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Military Base Closures and Affected Defense Department Civil Service Employees

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Summary

As a step in the 2005 round of the base realignment and closure (BRAC) process, the Defense Base Closure and Realignment Commission (commonly referred to as the BRAC Commission) recommended on September 8, 2005, that a number of domestic U.S. military installations be closed or realigned. Overall, the BRAC Commission estimated that the recommended closures or realignments would result in a net decrease of 15,874 federal civilian jobs at the Department of Defense (DOD). On September 15, 2005, the President approved the commission's recommendations and transmitted them to Congress. Congress rejected H.J.Res. 65 (a resolution of disapproval of the BRAC Commission recommendations) on October 27, 2005. The BRAC Commission recommendations took effect on November 9, 2005, and are required to be implemented by 2011.

As BRAC-related closures and realignments are implemented, there will likely be several implications and options for affected DOD civil service employees relating to reductions in force (RIFs) and several types of transition assistance. In addition, DOD's National Security Personnel System (NSPS) and labor-management relations could have implications in some respects for how DOD employees are affected by the BRAC process.

This report will be updated if major changes occur in the BRAC process regarding DOD civil service employees. Implementation of NSPS is discussed in CRS Report RL31954, *DOD's National Security Personnel System: Statute, Regulations, and Implementation Plans*, coordinated by Barbara Schwemle.

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Military Base Closures and Affected Defense Department Civil Service Employees

BRAC and DOD Civilian Employees

On May 13, 2005, the Department of Defense (DOD) announced recommendations to close or realign a number of domestic U.S. military bases in order to consolidate forces and save funds. The announcement occurred as a step in the 2005 round of the base realignment and closure (BRAC) process, as authorized by Congress in 2001.¹ Specifically, DOD recommended closures and realignments that the agency estimated would eliminate approximately 18,000 civilian support positions.² In addition, the DOD recommendations contemplated significant restructuring and consolidation of support functions with potential implications for affected civilian employees.

Under the BRAC framework, Secretary of Defense Donald Rumsfeld transmitted the recommendations to the Defense Base Closure and Realignment Commission (commonly referred to as the BRAC Commission) for its review and recommendations. After its review process, on September 8, 2005, the BRAC Commission transmitted its recommendations in a report to President George W. Bush.³ The BRAC Commission accepted a majority of DOD's recommendations for closure and realignment, rejected or modified some DOD recommendations, and made several recommendations on its own initiative. Appendix O of the BRAC Commission's report included information about "employment impact by economic areas and states," including, among other things, net direct job changes (i.e., increases and decreases for each state and area) for military, civilian, and contractor personnel. Overall, the data in Appendix O indicated a net decrease of 15,874 federal civilian jobs across all states and areas, corresponding to the BRAC Commission's

¹ For more on the BRAC process and specific timing of steps in the 2005 round, see CRS Report RL32216, *Military Base Closures: Implementing the 2005 Round*, by David E. Lockwood. A BRAC "timeline" is located on DOD's main BRAC Web page, available at [<http://www.defenselink.mil/brac/>].

² U.S. Department of Defense, "Part 1 of 2: Results and Process," *Base Closure and Realignment Report*, vol. 1, May 2005, p. 4 (hereafter "*DOD BRAC Report*"), available at [http://www.defenselink.mil/brac/vol_I_parts_1_and_2.html].

³ U.S. Defense Base Closure and Realignment Commission, *2005 Defense Base Closure and Realignment Commission Report* (Arlington, VA: Sept. 8, 2005), available at [<http://www.brac.gov/finalreport.asp>]. For discussion, see CRS Report RS22291, *Military Base Closures: Highlights of the 2005 BRAC Commission Report and Proposed Legislation*, by Daniel Else and David Lockwood.

recommendations. Maryland was listed with the largest increase in net civilian jobs (7,773) among all states, and Virginia was listed with the largest decrease (-10,838). (See **Appendix A** of this report for a table showing net job changes for each state, territory, and the District of Columbia.⁴)

On September 15, 2005, the President, who could accept or reject the BRAC Commission's recommendations only in their entirety, approved the commission's recommendations and transmitted them to Congress. On October 27, 2005, Congress rejected H.J.Res. 65, a resolution of disapproval of the BRAC Commission's recommendations.⁵ The recommendations took effect on November 9, 2005.⁶ DOD reportedly will develop "general plans" early in 2006 to implement the BRAC Commission's recommendations, with over 241 specific implementation plans being developed thereafter at "their own pace, their own schedule and their own cost structure."⁷ Barring future congressional action, DOD is required to implement the recommendations by 2011.

Transition Assistance for Employees

According to DOD, "[w]hen implementing decisions during the past four BRAC rounds, the Department worked diligently to assist its military and civilian personnel in transition ... [and] attempted to minimize involuntary separations of Defense civilians at closing or realigning installations through a variety of placement, retirement, and federal retraining programs."⁸ As evidence of the success of these programs, DOD also stated that "[e]ven though the Department's civilian workforce has been reduced by 40 percent since the first BRAC rounds began in 1988, less than 10 percent of the affected employees were involuntarily separated."⁹ For the current round, DOD stated:

One of the Department's challenges at installations subject to BRAC decisions is the fair and effective management of human resources. The closure of

⁴ The appendix, which lists employment impacts by state and metropolitan statistical area, is separately available from the full BRAC Commission report at [<http://www.brac.gov/docs/final/AppendixO.pdf>].

⁵ CRS Report RS22144, "*Fast Track*" Congressional Consideration of Recommendations of the Base Realignment and Closure (BRAC) Commission, by Christopher M. Davis.

⁶ Donna Miles, "BRAC Deadline Expires; DoD to Begin Closures, Realignments," American Forces Information Service, Nov. 9, 2005, available at [http://www.defenselink.mil/news/Nov2005/20051109_3280.html].

⁷ Sgt. Sara Wood, "BRAC Implementation Plan on Schedule, Official Says," American Forces Information Service, Dec. 12, 2005, available at [http://www.defenselink.mil/news/Dec2005/20051212_3622.html].

⁸ *DOD BRAC Report*, p. 27.

⁹ U.S. Department of Defense, *BRAC Transition, Assistance for DOD Civilian Employees, Base Realignment and Closure (BRAC) Information* (Washington: DOD, [May 15, 2005]), p. 1, available at [<http://www.cpms.osd.mil/bractransition>] (at bottom, select "download brochure").

installations with the potential for separating a large number of civilian employees presents major challenges to commanders and human resource personnel. While these installations will still have missions to accomplish, the employees will be stressed about their careers and employment security. In this atmosphere, productivity will suffer and the employees' overall quality of life may diminish. The Department has a number of mitigating placement, transition, and worker assistance programs to draw from....¹⁰

In order to assist with efforts to mitigate the impact of job separations (e.g., through reduction in force) and otherwise help civilian employees with transitions, DOD established a "BRAC Transition" website and created a brochure to assist civil service employees (appropriated fund employees) and nonappropriated fund (NAF) employees.¹¹ The website outlines several available resources, including job placement programs, separation incentives, and various benefit and entitlement programs, including some from other agencies.¹² This report focuses on DOD civil service (appropriated fund) employees.¹³

What Will Happen to Affected DOD Civil Service Employees?

When BRAC closures and realignments are implemented, there will likely be several implications and options for affected DOD civil service employees.¹⁴ The

¹⁰ *DOD BRAC Report*, p. 29.

¹¹ For the website, see [<http://www.cpms.osd.mil/bractransition/>]. The brochure is the previously cited U.S. Department of Defense, *BRAC Transition, Assistance for DOD Civilian Employees*. NAF employees, sometimes also called nonappropriated fund instrumentality (NAFI) employees, typically include personnel who work at post exchanges or commissaries. NAF employees are federal employees within DOD, but are not legally considered federal civil service employees (i.e., not deemed an employee for the purpose of most laws administered by the U.S. Office of Personnel Management). See U.S. Department of Defense, *Personnel Policy Manual for Nonappropriated Fund Instrumentalities*, DOD 1401.1-M, Dec. 1988, reissued Dec. 26, 2001, p. 17, available at [<http://www.dtic.mil/whs/directives/corres/html/14011m.htm>]. However, some laws that apply to federal civil service employees can be administratively adopted by regulation for application to NAF employees. For example, see U.S. Department of the Army, *Nonappropriated Funds Personnel Policy*, Army Regulation 215-3, Aug. 29, 2003, available at [<http://www.cpol.army.mil/library/naf/welcome.html>].

¹² For more information, see CRS Report RS22184, *Military Base Closures: Redevelopment Assistance Programs*, by Baird Webel.

¹³ For information about transition assistance specifically for NAF employees, see the BRAC Transition website, which provides customized information for civil service and NAF employees. For more on NAF employee policies, see, for example, U.S. Department of the Army, *NAF Employee Handbook*, Aug. 2004, available at [<http://cpol.army.mil/library/naf/handbook/>].

¹⁴ For press coverage after DOD released its initial recommendations, see Stephen Barr, "Help and Hope for Workers At Risk in Base Closings," *Washington Post*, May 15, 2005, (continued...)

sections below briefly identify a number of them. As noted in DOD's BRAC report, however, "[c]oncerns about the implementation of BRAC decisions are numerous and based on very installation-specific circumstances. For many of these concerns, sufficient information may be available only after BRAC decisions are finalized and installation-specific implementation plans are developed."¹⁵ Therefore, it appears that detailed information about these implications or options will emerge over time.

Reduction in Force (RIF)

Perhaps the most severe potential effect of BRAC on affected employees could be a reduction in force (RIF). Under delegated authority from the Secretary of Defense, RIF actions are approved by certain senior DOD officials. Redlegation of the approval authority to the lowest practical level is authorized when fewer than 50 employees are involuntarily separated through RIF, or when the RIF occurs as a result of BRAC. RIFs within DOD may not commence until 45 days after Congress has received the appropriate information about the action. Each employee affected by a RIF must receive a specific written notice of at least 60 full days (not counting notice delivery dates and effective dates) before the action becomes effective. The employee's labor representative is notified at the same time. When 50 or more employees in a competitive area are being separated, the state dislocated worker unit(s), chief elected official(s) of local government(s) where the separations will occur, and the Office of Personnel Management (OPM) must be notified in writing. Except in specific situations, RIF or other termination notices cannot be issued or made effective between December 15 and January 3.

DOD's final regulations to implement the RIF provisions of the National Security Personnel System (NSPS, described in a later section), which became effective on November 28, 2005, are different from the RIF rules that apply to other civilian employees government-wide. Under the government-wide regulations, an employee's retention standing in a RIF is based, in descending order, on tenure, veterans' preference, length of service, and performance (5 CFR §351.501(a)). Were a RIF to occur after the NSPS rules are fully implemented, in an installation covered by the NSPS, performance would precede length of service in determining retention standing (5 CFR §9901.607(a)). Under both the government-wide and NSPS regulations, a higher-standing employee could displace a lower-standing employee on the same retention list.¹⁶ DOD is to address changes to the RIF process included

¹⁴ (...continued)
p. C2.

¹⁵ DOD BRAC Report, pp. 28-29.

¹⁶ The regulations at 5 CFR §351.702(a), applicable to other civilian employees government-wide, provide that displacement may generally occur if the employee: (1) meets the OPM standards and requirements for the position; (2) is physically qualified to perform the duties of the position; (3) meets any special qualifying condition for the position; and (4) has the capacity, adaptability, and special skills needed to satisfactorily perform the duties of the position without undue interruption. Under the NSPS regulations at 5 CFR §9901.608(a), displacement may occur if: (1) the higher-standing employee is qualified for the position, consistent, as applicable, with 5 CFR §351.702, or the Department's own qualifications (continued...)

in the NSPS regulations to ensure that the rules are applied consistently across DOD components. An employee may appeal the RIF action to the Merit Systems Protection Board (MSPB) not later than 30 days after the RIF effective date. An employee in a bargaining unit covered by a negotiated grievance procedure that does not exclude RIF must use the negotiated grievance procedure. The employee may not appeal the RIF action to MSPB unless the employee alleges the action was based upon discrimination. The collective bargaining agreement covers the time limits for filing a grievance under a negotiated grievance procedure. Several authorities (i.e., VERA and VSIP, described below) are intended to reduce the number of involuntary separations.

Transfer of Function

According to DOD, if an employee's organization is realigned to another geographic location, the employee might or might not be offered the opportunity to move with the work.¹⁷ An employee's right of assignment depends on whether the employee's organization is being moved due to a "transfer of function." As DOD explains, a *transfer of function* "occurs when a function ceases in one location and is moved to one or more other locations that are not performing that specific type of work."¹⁸ In such a case, non-temporary employees would have the right to move with their work if the alternative at the losing organization were separation or demotion due to a RIF. If a realignment were not a transfer of function, an employee would not have the right to accompany the function to the new location. In such a case, DOD might give employees the opportunity to volunteer to relocate with the organization. If, however, such an employee does not volunteer, or volunteers but is not selected, the employee would be subject to a resulting RIF action and might be eligible for transition assistance.

Voluntary Early Retirement Authority (VERA)

Employees who are at least 50 years of age with at least 20 years of creditable service (or 25 years of service at any age) may be eligible for early retirement. These requirements apply to individuals covered by the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). Annuities for CSRS employees are reduced by 2% a year for each year the retiree is under age 55. Individuals serving under an appointment without time limit and continuously employed by DOD for more than 30 days before an installation's reduction or

¹⁶ (...continued)

applied consistent with other requirements in 5 CFR §351.702; (2) no undue interruption would result from displacement; and (3) the position of the lower-standing employee is in the same pay band, or in a lower pay band, as the position of the higher-standing employee (*Federal Register*, vol. 70, Nov. 1, 2005, p. 66205).

¹⁷ U.S. Department of Defense, "Base Realignment and Closure (BRAC) 2005 Frequently Asked Questions," question #17 for appropriated fund employees (hereafter, "BRAC FAQs"), available at [<http://www.cpms.osd.mil/bractransition/AF-BRAC.htm>].

¹⁸ Detailed information about transfers of function is available from U.S. Office of Personnel Management, *Restructuring Information Handbook*, module 4, available at [<http://www.opm.gov/rif/handbook/rih.asp>].

restructuring was approved are eligible for VERA. Employees who are involuntarily separated for misconduct or unacceptable performance, or who have received a specific RIF separation notice, are not eligible for early retirement. VERA is not an entitlement and may be offered to all employees or to specific groups of employees, depending on the circumstances of the reduction or restructuring.

Voluntary Separation Incentive Payments (VSIPs)

Employees who accept a VSIP (also known as a “buyout”) agree to separate from the workforce voluntarily by optional retirement, early retirement (under VERA), or resignation. Generally, employees must be U.S. citizens, have permanent appointments, and have at least 12 months of continuous employment with DOD to be eligible for a separation incentive. VSIPs are \$25,000 or the amount of severance pay an employee would receive under the standard formula, whichever is less, and are taxable. Individuals receiving an incentive payment who want to return to employment with DOD within 12 months of separation or with any federal agency within five years, must repay the full amount of the VSIP. Under a program called VSIP Phase II, cash incentives may be offered to encourage employees at installations that are not downsizing to resign or retire. This would create vacancies for individuals who are registered for the Priority Placement Program and who may be involuntarily separated because their installation is restructuring or closing.¹⁹

Job Placement Programs

Among the programs available to assist displaced civilian employees in continuing their careers in other federal agencies are the Priority Placement Program (PPP), Interagency Career Transition Assistance Plan (ICTAP), Reemployment Priority List (RPL), and job exchanges.²⁰ Generally, these programs involve some degree of priority placement within a certain geographic or commuting area and require the displaced individual to have a certain level of competency in order to be placed. Each also has certain registration requirements and time limitations. NAF employees are covered by a separate RPL and can be placed in civil service positions under an interchange agreement signed by DOD and OPM. DOD employees whose work is contracted out or whose bases are being closed must be given “the right of first refusal” for vacant positions (i.e., environmental cleanup and restoration or security) by the contractor retained to prepare an installation for closure or to maintain it after closure. Retraining and readjustment assistance (including career counseling, testing, and placement assistance) is provided to displaced federal employees under the Workforce Investment Act,²¹ which is administered through state employment security agencies.

¹⁹ Further details are available at [<http://www.cpms.osd.mil/bractransition/Separation.htm>].

²⁰ Fact sheets are available at [http://www.cpms.osd.mil/bractransition/Job_Placement.htm].

²¹ For discussion, see CRS Report RS22184, *Military Base Closures: Redevelopment Assistance Programs*, by Baird Webel.

Benefits and Entitlements

For civil service employees who are separated by RIF, transfer of function, or other displacement action, a number of “benefit and entitlement” programs would be available for eligible employees.²² DOD commanders and activity heads are authorized to use appropriated funds to provide certain assistance, such as career transition training, to employees adversely affected by BRAC. Outplacement subsidies could also be offered to other federal agencies to hire displaced DOD employees through reimbursement for moving expenses. Employees who are involuntarily separated may also be entitled to severance pay, extended employment for retirement or health benefits, or temporary continuation of health insurance coverage, among other entitlements and benefits.

Implications of NSPS and Labor-Management Relations

National Security Personnel System (NSPS)

Implementation of DOD’s NSPS could have implications in some respects for how DOD employees are affected by the BRAC process.²³ According to DOD,

Benefits such as health and life insurance, retirement, thrift savings plan, annual and sick leave, severance pay and moving expenses are untouched as a result of NSPS. Additionally, the Department’s primary tools for transition assistance for its civilians, such as outplacement services, priority placement and separation incentives, will be available to employees under NSPS. Eligibility for those programs and services is not affected by NSPS.²⁴

Nevertheless, it is possible that NSPS implementation might affect collective bargaining agreements and RIFs, with attendant implications for employees, as discussed elsewhere in this report. It is not yet clear, however, if or when the NSPS

²² Detailed fact sheets are available at [<http://www.cpms.osd.mil/bractransition/Benefits.htm>].

²³ The NSPS was enacted as part of Title XI of the National Defense Authorization Act for FY2004 (P.L. 108-136; 117 Stat. 1392, at 1621), and allows DOD to establish a new human resources management system for the agency, notwithstanding a number of provisions of Title 5, *United States Code*, which establish various policies related to management of the federal civil service. See CRS Report RL31954, *DOD’s National Security Personnel System: Statute, Regulations, and Implementation Plans*, coordinated by Barbara L. Schwemle. For a DOD overview of NSPS implementation plans and timing, see [<http://www.cpms.osd.mil/nsps/index.html>]. On Feb. 27, 2006, a federal district court enjoined subparts G, H, and I of the NSPS regulations, which involve adverse actions, appeals, and labor-management relations. An appeal of the decision is likely. See *American Federation of Government Employees, AFL-CIO v. Rumsfeld*, No. CIV. 05-2183 EGS (D.D.C. Feb. 27, 2006).

²⁴ U.S. Department of Defense, “BRAC FAQs,” question #28 for appropriated fund employees.

will be implemented for employees potentially affected by the BRAC process. According to DOD, BRAC will not affect the “overall implementation” of NSPS, and activities on the BRAC list will not automatically be excluded from “Spiral One” (the first phase) of the NSPS implementation. However, “[c]omponents will assess whether inclusion of a BRAC site in Spiral One is appropriate, considering such factors as the anticipated time frame for the closure/realignment and impact on the mission and the workforce.”²⁵

Labor-Management Relations

DOD employees are currently represented by 43 unions.²⁶ Although the Secretary of Defense has broad authority to take appropriate action to provide for the more effective and efficient operation of the agency, including the transfer and reassignment of any function or duty, the collective bargaining agreements that were negotiated by DOD and the unions may include provisions that have implications for how DOD employees are affected by the BRAC process.

For example, an agreement may include a negotiated grievance procedure that could be invoked in connection with a RIF action.²⁷ In *National Federation of Federal Employees v. FLRA*, a 2004 case involving non-professional employees at the U.S. Army’s Letterkenny Depot, whose activities were transferred following a decision by the BRAC Commission, the collective bargaining agreement that was negotiated between the parties included a provision that permitted the union to request bargaining within 10 days after receiving notice of a change in working conditions.²⁸

Although a collective bargaining agreement may include provisions that affect the BRAC process, such provisions could be nullified by the implementation of the NSPS. Section 9901.905(a) of the new NSPS regulations indicates that any provision of a collective bargaining agreement that is inconsistent with the regulations or DOD implementing issuances is unenforceable.²⁹ In addition, section 9901.917(d)(2) of the new regulations states that management has no obligation to bargain over a change to a condition of employment unless the change is “foreseeable, substantial, and significant in terms of both impact and duration on the bargaining unit, or on those employees in that part of the bargaining unit affected by the change.”³⁰ Thus, whether unions have a significant role in the BRAC process would seem to depend on the provisions of existing agreements, the NSPS regulations, and other DOD implementing issuances.

²⁵ *Ibid.*, question #27 for appropriated fund employees.

²⁶ 70 Fed. Reg. 66,120 (Nov. 1, 2005) (final NSPS rule).

²⁷ See, for example, *Snyder v. Dept. of Defense*, No. 00-3022, 2000 WL 380089 (Fed. Cir. Apr. 11, 2000).

²⁸ 369 F.3d 548 (D.C. Cir. 2004).

²⁹ 5 C.F.R. § 9901.905(a).

³⁰ 5 C.F.R. § 9901.917(d)(2).

Appendix A: Net Federal Civilian Job Changes, by State, Territory, and District of Columbia

Table 1. Net Federal Civilian Job Changes Under 2005 BRAC Commission Recommendations

Location	Net Federal Civilian Job Changes	Location	Net Federal Civilian Job Changes
Alabama	1,405	Montana	114
Alaska	-301	Nebraska	-232
Arizona	-387	Nevada	75
Arkansas	173	New Hampshire	-5
California	-1,387	New Jersey	-3,783
Colorado	-687	New Mexico	-217
Connecticut	-235	New York	514
Delaware	126	North Carolina	951
District of Columbia	-3,145	North Dakota	-70
Florida	1,120	Ohio	1,347
Georgia	-2,254	Oklahoma	-45
Guam	-31	Oregon	-625
Hawaii	-357	Pennsylvania	-990
Idaho	-98	Puerto Rico	-48
Illinois	-832	Rhode Island	229
Indiana	813	South Carolina	-728
Iowa	247	South Dakota	27
Kansas	306	Tennessee	314
Kentucky	1,667	Texas	-919
Louisiana	-549	Utah	-930
Maine	-94	Vermont	51
Maryland	7,773	Virginia	-10,838
Massachusetts	-672	Washington	-74
Michigan	730	West Virginia	0
Minnesota	-124	Wisconsin	-278
Mississippi	-429	Wyoming	0
Missouri	-2,492		
Total Net Federal Civilian Job Changes			-15,874

Source: U.S. Defense Base Closure and Realignment Commission, *2005 Defense Base Closure and Realignment Commission Report*, Appendix O