(1) Group I includes each career employee who is not serving a probationary period. (A supervisory or managerial employee serving a probationary period required by subpart I of part 315 of this title is in group I if the employee is otherwise eligible to be included in this group.) The following employees are in group I as soon as the employee completes any required probationary period for initial appointment:

(i) An employee for whom substantial evidence exists of eligibility to 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);

- (ii) An employee who acquires competitive status and satisfies the service requirement for career tenure when the employee's position is brought into the competitive service;
 - (iii) An administrative law judge;
- (iv) An employee appointed under 5 U.S.C. 3104, which provides for the employment of specially qualified scientific or professional personnel, or a similar authority: and
- (v) An employee who acquires status under 5 U.S.C. 3304(c) on transfer to the competitive service from the legislative or judicial branches of the Federal Government.
- (2) Group II includes each careerconditional employee, and each employee serving a probationary period under subpart H of part 315 of this chapter. (A supervisory or managerial employee serving a probationary period required by subpart I of part 315 of this title is in group II if the employee has not completed a probationary period under subpart H of part 315 of this title.) Group II also includes an employee when substantial evidence exists of the employee's 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).
- 46. Section 351.502 is revised to read

as follows:

§ 351.502 Order of retention—excepted service.

(a) Competing employees shall be classified on a retention register in tenure groups on the basis of their tenure of employment, veteran preference, length of service, and performance in descending order as set forth under § 351.501(a) for competing employees in the competitive service.

- (b) Groups are defined as follows:
- (1) Group I includes each permanent employee whose appointment carries no restriction or condition such as conditional, indefinite, specific time limit, or trial period.
 - (2) Group II includes each employee:
 - (i) Serving a trial period; or
- (ii) Whose tenure is equivalent to a career-conditional appointment in the competitive service in agencies having such excepted appointments.
 - (3) Group III includes each employee:
- (i) Whose tenure is indefinite (i.e., without specific time limit), but not actually or potentially permanent;
- (ii) Whose appointment has a specific time limitation of more than 1 year; or
- (iii) Who is currently employed under a temporary appointment limited to 1 year or less, but who has completed 1 year of current continuous service under a temporary appointment with no break in service of 1 workday or more.
- 47. In § 351.506, paragraph (b) is revised to read as follows:

§ 351.506 Effective date of retention standing.

- (b) The retention standing of each employee retained in a competitive level as an exception under § 351.607 or § 351.608 is determined as of the date the employee would have been released from the competitive level had the exception not been used. The retention standing of each employee retained under either exception remains fixed until completion of the reduction in force action which resulted in the temporary retention.
- 48. In § 351.701, paragraph (a) is revised to read as follows:

§ 351.701 Assignment involving displacement.

(a) General. When a group I or II competitive service employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent, or higher, is released from a competitive level, an agency shall offer assignment, rather than furlough or separate, in accordance with paragraphs (b), (c), and (d) of this section to another competitive position which requires no reduction, or the lease possible reduction, in representative rate. The employee must be qualified for the offered position. The offered position shall be in the same competitive area, last at least 3 months, and have the same type of work schedule (e.g., fulltime, part-time, intermittent, or seasonal) as the position from which the employee is released. Upon accepting an offer of assignment, or displacing

another employee under this part, an employee retains the same status and tenure in the new position. The promotion potential of the offered position is not a consideration in determining an employee's right of assignment.

49. In § 351.702, paragraph (a)(4) is revised to read as follows:

§ 351.702 Qualifications for assignment.

(a) * * *

(4) Has the capacity, adaptability, and special skills needed to satisfactorily perform the duties of the position without undue interruption. This determination includes recency of experience, when appropriate.

50. In § 351.704, paragraph (b)(5) is added to read as follows:

§ 351.704 Rights and prohibitions.

*

(b) * * *

(5) Authorize or permit an agency to displace an employee or to satisfy a competing employee's right to assignment by assigning the employee to a position with a different type of work schedule (e.g., full-time, part-time, intermittent, or seasonal) than the position from which the employee is released.

PART 353—RESTORATION TO DUTY FROM MILITARY SERVICE OR **COMPENSABLE INJURY**

51. Part 353 is revised to read as follows:

PART 353—RESTORATION TO DUTY FROM MILITARY SERVICE OR **COMPENSABLE INJURY**

Subpart A—General Provisions

Sec.

353.101 Scope.

353.102 Definitions.

353.103 Persons covered. 353.104 Notification of rights and

obligations. 353.105 Maintenance of records.

353.106 Personnel actions during employee's absence.

353.107 Status upon reemployment.

353.108 Effect of performance and conduct on restoration rights.

353.109 Transfer of function to another agency.

353.110 OPM placement assistance.

353.111 Restoration rights of TAPER employees.

Subpart B-Military Service

353.205

353.201 Leaves of absence.

353.202 Mandatory restoration.

353.203 Physical disqualification.

Prohibition against discrimination.

353.204 Retention protection.