR 351.403(b)(4))

o There is no authority to establish separate competitive levels based upon subsets of the five categories covered in 3-A-9-6-d-1 through 3-A-9-6-d-5 above (e.g., all seasonal employees in otherwise interchangeable positions are placed in the same competitive level). The agency may not establish a competitive level for full-time seasonal employees and a different competitive level for part-time seasonal employees.) (5 CFR 351.403(b)(4))

(e) FORMALLY DESIGNATED TRAINEE OR DEVELOPMENTAL POSITIONS (see 3-B-10-6-(e) for additional information). The agency establishes separate competitive levels for positions filled by an employee in a formally designated trainee or developmental program which has the following characteristics: (5 CFR 351.403(b)(5)

(1) Is designed to meet the agency's needs and requirements for the development of skilled personnel; (5 CFR 351.702(e)(1))

(2) Is formally designated as a trainee or developmental program, with its provisions announced to employees and supervisors; (5 CFR 351.702(e)(2))

(3) Is developmental by design, offering planned growth in duties and responsibilities and providing advancement in recognized lines of career progression; (5 CFR 351.702(e)(3)), and

(4) Is fully implemented, with the participants chosen for the program through standard selection procedures. (5 CFR 351.702(e)(4))

7. SEPARATE COMPETITIVE LEVELS PROHIBITED. An agency may not assign a position to a separate competitive level based solely on:

(a) The sex of an employee, except when OPM has determined that certification of eligibles by sex is justified; (5 CFR 351.403(a)(3))

(b) A requirement to serve a probationary period for initial appointment to a supervisory or managerial position; (5 CFR 351.403(b)(5))

(c) A difference in the number of hours or weeks scheduled to be worked by other-than-full-time employees who otherwise would be in the same competitive level; (5 CFR 351.403(c)(1))

(d) A requirement to work changing shifts; (5 CFR 351.403(c)(2))

(e) The grade promotion potential of the position. (5 CFR 351.403(c)(3)), or

(f) A difference in the local wage areas in which wage grade positions are located. (5 CFR 351.403(c)(4))

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 10. ESTABLISHING RETENTION REGISTERS

1. GENERAL (see 3-B-10-1 for additional information). The "RETENTION REGISTER" applies the four retention factors required by law in 5 U.S.C. 3502(a) (i.e., tenure, veterans' preference, length of service, and performance ratings) to the competitive level. (5 CFR 351.404(a))

o A RETENTION REGISTER lists competing employees (i.e., defined in 5 CFR 351.203 as an employee in Tenure Group I, II, or III) in the order of their relative retention standing in a single competitive level. (5 CFR 351.404(a))

2. EMPLOYEES LISTED ON THE RETENTION REGISTER (see 3-B-10-2 for additional information). The retention register includes the name of each competing employee who holds an official position of record in the competitive level and is:

(a) Serving in that position; (5 CFR 351.404(a)(1))

(b) Temporarily promoted from the competitive level by either temporary promotion or term promotion; (5 CFR 351.404(a)(2)), or

(c) Detailed from the competitive level under 5 U.S.C. 3341 or other authority. (5 CFR 351.404(a)(3))

3. EMPLOYEES NOT LISTED ON THE RETENTION REGISTER BECAUSE OF RESTORATION RIGHTS BASED ON SERVICE IN THE ARMED FORCES. The retention register does not include the name of a competing employee on military duty with a restoration right to the competitive level. (5 CFR 351.404(a))

o The employee does not compete for retention because of the restoration right under 5 CFR 353.

4. EMPLOYEES LISTED APART FROM THE RETENTION REGISTER (reference 3-B-10-4 for additional information). Employees holding certain positions in a competitive level do not compete for retention in that competitive level.

(a) The agency first enters on a separate list the name of each employee who is serving in the competitive level under a:

(1) Time limited appointment; (5 CFR 351.404(b)(1))

(2) Term promotion; (5 CFR 351.404(b)(1)), or

(3) Temporary promotion. (5 CFR 351.404(b)(1))

(b) The agency enters on a separate list the name of each employee who holds an official position of record in the competitive level and has received a final written decision under 5 CFR Part 432 ("Performance Based Reduction in Grade and Removal Actions") of:

(1) Removal because of "Unacceptable" or equivalent performance; (5 CFR 351.404(b)(2)), or

(2) Demotion because of "Unacceptable" or equivalent performance. (5 CFR 351.405)

o An employee who has received a written decision of demotion under 5 CFR Part 432 competes for retention from the position to which the employee will be, or has been, demoted. (5 CFR 351.405)

(c) The agency enters on a separate list the name of each employee who holds an official position of record in the competitive level and has received a final written decision under 5 CFR Part 752 ("Adverse Action") of:

(1) Removal; (5 CFR 351.404(b)(2)), or

(2) Demotion. (5 CFR 351.405)

o An employee who has received a written decision of demotion under 5 CFR Part 752 competes for retention from the position to which the employee will be, or has been, demoted. (5 CFR 351.405)

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 11. DETERMINING EMPLOYEES' RETENTION STANDING

1. GENERAL. The four retention factors required in 5 U.S.C. 3502(a) are implemented in the following order on the retention register: (5 CFR 351.501(a))

(a) TENURE is the first factor and is implemented through three "Tenure Groups" on the retention register; (5 U.S.C. 3502(a)(1))

(b) VETERANS' PREFERENCE is the second factor and is implemented through three "Tenure Subgroups" on the retention register; (5 U.S.C. 3502(a)(2))

(c) SERVICE is the third factor and is implemented through each employee's "Service Computation Date" on the retention register; (5 U.S.C. 3502(a)(3)), and

(d) PERFORMANCE is the fourth factor and is implemented through additional service added for retention to the employee's Service Computation Date on the retention register. (5 U.S.C. 3502(a)(4))

2. ORDER OF EMPLOYEES ON THE RETENTION REGISTER. The agency lists competing employees on the retention register in the following order:

(a) TENURE GROUPS. The order of the three retention Tenure Groups on the retention register is:

(1) Group I; (5 CFR 351.501(a)(1))

(2) Group II; (5 CFR 351.501(a)(1)), and

(3) Group III. (5 CFR 351.501(a)(1))

(b) TENURE SUBGROUPS. The order of the three veterans' preference retention Tenure Subgroups on the retention register is:

(1) Subgroup AD; (5 CFR 351.501(a)(2)

(2) Subgroup A; (5 CFR 351.501(a)(2), and

(3) Subgroup B. (5 CFR 351.501(a)(2)

(c) SERVICE CREDIT. Within each subgroup, the agency first establishes a service computation date for each competing employee. (5 CFR 351.503(a))

(d) PERFORMANCE. Then within each subgroup, the agency adds additional service credit for performance, listing the employee with the earliest service date at the top of the subgroup. (5 CFR 352.501(a)(3))

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 12. RETENTION TENURE GROUPS

1. GENERAL. Tenure is one of the four retention factors required in 5 U.S.C. 3502(a). (5 U.S.C. 3502(a)(1))

2. TENURE GROUPS-COMPETITIVE SERVICE (see 3-B-12-2-(c) for additional information). Competitive service tenure groups are defined to provide that:

(a) GROUP I includes each career employee who is not serving a probationary period for appointment to a competitive position. (5 CFR 351.501(b)(1)

o An employee serving a probationary period required by 5 CFR 315-I for a supervisory or managerial position does not affect the tenure group designation. (5 CFR 351.501(b)(1)

o The following employees are in Group I as soon as they complete any required probationary period for initial appointment:

(1) An appointment for whom substantial evidence exists of eligibility to immediately acquire status and career tenure and whose case is pending final resolution by OPM (including cases under Executive Order 10826 to correct certain administrative errors); (5 CFR 351.501(b)(1)(i))

(2) An employee who acquires competitive status and satisfies the service requirement for career tenure when his or her position is brought into the competitive service; (5 CFR 351.501(b)(1)(ii)

(3) An administrative law judge; (5 CFR 351.501(b)(1)(iii)

(4) An employee appointed under 5 U.S.C. 3104 (which provides for the employment of specifically qualified scientific and professional personnel) or a similar authority; (5 CFR 351.501(b)(1)(iv), and

(5) An employee who acquires status under 5 U.S.C. 3304(c) on transfer to the competitive service from the legislative or judicial branch of the Federal Government. (5 CFR 351.501(b)(1)(v)

(b) GROUP II includes:

(1) Each career-conditional employee; (5 CFR 351.501(b)(2))

(2) Each employee serving a probationary period for initial appointment to a competitive position; (5 CFR 351.501(b)(2)), and

(3) An employee is in Group II when substantial evidence exists of eligibility to immediately acquire status and career-conditional tenure and the employee's case is pending final resolution by OPM (including cases under Executive Order 10826 to correct certain administrative errors). (5 CFR 351.501(b)(2))

(c) GROUP III includes each employee serving under:

(1) Indefinite appointment; (5 CFR 351.501(b)(3)

(2) Temporary appointment pending establishment of a register (TAPER); (5 CFR 351.501(b)(3)

(3) (See 3-B-12-2-(c) for additional information) Term appointment; (5 CFR 351.501(b)(3)

(4) Status quo appointment; (5 CFR 351.501(b)(3)

(5) A provisional appointment (see 3-A-12-2-d below); (5 CFR 316.401),

(6) Any other nonstatus nontemporary appointment. (5 CFR 351.501(b)(3)

(d) A competitive service employee serving under a temporary limited appointment is not in tenure Group III and is not a competing employee, except when the employee serves in a provisional appointment that was: (5 CFR 351.501(b)(3)

(1) Granted by OPM; (5 CFR 351.501(b)(3), or

(2) Made under an authority established by law, Executive order, or regulation (see 5 CFR 316.401 and 351.501(b)(3)).

3. TENURE GROUPS-EXCEPTED SERVICE (see 3-B-12-3) for additional information). Excepted service tenure groups are defined to provide that:

(a) GROUP I includes each permanent employee whose appointment carries no restriction or condition such as conditional, indefinite, specific time limit, or trial period; (5 CFR 351.502(b)(1))

(b) GROUP II includes each employee:

(1) Serving a trial period; (5 CFR 351.502(b)(2)(ii)), or

(2) Whose tenure is equivalent to a career-conditional appointment in the competitive service in agencies having these appointments. (5 CFR 351.502(b)(2)(iii))

o See 3-B-12-3-(b)-(2) for additional information.

(c) GROUP III includes each employee:

(1) With indefinite tenure (i.e., without specific time limit, but not actually or potentially permanent); (5 CFR 351.502(c)(3)(i))

(2) Under an appointment with a specific time limitation of more than 1 year; (5 CFR 351.502(c)(3)(ii)), or

o See 3-B-12-3-(c)-(2) for additional information.

(3) Who is currently serving under a temporary appointment limited to 1 year, but has completed one year of current continuous service under a temporary appointment with no break in service of 1 workday or more. (5 CFR 351.502(c)(3)(iii))

o See 3-B-12-3-(c)-(3) for additional information.

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 13. VETERANS' PREFERENCE IN REDUCTION IN FORCE

1. RETENTION SUBGROUPS. Veterans' preference is one of the four retention factors required in 5 U.S.C. 3502(a). (5 U.S.C. 3502(a)(2))

2. EMPLOYEES INCLUDED IN RETENTION SUBGROUPS. Within each of the three tenure groups on a retention register, the names of competing employees are placed in veterans' preference subgroups:

(a) SUBGROUP AD includes each veterans' preference eligible employee who has a compensable service-connected disability of 30 percent or more. (5 CFR 351.501(c)(1))

(b) SUBGROUP A includes each veterans' preference eligible employee not in subgroup AD, including all employees eligible for derivative preference under 5 U.S.C. 2108(3)(D)-(G)). (5 CFR 351.501(c)(2))

(c) SUBGROUP B includes each employee not eligible for veterans' preference. (5 CFR 351.501(c)(3))

3. GENERAL ELIGIBILITY FOR VETERANS' PREFERENCE (see 3-B-13-3 for additional information). Veterans' preference for civil service purposes is authorized by 5 U.S.C. 2108. (5 CFR Part 211)

(a) The Dual Compensation Act of 1964, as codified in 5 U.S.C. 3501(a) and 3502(a)(A) and (B), places additional limitations upon retired members of the Armed Forces that restricts both eligibility for retention preference, and the crediting of service in the Armed Forces for retention. (5 CFR 351.501(d))

o See paragraphs 3-A-13-8 and 3-A-13-9 below for additional information on the application of the Dual Compensation Act upon retention preference.

o Except for employees who are retired members of the Armed Forces, an employee who is eligible for veterans' preference for purposes of initial appointment to the Federal service is also eligible for veterans' preference under OPM's reduction in force regulations.

(b) Sections 3-A-13 and 3-B-13 of the Restructuring Information Handbook have basic information on the application of veterans' preference for retention. However, in making an official determination of whether an employee is entitled to veterans' preference for retention, or to determine whether an employee's service in the Armed Forces is creditable for retention, refer to the applicable OPM Operating Manual, "THE GUIDE TO PROCESSING PERSONNEL ACTIONS," (which was formerly Federal Personnel Manual Supplement 296-33):

4. DISABLED VETERAN. A "DISABLED VETERAN" is defined in section 2108(2) of title 5, United States Code, and further implemented through 5 CFR 211.102(b)), as an individual who:

(a) Served on active duty in the Armed Forces; (5 U.S.C. 2108(2))

(b) Was separated from the Armed Forces under honorable conditions; and presently receives either;

(1) A service-connected disability; (5 U.S.C. 2108(2)), or

(2) Compensation, disability retirement benefits, or a pension from the Department of Veterans Affairs, or the Armed Forces. (5 U.S.C. 2108(2))

5. ELIGIBILITY FOR VETERANS' PREFERENCE WHEN INITIAL ENTRY INTO THE ARMED FORCES TOOK PLACE BEFORE OCTOBER 15, 1976. If the employee initially entered the Armed Forces before October 15, 1976, "Veteran" means an individual who served on active duty in the Armed Forces: (5 CFR 211.102(a))

(a) During a war; (5 U.S.C. 2108(1)(A))

(b) In a campaign or expedition for which a campaign badge has been authorized; (5 U.S.C. 2108(1)(A))

(c) During the period from April 28, 1952, through July 1, 1955; (5 U.S.C. 2108(1)(A)); or

(d) For more than 180 consecutive days, any part of which the employee served from February 1, 1955, through October 14, 1976. (5 U.S.C. 2108(1)(B))

6. ELIGIBILITY FOR VETERANS' PREFERENCE WHEN INITIAL ENTRY INTO THE ARMED FORCES TOOK PLACE ON OR AFTER OCTOBER 15, 1976. If the employee initially entered the Armed Forces on or after October 15, 1976, "VETERAN" means an individual who served on active duty in the Armed Forces, and:

(a) Is a disabled veteran (5 U.S.C. 2108(3)(C)); or

(b)(1) Served in a campaign or expedition for which a campaign badge has been authorized; (5 U.S.C. 2108(1)(A)), and

(2) As provided in 38 U.S.C. 5303(a), medal holders who initially enlisted in the Armed Forces after September 7, 1980, or who entered on active duty after October 13, 1982, must have served continuously for 24 months, or the full period called or ordered to active duty.

o The service requirement does not apply to veterans with compensable service-connected disabilities, or to veterans separated for disability in the line of duty, or for hardship.

(3) Section 1102 of Title XI of Public Law 105-85, approved and effective November 18, 1997, extends veterans' preference to other eligible nondisabled veterans who served on active duty in the Armed Forces during the period beginning August 2, 1990, and ending January 2, 1992; however, the individual must still meet other conditions set forth in statute (e.g., the general requirement for 24 months continuous service, or service for the full period called or ordered to active duty, as covered in 3-A-6-(b)-(2) above.

o Section 1102 of Title XI of Public Law 105-85 did not extend veterans' preference for retention to retired members of the Armed Forces who are excluded from preference by the Dual Compensation Act of 1964, as codified in 5 U.S.C. 3501(a). (For additional information on the Dual Compensation Act's limits on the application of veterans' preference to retired members of the Armed Force, refer to paragraph 3-A-13-8 below.)

7. ELIGIBILITY FOR VETERANS' PREFERENCE BASED ON DERIVATIVE PREFERENCE (see 3-B-13-7 for additional information). Veterans' preference also extends to four types of employees who are eligible for derivative preference, which is retention subgroup "A": (5 CFR 211.102(c))

(a) The unmarried widow or widower of a veteran, as defined in 5 U.S.C. 2108(1)(A); (5 U.S.C. 2108(3)(D)),

(b) The spouse of a service-connected disabled veteran, as defined in 5 U.S.C. 2108(2), who has been unable to qualify for a Federal position; (5 U.S.C. 2108(E)),

(c) The mother of a veteran who died in a war or campaign, provided that the mother also meets other statutory conditions; (5 U.S.C. 2108(F)), or

(d) The mother of a permanently disabled veteran, provided that the mother also meets other statutory conditions. (5 U.S.C. 2108(G))

8. ELIGIBILITY FOR VETERANS' PREFERENCE WHEN THE EMPLOYEE IS RETIRED FROM THE ARMED FORCES (see 3-B-13-8 for additional information). A section of the Dual Compensation Act of 1964 (5 U.S.C. 3501(a)) limits veterans' preference for retired members of the Armed Force.

(a) Under the Dual Compensation Act, an employee who is a retired member of the Armed forces is eligible for veterans' preference for retention purposes if the employee's retirement from the Armed Forces is based on a disability that either:

(1) Resulted from injury or disease received in the line of duty as a direct result of armed conflict (5 U.S.C. 3501(a)(3)(A)(i)); 5 CFR 351.501(d)(1)(ii)), or,

(2) Was caused by an instrumentality of war, and was incurred in the line of duty during a period of war as defined by sections 101 and 301 of title 38, United States Code. (5 U.S.C. 3501(a)(3)(A)(ii); 5 CFR 351.501(d)(1)(ii))

(b) Under the Dual Compensation Act, an employee who is a retired member of the Armed forces is eligible for veterans' preference for retention purposes if the employee's retired pay from a uniformed service is not based on 20 or more years of full-time active service, regardless of when performed but not including periods of active duty for training. (5 U.S.C. 3501(a)(3)(B); 5 CFR 351.501(d)(2))

(c) Under the Dual Compensation Act, an employee who is a retired member of the Armed forces is eligible for veterans' preference for retention purposes if the employee has been continuously employed in a position covered by OPM's retention regulations since November 30, 1964, without a break in service of more than 30 days (5 U.S.C. 3501(a)(3)(C); 5 CFR 351.501(d)(3)), and either:

(1) Retired at the rank of major (or equivalent) or higher, and is a disabled veteran, as defined in 5 U.S.C. 2108(2); (5 U.S.C. 2108(4)(A); 5 CFR 351.501(d)(4)), or

(ii) Retired below the rank of major (or equivalent) (5 U.S.C. 2108(4)(B); 5 CFR 351.501(d)(4)).

9. ELIGIBILITY FOR VETERANS' PREFERENCE WHEN THE EMPLOYEE IS RETIRED FROM THE ARMED FORCES AS A TITLE 10 RESERVIST (see 3-B-13-9 for additional information. A veteran who becomes eligible for retired pay at age 60 as a reservist under authority of chapter 67 of title 10, United States Code, is not subject to the Dual Compensation Act of 1964 because the retirement from the Armed Forces is based on less than 20 years creditable active service. (5 CFR 351.501(d)(5))

(a) To retain retention preference at at age 60, the reservist must have either:

(1) Retired at the rank of major (or equivalent) or higher, and be a disabled veteran, as defined in 5 U.S.C. 2108(2); (5 U.S.C. 2108(4)(A)); 5 CFR 351.501(d)(5)), or

(2) Retired below the rank of major (or equivalent). (5 U.S.C. 2108(4)(B); 5 CFR 351.501(d)(5))

(b) The reservist is eligible for veterans' preference only if the employee meets the applicable Armed Forces service requirements covered in, as appropriate, paragraphs 3-A-13-3 or 3-A-13-4 above. 5 CFR 351.501(d)(5))

o If the employee meets the requirements for veterans' preference, the reservist is always eligible for veterans' preference in reduction in force until age 60 when the Armed Forces retirement pay commences. (5 CFR 351.501(d)(5))

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 14. SERVICE CREDIT IN REDUCTION IN FORCE

1. GENERAL. "LENGTH OF SERVICE" is one of the four retention factors required in 5 U.S.C. 3502(a). (5 U.S.C. 3502(a)(3))

o As covered in Section 3-A-13, employees are listed on a retention register within veteran preference subgroups by length of service, in descending order starting with the earliest service date.

2. RESPONSIBILITY OF THE AGENCY TO DETERMINE EMPLOYEES' RETENTION SERVICE DATES. The agency is responsible for determining each employee's service date for retention. (5 CFR 351.503(a))

o The agency is also responsible, if necessary, for correcting the service date of an employee to withhold retention service credit for noncreditable service. (5 CFR 351.503(d))

3. CREDITABLE SERVICE FOR RETENTION (see 3-B-14-3 for additional information). Employees receive retention service credit for:

(a) All civilian service performed as a Federal employee, as defined in 5 U.S.C. 2105(a); (5 U.S.C. 3502(a)(3); 5 CFR 351.503(b)), and

(b) All active duty performed in a uniformed service, except as restricted by the Dual Compensation Act of 1964 for certain members of the Armed Forces who are receiving retired pay. (5 U.S.C. 3502(a)(A) and (B); 5 CFR 351.503(b))

o Paragraph 3-A-14-5 below covers how agencies determine the retention service date for retired members of the Armed Forces.

4. DETERMINING THE EMPLOYEE'S SERVICE DATE (see 3-B-14-4 for additional information). An employee's service date under the reduction in force regulations is one of the three following dates:

(a) If the employee has no previous creditable service, the date that the employee entered on duty; (5 CFR 351.601(b)(1))

(b) If the employee has previous creditable service, the date obtained by subtracting the employee's total previous creditable service from the date that the employee last entered on duty; (5 CFR 351.601(b)(2)), or

(c) Whether or not the employee has previous creditable service, the date obtained by subtracting from the applicable date above any retention service credit based on performance to which the employee is entitled under 5 CFR 351.504. (5 CFR 351.601(b)(3))

5. DETERMINING THE SERVICE DATE OF RETIRED MEMBERS OF THE ARMED FORCES (see paragraph 3-B-14-5 for additional information). The Dual Compensation Act of 1964 limits the amount of military service that most retired members of the Armed Forces may credit under OPM's reduction in force regulations. (5 U.S.C. 3502(a)(B))

(a) If the retired member of the Armed Forces is not eligible for veterans' preference under OPM's reduction in force regulations, the employee receives retention credit only for creditable active military service: (5 CFR 351.503(c)(1))

(1) during a war; (5 U.S.C. 3501(a)(B)(i)), or

(2) actually performed in a campaign or expedition for which a campaign badge has been authorized. (5 U.S.C. 3501(a)(B)(i))

(b) If the retired member of the Armed Forces is eligible for veterans' preference under OPM's reduction in force regulations, the employee receives retention credit for all creditable active military service. (5 U.S.C. 3501(a)(B)(ii); 5 CFR 351.503(c)(2))
o See paragraphs 3-A-13-8 through 3-A-13-9 for specific information on determining veterans' preference eligiblity for retired members of the Armed Forces.

6. ADDITIONAL INFORMATION ON CREDITABLE SERVICE. For detailed information on determining creditable service under the reduction in force regulations, and related topics such as setting service computation dates, and making adjustments for noncreditable service, refer to the OPM Handbook, "THE GUIDE TO PROCESSING PERSONNEL ACTIONS" (which was formerly Federal Personnel Manual Supplement 296-33).

MODULE 3 (RIF), UNIT A (REQUIRED PROCEDURES), SECTION 15. CREDIT FOR PERFORMANCE IN REDUCTION IN FORCE UNDER OPM'S NOVEMBER 24, 1997, RETENTION REGULATIONS

1. GENERAL. "PERFORMANCE" is one of the four retention factors required in 5 U.S.C. 3502(a). (5 U.S.C. 3502(a)(4))

2. EFFECTIVE DATE FOR THE REVISED RIF REGULATIONS COVERING RETENTION SERVICE CREDIT FOR PERFORMANCE. OPM published final retention regulations in the Federal Register on November 24, 1997, with revised procedures on the crediting of employees' performance ratings in reduction in force. (62 FR 62495)

(a) In a Note to revised 5 CFR 351.504, OPM states that subject to the requirements of 5 U.S.C. 7116(a)(7), agencies may implement revised 5 CFR 351.504 with these new performance provisions at any time between December 24, 1997, and October 1, 1998.

(1) Section 5 U.S.C. 7116(a)(7) provides that "For purposes of this chapter (i.e., Chapter 71 of Title 5, U.S.C., "Labor-Management Relations"), it shall be an unfair labor practice for an agency--(7) to enforce any rule or regulation (other than a rule or regulations implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed."

(2) This Section 15, Unit A, of Module 3 (i.e., Section 3-A-15) covers retention credit for performance based upon the regulations OPM published on November 24, 1997.

(b) For reduction in force actions effective between December 24, 1997, and September 30, 1998, agencies may use either 5 CFR 351.504 effective December 24, 1997, or the prior 5 CFR 351.504 in 5 CFR part 351 (January 1, 1997, edition).

(1) Appendix A in Module 3, Unit A, includes the prior Section 15, Unit A, of Module 3 covering retention credit for performance based upon the regulations in effect on January 1, 1997.

3. TIME PERIOD COVERED BY EMPLOYEES' RATINGS OF RECORD. Each employee receives additional retention service credit for performance based upon the average of the employee's three most recent ratings of record received during the 4-year period prior to the date that the agency either:

(a) Issues specific reduction in force notices; (5 CFR 351.504(b)(1)), or

(b) Freezes ratings before issuing specific reduction in force notices (see paragraph 3-A-8 below). (5 CFR 351.504(b)(2))

4. RATINGS USED FOR RIF PURPOSES (see 3-B-15-4 for additional information). Only ratings of record as defined in 5 CFR 351.203 may be used as the basis for granting retention service credit in a reduction in force. (5 CFR 351.504(a)(1))

o Paragraphs 3-A-15-6 and 3-A-15-7 cover the applicable definitions of "RATING OF RECORD."

o The agency must identify a competing employee's current rating of record not only for crediting additional retention service, but also for determining the employee's potential "Bump" and "Retreat" rights to other positions (see 3-A-18-2-(c) and 3-A-19-2 for additional information on the use of ratings of record in determining employees' assignment rights).

(a) "CURRENT RATING OF RECORD" is the rating of record for the most recently completed appraisal period, as provided in 3-A-6-a below. (5 CFR 351.203)

o There is no authority for an agency to issue a retroactive rating of record for RIF purposes if the employee lacks three actual ratings of record during the 4-year period.

(b) (See 3-B-15-4-(b) for additional information.)

"MODAL RATING" is the summary rating level assigned most frequently among the actual ratings of record that are:

(1) Assigned under the summary level pattern that applies to the employee's position of record on the date of the reduction in force; (5 CFR 351.203)

(2) Given within the same competitive area, or at the agency's option within a larger subdivision of the agency or agencywide; (5 CFR 351.203), and

(3) On the record for the most recently completed appraisal period prior to the date of issuance of reduction in force notices, or the cutoff date the agency specifies prior to the issuance of notices after which no new ratings will be put on record. (5 CFR 351.203)

5. RATINGS IN OTHER AGENCIES (see 3-B-15-4 for additional information). Regardless of whether the employee's service occurred in the present or a former agency, the employee's actual ratings of record are used to the extent they are available. (5 CFR 351.504(b)(1))

o If ratings in a prior agency are not available in the employee's official records, the current employing agency can accept the employee's copies of ratings of record for this purpose.

6. RATING OF RECORD-EMPLOYEES COVERED BY 5 U.S.C. CHAPTER 43 OR 5 CFR 430. For an employee covered by 5 U.S.C. Chapter 43 or by 5 CFR Part 430, "RATING OF RECORD" for purposes of OPM's retention regulations uses the definition covered in 5 CFR 430.203. (5 CFR 351.203)

(a) In Section 5 CFR 430.203, "RATING OF RECORD means the performance rating prepared at the end of an appraisal period for performance of agency-assigned duties over the entire period, and the assignment of a summary level within a pattern (as specified in 5 CFR 430.208(d), or (2) in accordance with 5 CFR 531.404(a)(1) of Chapter I of Title 5 CFR. These constitute official ratings of record referenced in Chapter I of Title 5 CFR." (5 CFR 430.203)

(b) Employees who received ratings of record while covered by 5 CFR Subpart 430-B receive additional retention service credit based upon those ratings. (5 CFR 351.504(a)(2))

7. RATING OF RECORD-EMPLOYEES NOT COVERED BY 5 U.S.C. CHAPTER 43 OR 5 CFR 430 (see 3-B-15-7 for additional information). For an employee who is not covered by 5 U.S.C. Chapter 43 or by 5 CFR Part 430, "RATING OF RECORD" for purposes of OPM's retention regulations 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 5 CFR 430.201(c). (5 CFR 351.203)

(a) Employees who received ratings of record while not covered by 5 U.S.C. Chapter 43, and by 5 CFR Subpart 430-B, receive additional retention service credit based upon those ratings only if the agency conducting the reduction in force determines that the ratings are "EQUIVALENT RATINGS OF RECORD" under the provisions of 5 CFR 351.201(c). (5 CFR 351.504(a)(3))

(b) Section 5 CFR 430.201(c) defines "EQUIVALENT RATINGS OF RECORD" to include 3-A-15-7-(c), (d), and (e) below. (5 CFR 430.201(c)(1))

(c) If an agency has administratively adopted and applied the procedures of subpart 5 CFR 430-B to evaluate the performance of its employees, the ratings of record resulting from that evaluation are considered "EQUIVALENT RATINGS OF RECORD" for reduction in force purposes. (5 CFR 430.201(c)(1))

(d) Other performance evaluations given while an employee is not covered by the provisions of subpart 5 CFR 430-B are considered ratings of record for reduction in force purposes when the performance evaluation: (5 CFR 430.201(c)(2))

(1) Was issued as an officially designated evaluation under the employing agency's performance evaluation system; (5 CFR 430.201(c)(2)(i))

(2) Was derived from the appraisal of performance against expectations that are established and communicated in advance and are work related; (5 CFR 430.201(c)(2)(ii)), and

(3) Identified whether the employee performed acceptably. (5 CFR 430.201(c)(2)(iii))

(e) When the performance evaluation does not include a summary level designator and pattern comparable to those established at 5 CFR 430.208(d), the agency may identify a level and pattern based on information related to the appraisal process. (5 CFR 430.201(c)(2))

8. AVAILABILITY OF RATINGS (see 3-B-15-8 for additional information). To be creditable for reduction in force purposes, ratings of record must have been issued to the employee, with all appropriate reviews and signatures, and must also be on record. (5 CFR 351.504(b)(3))

(a) This means that the rating was:

(1) Issued to the employee; (5 CFR 351.504(b)(3))

(2) Returned with all appropriate reviews and signatures; (5 CFR 351.504(b)(3)), and

(3) On record and available for use by the office responsible for preparing retention registers (i.e., the rating of record is final and has been entered into the agency's personnel records system). (5 CFR 351.504(b)(3))

(b) Agencies must ensure that ratings of record are issued in accordance with established schedules and forwarded to the appropriate office on a timely basis. (5 CFR 351.504(b)(3))

(c) Since rating procedures may vary, each agency must set its own internal policy for processing ratings and putting them on record for reduction in force purposes; this policy must be:

(1) Included in the agency's appropriate issuances that implement these performance management policies; (5 CFR 351.504(b)(4)); and,

(2) Applied on a uniform and consistent basis in the competitive area where the reduction in force will take place. (5 CFR 351.504(b)(4))

(d) The agency's appropriate issuances that implement its performance management policies under 3-A-15-8-(c) above must specify:

(1) 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; (5 CFR 351.504(b)(4)(i)),

(2) 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 to determine employees' retention standing; (5 CFR 351.504(b)(4)(ii)), and

o Paragraph 3-A-15-9 below contains additional information on freezing ratings of record in reduction in force competition.

(3) If the agency has employees in a competitive area who have ratings of record under more than one pattern of summary levels, the agency must specify the number(s) of years additional retention service credit that it will establish for the summary levels. (5 CFR 351.504(e)(7))

o This information must be made available for review. (5 CFR 351.504(e)(7))

o Paragraph 3-A-15-12 below contains additional information on providing additional retention service credit to employees who, within a single competitive area, have ratings of record under more than one pattern of summary levels.

o Paragraph 5 CFR 430.208(d) covers patterns of summary levels used in appraisal programs.

9. FREEZING RATINGS (see 3-B-15-9 for additional information). To provide time to properly determine employee retention standing prior to a reduction in force, agencies may establish a policy providing for a cutoff date a specified number of days prior to the date it issues specific reduction in force notices. (5 CFR 351.504(b)(2); 5 CFR 351.504(b)(4)(ii))

(a) After the cutoff date, no new ratings of record may be put on record and used for reduction in force purposes. (5 CFR 351.504(b)(2); 5 CFR 351.504(b)(4)(ii))

(b) If adopted, this policy must be:

(1) Applied on a uniform and consistent basis in the competitive area where the reduction in force will occur; (5 CFR 351.504(b)(4)(ii)), and

(2) Documented in the agency's performance management policies or other appropriate issuance. (5 CFR 351.504(b)(4)(ii))

10. MISSING RATINGS (see 3-B-15-10 for additional information). If an employee has not received three actual ratings of record during the applicable 4-year period prior to the date the agency issues specific reduction in force notices or freezes ratings (see paragraph 3-A-15-3 above), the agency provides additional retention service credit under the following procedures: (5 CFR 351.504(c))

(a) An employee who has not received any rating of record during the applicable 4-year period receives retention service credit for performance based on the modal rating for the summary level pattern that applies to the employee's official position of record at the time of the reduction in force; (5 CFR 351.504(c)(1)), or

(b) An employee who has received at least one, but fewer than three previous ratings of record during the applicable 4-year period, receives retention service credit for performance on the basis of the value of the actual rating(s) of record divided by the number of actual ratings received. (5 CFR 351.504(c)(1))

(1) An employee who has received only two actual ratings of record during the applicable 4-year period receives retention service credit for performance by adding together the value of the two ratings, then dividing the sum by two and rounding to the next higher whole number if the result is a fraction, to determine the amount of additional retention service credit. (5 CFR 351.504(c)(1))

(2) An employee who has received only one actual rating of record during the applicable 4-year period receives retention service credit for performance on the basis of the value of the single rating. (5 CFR 351.504(c)(1))

11. AMOUNT OF CREDIT-SINGLE RATING PATTERN (see 3-B-15-11 for additional information). If all employees in a reduction in force competitive area have received all of their ratings of record under a single pattern of summary levels as covered in 5 CFR 430.208(d), the additional retention service credit provided to employees is expressed in additional years of service that consists of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee's applicable ratings of record, as computed on the following basis:

(a) 20 additional years of service for each rating of record of "Outstanding" or equivalent summary (Level 5); (5 CFR 351.504(d)(1))

(b) 16 additional years of service for each rating of record of "Exceeds Fully Successful" or equivalent summary (Level 4); (5 CFR 351.504(d)(2)), and

(c) 12 additional years of service for each rating of record of "Fully Successful" or equivalent summary (Level 3). (5 CFR 351.504(d)(3))

(d) No additional retention service credit is given for ratings of record below "Fully Successful" or equivalent summary. (5 CFR 351.504(d))

o No additional service credit for retention is given for ratings of record of "Minimally Successful" or equivalent (Level 2), or "Unacceptable" or equivalent summary (Level 1). (5 CFR 351.504(d))

12. AMOUNT OF CREDIT-MULTIPLE RATING PATTERNS (see 3-B-15-12 for additional information). If an agency has employees in a competitive area who have received ratings of record under more than one pattern of summary levels, as covered in 5 CFR 430.208(d), the agency must consider the mix of patterns and provide additional retention service credit for performance to employees expressed in additional years of service on the following basis: (5 CFR 351.504(e))

(a) The additional years of service for reduction in force purposes consists of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the additional retention service credit that the agency established for the summary levels of the employee's applicable rating(s) of record. (5 CFR 351.504(e)(1))

(b) The agency must establish the amount of additional retention service credit provided for summary levels only in full years. (5 CFR 351.504(e)(2))

(c) The agency may not establish additional retention service credit for summary levels below Level 3 ("Fully Successful" or equivalent). (5 CFR 351.504(e)(2))

(d) When establishing additional retention service credit for the summary levels at Level 3 ("Fully Successful" or equivalent) and above, the agency must provide at least an additional 12 years, but no more than 20 additional years, additional retention service credit for a summary level. (5 CFR 351.504(e)(3))

(e) The agency may establish the same number of years additional retention service credit for more than one summary level. (5 CFR 351.504(e)(4))

(f) The agency must establish the same number of years additional retention service credit for all ratings of record with the same summary level in the same pattern of summary levels. (5 CFR 351.504(e)(5))

o Paragraph 5 CFR 430.208(d) covers patterns of summary levels used in appraisal programs.

(g) The agency may establish a different number of years additional retention service credit for the same summary level in different patterns. (5 CFR 351.504(e)(6))

(h) In providing service credit for retention to employees who are under more than one pattern of summary levels (which are covered in 5 CFR 430.208(d)), the agency must specify the number(s) of years additional retention service credit that it will establish for summary levels. (5 CFR 351.504(e)(7))

o This information must be made available for review. (5 CFR 351.504(e)(7))

o Paragraph 3-A-15-8 above notes that the agency must specify this information in the appropriate issuances that implement the agency's performance management policies. (5 CFR 351.504(b)(4))

(i) The agency may apply this paragraph (i.e., paragraph 3-A-15-12, "AMOUNT OF CREDIT-MULTIPLE RATING PATTERNS") only to ratings of record put on record on or after October 1, 1997. (5 CFR 351.504(e)(8))

o The agency must determine additional retention service credit for ratings of record put on record prior to October 1, 1997, in accordance with paragraph 3-A-15-11 (i.e., paragraph 3-A-15-11, "AMOUNT OF CREDIT-SINGLE RATING PATTERN"). (5 CFR 351.504(e)(8))

13. UNACCEPTABLE PERFORMANCE-PROPOSED DECISION TO REMOVE OR DEMOTE. An employee with a current Level 1 ("Unacceptable" or equivalent) rating of record who has not received a final written decision of removal or demotion under 5 CFR Part 432 (e.g., an employee on an opportunity to demonstrate acceptable performance as defined in 5 CFR 430.103(d)) is not penalized in first round reduction in force competition, and is listed on the retention register with other employees. (5 CFR 351.404(b)(2))

(a) The employee is assigned to the appropriate group and subgroup and receives credit for all applicable service.

(b) The employee also receives any service credit to which entitled for the other two previous ratings of record.

o An employee with a proposed, but not a final written decision of removal or demotion under 5 CFR Part 752 because of a pending adverse action, is not penalized solely on that basis in first or second round reduction in force competition, and is listed on the retention register with other employees. (5 CFR 351.404(b)(2))

o "ROUND OF COMPETITION" is defined in paragraph 3-A-4-1-r. "First Round Competition" is reduction in force competition for other positions within the competitive level, while "Second Round Competition" is reduction in force competition for positions on other competitive levels based upon "Bump" and "Retreat" rights.

14. UNACCEPTABLE PERFORMANCE-FINAL DECISION TO REMOVE OR DEMOTE. An employee who has received a final written decision of removal under 5 CFR Part 432 due to unacceptable (or equivalent) performance competes differently from an employee who has received a final written decision of demotion due to unacceptable (or equivalent) performance:

(a) An employee who as of the effective date of the reduction in force has received a final written decision of removal under 5 CFR 432 because of unacceptable performance, or under 5 CFR 752 because of adverse action, is listed apart from the retention register and does not compete in first or second round reduction in force competition. (5 CFR 351.404(b)(2)

(b) An employee who has received a final written decision of demotion under 5 CFR 432 because of unacceptable performance, or under 5 CFR 752 because of adverse action, is listed on the retention register for the position to which the employee will be demoted. (5 CFR 351.405)

15. UNACCEPTABLE PERFORMANCE-ELIMINATION OF "UNACCEPTABLE" RATING. If because of performance improvement during the notice period of a proposed action under authority of 5 CFR Part 432 an employee is not demoted or separated, and the employee's performance continues to be acceptable for 1 year after the notice, any record of the unacceptable performance is removed from agency records. (5 CFR 293.404(a)(3))

o In this situation, no record of the "Unacceptable" rating would exist.

o There is no authority for an agency to remove an employee's "Unacceptable" rating except under authority of 5 CFR 293.404(a)(3) covered above, or under other appropriate authority (e.g., an award resulting from a grievance, equal employment opportunity complaint, etc.).

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 16. PERSONNEL RECORDS IN REDUCTION IN FORCE

1. RESPONSIBILITY OF AGENCY TO MAINTAIN PERSONNEL RECORDS (see 3-B-16-1 for additional information). The agency is reponsible for maintaing the personnel records that are used to determine the retention standing of competing employees. (5 CFR 351.505)

2. RESPONSIBILITY OF AGENCY UNDER PRIVACY ACT. The agency is responsible for ensuring that each employee's access to retention records is consistent with the Privacy Act.

3. EMPLOYEE ACCESS TO RETENTION RECORDS. The agency must allow its retention registers and related records to be inspected by:

(a) A representative of OPM; (5 CFR 351 505(a)), and

(b) An employee of the agency who has received a specific reduction in force notice, or the employee's representative. (5 CFR 351.505(b))

o 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. (5 CFR 351.505(b))

4. RETENTION RECORDS AVAILABLE FOR REVIEW. The employee has the right to review any records used by the agency in a reduction in force action that was taken, or will be taken, against the employee, including:

(a) The complete retention register with the employee's name 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; (5 CFR 351.505(b)) and

(b) The complete retention registers for other positions that could affect the composition of the employee's competitive level, and/or the determination of the employee's assignment rights. (5 CFR 351.505(b))

5. RETENTION OF RECORDS FOR 1 YEAR. The agency must preserve all registers and records relating to a reduction in force for at least 1 year after the date it issues a specific reduction in force notice. (5 CFR 351.505)

o The agency should always retain any retention records that are, or may be, subject to review in an appeal or grievance without regard to the general 1 year limit for preserving records related to the reduction in force.

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 17. RELEASE FROM THE COMPETITIVE LEVEL

1. DATE USED TO DETERMINE AN EMPLOYEE'S RETENTION STANDING (see 3-B-17-1 for additional information). The agency determines each employee's retention standing as of the effective date of the reduction in force. (5 CFR 351.506(b))

o The effective date of the reduction in force is the date that the employee is released from the competitive level. (5 CFR 351.506(a))

o Note that the terms "COMPETITIVE LEVEL" and "RETENTION REGISTER" are used interchangeably. (See 3-A-9-1 for additional information.)

2. RELEASE OF NONCOMPETING EMPLOYEES. Before a competing employee (i.e., an employee in tenure Groups I, II, or III) may be released from a competitive level, the agency must first release from that competitive level each employee who:

(a) Holds a temporary appointment to a position in that competitive level; (5 CFR 351.602(a))

(b) Holds a term promotion or temporary promotion to a position in that competitive level (these employees are returned to their permanent positions of record, or equivalent); (5 CFR 351.602(b))

(c) Has received a written decision of removal or demotion under 5 CFR Part 432 ("Performance Based Reduction in Grade and Removal Actions") because of "Unacceptable" (or an equivalent rating) performance from a position in that competitive level. (5 CFR 351.602(c)), or

(d) Has received a written decision of removal or demotion under 5 CFR Part 752 ("Adverse Actions"). (5 CFR 351.602(c)),

o An employee who has received a written decision of demotion under 5 CFR Part 432, or under 5 CFR Part 752, competes for retention from the position to which the employee will be, or has been, demoted. (5 CFR 351.405)

3. ORDER OF RELEASING EMPLOYEES FROM THE COMPETITIVE LEVEL. The agency then releases competing employees from the reduction in force retention register in the inverse order of the employees' relative retention standing. (5 CFR 351.601(a))

o The first employee released is the employee who has the lowest retention standing on the retention register. (5 CFR 351.601(a))

o The employee with the next lowest standing on the retention register is the second employee released, and the same order is followed until the required number of employees are released from the retention register. (5 CFR 351.601(a))

o Upon displacing another employee in the competitive level, the higher-standing employee (i.e., the displacing employee) retains the same status and tenure in the new position. (5 CFR 351.601(a))

o The displacement of a lower-standing employee by a higher-standing employee in the same competitive level is not a reduction in force action for the higher-standing employee, who is reassigned to the position rather than released from the competitive level. (5 CFR 351.601(a))

o A higher-standing employee who displaces a lower-standing employee in the same competitive level retains the same status and tenure upon encumbering the position of the lower-standing employee (e.g., a subgroup I-B employee who displaces a subgroup III-B term employee retains the same I-B status and tenure while encumbering the term position. (5 CFR 351.403(a))

o An agency may release a competing employee from a competitive level, and still retain a lower standing competing employee with lower retention standing in the same level, only if the agency uses a mandatory, discretionary, or liquidation exception, which are covered in paragraphs 3-A-17-5 through 3-A-17-20 below.

4. BREAKING TIES IN EMPLOYEES' RETENTION STANDING. When employees in the same retention subgroup have identical service dates and are tied for release, the agency has the right to determine the order in which the tied employees are released. (5 CFR 351.601(b))

5. EXCEPTIONS TO THE REGULAR ORDER OF RELEASE-MANDATORY EXCEPTION BASED UPON SERVICE IN THE ARMED FORCES. The agency must use a mandatory exception to the regular order of releasing employees in order to retain tenure Group I or Group II employees who have restoration rights under 38 U.S.C. 4301 or 4304 after returning from service in the Armed Forces. (5 CFR 351.606(a))

(a) A mandatory exception applies to employees with restoration rights for either 6 months, or 1 year, as appropriate. (5 CFR 351.601(a)(1)); 5 CFR 353.301(a))

(b) Before release from the competitive level by reduction in force, each employee with a restoration right based on service in the Armed Forces must be retained over other employees in the tenure Group and subgroup until the end of the applicable 6 months or 1-year mandatory retention period. (5 CFR 351.601(a)(1))

(c) If an employee with this restoration right is reached for release from a competitive level during the applicable mandatory retention period (i.e., 6 months or 1 year) following restoration from the Armed Forces, the agency is obligated to find another position for the employee under the provisions of 5 CFR Part 353, if possible, rather than separate the employee by reduction in force. (5 CFR 353.207; (5 CFR 353.209(b))

(d) The agency must record on the retention register the reason(s) for using a mandatory exception to the regular order of release. (5 CFR 351.606(c))

o Each employee listed on the retention register has the right to review the reason(s) for the use of the mandatory exception to the regular order of release. (5 CFR 351.606(c); 5 CFR 351.505)

6. EXCEPTIONS TO THE REGULAR ORDER OF RELEASE-MANDATORY EXCEPTION AND THE USE OF ANNUAL LEAVE TO OBTAIN RETIREMENT BENEFITS AND/OR TO CONTINUE HEALTH BENEFITS (see 3-B-17-6 for additional information). An agency must use a mandatory exception to the regular order of releasing employees from the competitive level in order to retain an employee who is being involuntarily separated from the agency by reduction in force if the employee elects to use annual leave, and remain on the agency's rolls after the effective date that the employee would otherwise have been separated, for the purpose of establishing initial eligibility for:

(a) Immediate retirement under 5 U.S.C. 8336, 8412, or 8414 (including discontinued service retirement or voluntary early retirement); (5 CFR 351.606(b)(1)), and/or

(b) Continuation of health benefits coverage into retirement under 5 U.S.C. 8905. (5 CFR 351.606(b)(1))

(c) An employee retained under this provision must be covered by the leave provisions authorized by Chapter 63 of Title 5, United States Code. (5 CFR 351.606(b)(3))

o Paragraph 3-A-17-15 covers how an agency may use a permissive temporary exception to the regular order of releasing employees in order to retain an employee who is covered by a Federal leave system under authority other than Chapter 63 of Title 5, United States Code, for the purpose of establishing initial eligibility for immediate retirement under 5 U.S.C. 8336, 8412, or 8414, and/or continuation of health benefits coverage into retirement under 5 U.S.C. 8905. (5 CFR 351.608(e))

(d) An agency may not retain an employee under this provision past the date that 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. (5 CFR 351.606(b)(4))

(e) Except as permitted as a permissive temporary exception under authority of 5 CFR 351.608(d) for an employee on approved sick leave (see paragraph 3-A-17-14 below for additional information), an agency may not approve an employee's use of any other type of leave after the employee has been retained under a mandatory exception for the purpose of gaining initial eligibility for immediate retirement and/or continuation of health benefits into retirement. (5 CFR 351.606(b)(5))

(f) Section 5 CFR 630.212 defines annual leave that is available for purposes of a mandatory exception under this paragraph. (5 CFR 351.606(b)(6))

o For reference, these specific annual leave provisions are covered in 3-B-17-6-(f).

(g) The agency must record on the retention register the reason(s) for using a mandatory exception to the regular order of release. (5 CFR 351.606(c))

o Each employee listed on the retention register has the right to review the reason(s) for the use of the mandatory exception to the regular order of release. (5 CFR 351.606(c); 5 CFR 351.505)

7. EXCEPTIONS TO THE REGULAR ORDER OF RELEASE-EFFECTIVE DATE OF RIF ACTION WHEN USING A MANDATORY EXCEPTION. The agency determines the retention standing of an employee who is retained under a mandatory exception as of the date the employee would have been released from the competitive level had the agency not used the exception. (5 CFR 351.506(b))

8. THE MANDATORY USE OF ANNUAL LEAVE IN RELOCATION SITUATIONS TO OBTAIN RETIREMENT BENEFITS AND/OR TO CONTINUE HEALTH BENEFITS COVERAGE. An employee who is being involuntarily separated under authority of 5 CFR Part 752 as an adverse action because of the employee's decision to decline relocation (including transfer of function) may elect to use annual leave and remain on the agency's rolls after the effective date that the employee would otherwise have been separated by adverse action in order to establish initial eligibility for:

(a) Immediate retirement under 5 U.S.C. 8336, 8412, or 8414 or (including discontinued service retirement or voluntary early retirement); (5 CFR 351.606(b)(2)), and/or

(b) Continuation of health benefits coverage into retirement under 5 U.S.C. 8905. (5 CFR 351.606(b)(2))

(c) An employee retained under this provision must be covered by chapter 63 of title 5, United States Code. (5 CFR 351.606(b)(3))

(d) An agency may not retain an employee under this provision past the date that 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. (5 CFR 351.606(b)(4))

(e) Annual leave for purposes of this paragraph is defined in 5 CFR 630.212. (5 CFR 351.606(b)(6))

9. EXCEPTIONS TO THE REGULAR ORDER OF RELEASE-DISCRETIONARY CONTINUING EXCEPTION. An agency may use a continuing exception to the regular order of releasing employees in order to retain an employee for more than 90 days in a position that no higher-standing employee can take over:

(a) Within 90 days; (5 CFR 351.607), and

(b) Without undue interruption to the agency. (5 CFR 351.607)

10. EXCEPTIONS TO THE REGULAR ORDER OF RELEASE-EFFECTIVE DATE OF RIF ACTION WHEN USING A DISCRETIONARY CONTINUING EXCEPTION. The agency determines the retention standing of an employee who is retained in the competitive level under a discretionary continuing exception as of the date the employee would have been released from the competitive level had the agency not used the exception. (5 CFR 351.506(b))

11. EXCEPTIONS TO THE REGULAR ORDER OF RELEASE-NOTICE TO HIGHER-STANDING EMPLOYEES WHEN USING A DISCRETIONARY CONTINUING EXCEPTION. When an agency retains an employee under a discretionary continuing exception, the agency must give each higher-standing employee reached for release from the same retention register:

(a) A written notice of the exception; (5 CFR 351.607), and

(b) The reason for the exception. (5 CFR 351.607)

12. EXCEPTIONS TO THE REGULAR ORDER OF RELEASE-PERMISSIVE TEMPORARY EXCEPTION-UNDUE INTERRUPTION. An agency may use a discretionary temporary exception for not more than 90 days to the regular order of releasing employees in order to retain an employee in a position that no higher-standing employee can take over within 90 days without undue interruption to the agency. (5 CFR 351.608(b))

13. EXCEPTIONS TO THE REGULAR ORDER OF RELEASE-PERMISSIVE TEMPORARY EXCEPTION-TO SATISFY A GOVERNMENT OBLIGATION. An agency may use a discretionary temporary exception, without regard to time limit, to the regular order of releasing employees in order to retain an employee in order to satisfy a Government obligation to the retained employee. (5 CFR 351.608(c))

14. EXCEPTIONS TO THE REGULAR ORDER OF RELEASE-PERMISSIVE TEMPORARY EXCEPTION-USE OF SICK LEAVE. An agency may use a discretionary temporary exception to the regular order of releasing employees in order to retain an employee who is on approved sick leave on the effective date of the reduction in force. (5 CFR 351.608(d))

(a) The agency may retain the employee under this provision for a period not to exced the date that the employee's sick leave is exhausted. (5 CFR 351.608(d))

(b) Use of sick leave for this purpose must be in accordance with the requirements in Subpart 5 CFR 630-D, or other applicable leave system for Federal employees. (5 CFR 351.608(d))

15. EXCEPTIONS TO THE REGULAR ORDER OF RELEASE-PERMISSIVE TEMPORARY EXCEPTION-THE USE OF ANNUAL LEAVE TO OBTAIN RETIREMENT BENEFITS AND/OR TO CONTINUE HEALTH BENEFITS (see 3-B-17-15 for additional information). An agency may use a permissive temporary exception to the regular order of releasing employees in order to retain an employee who:

(a) Is being involuntarily separated by reduction in force under 5 CFR Part 351; (5 CFR 351.608(e)(1)(i)), and

(b) Is covered by a Federal leave system under authority other than Chapter 63 of Title 5, United States Code; (5 CFR 351.608(e)(1)(ii)), and

(c)(1) Will attain first eligibility for an immediate retirement benefit under 5 U.S.C. 8336, 8412, or 8414 (or other authority) (5 CFR 351.608(e)(1)(iii)), and/or

(2) 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. (5 CFR 351.608(e)(1)(iii))

(d) An agency may not approve an employee's use of any other type of leave after the employee has been retained as a permissive temporary exception under this provision. (5 CFR 351.608(e)(2))

(e) This permissive temporary exception may not exceed the date that 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. (5 CFR 351.608(e)(3))

(f) Accrued annual leave available under this permissive temporary exception 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. (5 CFR 351.608(e)(4))

o When approving a permissive temporary exception under this provision, 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. (5 CFR 351.608(e)(4))

16. EXCEPTIONS TO THE REGULAR ORDER OF RELEASE-PERMISSIVE TEMPORARY EXCEPTION-OTHER EXCEPTIONS. An agency may use a permissive temporary exception to the regular order of releasing employees in order to extend an employee's separation date beyond the effective date of the reduction in force when the temporary retention of a lower-standing employee does not adversely affect the right of any higher-standing employee who is released ahead of the lower standing employee. (5 CFR 351.608(f))

(a) The agency may establish a maximum number of days, up to 90 days, for which a permissive temporary exception may be approved under this provision. (5 CFR 351.608(f))

(b) There is no authority under this provision for an agency to retain an employee for the purpose of gaining eligibility for immediate retirement under 5 U.S.C. 8336, 8412, or 8414, and/or for continuation of health benefits coverage into retirement under 5 U.S.C. 8905. (5 CFR 351.608(f); 5 CFR 351.606(b)(1); 5 CFR 351.608(e))

o As applicable, an agency retains an employee to gain initial eligibility for benefits only on annual leave as provided in 3-A-17-6 for a mandatory exception, or as provided in 3-A-17-15 for a permissive temporary exception. (5 CFR 351.608(f); 5 CFR 351.606(b)(1); 5 CFR 351.608(e))

17. EXCEPTIONS TO THE REGULAR ORDER OF RELEASE-EFFECTIVE DATE OF RIF ACTION WHEN USING A DISCRETIONARY TEMPORARY EXCEPTION. The agency determines the retention standing of an employee who is retained in the competitive level under a discretionary temporary exception as of the date the employee would have been released from the competitive level had the agency not used the exception. (5 CFR 351.506(b))

18. EXCEPTIONS TO THE REGULAR ORDER OF RELEASE-NOTICE TO HIGHER-STANDING EMPLOYEES WHEN USING A DISCRETIONARY TEMPORARY EXCEPTION. When an agency retains an employee under a discretionary temporary exception for more than 30 days after the date a higher-standing employee is released from the same retention register, the agency must:

(a) Give written notice to each higher-standing employee in the competitive level who is reached for release the reason for the exception, and the date that the lower-standing employee's retention will end; (5 CFR 351.608(g)(1)), and

(b) List opposite the retained employee's name on the retention register the reasons for the exception, and the date that the employee's retention will end. (5 CFR 351.608(g)(2))

19. EXCEPTIONS TO THE REGULAR ORDER OF RELEASE-LIQUIDATION EXCEPTION (see 3-B-17-19 for additional information). When an agency will abolish all positions in a competitive area within 180 days, it must release the employees in subgroup order, but may release them regardless of their retention standing within a subgroup. (5 CFR 351.605)

o The liquidation exception may not be use to release an employee who is under a mandatory exception. (See paragraph 3-A-17-5 above.)

20. EXCEPTIONS TO THE REGULAR ORDER OF RELEASE-NOTICE TO HIGHER-STANDING EMPLOYEES WHEN USING A LIQUIDATION EXCEPTION. When an agency uses the liquidation provision, it must:

(a) Notify affected employees; (5 CFR 351.605), and

(b) Give the date that the liquidation will be completed. (5 CFR 351.605)

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 18. ACTIONS FOLLOWING RELEASE FROM THE COMPETITIVE LEVEL

1. OFFER OF ANOTHER POSITION. An employee reached for release from a competitive level may have a right under the reduction in force positions to a position in a different competitive level. (5 CFR 351.603)

o ASSIGNMENT RIGHT means the right of a released employee to be assigned by "BUMP" or "RETREAT" to a different position in the second round of reduction in force competition. (5 CFR 351.701(a))

o If the employee has an assignment right to another position, the agency must offer the employee that position, or an equivalent position. (5 CFR 351.603); (5 CFR 351.701(a))

o The definitions of "Assignment Right," "Bump," "Retreat," and "Round of Competition" are found in Section 3-A-4 of this Module.

o Sections 3-A-18 begins the material on employees' reduction in force assignment rights.

2. SEPARATION OR FURLOUGH (see 3-B-18-2 for additional information). The agency may use reduction in force procedures to separate or furlough the released employee only if the employee: (5 CFR 351.603)

(a) Has no assignment right to another position; or

(b) Declines an offer of assignment to another position that would have satisfied the employee's assignment right.

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 19. DETERMINING EMPLOYEES' REDUCTION IN FORCE ASSIGNMENT RIGHTS

1. BUMPING AND RETREATING RIGHTS. OPM's reduction in force regulations provide released employees with two types of assignment rights to positions in different competitive levels:

(a) "BUMPING" is defined in paragraph 3-A-4-1-(b) as the assignment of an employee to a position in a different competitive level that is held by another employee in a lower retention tenure Group, or in a lower Subgroup within the same tenure Group. (5 CFR 351.701(b)(1))

o For specific information on bumping rights, refer to paragraph 3-A-20-1.

(b) "RETREATING" is defined in paragraph 3-A-4-1-(q) as the assignment of an employee to a position in a different competitive level that is held by another employee with less service in the same retention Subgroup. (5 CFR 351.702(c)(1))

o For specific information on retreating rights, refer to paragraphs 3-A-20-2 through 3-A-20-4.

2. EMPLOYEES WITH ASSIGNMENT RIGHTS. OPM's reduction in force regulations provide assignment rights (i.e., bumping and retreating rights) to an employee who:

(a) Holds a position under a competitive service appointment; (5 CFR 351.701(a))

(b) Is in retention tenure Group I or Group II; (5 CFR 351.701(a)), and

(c) Has a current performance rating of at least "Minimally Successful" or equivalent. (5 CFR 351.701(a))

3. EMPLOYEES WITH NO ASSIGNMENT RIGHTS. OPM's reduction in force regulations do not provide assignment rights to an employee who:

(a) Is in retention tenure Group III, although the agency at its option can offer limited assignment rights (i.e., "Bumping" rights) to its Group III employees as covered in 3-A-28-3; (5 CFR 351.705(a)(2));

(b) Holds a position under an excepted service appointment, although the agency at its option can offer assignment rights to its excepted employees to positions under the same appointing authority, as covered in 3-A-28-4; (5 CFR 351.705(a)(3)), or

(c) Has a current annual performance rating of "Unacceptable" or equivalent. (5 CFR 351.701(a))

4. DEFINITION OF AVAILABLE POSITION. An "AVAILABLE POSITION" that satisfies an employee's reduction in force assignment right must:

(a) Be in the competitive service; (5 CFR 351.701(a))

(b) Be in the same competitive area; (5 CFR 351.701(a))

(c) Last at least 3 months; (5 CFR 351.701(a))

(d) Be a position for which the released employee qualifies, unless the agency, at its discretion, chooses to waive qualifications in offering the employee assignment to a vacant position; (5 CFR 351.701(a))

(e) Have a representative rate that requires no reduction, or the least possible reduction, in the of the position held by the released employee; (5 CFR 351.701(a)), and

(f) Have the same type of work schedule (e.g., full-time, part-time, intermittent, seasonal, or on-call) as the position from which the employee is released. (5 CFR 351.701(a))

o "REPRESENTATIVE RATE" is defined in paragraph 3-A-4-1-(n) as the fourth step of a grade for a position under the General Schedule, the prevailing rate for a position under the Federal Wage system or similar wage determining procedure, and for other positions, the rate designated by the agency as representative of the position. (5 CFR 351.203)

o Additional material on representative rate is covered in Section 3-A-24.

(f) Be occupied by a lower-standing employee in a different competitive level who can be displaced by the released employee by bumping rights, or by retreating rights; (5 CFR 351.701(a)), and,

(g) Have the same type of work schedule (e.g., full-time, part-time, intermittent, seasonal, or on-call) as the position from which the higher-standing employee is released. (5 CFR 351.701(a))

5. POSITIONS OCCUPIED BY TEMPORARY EMPLOYEES (see 3-B-19-5 for additional information). Released employees do not have assignment rights to positions occupied by temporary employees (tenure group 0) in another competitive level. (5 CFR 351.701(a))

6. LIMITATIONS IN OFFERING EMPLOYEES ASSIGNMENT TO OTHER POSITIONS (see 3-B-19-6 for additional information). An agency may not:

(a) Assign an employee to a position with a representative rate higher than that of the employe's current position; (5 CFR 351.704(b)(1))

(b) Assign an other-than-full-time employee to a position held by a full-time employee, or to satisfy an other-than-full-time employee's right of assignment by assigning the employee to a vacant full-time position; (5 CFR 351.704(b)(2))

(c) Assign a full-time employee to a position held by an other-than-full-time employee, or to satisfy the full-time employee's right of assignment by assigning the employee to a vacant other-than-full-time position; (5 CFR 351.704(b)(3))

(d) Assign an employee to a temporary position (i.e., a position under an appointment not to exceed 1 year), except as an offer of assignment in lieu of separation by reduction in force when the employee has no other assignment right; (5 CFR 351.704(b)(4))

(e) Assign an employee to a position held by an employee with a different type of work schedule (e.g., full-time, part-time, intermittent, seasonal, or on-call), or to satisfy the employee's right of assignment by assigning the employee to a vacant position with a different type of work schedule; (5 CFR 351.704(b)(5))

(f) Assign an employee in the competitive service to a position in the excepted service; (5 CFR 351.705(b)(5)), or

(g) Assign an employee in the excepted service to a position in the competitive service. (5 CFR 351.705(b)(6))

7. MORE THAN ONE AVAILABLE POSITION FOR ASSIGNMENT (see 3-B-19-7 for additional information). When an employee has a potential right of assignment to two or more positions with the same representative rate, the agency may satisfy the employee's right of assignment by offering any one of the positions. (5 CFR 351.701(a))

o An employee has no right to choose among positions with the same representative rate. (5 CFR 351.701(a))

8. ONE OFFER OF ASSIGNMENT. An employee is entitled to only one offer of assignment, and, except as provided in 3-A-19-9 below, is not entitled to any further offers if the employee:

(a) Accepts an offer; (5 CFR 351.701(a))

(b) Rejects an offer; (5 CFR 351.701(a)), or

(c) Fails to reply to an offer within a reasonable time. (5 CFR 351.701(a))

9. REQUIREMENT TO MAKE AN ADDITIONAL OFFER OF ASSIGNMENT (see 3-B-19-9 for additional information). Even though an employee is entitled to only one offer of assignment, the agency must make a better offer of assignment (e.g., a position with a higher representative rate) to a released employee if a position becomes available before, or on, the effective date of the reduction in force. (5 CFR 351.506(a); 5 CFR 351.805(c))

o The released employee is entitled to any better offers of assignment regardless of whether the employee previously accepted or declined a previous offer of assignment.

o A better offer of assignment may become available when another employee rejects an offer or vacates a position by resignation, retirement, etc.

10. ALTERNATIVE OFFER. After determining an employee's assignment right, the agency, at its discretion, may also make an alternative offer of a vacant position with the same or a lower representative rate than that of the position to which the employee was entitled.

o The alternative offer may be a second offer of assignment to a vacant position, or may be an offer of a vacant position in lieu of reduction in force separation or other reduction in force action.

o The agency may not make an alternative offer of assignment to a vacant position if the employee's acceptance of the offer would result in a more severe reduction in force action for another employee.

o In making an alternative offer of a vacant position with a lower representative rate, the agency must insure that the employee has also received notice of his or her entitlement to a position with a higher representative rate.

11. EMPLOYEES' STATUS AND TENURE AFTER ACCEPTING AN OFFER OF ASSIGNMENT (see 3-B-19-11 for additional information). An employee retains the same status and tenure in the new position after:

(a) Displacing a lower-standing employee in the same competitive level in first round reduction in force competition; (5 CFR 351.403(a)), or

(b) Accepting an offer of assignment to a position in a different competitive level in second round reduction in force competition. (5 CFR 351.701(a))

12. PROMOTION POTENTIAL OF A POSITION OFFERED FOR ASSIGNMENT (see 3-B-19-12 for additional information). The promotion potential of a position is not a consideration in determining an employee's assignment rights to an available position. (5 CFR 351.701(a))

o Promotion potential is also not a consideration in determining an employee's assignment right to a vacant position. (5 CFR 351.201(b); 5 CFR 351.701(a); 5 CFR 351.704(a))

o Employees may be assigned under reduction in force procedures to positions with higher promotion potential, and are subsequently noncompetitively promoted to the full performance level of that position.

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 20. USING BUMP AND RETREAT IN MEETING EMPLOYEES' ASSIGNMENT RIGHTS

1. BUMP RIGHTS (see 3-B-20-1 for additional information). "BUMPING" is defined in 3-A-4-1-(c) as a released employee's right of assignment to a position in a different competitive level that is: (5 CFR 351.701(b)(1)

(a) Held by an employee in a lower tenure Group, or lower tenure Subgroup within the same tenure Group; (5 CFR 351.701(b)(1), and

(b) The same grade, or down to three grades or grade-intervals (or equivalent) below the position of the released employee. (5 CFR 351.701(b)(2)

o Section 3-A-23 covers grades and grade-intervals used in determining employees' reduction in force assignment rights.

o A released employee has bumping rights to a position based on the employee's personal qualifications in relation to the position held by the lower-standing employee. (5 CFR 351.702(a))

o Section 3-A-25 covers employees' qualifications for assignment to another position based on bumping rights.

o A released employee may have bumping rights to a position regardless of whether or not the employee previously held the position of the lower-standing employee. (5 CFR 351.701(b))

2. RETREAT RIGHTS-GENERAL (see 3-B-20-2 for additional information). "RETREATING" is defined in paragraph 3-A-4-1-(q) as a released employee's right of assignment to a position in a different competitive level that is:

(a) Held by another employee with less service (including additional retention credit for performance) in the same retention subgroup; (5 CFR 351.701(c)(1))

(b) The same grade, or down to three grades or three grade-intervals (or equivalent) below the position from which the employee is released; (5 CFR 351.701(c)(2)), and

(c) The same position, or a position that is essentially identical, to a position previously held by the released employee on a permanent basis in any Federal agency. (5 CFR 351.701(c)(3))

o Paragraph 3-A-20-3 below explains the competitive level standard that agencies use to evaluate an "Essentially Identical Position" for purposes of determining an employee's retreat rights.

(d) A released employee with a current annual performance rating of "Minimally Successful" or equivalent has the right to retreat only to a position that is held by another employee who has a current performance rating of "Minimally Successful" or equivalent, or a lower performance rating. (5 CFR 351.701(d))

o Section 3-A-23 covers grades and grade-intervals used in determining employees' reduction in force assignment rights.

(e) A released employee has retreating rights to a position based on the official position record previously held by the employee in relation to the official position of record currently held by the employee with less service in the same subgroup. (5 CFR 351.701(c)(3))

o The released employee's personal qualifications to perform the position held by the employee with less service in the same subgroup are not a consideration in determing retreat rights. (5 CFR 351.701(c)(3))

o A released employee may only have retreating rights to a position that the employee previously held on a permanent basis in the Federal service, or a position that is essentially identical to the position of the employee with less service in the same subgroup. (5 CFR 351.701(c)(3))

3. RETREAT RIGHTS-ESSENTIALLY IDENTICAL POSITION (see 3-B-20-3 for additional information). In determining employees' retreat rights, a position is considered essentially identical to a position that the released employee previously held if:

(a) The released employee held the previous position as a competing employee (i.e., the employee did not hold the position only on detail, term or temporary promotion, or on a temporary appointment with no status and tenure); (5 CFR 351.701(c)(3)), and

(b) The agency determines on the basis of available information that the released employee previously held an essentially identical position based on the Competitive Level criteria found in Section 3-A-9, but not necessarily in regard to the two positions' respective:

(1) Grade; (5 CFR 351.701(c)(3))

(2) Classification series; (5 CFR 351.701(c)(3))

(3) Type of work schedule; (5 CFR 351.701(c)(3)), or

(4) Type of service. (5 CFR 351.701(c)(3))

o A released employee may have a right to retreat to an essentially identical position in the present competitive area that is filled at a different grade, classification series, work schedule, appointing authority, etc., than the position that the released employee actually encumbered, provided that the two positions meet the standard covered in 3-A-20-3-b above. (5 CFR 351.701(c)(3))

4. RETREAT RIGHTS-EXPANDED GRADE LIMITS FOR DISABLED VETERANS IN SUBGROUP AD. A released employee has the right to retreat to a position at the same grade, or down to five grades or five grade-intervals (or equivalent) below the position from which the employee is released, if the employee is:

(a) Eligible for veterans' preference under OPM's reduction in force regulations; (5 CFR 351.702(c)(2)), and

(b) Receiving a compensable service-connected disability of 30 percent or more (i.e., the employee is in retention Subgroup AD). (5 CFR 351.701(c)(2))

o Except for the change in grade limits, the other conditions on employees' retreat rights covered in 3-A-19-2 above also apply to this provision. (5 CFR 351.701(c)(2))

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 21. USING VACANCIES IN MEETING EMPLOYEES' ASSIGNMENT RIGHTS

1. MANAGEMENT'S DECISION TO FILL VACANT POSITIONS DURING A RIF. An agency is not required to fill vacant positions in a reduction in force, but the agency may decide to fill all, some, or no vacant positions. (5 CFR 351.201(b))

2. MAKING RIF OFFERS OF VACANT POSITIONS TO RELEASED EMPLOYEES. An agency may satisfy a released employee's reduction in force assignment right by offering the employee assignment to a vacant position that:

(a) Is in the same competitive area; (5 CFR 351.704(a)(1); 5 CFR 351.701(a)); and

(b) Has a representative rate at least equal to a position that the employee is entitled on the basis of bump or retreat rights; (5 CFR 351.704(a)(1); 5 CFR 351.701(a))

(c) An agency may also offer an employee assignment to a vacant position in lieu of separation by reduction in force, subject to the same grade and grade-interval limits applicable to bump and retreat. (5 CFR 351.704(a)(1); 5 CFR 351.701(a))

o Subparagraph 3-A-19-1-(b) covers the limits for bump rights, while subparagraph 3-A-19-2-(b) and paragraph 3-A-19-3 cover the limits for retreat rights.

o Subparagraph 3-A-21-4-(a) below covers general qualifications for reduction in force assignment to a vacant position.

o Subparagraph 3-A-21-4-(b) below covers the loser undue interruption standard that is applicable to the determination of employees' qualifications for reduction in force assignment to a vacant position.

o Paragraph 3-A-21-6 below covers voluntary offers of vacant positions to place employees in lieu of separation or other reduction in force actions.

3. CONSIDERATION OF RETENTION STANDING IN OFFERING VACANT POSITIONS (see 3-B-21-3-(a)-(d) for additional information). When an agency chooses to fill a vacant position with an employee released from a competitive level, the agency must make the offer consistent with OPM's reduction in force regulations. (5 CFR 351.201(c))

(a) A vacant position that is filled effective at the beginning of the day after the effective date of the reduction in force, or immediately after the effective date, is an available position for purposes of determining employees' assignment rights. (5 CFR 351.506(a))

o Paragraph 3-A-18-4 covers "Available Position."

(b) When an agency decides to use a vacant position as a reduction in force offer of assignment to a released employee, the agency determines whether it can offer the position to the released employee provided that another released employee who has higher retention standing would not have a bump or retreat right to the vacant position. (5 CFR 351.704(a)(1))

(c) The agency must consider the relative subgroup standing of competing employees before offering a released employee assignment to a vacant position (i.e., the agency offers a released employee in Subgroup 1-A assignment to a vacant position before offering assignment to a released employee in Subgroup I-B). (5 CFR 351.201(c))

(d) When offering a released employee assignment to a vacant position, the agency is not required to consider the relative service computation dates of released employees in the same retention subgroup, unless one employee:

(1) Formerly held a position that is essentially identical to the vacant position; (5 CFR 351.201(c);(5 CFR 351.701(c))

(2) Has more service credit than a second employee in the same subgroup; (5 CFR 351.201(c);(5 CFR 351.701(c)), and

(3) Would have a right to the position on the basis of retreat rights if the vacancy was filled with another employee with less service. (5 CFR 351.201(c);(5 CFR 351.701(c))

4. CONSIDERATION OF UNDUE INTERRUPTION IN DETERMINING QUALIFICATIONS FOR ASSIGNMENT TO VACANT POSITIONS (see 3-B-21-4 for additional information). An employee released from a competitive level by reduction in force has an assignment right to another position (through bump, retreat, or an offer of a vacant position) held by an employee with lower retention standing only if the released employee is qualified for assignment. (5 CFR 351.701(a); 5 CFR 351.702(a))

(a) Except as covered in paragraph 3-A-23-8 ("Waiver of Qualifications in Offering Assignment to a Vacant Position"), a released employee is qualified for assignment to an "Available Position" (see 3-A-19-4 for definition) if the employee is otherwise qualified for the position, and has the capacity to perform the duties of the position without "Undue Interruption" to the agency.

(b) "UNDUE INTERRUPTION" is defined by regulation in 5 CFR 351.203, as duplicated in paragraph 3-A-5-1-(v), and generally means that an otherwise qualified employee must be able to perform the duties of the position within 90 days.

o The 90-day standard for undue interruption is generally not applicable to offers of assignment to vacant positions; the definition in 5 CFR 351.203 states that "The 90-day standard may be extended if placement is made under this part to a low priority program or to a vacant position."

5. WAIVER OF QUALIFICATIONS REQUIREMENTS IN OFFERING RIF ASSIGNMENT TO VACANT POSITIONS (for additional information, see 3-B-21-5). At its option, an agency may waive OPM's qualifications standards and requirements in offering a released employee assignment to a vacant position. (5 CFR 351.703)

o Section 3-A-25 covers consideration of qualifications when determining employees' assignment rights; 3-A-25-8 covers waiver of qualifications under the retention regulations.

6. OFFERING VACANT POSITIONS AS NON-RIF OFFERS TO PLACE EMPLOYEES IN LIEU OF RIF SEPARATION OR OTHER RIF ACTIONS (see 3-B-21-6 for additional information). The agency has the basic right to take other personnel actions, including the filling of vacant positions using authority other than OPM's retention regulations, before, during, and after a reduction in force, unless the agency has limited this right as a matter of policy. (5 CFR 351.201(a)(1))

o Paragraph 3-A-3-4 covers management's general right to take other personnel actions. (5 CFR 351.201(a)(1))

(a) A vacant position that is filled on or after the effective date of the reduction in force, or immediately after the effective date, is an available position for purposes of determining employees' assignment rights. (5 CFR 351.506(a))

(b) The agency may make a voluntary offer of a vacant position to a released employee as:

(1) An offer in lieu of separation by reduction in force;

(2) An offer in lieu of downgrading by reduction in force; or

(3) An alternative offer in lieu of an offer of assignment by reduction in force.

o The grade-level limits applicable to offer of assignment under the reduction in force regulations do not apply when the agency makes a voluntary offer to a released employee.

o This includes the option to offer a vacant other-than-full-time position to a full-time employee or offer a vacant full-time position to an other-than-full-time employee.

o Although the employee was reached for a reduction in force action, these voluntary offers are not offers of assignment under the retention regulations.

o The agency must provide for competition through its internal staffing plan if the offered position has more promotion potential than the employee's present position.

o The placement action is processed as a reassignment, position change, change to lower grade, or change in work schedule, and should be documented to show that the employee accepted the position as a voluntary offer in lieu of reduction in force.

o Voluntary offers of vacant positions that are in a different competitive area within the same local commuting area, must be consistent with the Reemployment Priority List, and any other applicable transition programs. (Module 6 covers the Reemployment Priority List.)

o Voluntary offers of vacant positions that are in both a different competitive area and a different local commuting area are not subject to the Reemployment Priority List, but may be covered by other applicable agency-specific transition programs.

7. MODIFICATION OF QUALIFICATIONS REQUIREMENTS IN OFFERING POSITIONS IN LIEU OF RIF SEPARATION OR OTHER RIF ACTIONS. At its option, an agency may modify OPM's qualifications standards and requirements in offering a vacant position to a released employee in lieu of separation or other reduction in force action.

o The offer may be a reassignment or a voluntary change to lower grade.

o See paragraph 3-A-25-9 for additional information.

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 22. USING VACANT TEMPORARY POSITIONS AS PLACEMENT OFFERS

1. TEMPORARY POSITIONS ARE NOT AVAILABLE POSITIONS (see 3-B-22-1 for additional information). An employee released from a competitive level by reduction in force does not have assignment rights to a position in a different competitive level that is held by a temporary (tenure group 0) employee. (5 CFR 351.701(a))

o A temporary employee (tenure group 0 is a noncompeting employee in reduction in force competition. (5 CFR 351.501(b))

o Paragraph 3-A-16-2(a) provides that an agency must separate all temporary employees from a competitive level before a competing employee is released from that level by reduction in force. (5 CFR 351.602(a))

2. USING A TEMPORARY POSITION AS A RIF OFFER OF ASSIGNMENT (see 3-B-22-2 for additional information). At its discretion, an agency may use a vacant temporary position that will last at least 3 months as a reduction in force offer of assignment to a competing employee who has no assignment right to another position and who will otherwise be separated by reduction in force. (5 CFR 351.704(b)(4))

o The agency makes the offer of the vacant temporary position as a reduction in force offer of assignment on the same basis as other vacant positions offered in RIF (see 3-A-20), including the three-grade or grade-interval limits. (5 CFR 351.704(b)(4))

o When an employee accepts a temporary position as a reduction in force offer of assignment, the employee retains the same status and tenure (e.g., a competitive service employee in Subgroup I-B retains the I-B status after entering on duty in the temporary position). (5 CFR 351.701(a))

o If the temporary appointment expires or the agency abolishes the position, the employee is again entitled to compete under the reduction in force regulations based on the retained status and tenure if the employee is faced with separation or downgrading. (5 CFR 351.701(a))

3. USING A TEMPORARY POSITION FOR REEMPLOYMENT FOLLOWING RIF SEPARATION. At its discretion, an agency may offer reemployment, or continued employment, in a vacant temporary position if a competing employee has no right of assignment.

(a) The agency must follow tenure group and subgroup standing in offering an employee appointment to a temporary position in the same same local commuting area as the reduction in force. (5 CFR 330.205(a))

o The requirement to follow tenure group and subgroup standing ensures compliance to the agency's reemployment priority list. (5 CFR 330.205(a))

o When an employee accepts a temporary position as an offer of reemployment following separation by reduction in force, the action is processed as a separation followed by a new temporary appointment.

(b) The agency may reemploy the separated employee in the temporary position with no break in service, or reemployment following a break in service.

o The agency must follow tenure group and subgroup standing in order to comply with the agency's reemployment priority list. (5 CFR 330.205(a))

o In the temporary position, the employee's status and tenure are changed to that which is appropriate for the temporary appointment (i.e., tenure Group 0), reflecting that the employee is not covered by OPM's reduction in force regulations. (5 CFR 351.501(b))

o If the temporary appointment expires or the agency abolishes the temporary position, the agency may separate the employee without regard to OPM's reduction in force regulations. (5 CFR 351.501(b))

(c) The agency may offer an employee who has received a notice of separation by reduction in force the opportunity to convert to a temporary (i.e., tenure Group 0) position in lieu of involuntary separation.

o In making an appointment to the temporary position, the agency must follow tenure group and subgroup standing in order to comply with the agency's reemployment priority list. (5 CFR 330.205(a))

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 23. CONSIDERATION OF GRADES IN MEETING EMPLOYEES' ASSIGNMENT RIGHTS

1. RANGE OF GRADES AND GRADE-INTERVALS IN DETERMINING ASSIGNMENT RIGHTS. Section 3-A-19 covers the range of grade limits that apply to employees' bump and retreat rights.

o Employees have bump and retreat rights to positions at the same grade, or down to three grades or grade-intervals (or equivalent) below the position from which the employee is released. (5 CFR 351.701(b)(2); 5 CFR 351.701(c)(2))

o Employees who are eligible for veterans' preference in reduction in force and are receiving a service-connected compensable disability of 30% or more have retreat rights to positions at the same grade, or down to five grades or grade-intervals (or equivalent) below the position from which the employee is released. (5 CFR 351.701(c)(2))

2. EMPLOYEE'S POSITION OF RECORD DETERMINES GRADE AND GRADE-INTERVAL RANGE. The agency uses the grade progession of the released employee's official position of record to determine the grade limits of the employee's assignment rights. (5 CFR 351.701(f)(1)

3. DISTINCTION BETWEEN GRADE AND GRADE-INTERVAL. The difference between successive grades in a:

(a) One-grade occupation is a GRADE difference.

(b) Multi-grade occupation is a GRADE-INTERVAL difference.

o A position with a one-grade progression is comprised of consecutive grade levels (e.g., GS-5-6-7-8).

o A position with a two-grade, or other multi-grade progression is comprised of nonconsecutive grade levels (e.g., GS-5-7-9-11).

o After the agency determines the range, employee have assignment rights to positions at all grades within the grade-interval limits, including positions in intervening grades within the grade-interval progression in both the employee's present pay system, and positions in other pay systems. (5 CFR 351.701(b)(2); 5 CFR 351.701(c)(2))

4. DETERMINING THE GRADE-INTERVAL PROGRESSION FOR GENERAL SCHEDULE POSITIONS. 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. (5 CFR 351.701(f)(2))

o For General Schedule positions, a two-grade-interval progression applies to the occupations listed in the "Introduction to the Position Classification Standards."

o Employees released from two-grade-interval positions have assignment rights to positions at all grade levels within these grade limits, including positions that are not part of the two-grade progression (e.g., assignment rights to a GS-8 position when the two-grade progression provides the employee with assignment rights GS-9-7-5-4 when the entry level of the two-grade progression is GS-5). (5 CFR 351.701(b)(2); 5 CFR 351.701(c)(2))

o The use of grade intervals extends only to the entry level of the position with a two-grade progression (e.g., GS-9-7-5 when the entry level of the two-grade progression is GS-5).

o If applicable, the agency provides the employee with assignment rights of three grades or grade intervals by using a one-grade basis to determine grade limits below the entry level of the position with a two-grade progression (e.g., GS-9-7-5-4 when the entry level of the two-grade progression is GS-5). (5 CFR 351.701(f)(5)

o Employees released from one-grade-interval positions have assignment rights to positions up to three grade levels below the employee's present position (e.g., GS-7-6-5-4 when the entry level of the one-grade progression is GS-4).

o For mixed interval jobs (e.g., a GS-9 position that progresses GS-5-6-7-9), the assignment right grade limits are based on progression to the present position. (5 CFR 351.701(f)(2)

o If the employee holds a position that is less than three grades above the lowest grade in the classification system (e.g., the employee holds a GS-2 position), the employee still has potential assignment rights to positions in other pay systems with a representative rate lower than the position held by the released employee. (5 CFR 351.701(f)(5))

5. DETERMINING THE GRADE INTERVAL PROGRESSION FOR POSITIONS NOT COVERED BY THE GENERAL SCHEDULE-GENERAL AGENCY RESPONSIBILITY TO ESTABLISH LINE OF PROGRESSION. For positions not covered by the General Schedule, the agency has the responsibility to establish the normal line of progression for each occupational series and grade level, and to then apply employees' assigment limits based on this determination. (5 CFR 351.701(f)(3))

6. DETERMINING THE GRADE INTERVAL PROGRESSION FOR POSITIONS NOT COVERED BY THE GENERAL SCHEDULE-SCOPE OF POSITIONS CONSIDERED BY THE AGENCY. At its discretion, the agency may establish the normal line of progression by: (5 CFR 351.701(f)(3))

(a) Competitive area;

(b) A larger subdivision of the agency including multiple competitive areas; or

(c) An agencywide or departmentwide basis.

7. DETERMINING THE GRADE INTERVAL PROGRESSION FOR POSITIONS NOT COVERED BY THE GENERAL SCHEDULE-MOVEMENT BETWEEN POSITIONS. Each single or multi-grade movement within the normal line of progression is considered a grade interval for purposes of applying the grade range limitations on assignment rights. (5 CFR 351.701(b)(2); (5 CFR 351.701(c)(2)); (5 CFR 351.701(f)(3))

o The normal line of progression may include grade levels in different pay systems. (5 CFR 351.701(f)(3))

o Once the agency establishes the normal line of progression agency for a particular series and grade level, the same grade level limits for bump and retreat are applied to all employees in that series and grade level without regard to an employee's actual progression to that grade level. (5 CFR 351.701(f)(1); 5 CFRF 351.701(f)(3))

o Determination of grade limits below the starting point of the normal line of progression is made on a one-grade basis (e.g., WG-10-8-5-4 when the entry level of the progression is WG-5). (5 CFR 351.701(f)(5))

8. DETERMINING THE GRADE INTERVAL PROGRESSION FOR POSITIONS NOT COVERED BY THE GENERAL SCHEDULE-NO PROGRESSION EXISTS. In some situations, the agency may determine that there is no line of progression to a particular series and grade level (e.g., when an agency normally fills a particular series and grade at the journeyman level from outside the agency). (5 CFR 351.701(f)(3))

o In this situation, grade interval progression is not applicable and the agency provides the employee with assignment rights to positions up to three grades lower, as determined on a one-grade basis (e.g., a WG-10 employee in a series and grade which has no line of progression would have assignment rights to positions based upon WG-10-9-8-7). (5 CFR 351.701(f)(3))

9. DETERMINING THE GRADE INTERVAL PROGRESSION FOR POSITIONS NOT COVERED BY THE GENERAL SCHEDULE-NO GRADE STRUCTURE EXISTS. In a situation where no grade structure exists (e.g., the agency uses negotiated pay rates), the agency determines if a line of progression exists for each occupation/pay rate and provides assignment rights to positions up to three grade-intervals lower on that basis. (5 CFR 351.701(f)(4))

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 24. CONSIDERATION OF REPRESENTATIVE RATES WHEN DETERMINING EMPLOYEES' ASSIGNMENT RIGHTS

1. COMPARING POSITIONS. Agencies may need to compare positions in different pay schedules to determine an employee's eligibility to bump or retreat to a position in a different pay schedule. (5 CFR 351.701(e)(1))

o When two or more positions are in different pay schedules, the "REPRESENTATIVE RATES" of the positions are used to determine equivalent grade levels and the best offer of assignment for a released employee. (5 CFR 351.701(a))

o Representative rates are not used when positions are in the same pay schedule because the agency directly compares the grades or levels of the positions. (5 CFR 351.203; 5 CFR 351.701(e))

2. PAY SCHEDULE DEFINITION (see 3-B-24-2 for additional information). "PAY SCHEDULE" means any one set of pay rates identified by statute or by an agency as applying to a group of occupations.

o The General Schedule (GS) is one pay schedule regardless of special rates or premium rates. (5 CFR 531.101)

o The regular nonsupervisory, leader, and supervisory schedules of the Federal Wage System which are considered to be separate pay schedules regardless of special rates. (5 CFR 532.203)

o Agency special wage schedules for positions not under the regular schedules of the Federal Wage System also are considered to be separate pay schedules. (5 CFR 532.254)

3. REPRESENTATIVE RATE-DEFINITION (see 3-A-24-3 for additional information). Representative rate is: (5 CFR 351.203)

(a) The fourth step of the grade for a position under the General Schedule (except a GS-18 has a single rate); (5 CFR 531.403); (5 CFR 532.401)

(b) The prevailing rate for a position under the Federal Wage System or similar wage-determining procedure; (5 CFR 532.401), and

o Under a wage system with five steps for each grade level or rating, the second step is based on the local prevailing rate and is designated the representative rate. (5 CFR 532.401)

(c) For other positions, the rate designated by the agency as representative of the position. (5 CFR 351.203); (5 CFR 532.401)

o The representative rate of a Senior-level (SL) position established under authority of 5 U.S.C. 5376, and classified above GS-15, is the rate designated by the agency as representative of the position. (5 CFR 351.203); (5 CFR 534.501)

4. REPRESENTATIVE RATE-EXPLANATION. A representative rate is the basic rate of pay without regard to overtime, night differential, post differential, cost of living allowances, or premium pay. (5 CFR 531.403); (5 CFR 532.401)

o Locality-based comparability payments for General Schedule employees under 5 U.S.C. 5304 are not considered in determining the representative rate. (5 CFR 531.403)

5. REPRESENTATIVE RATE-CALCULATION. For General Schedule positions and other positions with per annum salary, the hourly equivalent of the representative rate is obtained by dividing the annual rate by 2,087 with the result adjusted to the nearest cent, counting one-half and over as the next whole cent. (5 CFR 531.102(a))

6. REPRESENTATIVE RATE-RATE USED TO DETERMINE RETENTION RIGHTS. The agency compares employees' representative rates that are in effect on the date the agency issues specific reduction in force notices. (5 CFR 351.701(e)(2))

o When the approval of new pay rates has been announced before the date of notices and the new rates will be put into effect by the effective date of the reduction in force, the new pay rates must be used. (5 CFR 351.701(e)(2))

7. APPLICATION OF REPRESENTATIVE RATES IN DETERMINING EMPLOYEES' ASSIGNMENT RIGHTS. To determine whether a position in a different pay schedule is within the bump and retreat grade limits, the agency determines the representative rates for the employee's current position and for the lowest grade to which the employee has bump and retreat rights. (5 CFR 351.701(b)(2); (5 CFR 351.701(c)(2))

o The agency then compares these limits with the representative rates in the different pay schedule, and determines the range of grades the employee may be assigned to in the other pay schedule. (5 cFR 351.701(a))

o The highest grade for an assignment right to a position in the other pay schedule is the highest grade with a representative rate that does not exceed the representative rate of the employee's current position. (5 CFR 351.704(b)(1))

o The lowest grade for an assignment right to a position in the other pay schedule is the lowest grade with a representative rate that is not less than the representative rate of the lowest grade to which the employee has bump and retreat rights. (5 CFR 351.701(b)(2); (5 CFR 351.701(c)(2))

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 25. CONSIDERATION OF QUALIFICATIONS WHEN DETERMINING EMPLOYEES' ASSIGNMENT RIGHTS

1. ONLY QUALIFIED EMPLOYEES HAVE ASSIGNMENT RIGHTS (for additional information, see 3-B-25-1). An employee released from a competitive level by reduction in force has bump or retreat rights to another position held by an employee with lower retention standing only if the released employee is qualified for assignment. (5 CFR 351.701(a))

2. QUALIFICATIONS STANDARD (for additional information, see 3-B-25-2). Except as covered in paragraph 3-A-23-8 (waiver of qualifications in offering assignment to a vacant position), a released employee is qualified for assignment to an "Available Position" (see 3-A-19-4 for definition) if the employee:

(a) Meets OPM-established and requirements for the position, including any minimum educational requirement, and any selective placement factors established by the agency; (5 CFR 351.702(a)(1))

(b) Is physically qualified, with reasonable accomodation where appropriate, to perform the duties of the position; (5 CFR 351.702(a)(2))

(c) Meets any OPM-approved special qualifying condition for the position; (5 CFR 351.702(a)(3)), and

(d) Clearly demonstrates based on overall background, including recency of experience when appropriate, the ability to successfully perform the duties of the position upon assignment to it without undue interruption to the activity beyond that normally expected in the orientation of any new but fully qualified employee. (5 CFR 351.702(a)(3))

o "UNDUE INTERRUPTION" is defined in 3-A-5-1-v, and means that a qualified employee should not need a significant amount of training in the actual duties of the position, although orientation in organizational structure, terminology, office policies, etc. may be needed. (5 CFR 351.203)

3. OTHER QUALIFICATIONS FACTORS. Besides the standard covered in paragraph 3-A-25-2 above, an agency must, when applicable, consider other factors in determining whether a released employee is qualified for assignment to another position. (5 CFR 351.702)

(a) Before a released employee may be assigned to a trainee or developmental position, the employee must meet additional conditions in Section 3-A-26. (5 CFR 351.702(e))

(b) The agency may not consider the sex of a released employee in determining the employee's qualifications for assignment, except for positions where OPM has approved certification of eligibles by sex. (5 CFR 351.702(b))

(c) An agency may not deny a released employee assignment rights solely because an employee on leave of absence due to a compensable injury is not physically qualified for a position when the disqualification results from the compensable injury. (5 CFR 351.702(c))

o Instead, the agency makes a decision on the employee's physical qualifications when the employee requests a return to duty under 5 CFR 353.302 and 5 CFR 353.303. (5 CFR 351.702(c))

(d) In determining whether the assignment of a released employee would result in undue interruption to the activity under 3-A-25-2-(4) above, the agency may not use the "RECENCY OF EXPERIENCE" provision to disqualify an employee simply because the employee has not worked for some time in a particular function or occupation. (5 CFR 351.702(a)(4))

o The agency may use a recency of experience requirement in determining the employee's assignment right only for a position where the agency can demonstrate that this added requirement is appropriate for successful performance on the job. (5 CFR 351.702(a)(4))

(e) Before the agency may restrict assignment of a released employee to certain positions because the employee lacks a security clearance, the agency must consider additional undue interruption issues that are covered in Section 3-A-27.

4. ASKING EMPLOYEES FOR A QUALIFICATIONS UPDATE (see 3-B-25-4 for additional information). An agency may ask employees to update their qualifications statements prior to a reduction in force and may establish a formal deadline for the receipt of this material. (5 CFR 351.702(a))

o The agency is not obligated to consider material received after the deadline in determining the employee's qualifications for assignment to other positions.

5. MAKING QUALIFICATIONS DETERMINATIONS-GENERAL (see 3-B-25-5 for additional information). The agency reviews available records (e.g., the employee's Official Personnel Folder, a personal qualifications update, etc.) with information on the released employee's education, training, and experience to determine whether the employee is qualified for assignment to a position in a different competitive level.

6. MAKING QUALIFICATIONS DETERMINATIONS-PHYSICAL QUALIFICATIONS DETERMINATIONS (see 3-B-25-6 for additional information). The agency determines on the basis of available information whether an employee is physically qualified, with reasonable accomodation if necessary, for a position. (5 CFR 351.702(a)(2))

(a) The agency's determination on whether a released employee is physically qualified for assignment to another position does not require that the agency conduct a separate medical examination for that purpose.

o A physical examination may be required when the employee is being considered for a position which is subject to physical or medical standards, is covered by a medical surveillance program established by agency regulations, or has important duties which are more physically arduous than the position previously held.

o OPM approval of a decision that an employee is not physically qualified is not required except in the case of employees who are 30 percent or more disabled veterans, as covered in paragraph 3-A-23-7 below.

(b) An agency may not deny reduction in force assignment rights to an employee who is reached for release from a competitive level during a leave of absence that resulted from a compensable injury solely because the employee is physically disqualified as a result of the compensable injury. (5 CFR 351.702(c)).

o The agency must determine whether the injured employee is entitled to any reduction in force assignment rights, subject to recovery from the injury as provided by 5 U.S.C. 8151 and 5 CFR Part 353. (5 CFR 351.702(c))

7. MAKING QUALIFICATIONS DETERMINATIONS-PHYSICAL QUALIFICATIONS DETERMINATIONS FOR CERTAIN DISABLED VETERANS. If the agency determines on the basis of available evidence that a veteran with a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of a position which the employee otherwise would have been offered, the agency must notify OPM of this determination. (5 CFR 351.201(d))

(a) A veteran is entitled to this procedure if the employee is receiving a compensable-service connected disability of 30% or more, even though the employee may not be a preference eligible in reduction in force competition (e.g., the employee is retired from the Armed Forces under a provision that excludes veterans' preference for retention purposes). (5 CFR 351.201(d))

(b) At the same time, the agency must notify the employee of the determination, the reasons for the finding, and of the employee's right to respond to OPM within 15 days of the notification. (5 CFR 351.201(d))

(c) The agency must submit the reasons for the determination to OPM, along with the complete medical information on which the determination was based. (5 CFR 351.201(d))

(d) The agency is also required to demonstrate to OPM that the notification was timely sent to the employee's last known address. (5 CFR 351.201(d))

(e) The agency may not assign any other person to the position until OPM has made a final determination concerning the physical qualifications of the employee for the position. (5 CFR 351.201(d))

(f) After OPM has completed its review of the proposed disqualification, it will send its findings to both the agency and the employee. The agency is required to comply with OPM's findings. (5 CFR 351.201(d))

(g) The agency must send the case to:

Office of Personnel Management
Associate Director,
Employment Service
Staffing Reinvention Office
1900 E Street, N.W.
Washington, D.C. 20415

(Telephone: 202-606-0830; Fax: 202-606-0390)

8. WAIVER OF QUALIFICATIONS REQUIREMENTS IN OFFERING RIF ASSIGNMENT TO VACANT POSITIONS. In offering a released employee assignment to a vacant position, an agency, at its discretion, may waive OPM's qualifications standards and requirements for the position, if the agency determines that the employee: (5 CFR 351.703)

(a) Meets any minimum education requirement for the position; (5 CFR 351.703(a)), and

(b) Has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position. (5 CFR 351.703(a)(2).

o The promotion potential of the offered vacant position is not a consideration in offering employee assignment. (5 CFR 351.701(a))

o Section 3-A-21 covers the use of vacant positions in meeting employees' assignment rights.

9. MODIFICATION OF QUALIFICATIONS IN OFFERING POSITIONS IN LIEU OF RIF SEPARATION OR OTHER RIF ACTIONS. The Qualifications Standards Handbook provides that an agency, at its discretion, may modify qualifications standards for inservice placement actions if the agency determines that the employee can successfully perform the work of a position even though the employee may not meet all the requirements in the OPM qualification standard.

o With this option, an agency may modify OPM's qualification standards for interagency and intraagency inservice placement actions, including reassignment, voluntary change to lower grade, transfer, reinstatement, or repromotion to a grade not higher than a grade previously held.

o A placement action made under this authority may only to a position with no more promotion potential than the employee's present position without competition under the agency's internal staffing plan.

o Paragraph 3-A-21-5 covers the use of vacant positions as offers in lieu of separation or other reduction in force actions.

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 26. USE OF TRAINEE AND DEVELOPMENTAL POSITIONS WHEN DETERMINING EMPLOYEES' ASSIGNMENT RIGHTS

1. ASSIGNMENT TO A TRAINEE OR DEVELOPMENTAL POSITION. An agency must consider three additional qualifications requirements when determining whether a released employee has assignment rights to a position held by a lower-standing employee in a formally-designated trainee or developmental position: (5 CFR 351.702(e))

(a) Whether the lower-standing employee holds a formally designated trainee or developmental position;

(b) Whether the higher-standing employee meets all of the conditions for selection and entry into the formally designated trainee or developmental program; and,

(c) If (a) and (b) are applicable, whether undue interruption would result if the higher-standing employee displaced the employee holding the trainee or developmental position.

o These additional conditions apply when the released employee is otherwise qualified for assignment to the position, as covered in Section 3-A-25.

2. DEFINITION OF A TRAINEE OR DEVELOPMENTAL POSITION (see 3-B-26-2 for additional information). A formally designated trainee or developmental position is in a program that:

(a) Has been designed to meet the agency's needs and requirements for the development of skilled personnel; (5 CFR 351.702(e)(1))

(b) Has been formally designated, with its provisions announced to employees and supervisors; (5 CFR 351.702(e)(2))

(c) Is developmental by design, offering planned growth in duties and responsibilities and providing advancement in recognized lines of career progression; (5 CFR 351.702(e)(3)), and

(d) Is fully implemented, with the participants chosen through standard selection procedures. (5 CFR 351.702(e)(4))

o Positions in programs that do not meet all of these conditions are not considered trainee or developmental positions for reduction in force purposes.

o Positions identified simply as "career ladder" positions, which do not meet all of the four characteristics covered above are not considered as trainee or developmental positions for reduction in force purposes.

3. FULLY TRAINED EMPLOYEES HAVE NO ASSIGNMENT RIGHTS TO A TRAINEE OR DEVELOPMENTAL POSITION (see 3-B-26-3 for additional information). OPM's reduction in force regulations do not authorize assignment of a higher-standing employee who has completed a course of training or development, or who is otherwise fully trained, into a position in a formally designed trainee or dvelopmental program because the employee no longer meets the conditions for entry into the program. (5 CFR 351.702(e))

o These restrictions prevent a journeyman to bump or retreat into an apprenticeship program for the same trade or craft, or for the graduate of an intern program to bump or retreat into the same intern program. (5 CFR 351.702(e))

o OPM's reduction in force regulations do not specifically bar higher-standing employees from displacing employees in trainee or developmental positions. (5 CFR 351.701(a))

o A released employee may displace a lower-standing employee in a trainee or developmental position only if the released employee is otherwise qualified for assignment to the position, and no undue interruption would result from the placement. (5 CFR 351.702(e))

4. MAKING QUALIFICATIONS DETERMINATIONS WHEN CONSIDERING ASSIGNMENT RIGHTS TO A TRAINEE OR DEVELOPMENTAL POSITION. An agency first reviews a released employee's qualifications for assignment to a formally-designated trainee or developmental position under the qualifications standard covered in Section 3-A-25. (5 CFR 351.702(e))

o In determining whether the employee has assignment rights to a formally-designated trainee or developmental position, the agency must consider whether the offer would result in undue interruption (see 3-A-4-1-v). (5 CFR 351.702(e))

o Since a formally-designated trainee or developmental program always includes planned career advancement based upon progressive training or rotational assignments, undue interruption would normally result if an employee was assigned to a trainee or developmental position more than 90 days after the program started. (5 CFR 351.702(e))

o In order to be considered qualified for assignment to a trainee or developmental position when undue interruption may not be a consideration (e.g., when the formally-designated trainee or developmental program started less than 90 days before the effective date of the reduction in force, an employee must meet all of the conditions required for selection and entry into the program. (5 CFR 351.702(e)(4))

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 27. CONSIDERATION OF SECURITY CLEARANCES WHEN DETERMINING EMPLOYEES' ASSIGNMENT RIGHTS

1. ASSIGNMENT TO A SENSITIVE POSITION. An agency first determines an employee's qualifications for assignment to a sensitive position in the same manner that it makes qualifications determinations for assignment to other positions (see Section 3-A-25).

o In making a qualifications determination involving assignment to a sensitive position, the agency may consider whether the time period required for completion of a security clearance will result in undue interruption to the activity, and apply that standard in determining whether the released employee has a potential right of assignment.

o Undue Interruption is defined in 3-A-4-1-v, and generally requires that an otherwise qualified employee be able to fully perform the position within 90 days after the assignment is made on the effective date of the reduction in force.

o An employee who does not have a right of assignment to a sensitive position because approval of the security clearance would result in undue interruption is not qualified for assignment to that position, but still has potential assignment rights to other positions with the same or a lower representative rate. (5 CFR 351.701(a))

2. AGENCY MUST INITIATE CLEARANCE PROCESS WHEN IT DETERMINES POTENTIAL RIGHT OF ASSIGNMENT. When an agency can satisfy an employee's right of assignment only by an offer of a sensitive position, the agency may not delay or deny the assignment solely because the employee does not have the appropriate security clearance or is in the process of obtaining the clearance.

o When the agency determines that an employee has a right of assignment to a sensitive position and that the employee's lack of a security clearance will not result in undue interruption, the agency at that time should initiate the actions to obtain the clearance.

3. WORK ASSIGNMENTS WHILE APPROVAL OF CLEARANCE IS PENDING. While the security clearance is being processed, the agency may assign the employee to the sensitive position on the effective date of the reduction in force. If the agency cannot allow the employee access to classified material or permit the employee to perform the duties of the sensitive position, in some situations the agency may:

o Give the employee nonsensitive duties of the position to perform;

o Detail the employee to a nonsensitive position, or set of duties;

o Grant leave upon the employee's request;

o Suspend the employee as provided in Executive Order 10450 and related authorities specified in 5CFR 732;

o Temporarily give the duties of the sensitive position to another qualified employee with the requisite security clearance; or

o Use a discretionary temporary exception to the regular order of release from a competitive level (see paragraphs 3-A-17-9 through 3-A-17-12).

4. ASSIGNMENT RIGHTS WHEN CLEARANCE IS DENIED. When an agency can satisfy an employee's right of assignment only by an offer of a sensitive position, but the employee fails the security clearance and is therefore not qualified for assignment to the sensitive position, the agency has two principal options:

(a) Separate the employee by reduction in force from the position the employee holds at the time of release from the competitive level because the employee has no right of assignment to the position; (5 CFR 351.603), or

o In this situation, the agency would have used a discretionary temporary exception to retain the released employee past the effective date of the reduction in force.

(b) Upon completion of the security clearance process, the agency may take any appropriate action, including removal, as provided in Executive Order 10450 and related authorities specified in 5 CFR 732.

o In this situation, the agency would have placed the employee through reduction in force procedures into the sensitive position with the security clearance.

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 28. ADMINISTRATIVE ASSIGNMENT OPTIONS

1. ASSIGNMENT OPTIONS. An agency may, at its discretion, adopt any of the three options in paragraphs 3-A-28-2 through 3-A-28-4 below for assigning employees in a reduction in force. (5 CFR 351.705(a))

o These options are subject to the restrictions covered in paragraphs 3-A-28-5 and 3-A-28-6 below. (5 CFR 351.705(b))

2. BUMPING IN THE SAME SUBGROUP. An agency may permit competing employees in tenure Group I and Group II to displace other employees with lower retention standing within the same subgroup. (5 CFR 351.705(a)(1))

o The determination of the employee's bumping rights must be consistent with the bumping provisions covered in paragraph 3-A-20-1. (5 CFR 351.705(a)(1))

o The agency may use this option only to offer a released employee assignment to a position with a representative rate higher than that provided by the usual bumping procedures (i.e., displacing an employee on a different competitive level who is in a lower tenure Group, or in a lower subgroup within the same subgroup as the released employee). (5 CFR 351.705(a)(1))

3. BUMPING RIGHTS FOR EMPLOYEES IN TENURE GROUP III (see 3-B-28-3 for additional information). An agency may permit competing employees in tenure Group III to bump other employees in tenure Group III. (5 CFR 351.705(a)(2))

o Unless provided by the agency, Group III employees have no right of assignment under the reduction in force regulations. (5 CFR 351.705(a)(2))

o An agency may not provide a Group III employee with retreat rights. (5 CFR 351.705(a)(2))

4. ASSIGNMENT RIGHTS FOR EXCEPTED SERVICE EMPLOYEES. An agency may establish a system of assignment rights for competing employees in the excepted service to other excepted positions filled under the same appointing authority as the position held by the released employee. (5 CFR 351.705(a)(3))

o Unless provided by the agency, excepted employees have no right of assignment under the reduction in force regulations. (5 CFR 351.701(a); 5 CFR 351.705(a)(3))

o An agency may not provide excepted employee assignment rights to other excepted positions filled under different appointing authorities than the position held by the released employee. (5 CFR 351.705(a)(3))

5. REQUIREMENT THAT ADMINISTRATIVE ASSIGNMENT RIGHTS MUST BE CONSISTENT WITH THE RIF REGULATIONS. If the agency offers employees assignment rights under any of the three administrative assignment options covered in paragraphs 3-A-26-2 through 3-A-26-4 above, the provisions must be consistent with OPM's reduction in force regulations. (5 CFR 351.705(b)(1))

o The agency must apply the administrative assignment provisions uniformly and consistently in any one reduction in force. (5 CFR 351.705(b)(2))

6. RESTRICTIONS ON ADMINISTRATIVE ASSIGNMENT RIGHTS. If the agency offers employees assignment rights under any of the three administrative assignment options covered in paragraphs 3-A-28-2 through 3-A-28-4 above or under authority, the agency may not authorize:

(1) Displacement of an employee, except by an employee with higher retention standing; (5 CFR 351.705(b)(1))

(2) Assignment of an other-than-full-time employee to a full-time position, except as an offer of assignment to a vacant position in lieu of separation by RIF; (5 CFR 351.705(b)(3))

(3) Assignment of a full-time employee to an other-than-full-time position, except as an offer of assignment to a vacant position in lieu of separation by RIF; (5 CFR 351.705(b)(4))

(4) Assignment of an employee in the competitive service to a position in the excepted service; (5 CFR 351.705(b)(5))

(5) Assignment of an employee in the excepted service to a position in the competitive service. (5 CFR 351.705(b)(6))

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 29. REDUCTION IN FORCE NOTICES TO EMPLOYEES

1. DEFINITION OF A SPECIFIC RIF NOTICE. A specific reduction in force notice is a written communication from an agency official to an individual employee stating that the employee will be reached for a reduction in force action. (5 CFR 351.801(a)(1))

o This definition of "Notice" is also covered in paragraph 3-A-4-1-l.

o As used in this Section, "REDUCTION IN FORCE NOTICE" means a specific reduction in force notice.

2. CERTIFICATION OF EXPECTED SEPARATION. An agency may issue an employee a "CERTIFICATION OF EXPECTED SEPARATION" (CES) to assist the employee in pre-RIF placement assistance and early outplacement assistance. (5 CFR 351.807)

o Section 3-A-32 covers the CES option.

3. INFORMATIONAL NOTICES. At its discretion, an agency may issue an advance informational notice to alert employees that a reduction in force may be necessary.

o An informational notice does not count toward the mandatory notice period for a specific reduction in force notice.

o An informational notice does not satisfy an employee's right to a specific reduction in force notice.

4. CONTENT OF SPECIFIC RIF NOTICE (see 3-B-29-4 for additional information). A specific reduction in force notice must contain the following information: (5 CFR 351.802)

(a) What reduction in force action is being taken (i.e., separation, demotion, furlough for more than 30 days, etc.); (5 CFR 351.802(a)(1))

(b) The reasons for the reduction in force action; (5 CFR 351.802(a)(1))

(c) The effective date of the action; (5 CFR 351.802(a)(1))

(d) The employee's competitive area, competitive level, retention subgroup, service date, and annual performance ratings of record received during the last 4 years before the agency issues reduction in force notices or freezes ratings used to determine employees' retention standing; (5 CFR 351.802(a)(2))

(e) The place where the employee may inspect the regulations and records pertinent to his or her case; (5 CFR 351.802(a)(3))

(f) If applicable, the reasons for retaining a lower-standing employee under a mandatory exception (5 CFR 351.606), a discretionary continuing exception (5 CFR 351.607), or a discretionary temporary exception (5 CFR 351.608); (5 CFR 351.802(a)(3))

o For additional information on exceptions to the order of release, see paragraphs 3-A-17-5 through 3-A-17-15.

(g) If applicable, explain that employees are being separated under the liquidation procedures without regard to retention standing within the subgroup, and the date the liquidation reduction in force will be completed; (5 CFR 351.605), and

o For additional information on the liquidation provision in reduction in force, see paragraphs 3-A-17-11 and 3-A-17-12.

(h) As applicable, the employee's right to appeal the reduction in force action to the Merit Systems protection Board under the provisions of the Board's regulations, or to grieve the action under a negotiated grievance procedure; (5 CFR 351.802(a)(6)).

5. REQUIREMENT TO PROVIDE EMPLOYEE WITH A COPY OF OPM's RIF REGULATIONS. When an agency issues a specific reduction in force notice to an employee, the agency must, at the employee's request, provide the employee with a copy of OPM's retention regulations found in 5 CFR Part 351. (5 CFR 351.802(b))

6. ADDITIONAL NOTICE REQUIREMENTS WHEN EMPLOYEES ARE SEPARATED BY RIF IN FORCE INCLUDING THE REVISED NOVEMBER 24, 1997, RIF REGULATIONS. OPM published final retention regulations in the Federal Register on November 24, 1997, at 62 FR 62495, with revised procedures providing additional notice requirements when employees are separated by reduction in force.

o Paragraph 3-A-30-2 covers the additional notice requirements when employees are separated by reduction in force under under OPM's November 24, 1997, retention regulations.

o Appendix C of Module 3, Unit A, covers the additional notice requirements when employees are separated by reduction in force under under OPM's January 1, 1997, retention regulations.

7. ADDITIONAL NOTICE REQUIREMENTS WHEN EMPLOYEES ARE SEPARATED BY RIF-50 OR MORE SEPARATIONS FROM A COMPETITIVE AREA. When an agency separates 5O or more employees from a competitive area, the agency has additional notice requirements to OPM, and to other Federal and nonfederal organizations: (5 CFR 351.804(b) and (c))

o Paragraphs 3-A-30-4 through 3-A-30-8 contain information on these requirements.

8. NOTICE TO BARGAINING UNIT REPRESENTATIVE. At the same time the agency issues a reduction in force notice to an employee, the agency must also notify the exclusive representative(s), as defined in 5 U.S.C. 7103(a)(16), of each affected employee at the time of the notice. (5 CFR 351.801(a)(3))

o This notification requirement does not relieve the agency of any obligations under the Federal Labor Management Relations Statute, or an applicable collective bargaining agreement.

9. LENGTH OF RIF NOTICE-MINIMUM 60-DAY RIF NOTICE FOR ALL EMPLOYEES. An agency must give each competing employee at least 60 days specific written notice before the effective date of the reduction in force action. (5 CFR 351.801(a)(1))

o The applicable minimum notice period is applicable to all reduction in force actions, including separation, demotion, and furlough.

10. LENGTH OF RIF NOTICE-MINIMUM 120-DAY RIF NOTICE FOR CERTAIN DOD EMPLOYEES. Each competing employee of the Department of Defense (DoD) is entitled, under implementing regulations issued by DoD, to a specific written notice at least 120 full days before the effective date of the reduction in force action when a significant number of employees will be separated by reduction in force. (5 CFR 351.801(a)(2)).

o The basic requirement for 60 days specific written notice is still applicable when less than a significant number of employees will be separated by DoD. (5 CFR 351.801(a)(1))

o The special 120-day reduction in force notice requirement for DoD is applicable during the period from January 20, 1993, through January 31, 2000. (5 U.S.C. 3502(d))

11. LENGTH OF RIF NOTICE-NEW NOTICE REQUIRED FOR MORE SEVERE RIF ACTION. An employee is entitled to a new reduction in force notice and notice period of, as applicable, at least 60 days or 120 days (or 30 days if the agency has obtained OPM approval for a shorter notice period under 5 CFR 351.801(b)) only if the agency takes a more severe reduction in force action than stated in the prior notice to the employee. (5 CFR 351.805(a))

o A change from a one-grade demotion to separation is an example of a more severe reduction in force action.

o An agency may satisfy this additional notice period by use of a discretionary temporary exception to satisfy a Government obligation to an employee (see 3-A-17-9 and 3-A-17-10).

o A new 60- or 120-day notice period is not required when an agency takes the same, or a less severe, reduction in force action, than specified in the prior notice.

12. LENGTH OF RIF NOTICE-NO MAXIMUM RIF NOTICE. There is no maximum reduction in force notice period under OPM's notice regulations. (5 CFR 351.801(a)(1))

13. LENGTH OF RIF NOTICE-REQUESTING OPM APPROVAL FOR A SHORTER RIF NOTICE PERIOD. An agency may request OPM to authorize a notice period of less than the minimum standard when a reduction in force is caused by unforeseeable circumstances. (5 CFR 351.801(b))

o Section 3-A-30 covers how an agency submits a request for a shorter reduction in force notice period to OPM.

o The agency's request may cover either the 60 days reduction in force notice requirement applicable to all agencies, or the 120 days reduction in force notice requirement applicable when to a significant reduction in force in DoD.

14. SAME NOTICE REQUIREMENTS WHEN USING AN INDIVIDUAL EXCEPTION TO THE RIF ORDER OF RELEASE. When an agency makes an individual exception to the regular reduction in force order of release under a mandatory, continuing, or temporary exception, the retained employee is entitled to a specific written notice at least 60 or 120 days, as appropriate, before the effective date of the reduction in force, unless the agency has obtained OPM approval for a notice period shorter than the minimum standard (see 3-A-29-9 and 3-A-29-10 above). (5 CFR 351.801(d)).

o Paragraph 3-A-17-5 covers a mandatory exception to the regular reduction in force order of release;

o Paragraphs 3-A-17-6 and 3-A-17-7 cover a discretionary continuing exception to the regular reduction in force order of release; and

o Paragraphs 3-A-17-9 through 3-A-17-11 cover a discretionary temporary exception to the regular reduction in force order of release.

o The implementation date of a reduction in force action for an employee covered by a discretionay continuing exception, or a discretionary temporary exception, is the date on which the exception expires (see paragraphs 3-A-17-7 and 3-A-17-11).

o The agency may not continue the reduction in force notice period beyond the employee's retention period. (5 CFR 351.801(d))

15. COMPUTING THE RIF NOTICE PERIOD. The notice period begins the day after the employee receives the reduction in force notice. (5 CFR 351.801(c))

(a) Neither the date the employee receives the notice, nor the effective date of the reduction in force action, may be counted in computing the notice period. (5 CFR 351.801(c); 5 CFR 351.801(c))

(b) An agency may not count a Saturday, Sunday, or legal holiday as the last day of the minimum notice period. (5 CFR 210.102(b)(3))

16. AMENDED RIF NOTICE-LATER RIF DATE. An agency must give an employee an amended reduction in force notice if the reduction in force is changed to a later date. (5 CFR 351.805(b)

o A reduction in force action taken after the date specified in the notice given to the employee is not invalid for that reason, except when it is challenged by a higher-standing employee in the competitive level who is reached out of order for a reduction in force action as a result of the change in dates. (5 CFR 351.805(b))

17. AMENDED RIF NOTICE-EARLIER RIF DATE. An agency may not take a reduction in force action before the effective date in the notice given to the employee. (5 CFR 351.804(b))

o To take a reduction in force action before the effective date in the notice, the agency must cancel the reduction in force notice and issue the employee a new, as appropriate, 60 or 120 day reduction in force notice. (5 CFR 351.804(b))

18. AMENDED RIF NOTICE-BETTER OFFER OF ASSIGNMENT. An agency must give an employee an amended reduction in force notice and allow the employee to decide whether to accept a better offer of assignment to a position with a higher representative rate that becomes available before, or on, the effective date of the reduction in force. (5 CFR 351.805(c))

o The agency must give the employee an amended notice regardless of whether the employee has accepted or rejected a previous offer. (5 CFR 351.805(c))

o The employee is still entitled to only one offer of assignment and may be separated by reduction in force if the employee rejects the better offer, or fails to reply to the better offer within a reasonable time. (5 CFR 351.603)

19. EXPIRATION OF RIF NOTICE-IMPLEMENTATION OF ACTION. A reduction in force notice expires when it is followed by the reduction in force action specified in the notice. (5 CFR 351.804(a))

20. EXPIRATION OF RIF NOTICE-IMPLEMENTATION OF LESS SEVERE ACTION. A reduction in force notice expires when it is followed by a reduction in force action that is less severe than specified in the prior notice, or in an amendment to the notice, before the agency takes the action. (5 CFR 351.804)

21. EMPLOYEE'S DUTY STATUS DURING RIF NOTICE PERIOD. When in an emergency the agency lacks work or funds for all or part of the notice period, the agency may, with or without the employee's consent, place the employee:

(a) On annual leave; (5 CFR 351.806)

(b) In a leave without pay status; (5 CFR 351.806), or

(c) In a nonpay status. (5 CFR 351.806)

o When possible, the agency must retain the employee on active duty during the reduction in force notice period. (5 CFR 351.806)

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 30. ADDITIONAL NOTICE REQUIREMENTS WHEN EMPLOYEES ARE SEPARATED BY REDUCTION IN FORCE

1. ADDITIONAL NOTICE REQUIREMENTS. The notice requirements in this Section are in additional to the reduction in force notice provisions covered in Section 3-A-29. (5 CFR 351.803(b))

2. ADDITIONAL NOTICE REQUIREMENTS WHEN EMPLOYEES ARE SEPARATED BY RIF IN FORCE UNDER THE REVISED NOVEMBER 24, 1997, RETENTION REGULATIONS (see 3-B-30-2-(c)-(7) for additional information). OPM published final retention regulations in the Federal Register on November 24, 1997, at 62 FR 62495, with revised procedures providing additional notice requirements when employees are separated by reduction in force.

(a) In a Note to revised 5 CFR 351.803(a), OPM states that subject to the requirements of 5 U.S.C. 7116(a)(7), agencies may implement revised 5 CFR 351.803(a) with these new notice requirements at any time between December 24, 1997 and October 1, 1998.

(1) Section 5 U.S.C. 7116(a)(7) provides that "For purposes of this chapter (i.e., Chapter 71 of Title 5, U.S.C., "Labor-Management Relations"), it shall be an unfair labor practice for an agency--(7) to enforce any rule or regulation (other than a rule or regulations implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed."

(2) Paragraph 3-A-30-2-(c) below covers additional notice requirements, based upon the regulations OPM published on November 24, 1997, that are applicable when employees are separated by reduction in force.

(b) For reduction in force actions effective between December 24, 1997 and September 30, 1998, agencies may use either 5 CFR 351.803(a) effective December 24, 1997, or the prior 5 CFR 351.803(a) in 5 CFR part 351 (January 1, 1997 edition).

o This option simply means that through September 30, 1998, agencies may, but are not required, to provide employees with information on:

-severance pay estimates (see 3-A-30-2-(c)-(6) below); (5 CFR 351.803(a))

-benefits available under the State dislocated worker units (see 3-A-30-2-(c)-(5) below); and

-a new option of authorizing the release of a displaced employee's resume to potential employers (see 3-A-30-2-(c)-(7) below).

(c) If the employee receives a notice of separation because of reduction in force, along with the reduction in force notice of separation (i.e., either in or with the reduction in force notice, or as a separate supplemental notice to the released employee), the agency must also give the employee information concerning: (5 CFR 351.802(a)(5); 5 CFR 351.803(a))

(1) Registration for the Reemployment Priority List; (5 CFR 351.802(a)(5); 5 CFR 351.803(a))

o Restructuring Information Handbook Module 6 covers the Reemployment Priority List.

(2) The agency's Career Transition Assistance Plan (CTAP) for Local Surplus and Displaced Employees; (5 CFR 351.803(a))

o CTAP provides surplus employees with priority for certain vacancies in their present agency, and is authorized by 5 CFR Subpart 330-F.

(3) The Interagency Career Transition Assistance Plan (ICTAP) for Displaced Employees; (5 CFR 351.803(a))

o ICTAP provides surplus employees with priority for certain vacancies in other agencies, and is authorized by 5 CFR Subpart 330-G.

(4) How to apply for unemployment insurance through the appropriate State office; (5 CFR 351.803(a))

(5) How to apply for benefits available under the State dislocated worker unit(s), as designated or created under title III of the Job Training Partnership Act; (5 CFR 351.803(a))

(6) An estimate of severance pay, if eligible; (5 CFR 351.803(a)), and

(7) A release to authorize, at the employees' option, the release of the employee's resume and other relevant employment information for employment referral to State dislocated worker unit(s), and potential public or private sector employers. (5 CFR 351.803(a))

o A sample release authorization is available in 3-B-30-(c)-(7).

3. ADDITIONAL NOTICE REQUIREMENTS WHEN EMPLOYEES ARE SEPARATED BY RIF-50 OR MORE SEPARATIONS FROM A COMPETITIVE AREA-NOTICES TO UNEMPLOYMENT INSURANCE SERVICE. The Department of Labor requires that agencies advise it when separating 50 or more employees in a commuting area by reduction in force.

o This information should be provided as far in advance as possible to:

Unemployment Insurance Service
Employment and Training Administration-TEUMI
United States Department of Labor
200 Constitution Avenue, M1
Washington, DC 20210

4. ADDITIONAL NOTICE REQUIREMENTS WHEN EMPLOYEES ARE SEPARATED BY RIF-50 OR MORE SEPARATIONS FROM A COMPETITIVE AREA-GENERAL. When an agency separates 5O or more employees from a competitive area, the agency has additional notice requirements to OPM, and to other Federal and nonfederal organizations: (5 CFR 351.804(b) and (c))

o The agency must send this additional notice to the three organizations listed in 3-A-30-6 through 3-A-30-8 at the same time it issues the separation notices to the employees. (5 CFR 351.803(c))

5. ADDITIONAL NOTICE REQUIREMENTS WHEN EMPLOYEES ARE SEPARATED BY RIF-50 OR MORE SEPARATIONS FROM A COMPETITIVE AREA-CONTENT OF NOTICE. The additional notice to the three organizations listed in 3-A-30-6 through 3-A-30-8 must include: (5 CFR 351.803(c))

(a) The number of employees that the agency will separate by reduction in force and, if applicable, broken down by geographic area or other basis specified by OPM; (5 CFR 351.803(c)(1))

(b) The effective date of the separations; (5 CFR 351.803(c)(2)), and

(c) Any other information required by OPM, including information needs identified from consultation between OPM and the Department of Labor to facilitate delivery of placement and related services. (5 CFR 351.803(c)(3))

6. ADDITIONAL NOTICE REQUIREMENTS WHEN EMPLOYEES ARE SEPARATED BY RIF-50 OR MORE SEPARATIONS FROM A COMPETITIVE AREA-STATE DISLOCATED WORKER UNIT. The agency must provide a notice with the information in 3-A-30-5 above to the appropriate State dislocated worker unit, as designated or created under title III of the Job Training Partnership Act; (5 CFR 351.803(b)(1))

7. ADDITIONAL NOTICE REQUIREMENTS WHEN EMPLOYEES ARE SEPARATED BY RIF-50 OR MORE SEPARATIONS FROM A COMPETITIVE AREA-LOCAL GOVERNMENTAL OFFICIAL. The agency must provide a notice with the information in 3-A-30-5 above to the chief elected governmental official of local government(s) within which these separations will occur; (5 CFR 351.803(b)(2))

8. ADDITIONAL NOTICE REQUIREMENTS WHEN EMPLOYEES ARE SEPARATED BY RIF-50 OR MORE SEPARATIONS FROM A COMPETITIVE AREA-OPM. The agency must provide a notice with the information in 3-A-30-5 above to the OPM Service Center with jurisdiction over the worksite. (5 CFR 351.803(b)(3))

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 31. REQUESTING AN EXCEPTION TO THE MINIMUM REDUCTION IN FORCE NOTICE PERIOD

1. OPM APPROVAL FOR RIF NOTICE LESS THAN 60 DAYS-GENERAL. When a reduction in force is caused by unforeseeable circumstances, an agency may request OPM to authorize a notice period of less than 60 days, or the 120 days requirement applicable to a significant reduction in force in the Department of Defense (DoD). (5 CFR 351.801(b))

o The agency is still required to provide at least 30 full days notice before the effective date of the reduction in force action. (5 CFR 351.801(b))

2. OPM APPROVAL FOR RIF NOTICE LESS THAN 60 DAYS-REQUEST FROM HEADQUARTERS. An agency's request for an exception to the minimum 60-day specific notice period must be signed by the head of the agency or a specific designee in the headquarters. (5 CFR 351.801(b))

3. OPM APPROVAL FOR RIF NOTICE LESS THAN 60 DAYS-CONTENT OF AGENCY'S REQUEST. Content of agency's request. An agency's request to OPM for a shorter reduction in force notice period must cover:

(a) Identification of the organization and geographic location for which an exception is requested; (5 CFR 351.801(b)(1))

(b) The effective date of the reduction in force; (5 CFR 351.801(b)(1))

(c) The number of employees who will be issued reduction in force notices; (5 CFR 351.801(b)(1))

(d) The number of days that the agency requests the notice period be shortened; (5 CFR 351.801(b)(2))

(e) The reasons why a shorter reduction in force notice period is needed; (5 CFR 351.801(b)(3)), and

(f) The name, telephone number, and title of an agency contact person in the event OPM requires additional information on the request. (5 CFR 351.801(b)(4))

4. OPM APPROVAL FOR RIF NOTICE LESS THAN 60 DAYS-OPM ADDRESS FOR SUBMITTING A REQUEST. Agencies must submit a request for a shorter reduction in force notice period to:

Office of Personnel Management
Associate Director
Employment Service
1900 E Street, NW
Washington, DC 20415

o An agency may FAX a request to:

Office of Personnel Management
Workforce Restructuring Office
Room 6500
Washington, DC 20415

FAX- 202-606-2329; telephone- 202-606-0960.

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 32. CERTIFICATION OF EXPECTED SEPARATION

1. PURPOSE OF CERTIFICATION OF EXPECTED SEPARATION. The "CERTIFICATION OF EXPECTED SEPARATION" (CES) allows otherwise eligible employees to participate in dislocated worker programs under the Job Training Partnership Act administered by the U.S. Department of Labor. (5 CFR 351.807(a))

2. MAXIMUM TIME LIMIT FOR CERTIFICATION OF EXPECTED SEPARATION. An agency may issue a Certification of Expected Separation up to 6 months prior to the expected effective date of a reduction in force. (5 CFR 351.807(a))

3. REQUIREMENTS FOR AGENCIES TO USE THE CERTIFICATION OF EXPECTED SEPARATION. At its option, an agency may issue a Certification of Expected Separation to a competing employee only when the agency determines: (5 CFR 351.807(b))

(a) There is a good likelihood that the employee will be separated by reduction in force; (5 CFR 351.807(b)(1))

(b) Employment opportunities in the same or similar position in the local commuting area are limited or nonexistent; (5 CFR 351.807(b)(2))

(c) Placement opportunities within the employee's own or other Federal agencies in the local commuting area are limited or nonexistent; (5 CFR 351.807(b)(3)), and

(d) If eligible for optional retirement, the employee has not filed a retirement application or otherwise indicated in writing an intent to retire. (5 CFR 351.807(b)(4))

4. CONTENT OF CERTIFICATION OF EXPECTED SEPARATION (see 3-B-32-4 for additional information). A Certification of Expected Separation must: (5 CFR 351.807(c))

(a) Be addressed to each individual eligible employee;

(b) Be signed by an appropriate agency official;

(c) Contain the expected date of reduction in force;

(d) Contain a statement that each factor covered in paragraph 3-A-29-3 has been met; and,

(e) Contain a description of available Job Training Partnership Act Programs, the agency's Reemployment Priority List, and OPM's Interagency Placement Program,

5. A CERTIFICATION OF EXPECTED SEPARATION IS NOT A RIF NOTICE. An agency may not use a Certification of Expected Separation to meet any of the reduction in force notice requirements covered in Section 3-A-29. (5 CFR 351.807(d).

6. NO RIGHT TO APPEAL A CERTIFICATION OF EXPECTED SEPARATION. (5 CFR 351.807(e)). An employee may not appeal an agency determination of eligibility for a Certification of Expected Separation to OPM, or to the Merit Systems Protection Board. (5 CFR 351.807(e))

7. EMPLOYEES' ELIGIBILITY FOR ADDITIONAL OUTPLACEMENT ASSISTANCE AFTER RECEIVING A CERTIFICATION OF EXPECTED SEPARATION. An agency may enroll an employee who has received a Certification of Expected Separation in OPM's Interagency Placement Program, and in the agency's own reemployment priority list. (5 CFR 351.807(f))

o Module 6 covers the Reemployment Priority List.

o Module 7 covers the Interagency Placement Program.

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 33. REDUCTION IN FORCE APPEALS

1. BASIC EMPLOYEE RIGHT TO APPEAL A RIF ACTION. An employee has a basic right to file a reduction in force appeal to the Merit Systems Protection Board (MSPB) under the provisions of the Board's regulations if, under authority of OPM's 5 CFR Part 351 reduction regulations, the employee was:

(a) Separated; (5 CFR 351.901); (5 CFR 1201.3(a)(10))

(b) Demoted; (5 CFR 351.901); (5 CFR 1201.3(a)(10)), or

(c) Furloughed for more than 30 days. (5 CFR 351.901); (5 CFR 1201.3(a)(10))

o An employee who accepts an offer of assignment to another position at the grade same representative rate may not appeal the reduction in force action to the Board. (5 CFR 351.901); (5 CFR 1201.3(a)(10))

o As covered in Section 3-A-34, an employee in a bargaining unit covered by a negotiated grievance procedure that does not exclude reduction in force must use the negotiated grievance procedure, and may not appeal the reduction in force action to the Board unless, as provided in 5 U.S.C. 7121(d)), the employee alleges discrimation. (5 CFR 1201.3(c))

o Paragraphs 3-A-34-3 through 3-A-34-5 cover this exception.

2. TIME LIMITS FOR FILING AN APPEAL TO THE BOARD. An employee may file an appeal with the Board during the 30-day period beginning with the day after the effective date of the action being appealed. (5 CFR 1201.22(b))

o The Board will not accept an appeal that is filed on or before the effective date of the action. (5 CFR 1201.3(a)(10))

3. AGENCY NOTICE OF APPEAL RIGHTS TO EMPLOYEES. When an agency issues a decision notice to an employee on a matter appealable to MSPB, the agency must provide the employee with the following information:

(a) Notice of the time limits for appealing to the Board; (5 CFR 1201.21(a))

(b) Any applicable limits on the employee's right to file an appeal because of a bargaining agreement; (5 CFR 1201.21(a))

(c) If (b) is applicable, the right of the employee to elect

whether to file a reduction in force appeal to the Board based on discrimination in lieu of a grievance; (5 CFR 1201.21(a))

(d) Notice of any applicable right of the employee to file a grievance. (5 CFR 1201.21(d))

(e) The address of the appropriate Board office where the employee should file the appeal; (5 CFR 1201.21(a))

(f) A copy, or access to a copy, of the Board's regulations found in 5 CFR 1201; (5 CFR 1201.21(b))

o Agencies should consult the Board's current regulations (found in 5 CFR 1201) prior to a reduction in force in order to have necessary information on the appeals process ready for distribution to affected employees.

(g) A copy of the appeal form found in 5 CFR 1201-Appendix I of the Board's regulations; (5 CFR 1201.21(c)), and

o A copy of the appeal form is also available in Optional Form 283, MSPB.

4. CORRECTIVE ACTION ON APPEAL-ACTION REVERSED OR MODIFIED. In adjudicating a reduction in force appeal, the Board determines whether the agency has correctly applied OPM's regulations and, if an error is found, may direct appropriate corrective action. (5 CFR 1201.111(a)(5))

5. CORRECTIVE ACTION ON APPEAL-ACTION REVERSED OR MODIFIED WITH INTERIM RELIEF. If the appellant is the prevailing party in an initial appeal to the Board, the initial decision provides interim relief under 5 U.S.C. 7701(b)(2) to the appellant unless the Board's administrative judge determines that the granting of interim relief is not appropriate. (5 CFR 1201.111(c))

o Interim relief is effective upon the date of the initial decision, and remains in effect until the date of the final order of the Board on any petition for review. (5 CFR 1201.111(c))

MODULE 3 (REDUCTION IN FORCE), UNIT A (REQUIRED PROCEDURES), SECTION 34. REDUCTION IN FORCE GRIEVANCES

1. BASIC EMPLOYEE RIGHT TO GRIEVE A RIF ACTION. An employee in a bargaining unit covered by a negotiated grievance procedure that does not exclude reduction in force must use the negotiated grievance procedure and may not appeal the reduction in force action to the Merit Systems Protection Board. (5 CFR 1201.3(c)(1))

o Paragraph 3-A-34-3 below covers an exception to the basic right of filing a grievance on a reduction in force action.

2. TIME LIMITS FOR FILING A GIREVANCE. The time limits for filing a grievance under a negotiated grievance procedure are spelled out in the applicable collective bargaining agreement. (5 CFR 1201.3(c)(1))

3. EXCEPTION TO THE BASIC EMPLOYEE RIGHT TO GRIEVE A RIF ACTION-GENERAL. Section 5 U.S.C. 7121(d) provides an exception to paragraph 3-A-33-1 above and the basic right of an eligible employee to only file a grievance on a reduction in force action. (5 CFR 1201.3(c)(2))

o This exception gives an employee the option of filing a reduction in force appeal to the Board, in lieu of filing a grievance under a negotiated grievance procedure, when the employee raises an allegation of discrimination under 5 U.S.C. 2302(b)(1). (5 CFR 1201.3(c)(2))

4. EXCEPTION TO THE BASIC EMPLOYEE RIGHT TO GRIEVE A RIF ACTION-ELECTION OF PROCEDURE (see 3-B-34-4 for additional information). The agency must advise each employee having the right to grieve a reduction in force matter under a negotiated grievance procedure that the employee has the option of filing a reduction in force appeal to the Board when a discrimination issue is raised. (5 CFR 1201.3(c)(2))

5. EXCEPTION TO THE BASIC EMPLOYEE RIGHT TO GRIEVE A RIF ACTION-TIME LIMITS FOR ELECTION (see 3-B-34-4 for additional information). An employee may not file a reduction in force appeal before the effective date of the reduction in force action, even when the employee's basic right is to file a grievance under a negotiated grievance procedure. (5 CFR 1201.3(a)(1))

o The employee may then file an appeal with the Board during the 30-day period beginning with the day after the effective date of the action being appealed. (5 CFR 1201.22(b))

o An employee who chooses to file a grievance follows the provisions of the negotiated procedure. (5 CFR 1201.3(c)(1))

6. CORRECTIVE ACTION ON GRIEVANCE. In adjudicating a reduction in force grievance under a negotiated grievance procedure, an arbitrator may determine whether than agency has correctly applied OPM's regulations and, if an error is found, may direct appropriate corrective action.

APPENDIX A

APPENDIX A. MODULE 3 (RIF), UNIT A (REQUIRED PROCEDURES), SECTION 15. CREDIT FOR PERFORMANCE IN REDUCTION IN FORCE UNDER OPM'S JANUARY 1, 1997, RETENTION REGULATIONS

A1. OPM published final retention regulations in the Federal Register on November 24, 1997, with revised procedures on the crediting of employees' performance ratings in reduction in force. (62 FR 62495)

(a) In a Note to revised 5 CFR 351.504, OPM states that subject to the requirements of 5 U.S.C. 7116(a)(7), agencies may implement revised 5 CFR 351.504 with these new performance provisions at any time between December 24, 1997 and October 1, 1998.

(1) Section 5 U.S.C. 7116(a)(7) provides that "For purposes of this chapter (i.e., Chapter 71 of Title 5, U.S.C., "Labor-Management Relations"), it shall be an unfair labor practice for an agency--(7) to enforce any rule or regulation (other than a rule or regulations implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed."

(2) Section 3-A-15 found in Appendix B includes the prior Section 15, Unit A, of Module 3 covering retention credit for performance based upon the regulations in effect on January 1, 1997.

(b) For reduction in force actions effective between December 24, 1997 and September 30, 1998, agencies may use either 5 CFR 351.504 effective December 24, 1997, or the prior 5 CFR 351.504 in 5 CFR part 351 (January 1, 1997 edition).

(1) Section 3-A-15 (i.e., Section 3-A-15 found in the body of the Handbook) covers retention credit for performance based upon the regulations OPM published on November 24, 1997.

APPENDIX A

MODULE 3 (RIF), UNIT A (REQUIRED PROCEDURES), SECTION 15. CREDIT FOR PERFORMANCE IN REDUCTION IN FORCE UNDER OPM'S JANUARY 1, 1997, RETENTION REGULATIONS

1. GENERAL. "PERFORMANCE" is one of the four retention factors required in 5 U.S.C. 3502(a). (5 U.S.C. 3502(a)(4))

2. TIME PERIOD COVERED BY EMPLOYEES' PERFORMANCE RATINGS. Each employee receives additional retention service credit based upon the average of the employee's three most recent annual performance ratings of record received during the 4-year period prior to the date that the agency either:

(a) Issues specific reduction in force notices; (5 CFR 351.504(b)(1)), or

(b) Freezes ratings before issuing specific reduction in force notices (see 3-A-15-3 below). (5 CFR 351.504(b)(2)

3. FREEZING RATINGS. To provide time to properly determine employee retention standing prior to a reduction in force, agencies may establish a policy providing for a cutoff date a specified number of days prior to the date it issues specific reduction in force notices. (5 CFR 351.504(a)(2); 5 CFR 351.504(d)(4)(111))

(a) After the cutoff date, no new annual performance ratings will be put on record and used for RIF purposes. (5 CFR 351.504(a)(2); 5 CFR 351.504(d)(4)(111))

(b) If adopted, this policy must be:

(1) Applied on a uniform and consistent basis in the competitive area where the RIF will occur; (5 CFR 351.504(a)(2); 5 CFR 351.504(d)(4)(111)), and

(2) Documented in the agency's performance management plan or other appropriate issuance. (5 CFR 351.504(a)(2); 5 CFR 351.504(d)(4)(111))

4. MISSING RATINGS. If an employee has not received three annual performance ratings of record during the 4-year period, credit is given for an assumed ratings of Fully Successful (Level 3) to bring the employee's annual ratings up to three. (5 CFR 351.504(c).

o Additional RIF service credit is based on an assumed rating of "Fully Successful" for each missing rating.

o There is no authority for an agency to issue a retroactive annual performance rating of record for RIF purposes if the employee lacks three actual annual performance ratings of record during the 4-year period.

5. DETERMINING RETENTION CREDIT FOR PERFORMANCE. Additional service credit is based on annual performance ratings of record received under a performance appraisal system required by 5 C.F.R. Part 430, or under a different appraisal system if Part 430 is not applicable. (5 CFR 351.504(a))

o 5 CFR Part 430 authorizes annual performance ratings, including equivalent ratings when applicable, of "Outstanding" (Level 5), "Exceeds Fully Successful" (Level 4), "Fully Successful' (Level 3), "Minimally Successful" (Level 2), and "Unacceptable" "Level 1). (5 CFR 351.504(a))

6. OTHER THAN FIVE RATING LEVELS. To determine additional service credit when any of an employee's three previous annual performance ratings of record used other than five summary levels as required by 5 C.F.R. Part 430, the agency determines equivalent rating levels between the systems and credits the employee accordingly.

7. AMOUNT OF CREDIT. An employee is given additional service credit based on the mathematical average (rounded in the case of a fraction to the next higher whole number) for the value of the employee's last three (actual and/or assumed) annual performance ratings of record received during 4-year period prior to the date the agency issues specific RIF notices. (5 CFR 351.504(d))

(a) In determining this average, the following value is assigned to each annual performance rating of record:

(1) 20 additional years of service for each performance rating of "Outstanding" (Level 5). (5 CFR 351.504(d)(1)

(2) 16 additional years of service for each performance rating of "Exceeds Fully Successful" (Level 4). (5 CFR 351.504(d)(2))

(3) 12 additional years of service for each performance rating of "Fully Successful" (Level 3). (5 CFR 351.504(d)(3))

(b) No additional service credit for retention is given for performance ratings below "Fully Successful."

8. RATINGS USED FOR RIF PURPOSES. Annual performance ratings of record that are used for RIF purposes are written ratings of record covering official appraisal periods which:

(a) Are established by agencies under a performance appraisal system approved by OPM in accordance with 5 U.S.C., chapter 43; (5 CFR 351.504(1)): or,

(b) For an agency not subject to chapter 43, an official performance rating as provided for in the agency's appraisal system. (5 CFR 351.504(1))

(c) To avoid confusion and insure proper application in reduction in force, each agency must specify in its performance management plan, or other appropriate issuance:

(1) Which ratings of record will be used for RIF purposes; (5 CFR 351.504(b)(4)(i))

(2) The conditions under which a rating 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, as appropriate, reduction in force notices, or the agency-established cutoff date for ratings; (5 CFR 351.504(4)(ii), and

(3) If the agency elects to use a cutoff date and freeze performance ratings, the number of days prior to the issuance of reduction in force notices after which no new notices will be put on record and used for determining employees' retention standing. (5 CFR 351.504(4)(iii)

9. AVAILABILITY OF RATINGS. To be creditable for reduction in force purposes, ratings must have been issued to the employee, with all appropriate reviews and signatures, and must also be on record. (5 CFR 351.504(b)(3))

(a) This means that the rating was:

(1) Issued to the employee; (5 CFR 351.504(b)(3))

(2) Returned with all appropriate reviews and signatures; (5 CFR 351.504(b)(3)), and

(3) On record and available for use by the office responsible for preparing retention registers (e.g., the rating is final and has been entered into the agency's personnel records system). (5 CFR 351.504(b)(3))

(b) Agencies must ensure that ratings are issued in accordance with established schedules and forwarded to the appropriate office on a timely basis. (5 CFR 351.504(b)(3))

(c) Since rating procedures may vary under individual agency performance management systems, each agency must set its own internal policy for processing ratings and putting them on record for reduction in force purposes, and this policy must be:

(1) Included in the agency performance management plan or other appropriate issuance; (5 CFR 351.504(b)(4)); and,

(2) Applied on a uniform and consistent basis in the competitive area where the reduction in force will take place. (5 CFR 351.504(b)(4); 5 CFR 351.201(c))

10. MORE THAN THREE RATINGS. If an employee had more than three annual performance ratings of record during the 4-year period, the three most recent annual performance ratings of record are used. (5 CFR 351.504(b)(1))

11. RATINGS IN OTHER AGENCIES. Regardless of whether the employee's service occurred in the present or a former agency, the employee's actual ratings are used to the extent they are available. (5 CFR 351.504(b)(1))

o If ratings in a prior agency are not available in the employee's official records, the current employing agency can accept the employee's copies of annual performance ratings of record for this purpose.

12. NARRATIVE RATINGS. If a previous appraisal was narrative only, an agency either may assign a summary rating if feasible or may use an assumed rating of Fully Succesful (Level 3) for the period covered by the narrative evaluation.

13. CURRENT ANNUAL PERFORMANCE RATING OF RECORD. A current annual performance rating of record is generally the employee's last actual annual performance rating of record (5 CFR 351.504(e), except that:

(a) An employee who has received an improved rating following an opportunity to demonstrate acceptable performance under authority of 5 CFR 432 has the improved rating credited as the employee's current annual performance rating of record; (5 CFR 351.504(e)(1)), and

(b) An employee who is demoted or reassigned under authority of 5 CFR 432 due to unacceptable performance has a current presumed rating of "Fully Successful," provided that the employee has not received a performance rating in the new position. (5 CFR 351.504(e)(2))

o An employee's current annual performance rating of record must be identified not only for crediting additional service, but also for determining assignment rights (see 3-A-18-2-(c) and 3-A-19-2 for additional information on the use of performance ratings in determining employees' assignment rights).

14. UNACCEPTABLE PERFORMANCE-PROPOSED DECISION TO REMOVE OR DEMOTE. An employee with a current annual performance rating of record of "Unacceptable" who has not received a final written decision of removal or demotion under 5 CFR Part 432 due to unacceptable (or equivalent) performance (e.g., an employee on an opportunity period) is not penalized, and is listed on the retention register with other employees. (5 CFR 351.504(e)(1))

o The employee is assigned to the appropriate group and subgroup and receives credit for all applicable service.

o The employee also receives any service credit to which entitled for the other two previous annual performance ratings of record.

15. UNACCEPTABLE PERFORMANCE-FINAL DECISION TO REMOVE OR DEMOTE. An employee with a current annual performance rating of record of "Unacceptable" who has received a final written decision of removal under 5 CFR Part 432 due to "Unacceptable" (or equivalent) performance is listed differently from an employee who has received a final written decision of demotion due to unacceptable (or equivalent) performance:

(a) An employee who as of the effective date of the reduction in force has received a final written decision of removal under 5 CFR 432 is listed apart from the retention register. (5 CFR 351.404(b)(2)

(b) An employee who has received a final written decision of demotion under 5 CFR 432 is listed on the retention register for the position to which the employee will be demoted. (5 CFR 351.405)

16. UNACCEPTABLE PERFORMANCE-ELIMINATION OF "UNACCEPTABLE" RATING. If because of performance improvement during the notice period of a proposed action under authority of 5 CFR Part 432 an employee is not demoted or separated, and performance continues to be acceptable for 1 year after the notice, any record of the unacceptable performance is removed from agency records. (5 CFR 293.404(a)(3))

o In this situation, no record of the "Unacceptable" rating would exist.

o There is no authority for an agency to remove an employee's "Unacceptable" rating except under authority of 5 CFR 293.404(a)(3) covered above, or under other appropriate authority (e.g., an award resulting from a grievance, equal employment opportunity complaint, etc.).