

SC1960. SUBCHAPTER 1960

WORKFORCE SHAPING  
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SC1960. SUBCHAPTER 1960

WORKFORCE SHAPING

- References:
- (a) Title 5, United States Code, "Government Organization and Employees"
  - (b) DoD Directive 1400.25, "DoD Civilian Personnel Management System," November 25, 1996
  - (c) Title 5, Code of Federal Regulations, "Administrative Personnel"
  - (d) DoD Directive 5410.10, "Coordination and Clearance of Announcements of Personnel Reductions, Closures of Installations, and Reductions of Contract Operations Within the United States," current version
  - (e) through (h), see Enclosure 1

SC1960.1. PURPOSE

This Subchapter implements the Department's workforce shaping program policy, delegates authority, assigns responsibility, and prescribes procedures for program management under the National Security Personnel System (NSPS). Subject to the requirements and limitations in Section 9902 of Reference (a), the rules governing workforce shaping (Section 9902(k) of Reference (a) established under Chapter 35 of Reference (a) may be waived or modified. Rules and procedures not specifically waived or modified by this Subchapter are still applicable.

SC1960.2. APPLICABILITY

This Subchapter applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense under NSPS (hereafter collectively referred to as the "DoD Components").

SC1960.3. RESERVED

SC1960.4. DEFINITIONS

SC1960.4.1. Local commuting area. The geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment.

SC1960.4.2. Modal rating. The rating of record that occurs most frequently in a particular competitive group during the most recently completed rating cycle that is consistent with the established cut-off date for receipt of performance ratings under SC1960.6.4.4.3.

SC1960.4.3. Undue interruption. The degree of interruption that would prevent the completion of required work by an employee within 90 days after the employee has been placed in a different position.

SC1960.5. POLICY. DoD policy is to accomplish workforce shaping with maximum advance planning to ensure minimum adverse affect on employees and disruption to mission. Organizations shall consider options to minimize involuntary separations as part of their workforce shaping efforts.

SC1960.5.1. Announcement. As required by Reference (d), initial announcements of decisions for reduction in force (RIF) that will result in the involuntary separation of 50 or more employees, substantially reduce contract operations or employment (involving 100 or more people), or any RIF (including closure of installations) expected to be of special interest to Congress or the public shall be first coordinated and staffed within OSD.

SC1960.5.1.1. The Assistant Secretary of Defense (Legislative Affairs) (ASD(LA)) is responsible for the coordination and staffing of required announcements. After a decision has been made and coordination is required, a written request for coordination shall be forwarded through the Deputy Under Secretary of Defense (Civilian Personnel Policy) (DUSD(CPP)) to ASD(LA) for this purpose. The request must contain all pertinent information concerning the matter, including:

- SC1960.5.1.1.1. The reason for the action;
- SC1960.5.1.1.2. The number of personnel affected by the action;
- SC1960.5.1.1.3. The total number of employees;
- SC1960.5.1.1.4. When appropriate, dollar amounts involved;
- SC1960.5.1.1.5. The estimated effect on the local economy;
- SC1960.5.1.1.6. Anticipated Congressional interest, including the names of members who shall be notified; and
- SC1960.5.1.1.7. Either a draft of any proposed press announcement or a statement that no press announcement is contemplated.

SC1960.5.1.2. The only required information for RIF actions at BRAC installations facing closure is the number of anticipated involuntary separations and the date the information will be publicly announced. RIF actions requiring congressional notification may not commence until 45 days after the required information is submitted to Congress (Reference (e)).

SC1960.6. PROCEDURES. Reduction in force procedures are required when employees are faced with separation, reduction in band, or furlough for more than 30 consecutive days, or more than 22 workdays if done on a discontinuous basis, as a result of workforce shaping efforts

described in Part 9901.601 of Reference (c). The procedures in this section are to be followed for competitive and excepted service employees in positions covered by NSPS who are impacted by an action that involves displacement within, or release from, a retention list. The basis for RIF, and the business-related factors considered, must be clearly and fully documented to ensure actions are taken on the basis of merit factors and are not used for the purpose of targeting an individual employee(s).

SC1960.6.1. Management Responsibility. Planning is essential to effective organizational management. When taking organizational-based restructuring actions, DoD Components should utilize proven options to lessen the likelihood of adverse effects on the workforce or to avoid a RIF altogether, such as Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Pay (VSIP) programs, early Priority Placement Program (PPP) registration, hiring freezes, voluntary placement(s), voluntary separation(s), use of vacancies and other techniques. Use of these options should not always be limited to the specific competitive areas or competitive groups affected, but may be utilized across the DoD activity as a whole.

SC1960.6.2. Official Position of Record. An employee competes in RIF from his or her official position of record, i.e., the permanent position of record. Determinations of competitive area, competitive group and placement on the retention list are based on the employee's official position of record, supplemented as necessary by other records that document actual performance of duties and responsibilities.

SC1960.6.3. Competitive Area and Competitive Group. Determination of competitive areas and groups will be defined as appropriate by an authorized management official and in advance of any action that involves displacement of an employee within, or released from, a retention list. An employee cannot be assigned to more than one competitive area or competitive group at one time. To establish or change a competitive area or a competitive group less than 90 days before the effective date of a RIF, activities must obtain Component approval prior to issuing written notices. DoD Components should establish procedures for requesting such approval.

SC1960.6.3.1. Establishing a Competitive Area.

SC1960.6.3.1.1. A competitive area may be established based on one or more of the following: geographical location(s); line(s) of business; product line(s); organizational unit(s); and funding line(s). Examples of competitive areas are:

SC1960.6.3.1.1.1. ABC Air Force Base, TX, Aircraft Maintenance Flight, F-16;

SC1960.6.3.1.1.2. QRF Naval Base, CA, Production Department, SSN 688 Class Shaft Seal Housing Refurbishment; or

SC1960.6.3.1.1.3. RDT&E, Operational Systems Development, Advanced Cryptologic Systems Engineering.

SC1960.6.3.1.2. Competitive Areas for an Inspector General Activity. The DoD Inspector General organization established under authority of Reference (f), shall be defined as a separate competitive area.

SC1960.6.3.2. Competitive Group. Separate competitive groups shall be defined for employees in the excepted and competitive service, under different excepted appointment authorities, and with different work schedules. A competitive group may be further defined on the basis of one or more of the following: career group; pay schedule; occupational series/code or specialty; pay band; or trainee status. Considerations in determining a competitive group include minimizing disruption and RIF impact (e.g., a smaller competitive group) as well as retention of skills (e.g., a larger competitive group). For example, a competitive group that includes employees in different pay bands will typically be more disruptive to the workforce as a whole. A competitive group cannot be based on gender, except for those positions for which OPM designates that certification of eligibles by gender is justified. Examples of competitive groups are:

SC1960.6.3.2.1. Engineering and Scientific Career Group, Professional Pay Schedule, Pay Band 2;

SC1960.6.3.2.2. Standard Career Group, Supervisor and Manager Pay Schedule; Occupational Series 0201; or

SC1960.6.3.2.3. Medical Career Group, Medical Professional and Medical Supervisory Pay Schedules.

SC1960.6.4. Retention Standing. Employees occupying positions in the same competitive group compete for positions in RIF based on their retention standing. Retention standing is based on a combination of tenure, veterans' preference, performance and creditable length of service (civilian and/or uniformed) and is only determined for competing employees. The retention standing of an employee released from a retention list is as of the date the employee is released or, in the case of an exception to order of release, the date the employee would have been released. The retention standing of an employee who has been given an exception to order of release is fixed until completion of the RIF action, unless an error is discovered that must be corrected.

SC1960.6.4.1. Retention List. All competing employees occupying positions in the competitive area, who are placed in the same competitive group, are included on a retention list in order of retention standing. While all positions in the competitive group are listed, only competing employees have retention standing.

SC1960.6.4.2. Active Armed Forces Members. Armed Forces active duty members with a restoration right are not listed on the retention list. Information must be in the record to identify these employees and the reason they are not competing employees for RIF.

SC1960.6.4.3. Employees with Performance and/or Conduct Problems

SC1960.6.4.3.1. Final Decision to Remove. An employee who, prior to the effective date of the RIF, has received a final written decision of removal for performance or for other than performance-based reasons does not compete for retention. Information must be in the record to identify these employees and the reasons they are not competing employees for RIF.

SC1960.6.4.3.2. Final Decision to Reduce in Band. An employee who, prior to the effective date of the RIF, has received a final written decision for reduction in band because of performance or, for other than performance-based reasons, is placed on the retention list for the position to which the employee will be reduced in band. The employee competes in RIF based on the new position.

#### SC1960.6.4.4. Retention Factors

SC1960.6.4.4.1. Tenure. Tenure Group I and Tenure Group III employees are competing employees for RIF. Tenure Group I employees who have completed their initial probationary period are listed ahead of Tenure Group I employees who have not completed their initial probationary period, followed by Tenure Group III employees. All Tenure Group I and Tenure Group III employees identified in the competitive group are placed on the retention list according to their position of record, including those who are on a temporary assignment (e.g., temporary promotion) to a position outside the competitive group. Tenure Group 0 employees do not compete in RIF.

#### SC1960.6.4.4.2. Veterans' Preference

SC1960.6.4.4.2.1. Employees are listed on the retention list by veterans' preference subgroups (AD, A or B) in the following descending order:

SC1960.6.4.4.2.1.1. AD: An employee eligible for veterans' retention preference with a compensable service-connected disability of 30% or more;

SC1960.6.4.4.2.1.2. A: Other employees eligible for veterans' retention preference; and

SC1960.6.4.4.2.1.3. B: Employees not eligible for veterans' retention preference.

SC1960.6.4.4.2.2. Eligibility for Veterans' Retention Preference for Retired Members of Uniformed Service. Eligibility for veterans' retention preference for retired members of a uniformed service shall be determined in accordance with Part 351.501(d) of Reference (c).

SC1960.6.4.4.3. Performance Credit. After placement on the retention list by tenure group and veterans' preference, employees are placed on the retention list in descending order based on their performance score. An employee's performance score is the average of the employee's three most recent ratings of record received during the 4-year period prior to the established cut-off date for receipt of performance ratings. Ratings shall be averaged to the first decimal point. (Cut-off dates shall be at least 90 days prior to the effective date of the RIF to

provide adequate time to determine employee retention standing.) To be creditable, a rating of record must have been issued to the employee with all appropriate reviews and signatures accomplished, and must be available for use by the office responsible for establishing retention lists. Only annual and special purpose ratings, as described in SC1940, are used when determining performance credit scores.

SC1960.6.4.4.3.1. Modal Rating. The modal rating shall be used as described in SC1960.6.4.4.3.2. and SC1960.6.4.4.3.2.3. Employees assigned to a competitive group with no modal rating, i.e., no employee in the competitive group has been rated, shall be assigned the modal rating for the competitive area.

SC1960.6.4.4.3.2 Applying Non-NSPS Ratings

SC1960.6.4.4.3.2.1. Upon Mass Conversion into NSPS. DoD employees who convert into NSPS with their organization, and have a non-NSPS rating of record above unacceptable on file at that time, shall be assigned a Level 3 rating. This converted rating of record shall be replaced as the employee is assigned an NSPS rating of record during the annual performance cycle. These employees may compete with less than three ratings of record until they have at least three NSPS ratings of record. DoD employees who convert into NSPS with an unacceptable rating shall be assigned a Level 1 rating.

SC1960.6.4.4.3.2.2. Voluntary Movement into NSPS. Employees who move into an NSPS position on a voluntary basis shall be assigned a modal rating for each rating above unacceptable.

SC1960.6.4.4.3.2.2.1. This modal rating shall be replaced as the employee is assigned an NSPS rating of record during the annual performance cycle. These employees may compete with less than three ratings of record until they have at least three NSPS ratings of record.

SC1960.6.4.4.3.2.2.2. Voluntary movement to an NSPS position includes movement from within the Department (other than mass conversion); an employee who transfers to an NSPS position from another Federal agency; and a new employee whose first Federal appointment is to an NSPS position.

SC1960.6.4.4.3.2.3. Missing ratings. Employees with no ratings of record within the most recent 4-year period prior to the established cut-off date for receipt of performance ratings shall be assigned a modal rating of record. Upon receiving an NSPS rating of record after the first full rating cycle, the modal shall be replaced by the actual rating of record. The employee may compete with less than three ratings of record until he/she has at least three NSPS ratings of record.

SC1960.6.4.4.4. Creditable Length of Service. Creditable service is the final consideration when placing an employee on a retention list. Within the credited performance score category, employees are further ranked by length of service in descending order. The

employee's length of service is reflected in the RIF service computation date (SCD) and includes all actual creditable civilian and uniformed service as defined in Part 351.503 of Reference (c).

SC1960.6.4.4.5. Tie-Breaking Procedures. Random numbers shall be used as tiebreakers within the Department.

SC1960.6.4.5. Displacement, Release, and Position Offers. Displacement means the movement of an employee from his or her present position because of position abolishment or the movement resulting from the abolishment of a higher-standing employee on a retention list to a position held by an employee of lower retention standing on the same retention list.

SC1960.6.4.5.1. Qualifications. An employee is qualified to displace another employee on the retention list if he or she meets the designated standards and requirements, including minimum educational requirements, for the position; is physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position; and can satisfactorily perform the duties of the position without undue interruption. Recency of experience may be used when appropriate to determine an employee's proper placement. The sex of an employee may not be considered in determining qualifications unless OPM has determined it is justified for certification of eligibles.

SC1960.6.4.5.1.1. An employee on a leave of absence because of a compensable injury may not be denied an assignment right solely because the employee is not physically qualified for the duties of the position if the physical disqualification resulted from the compensable injury. In this case, the employee must be afforded appropriate assignment rights subject to recovery as provided by Section 8151 of Reference (a) and Part 353 of Reference (c).

SC1960.6.4.5.1.2. If a preference eligible employee who has a compensable service-connected disability of 30 percent or more is determined not able to fulfill the physical requirements of a position to which the employee would have otherwise been assigned, OPM and the employee must be notified (at the same time). The employee must be provided the reasons for the determination and of the right to respond, within 15 days of the notification, to OPM. OPM shall make a final determination concerning the physical ability of the employee to perform the duties of the position. When OPM has completed its review, it must send the findings to both the Department and the employee, and the Department must comply with the findings.

SC1960.6.4.5.2. Displacement and Release Order. All employees whose positions are abolished shall be identified on the retention list. Employees shall be selected for release from the retention list beginning with the employee with the lowest retention standing. To ensure this, the placement of the employee with the highest retention standing whose position has been abolished shall be decided first. This process shall continue for each employee whose position has been abolished, or whom another employee has displaced, in descending retention standing order. When two or more employees on the retention list have the same retention standing and are tied for release, random numbers shall be used to break ties. A displaced employee must be in the same, or one lower, pay band as the higher-standing employee who displaced him or her. In cases where competitive groups mix varying types of pay schedules,

authorized management officials shall define "one lower pay band," as appropriate, consistent with this Chapter and Reference (a). Career employees placed in term positions retain their career status and tenure on the RIF effective date. When the time limitation for the term position expires or the term position is abolished, a subsequent RIF must be run with the same parameters for competitive area and group(s) whereas the employee is again entitled to compete based on the employee's personal career status and tenure.

SC1960.6.4.5.2.1. Employees on Temporary Appointments. If a competing employee has been reached for release from a retention list, temporary employees in that competitive group must be released in appropriate numbers to place career employees in the same competitive group. No competing employee may be released from a retention list containing a position held by a temporary employee when the competing employee is qualified for the position. Career employees placed in temporary positions maintain their career status and tenure on the RIF effective date. When the time limitation for the temporary position expires or the temporary position is abolished, a subsequent RIF must be run with the same parameters for competitive area and group(s) whereas the employee is again entitled to compete based on the employee's personal career status and tenure. Components shall identify a method to determine which employee serving on a temporary appointment will be terminated when a temporary position is needed to avoid separating a competing employee.

SC1960.6.4.5.2.2. Employees on Time-Limited Actions. If a competing employee has been reached for release from a retention list, personnel actions must be processed to return employees within the competitive group on temporary actions (e.g., temporary promotion, temporary reassignment) to their permanent positions of record, if the return would facilitate placement of career employees in the same competitive group. Regardless of whether or not a personnel action is processed, an employee shall always compete for retention from his or her permanent position of record.

SC1960.6.4.5.3. Position Offers. A position offer shall be to the position, for which qualified, that requires the least possible reduction in pay band, is occupied by an employee with lower retention standing, and lasts for at least 90 days. If a retention list includes employees in Tenure Groups I and III, a Tenure Group I employee may not displace a Tenure Group III employee unless there are no Tenure Group I employees with lower retention standing within the same competitive group that can be displaced. Offers may not be made more than one pay band below the employee's present position. The position offered may not result in a promotion, but may have promotion potential. If more than one placement opportunity exists, the employee shall be offered the position encumbered by the employee with the lowest retention standing.

SC1960.6.4.5.3.1. Offers of Vacant Positions. Components are not required to offer vacant positions, but may do so to eliminate or mitigate the disruption and impact of RIF. Authorized management officials may waive or modify qualifications when offering an employee a vacant position, provided the employee meets any minimum positive education requirements and has the capacity, adaptability, and special skills needed to satisfactorily perform the duties of the position. If Components choose to use vacancies in RIF, the following procedures shall apply.

SC1960.6.4.5.3.2. Offers of Vacant Positions Within the Competitive Group.

Vacancies within the employee's assigned competitive group must be used first. A vacancy offer must be based on relative retention standing, with the employee who has the highest retention standing and who is fully qualified being offered the vacancy before any other employee. For example, if two tenure group I employees who have met probationary period requirements qualify for a vacancy and one has RIF veterans' preference while the other does not, the employee with veterans' preference must be offered the vacancy first.

SC1960.6.4.5.3.3. Offers of Vacant Positions Outside the Competitive Group.

Vacancies outside the competitive group, but still within the competitive area, may be offered to employees who would otherwise be separated because they have been released from their retention list. Vacancies offered outside the competitive group, but still within the competitive area, must be based on relative retention standing as described in SC1960.6.4.5.3.2. above.

SC1960.6.4.5.3.4. Offers of vacancies satisfy an employee's RIF assignment rights if they are within the competitive area and otherwise meet the requirements of a position offer as described under SC1960.6.4.5.3.

SC1960.6.4.5.4. Exceptions to Order of Release. An employee may be given a temporary postponement to release from a retention list under options below, as appropriate. The reasons for the exception and the date the employee's retention will end must be on the retention list opposite the employee's name.

SC1960.6.4.5.4.1. Mandatory Exceptions

SC1960.6.4.5.4.1.1. Armed Forces Restoration Rights. A Tenure Group I employee entitled under Section 4301 or 4304 of Reference (g) to retention after restoration shall be given retention priorities over other employees in the same subgroup, regardless of performance rating or length of service, and may not be separated or reduced in pay band, except for cause, for a designated period of time, as specified in Part 353 of Reference (c).

SC1960.6.4.5.4.1.2. Use of Annual Leave to Reach Eligibility for Retirement or Continuance of Health Benefits

SC1960.6.4.5.4.1.2.1. A temporary exception shall be made to retain an employee who is being involuntarily separated under RIF procedures or removed because of a declination to relocate (i.e., declination of a transfer of function or management-directed reassignment) and who elects to use annual leave to remain on the rolls after the effective date the employee would otherwise have been separated, in order to establish initial eligibility for immediate retirement under Section 8336, 8412, or 8414 of Reference (a), and/or to establish initial eligibility under Section 8905 of Reference (a) to continue health benefits coverage into retirement.

SC1960.6.4.5.4.1.2.2. Employees may not be retained beyond the date they first become eligible for immediate retirement or continuation of health benefits, unless it is necessary in order to satisfy both retirement and health benefits requirements. Annual leave

considered must be accrued by the employee and may not be advanced. This 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. If the exception lasts more than 30 days, the RIF notice for each higher standing employee on the retention list reached for release from the list must include the reasons for the exception and the date the lower standing employee's retention will end.

SC1960.6.4.5.4.2. Continuing Exceptions. An employee may be retained on duties that cannot be taken over within 90 days without undue interruption to the mission by an employee with higher retention standing. The maximum number of days the exception may continue shall be established and the reason for authorizing the exception documented. The RIF notice for each higher standing employee on the retention list reached for release from the list must contain the reasons for the exception.

SC1960.6.4.5.4.3. Temporary Exceptions. With the exception of SC1960.6.4.5.4.3.2. and SC1960.6.4.5.4.3.4. below, the following are limited to 90 days. The RIF notice of each higher standing employee on the retention list reached for release from the list must include the reasons for the exception and the date the lower standing employee's retention will end:

SC1960.6.4.5.4.3.1. To retain an employee on duties that cannot be taken over within 90 days without undue interruption to the activity by an employee with higher retention standing;

SC1960.6.4.5.4.3.2. To satisfy a Government obligation to the retained employee (e.g., to allow an employee who is entitled to a new written notice to have the required full 60 days when the RIF effective date is less than that);

SC1960.6.4.5.4.3.3. To extend an employee's separation date beyond the effective date of the RIF 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; or

SC1960.6.4.5.4.3.4. To retain on sick leave a lower standing employee covered by Chapter 63 of Reference (a) (or other applicable leave system for Federal employees), who is on approved sick leave on the effective date of the RIF, for a period not to exceed the date the employee's sick leave is exhausted.

SC1960.6.4.5.4.4. Liquidation Exceptions. In addition to exceptions described above, an exception to release order based on retention standing may be made when all positions in the competitive area are abolished. This means employees may be released without regard to performance or creditable service time. However, employees must be released in subgroup order, meaning Tenure Group IB employees must be released before Tenure Group IA employees. This exception may be applied within one year of the date of liquidation.

SC1960.6.4.5.5. Notices

SC1960.6.4.5.5.1. Each employee reached for an action in RIF is entitled to a specific written notice of at least 60 days (not counting the date the notice is delivered or the RIF effective date) before the RIF effective date. The notice period begins the day after the employee receives the notice or, if mailed, 5 days after the date mailed to allow for delivery time. A notice expires when followed by the action specified, or when amended by an action less severe than originally specified. An action may not be taken before the effective date in the notice, nor can a notice be cancelled or amended after the RIF effective date for an employee retained under an exception to order of release (see SC1960.6.4.5.4.). At the same time a notice is issued to the employee, the employee's exclusive representative shall be notified.

SC1960.6.4.5.5.2. When a RIF is caused by circumstances not reasonably foreseeable, the Secretary may approve a notice period of less than 60 days. The shortened notice period must cover at least 30 full days before the effective date of release. A Component request to the Secretary shall specify:

SC1960.6.4.5.5.2.1. The reduction in force to which the request pertains;

SC1960.6.4.5.5.2.2. The number of days by which the Component requests that the period be shortened; and

SC1960.6.4.5.5.2.3. The reasons for the request.

SC1960.6.4.5.5.3. Content of Notice. At a minimum, RIF notices shall contain the following:

SC1960.6.4.5.5.3.1. The action to be taken, the reason(s) for the action, and its effective date;

SC1960.6.4.5.5.3.2. The employee's competitive area, competitive group, veterans' preference, date(s) and rating(s) of record used for performance credit, and creditable length of service (based on RIF SCD);

SC1960.6.4.5.5.3.3. The place where the employee may inspect the regulations and record(s) pertinent to the case;

SC1960.6.4.5.5.3.4. The reasons for retaining a lower-standing employee in the same competitive group (as appropriate, if an exception to order of release is made);

SC1960.6.4.5.5.3.5. As applicable, information on reemployment rights and career transition assistance under the Interagency Career Transition Assistance Program and Reemployment Priority List (Part 330 of Reference (c)), and under the DoD Priority Placement Program, reference (h);

SC1960.6.4.5.5.3.6. An estimate of severance pay, as applicable; and

SC1960.6.4.5.5.3.7. The employee's right, as applicable, to appeal to the Merit Systems Protection Board.

SC1960.6.4.5.5.4. Notice of Eligibility for Other Assistance. An employee who receives a specific notice of RIF separation must be given a release to authorize, at his or her option, the release of their resume and other relevant employment information for employment referral to the State unit or entity established under title I of the Workforce Investment Act of 1998 and potential public or private employees. The employee must also be given information concerning how to apply both for unemployment insurance through the appropriate State program and benefits available under the State's Workforce Investment Act of 1998 programs.

SC1960.6.4.5.5.4.1. When 50 or more employees in a competitive area receive a separation notice, written notification must be provided at the same time to the State or entity designated by the State to carry out rapid response activities under title I of the Workforce Investment Act of 1998 and the chief elected official of local government(s) within which the separations will occur. The notice must include:

SC1960.6.4.5.5.4.1.1. The number of employees to be separated, broken down by geographic area;

SC1960.6.4.5.5.4.1.2. The effective date of the separation; and

SC1960.6.4.5.5.4.1.3. Any other information necessary or identified in consultation with Department of Labor to facilitate delivery of placement and related services.

SC1960.6.4.5.5.5. New, Amended or Cancelled Notice Required. An employee is entitled to a new written notice of at least 60 days if a decision is made that results in an action more severe than the original action. An amended notice must be issued if a decision is made that results in a better offer or the effective date of the RIF is changed to a later date. If the RIF is cancelled, a cancellation notice must be issued.

SC1960.6.4.5.5.6. Status during Notice Period. The employee shall remain on active duty status during the notice period. However, if an emergency exists and there is a lack of work or funds for all or part of the notice period, the employee may be placed on annual leave with or without his or her consent or leave without pay with his or her consent. The reasons supporting the decision must be fully documented.

SC1960.6.4.5.5.7. Prohibited Notice Period. In accordance with reference (e), RIF and other termination notices shall not be issued or made effective between December 15 and January 3. If, in specific situations, available resources absolutely preclude delay, Components may authorize exceptions. Exceptions shall be limited, and approved only when adverse effect on employees will be significantly increased if the exceptions are not granted.

SC1960.6.4.5.5.8. Certification of Expected Separation. To enable employees to be considered for eligibility to participate in dislocated worker programs under the Workforce Investment Act of 1998 administered by the U.S. Department of Labor, a Certificate of Expected

Separation may be issued to a competing employee who it is believed, with a reasonable degree of certainty, will be separated by RIF and employment or placement opportunities in the same or a similar position in the local commuting area are limited. An employee eligible for optional retirement who has filed a retirement application or other written intent to retire may not be given a certificate of expected separation. A certificate may be issued up to six months in advance, must be addressed to each eligible employee, and be signed by the official authorized to approve the RIF. The certification must include:

SC1960.6.4.5.5.8.1. The expected RIF effective date;

SC1960.6.4.5.5.8.2. Statements that it is likely the employee will be separated and that employment or placement opportunities in the same or similar position within the local commuting area are limited or nonexistent;

SC1960.6.4.5.5.8.3. Placement opportunities within Federal agencies in the local commuting area are limited or nonexistent; and

SC1960.6.4.5.5.8.4. A description of the Workforce Investment Act of 1998, title I programs, and the Reemployment Priority List.

SC1960.6.4.5.5.9. Voluntary Separation. Components may minimize the impact of downsizing by allowing employees to volunteer to be separated in lieu of another employee who is slated to be separated by RIF. This provision may be used when acceptance of the offer to volunteer for separation will result in saving an employee who is otherwise scheduled for RIF separation. Voluntary separation may be effected only during formal RIF, that is, where official RIF notices will be issued and both employees are in the same competitive area. If, at any point in the RIF process, it is determined that the voluntary separation would not result in saving a RIF-affected employee, the voluntary separation shall be cancelled. This program may be expanded to include other DoD competitive areas in the commuting area.

SC1960.6.4.5.5.9.1. Matches of separation volunteers with those affected by RIF shall be based on the similarity of their positions. Any position affected by RIF may be identified for placement by a RIF separation volunteer, if separation of the RIF volunteer would result in the cancellation of a RIF separation action, and the subsequent placement of a RIF-affected employee. The placement should consider the employee's qualifications for placement in the volunteer's position, the ability to do the work of the similar position, and cost effectiveness. The placement cannot result in promotion.

SC1960.6.4.5.5.9.2. When there are more volunteers than needed and all are equally good matches, the placement shall be made based on seniority order of applicants using the SCD for leave. When there are fewer volunteers than needed and there are equally good matches for placement, placement shall be made in order of RIF retention standing.

SC1960.6.4.5.5.9.3. Volunteering for separation under this provision does not confer RIF assignment rights. Volunteering for RIF separation is strictly a voluntary action on the part of any employee to whom this option is offered. Employees shall not be forced or

coerced in any way to volunteer for RIF separation. Only competing employees as defined in this subpart are eligible for voluntary separation participation. In addition, RIF separation volunteers must be serving under an appointment without time limitation, may not be reemployed annuitants, and may not have a pending or approved application for disability retirement.

SC1960.6.4.5.5.9.4. Separation volunteers are ineligible for registration in the Priority Placement Program, non-federal hiring incentives, and voluntary separation incentives. Separation volunteers who are reemployed by the Federal government are subject to the rules governing repayment of severance pay. Generally, employees occupying critical or hard-to-fill positions, or with critical knowledge or skills, are not allowed to participate in voluntary separation programs, except with Component approval.

SC1960.6.4.5.5.9.5. Separation volunteers shall be issued RIF separation notices with the same effective date as other employees being separated by RIF. The notice shall advise the employee of his or her entitlements under RIF. Volunteers must sign a statement indicating they understand the action is irrevocable once a RIF separation notice has been issued. However, the action may be cancelled by the Component if necessary. Separation volunteers shall be treated as involuntary RIF separations, with all entitlements, except for those outlined in section SC1960.6.4.5.5.9.3. above.

SC1960.6.5. TRANSFER OF FUNCTION. A Transfer of Function (TOF) occurs when work is moved from one competitive area to another or when an entire competitive area is moved to a new commuting area. The work must cease to be performed in the losing competitive area and be performed by competing employees in the new competitive area (e.g., the work is not contracted out). However, the same type of work may already exist in the new competitive area or new commuting area (in cases where the entire competitive area is moved to a new commuting area).

SC1960.6.5.1. A TOF does not apply when the work is scheduled for liquidation or termination, even if it is terminated in the losing competitive area and associated work is transferred to the gaining competitive area to be carried out for final closure. For example, if an office responsible for performing audits is closed, and the work is terminated when all audits and reports are completed, the assignment of post-audit work to another competitive area for final closeout is not considered a TOF.

SC1960.6.5.2. Competing Employees. As in RIF, Tenure Group I and III employees are competing employees for TOF. A competing employee has the right to transfer if the employee will be reduced in band or separated if he or she does not transfer.

SC1960.6.5.3. Procedures. A TOF affects both the losing and gaining competitive areas; therefore, management in both competitive areas must work together during the entire process.

SC1960.6.5.3.1. To identify whether an action(s) must follow TOF procedures, the losing competitive area first determines the number and type of positions encompassing the transferring work in the losing competitive area based on the official position(s) of record,

supplemented by other records that document actual duties and responsibilities. The losing competitive area must then determine the number and type of positions that will remain in the losing competitive area after the transfer based on the work that will still be performed in the losing competitive area. If this comparison will result in any competing employee currently performing the transferring work in the losing competitive area being separated or reduced in band if they do not transfer, then TOF procedures must be followed.

SC1960.6.5.3.2. After identifying the competing employees who have a right to transfer, the losing and gaining competitive areas shall jointly determine the number and type of positions needed in the new competitive area. Employees shall be identified for right to transfer beginning with the employee with the lowest retention standing, unless this would result in an employee with higher retention standing being separated or reduced in band in the losing competitive area. In that case, employees shall be identified for transfer beginning with the employee with the highest retention standing. All employees who will be separated or reduced in band if they do not transfer are entitled to an offer to transfer.

SC1960.6.5.3.3. If a position in the competitive service, occupied by an employee with competitive status, moves to an organization covered by the excepted service, the position remains in the competitive service during the employee's incumbency.

#### SC1960.6.5.4. Transfer of Function and RIF

SC1960.6.5.4.1. If the TOF will result in a surplus of employees in the gaining competitive area, all employees who have a right to transfer with the work compete under RIF procedures with employees in the gaining competitive area. This may happen if the number of employees who have the right to transfer exceeds the number of positions needed in the gaining competitive area. The gaining competitive area shall determine the retention rights of transferring employees for a RIF that will be conducted in the gaining competitive area at the same time as the transfer before actually relocating the employees.

SC1960.6.5.4.2. A competing employee identified with work that is scheduled for liquidation or termination competes in the losing area for RIF because they have no right to transfer. This applies even if work is terminated in the losing competitive area and associated work is transferred to the gaining competitive area to be carried out for final closure.

SC1960.6.5.4.3. The losing competitive area may not conduct a RIF solely to place employees who decline to transfer, but may include employees who decline to transfer as part of a concurrent RIF that is being conducted for other reasons.

SC1960.6.5.4.4. Canvassing Competing Employees. Components may issue a canvass letter to ask each competing employee whether he or she wishes to transfer with the work to a different local commuting area. If canvass letters are used, they:

SC1960.6.5.4.4.1. Do not guarantee a position, and a specific position does not need to be identified in the canvass letter;

SC1960.6.5.4.4.2. Are considered an initial offer of transfer;

SC1960.6.5.4.4.3. Must include sufficient information for the employee to make a decision, including whether a failure to respond will be considered a declination and whether a declination shall result in separation by adverse action;

SC1960.6.5.4.4.4. Must allow the employee sufficient time to make a decision to accept or decline and must include the date a decision is due; and

SC1960.6.5.4.4.5. Must tell the employee that they may change an initial acceptance to a declination, but may not later change an initial declination to an acceptance of the offer to transfer.

SC1960.6.5.4.5. Volunteers. The losing competitive area may permit other employees (including time-limited employees) to volunteer for transfer in place of an employee identified for transfer, as long as no other employee is separated or reduced in band because the volunteer transferred in the employee's place. Components must identify a method to determine which volunteer shall be selected for transfer when the number of volunteers exceeds the number of employees required to perform the function in the gaining competitive area. For example, Components may use retention standing as a basis for selection.

SC1960.6.5.4.6. Separating Employees. Components are not required to separate employees who decline a TOF, but must use adverse action procedures if they choose to do so. For example, Components may offer these employees vacant positions or may include them in a concurrent RIF in the losing competitive area. Employees who are separated based on inclusion in a concurrent RIF conducted by the losing competitive area are not separated by adverse action procedures. In either case, the separation date may not be sooner than the effective date of the actual transfer of function.

SC1960.6.6. FURLOUGH. A competing employee may be furloughed when the intent is to recall the employee to duty within one year from the date of separation and the furlough will last for more than thirty consecutive calendar days or more than 22 workdays if done on a discontinuous basis. An employee may not be furloughed for more than one year. If more than one employee is to be furloughed, the procedures in this Subchapter shall be followed to determine retention standing, and employees shall be released beginning with the employee who has the lowest retention standing on the retention list. A competing employee may not be separated while an employee with a lower retention standing in the same competitive group is on furlough. When employees are recalled to duty, they shall be recalled in the order of their retention standing, beginning with the employee with the highest retention standing.

SC1960.6.7. Appeals. An employee who has been furloughed for more than 30 consecutive calendar days, or more than 22 workdays if done on a discontinuous basis, separated, or reduced in band by a RIF action may appeal to the Merit Systems Protection Board.

## SC1960.7. RECORDS

SC1960.7.1. Maintenance. Personnel records that are used to determine employees' retention standing must be correct. If an error in an employees' retention standing or action taken under this Subchapter is discovered, it shall be corrected with RIF notices, amended or issued as required.

SC1960.7.2. Retention. Records relating to a RIF or transfer of function must be maintained for at least 1 year after the final action has been effected. At a minimum, this includes the personnel records used to determine order of retention, completed retention lists with the names of displaced and released employees, retention factors as applied to each employee on the retention list(s), determination of employees' assignment rights, composition of the competitive area and competitive group, and decisions regarding use of vacancies and exceptions to order of release (including the reason and end dates for the exception).

SC1960.7.3. Access to Retention List and Records. An employee who has received a specific RIF notice and the employee's representative have the right to review any completed records used in a RIF action that was taken, or will be taken, against the employee. Access to retention records shall be consistent with both the Freedom of Information Act (Section 552 of Reference (a)) and the Privacy Act (Section 552a of Reference (a)). An employee who has not received a RIF notice has no right to review the retention list and related records.

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Section 1597 of title 10, United States Code
- (f) Public Law 95-452, "Inspector General Act of 1978," October 1, 1978, as amended
- (g) Title 38, United States Code, Part III, "Veterans Readjustment and Related Benefits"
- (h) DoD Directive 1400.20, "DoD Program for the Stability of Civilian Management," current version