By David Tobenkin

FEDERAL WORKFORCE CUTS

Budget reductions could mean job loss. Here's how to take charge of your career.

Illustration by Bill Pragluski, Critical Stages, LLC

CHANGE IS ON THE HORIZON FOR FEDERAL EMPLOYEES WITH THE SPECTER OF LAYOFFS — OR REDUCTIONS-IN-FORCE (RIFs) — most certainly on the way, reflecting major revisions to a variety of agencies. For federal employees who think they may be in the RIF firing line, the time to prepare is now, not later, as RIFs likely will force some federal employees to make dramatic changes in career, compensation and benefits planning.

The Trump administration in March announced its fiscal year 2018 preliminary budget plan, which proposed budget reductions for all but three federal

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agencies. Congress, which actually approves the budget, already has pushed back on many of those proposed cutbacks. However, in the Republican-dominated Congress, which generally backs a smaller federal government, it is likely that there will be support for federal agency budget cuts of a magnitude that will make some level of RIFs unavoidable, according to Bill Valdez, president of the Senior Executives Association, the association of federal senior executives.

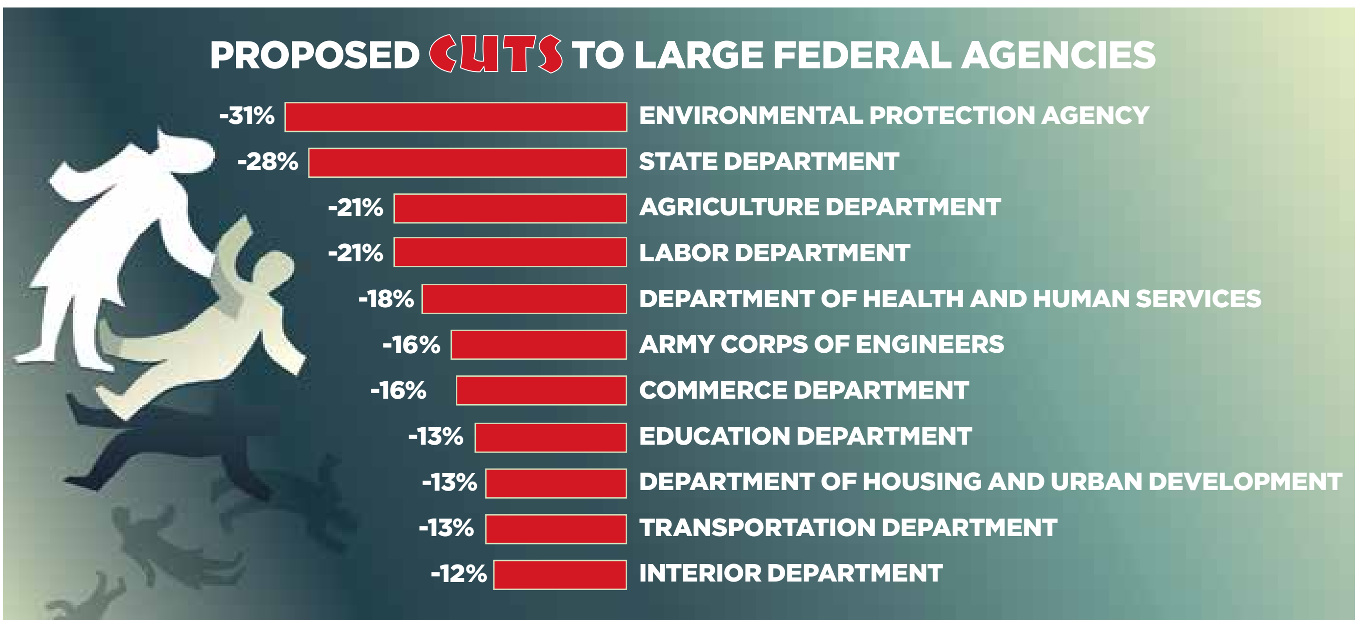
"I think that there will be some RIFs – that is inevitable," says Valdez, who noted that earlier in his career he had been part of a 1995 RIF at the Department of Energy where his own position in a technology transfer office was eliminated. "The president has proposed a wide range of cuts to agencies, including some agency abolishments. He won't get all of it, but he will get some of it, and when that occurs, RIFs will have to happen."

Federal agencies previously have used a wide variety of workforce management steps to avoid RIFs, such as hiring freezes, cuts to non-personnel components of budgets, buyouts, furloughs and general attrition to help reduce the workforce or manage budgetary shortfalls. Due to the fact that the cuts would take effect at the start of the new fiscal year on October 1, 2017, these steps will be insufficient to generate enough savings to avert RIFs at some agencies, says Jeffrey Neal, a senior vice president at consulting firm ICF and a former Department of Homeland Security chief human capital officer.

"Any agency looking at a 10 percent or more cut in their labor budget will have difficulty doing that in one year without a RIF," Neal says. "There is not enough turnover."

The Trump administration's preliminary budget includes cuts that exceeded the 10 percent level for 11 agencies, which are listed in the graphic below. That budget also proposed eliminating all funding for some smaller independent agencies, such as the National Endowment for the Arts and the Chemical Safety Board, among others. A key question is whether agencies will be able to implement any budget reductions authorized by Congress as they see fit, the standard approach in the past, which could allow agencies to make other cuts to save jobs, or whether agencies will be directed to realize budget savings through cuts to jobs. Valdez notes that the latter is possible "since the president's stated intention is to reduce the size of the workforce."

Many experts emphasize that the most important effort the federal workforce com-



Source: Fiscal Year 2018 Preliminary Budget Plan (www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf) munity and its advocates can make toward limiting the potential scope of RIFs is to vigorously speak to their legislators and the public about the value of services provided by federal agencies and the impact of federal employment on local economies.

NARFE, federal employee unions and many other organizations already are engaged in advocacy on behalf of the federal workforce. “While we have faced challenges in the past, the stars have never quite lined up in the way they do this year with a new president and a new Congress,” says NARFE National President Richard G. Thissen. “Our success during this congressional session will depend on how much you get involved.”

ABCs OF RIFs

Most federal agencies use federal RIF regulations (5 Code of Federal Regulations, Part 351) before separating or demoting an employee due to agency reorganization, a lack of work or a funding shortage. When an agency must abolish positions, the RIF regulations determine whether an employee keeps his or her present position or has a right to a different position.

For most federal civil service employees, the order of staff reductions is governed by four factors, listed in descending order of importance: tenure category (e.g., career over career conditional over non-permanent positions), veteran’s status, length of federal service and job performance ratings. There is a link between the final two categories, as the service computation date is adjusted by performance ratings, with credit for the last three annual ratings that are not more than four years old upon dissemination of the RIF notices.

However, the fiscal year 2016 National Defense Authorization Act implemented new rules for the Department of Defense that do not apply to other civilian federal agencies. Under the DOD system, a RIF is based primarily on performance, “as determined under any applicable performance management system,” generally running from 5 (outstanding) to 1 (unacceptable). The rating of record comes first, then tenure group, average performance rating and veteran preference.

Neal says for employees who are relatively new and/or whose performance is rated as out-

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—Jeffrey Neal

standing, or employees with veteran preference and a less than outstanding rating, the new DOD RIF rules could dramatically alter their chances of being affected by a RIF.

One aspect of the RIF selection factors that employees might be able to affect is performance evaluations, notes John P. Mahoney, a Washington, DC-based federal government employment lawyer who has represented federal employees in adverse action proceedings and the federal government in defending against RIF appeals. “Federal employees should follow up with a complaint if they think their performance appraisal is not what it should be,” Mahoney says.

Mahoney also says that federal employees should make sure that their position descriptions, performance records and electronic Official Personnel Folder at their agencies are up-to-date and indicate the correct position, title, grade, rating history, preference status and service computation date. This may prevent being improperly reached through a RIF due to an erroneous administrative record that, for example, understates seniority status or misstates tenure category.

Importantly, selection for a RIF is not the end of the story. Under the federal rules, agencies are required to hold a “Second Round RIF Competition” for competitive service positions, applying the four retention factors to determine whether a released employee has a “bump” or “retreat” right to a position in a different competitive level that is held by an employee with even lower retention standing. While often less desirable than maintaining the current position, this can keep an employee in the federal workforce and, importantly for many, continue eligibility to participate

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in federal benefits programs such as the Federal Employees Health Benefits Program (FEHBP). The Second Round may be held at an agency's discretion for excepted service positions, says the Office of Personnel Management (OPM). An agency must give employees reached by a RIF at least 60 days' written notice before the effective date of the RIF action.

Eligible employees reached by a RIF can receive severance payments, though those not eligible notably include those who decline a reasonable offer of reassignment, who are dismissed for unacceptable performance or conduct, or who are eligible for retirement. According to OPM, the basic severance pay allowance consists of:

• One week of pay at the rate of basic pay for the position held by the employee at the time of separation for each full year of creditable service through 10 years.

• Two weeks of pay at the rate of basic pay for the position held by the employee at the time of separation for each full year of creditable service beyond 10 years.

• Twenty-five percent of the otherwise applicable amount for each full three months of creditable service beyond the final full year.

The basic severance pay allowance is augmented by an age-adjusted allowance consisting of 2.5 percent of the basic severance pay allowance for each full three months of age over 40 years.

Unemployment benefits also will often be available to those affected by a RIF, although these benefits are usually relatively small and unlikely to cover ordinary income, says Wan McCormick, a certified financial planner at the Fairfax, Virginia-based Reliable Alliance Financial.

There is a good chance that agencies will offer buyouts or early outs to at least some employees likely to be reached by a subsequent RIF. Voluntary Separation Incentive Payments (VSIPs), also known as buyout authorities, offer employees a lump sum incentive payment of up to $25,000 ($40,000 for DOD employees) to voluntarily leave government service. Voluntary Early Retirement Authorities (VERAs), also known as early outs, offer eligible employees the opportunity to begin receiving retirement annuity payments earlier than they would otherwise be eligible. VSIPs and VERAs are often offered together. The August 2014 *narfe* magazine article, "Buyouts and Early Outs," pp. 20-26, described the rules governing VERAs and VSIPs and considerations in deciding whether to accept them.

STAYING PLUGGED IN

It is critical that employees who are or may be affected by RIFs thoroughly and carefully monitor, quickly review and keep any communications or documents sent by their agencies' human resource departments, OPM and benefits providers, such as the Thrift Savings Plan (TSP). These documents could announce key deadlines for employee actions that, if not acted on, could forfeit employee rights. It is also important that those potentially affected by a RIF stay tuned in to developments at the agency through all possible sources, including NARFE, federal employee unions, newspapers, trade magazines and websites.

Federal employees should determine if they are under a bargaining unit represented by a federal union. Even if they are not union members, they may benefit from a union-negotiated agreement with a federal agency that may have helpful provisions guiding or steering the implementation of a RIF, although unions generally cannot stop RIFs. "Unions can't control or stop a reduction-in-force, but we can address procedures and appropriate arrangements that govern some aspects of a RIF, such as the amount of notice and VERAs and VSIPs," says David Cann, director of field services and education at the American Federation of Government Employees (AFGE) federal employee union.

TAKING CHARGE OF CAREERS

Federal employees who believe that they may be reached by RIFs may for the first time need to think and live as cautiously as private-sector employees in at-will employment. As a rule of thumb, employees should save three to six months of living expenses in case of job loss. "They should keep in mind that finding a new position, particularly one with benefits, may take longer than expected," McCormick says. According to Department of Labor statistics, it

NARFE MAGAZINE CAREER RESOURCES

Past issues of *narfe* magazine are available online in PDF format to members at www.narfe.org/narfemagazine by locating the "Magazine Archives." The following articles highlight relevant topics for those considering career transitions:

- **Second Careers (June 2014) examined second careers for federal employees, including the 10 most popular careers reported by magazine readers.**
- **Moonlighting (November 2013) provided guidance on part-time moonlighting in a new potential career, while taking care to adhere to applicable government employee ethics rules.**
- **Alumni Associations Connect the Federal Family (April 2017) discussed federal agency alumni associations. These associations cost only a small fee to join, but may provide valuable news regarding employment opportunities through alumni.**

took an average of 25 weeks, or roughly a half year, to find a new job in February 2017.

Those who believe they may be affected by a RIF should begin considering potential new employment options immediately. See the sidebar above for a list of *narfe* magazine articles that may be helpful to those considering a career transition.

Those likely to be affected by a RIF may wish to look at transfer and hiring opportunities within their agency and in other agencies. Within their agency, a move to a division or location less likely to be affected by RIFs could be a smart move, though Neal noted this often can be difficult to determine. Employees may wish to examine similar jobs at agencies where, based on the president's preliminary budget, the budget may actually increase, such as the Department of Defense, the Department of Homeland Security and the Department of Veterans Affairs. Federal employee status could give federal employees a competitive edge in hiring for some positions.

CONSEQUENCES FOR BENEFITS

Employees eyeing potential retirement before being reached by RIFs should keep in mind that if they are actually affected by RIFs, they will qualify for reduced standards for eligibility for a Federal Employees Retirement System (FERS) or Civil Service Retirement System (CSRS) annuity. A federal employee who is involuntarily separated is eligible for a discontinued service annuity if the following conditions are met: The employee is 50 years old with 20 years of service, or any age with 25 years of service under FERS; and any age with 25 years of service under CSRS.

In addition, federal employees nearing retirement may want to use as little annual leave as possible, since this can count toward satisfying their time in service requirement, notes Mark Keen, a certified financial planner and partner at Fairfax, Virginia-based Keen & Pocock, as well as a longstanding contributor to *narfe* magazine.

Those who recently received a large pay increase might wish to consider staying in their positions as long as possible, as the increase could affect their high-three calculation for purposes of FERS and CSRS annuities, Keen adds. Some classes of employees eligible for FERS and CSRS annuities can credit unused sick leave toward total service lengths in annuity calculations.

Liquidity is a key consideration for those potentially affected by RIFs. Employees should determine how much cash and investments can be accessed without triggering large penalties, unlike the Thrift Savings Plan (TSP), where hardship withdrawals are taxable for many. Those who believe they may be at risk for a RIF may wish to reduce TSP contributions to the level necessary to obtain a matching contribution from the government, or even lower if they are truly cash deficient, and set that money

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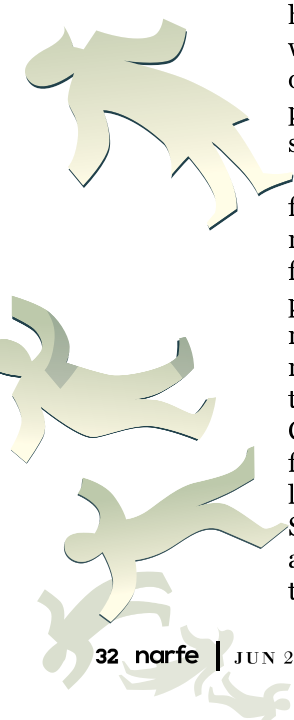
aside in a savings account or similarly liquid financial product, says Micah Shilanski, an Anchorage, AK-based certified financial planner and founder of federal retirement website plan-your-federal-retirement.com. Cutting expenses and reducing mortgage payments, if possible, are other ways to bulk up liquid savings in a hurry.

With respect to TSP balances, the best advice for many federal employees under age 55 will be to avoid touching such accounts if at all possible due to the low cost of these funds, and the immediate taxation and potential early withdrawal penalties that will occur in most cases, Shilanski notes.

For TSP withdrawal payments before a plan participant reaches age 59½, in addition to the regular income tax, the participant may have to pay an early withdrawal penalty tax equal to 10 percent of any taxable portion of the payment that is not transferred or rolled over. However, if an employee separates from service during or after the year they reach age 55 (or the year they reach age 50 if they are a public safety employee), then the 10 percent early withdrawal penalty tax does not apply. These penalties also do not apply to certain annuity payment plans, or equivalents, that participants can elect.

McCormick says it is also important to note that federal employees affected by a RIF who have a TSP loan with an outstanding balance will have 90 days to pay the full balance back or face the income tax and, potentially, the 10 percent early withdrawal penalty on the outstanding balance.



In addition, there are clear consequences for certain benefits for separating employees, notably health insurance. Separation from federal service will end eligibility to participate in the FEHBP unless one is eligible to retire and carry FEHBP coverage into retirement. A temporary health care benefit continuation option, Temporary Continuation of Coverage, is available for federal employees for an 18-month period, and is the equivalent of COBRA for private-sector employees. Similar to COBRA, it is an expensive option, as those participating will have to pay both their own contribution and that of the federal government, plus a 2 percent premium.

The prospect of rising health care costs for employees forced to separate could lead them to schedule medical procedures while they are still employed to take advantage of their existing coverage. Separated employees and their families also will lose access to the federal dental and vision plan under the Federal Employees Dental and Vision Insurance Program. Participation in the Federal Long Term Care Insurance Program is not affected by separation, if payments continue to be timely, but those separated and not retired cannot purchase a plan.

Those with Flexible Spending Accounts for Federal Employees (FSAFEDS) should use them before they leave because coverage terminates when they separate.

FIGHTING A RIF

Employees seeking to fight a RIF likely will have an uphill battle. Appeals of RIF decisions can be taken to the Merit Systems Protection Board (MSPB) for employees not represented by a union, or through a union grievance or an MSPB appeal for those who are union-represented, AFGE's Cann notes.

"RIFs are very difficult to overcome," says Ed Passman, a principal at the law firm Passman & Kaplan P.C. "Agencies can effectively gerrymander the competitive area and select the competitive level to try to get rid of whom they would like." Employees can allege discrimination, which also may be handled through the Equal Employment Opportunity process but would eventually come before the MSPB for a hearing.

Mahoney notes, however, that it is quite possible that agencies unfamiliar with RIF processes will make mistakes in carrying them out and will be willing to settle with federal employees with strong cases.

Ultimately, the prospect of RIFs depends heavily on whether President Trump's budget and his proposals are enacted, but his intention to reshape the federal government is clear, and one matter is certain: A new day has dawned for federal employees, and managing change will be the standard at most federal agencies. n

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