



DEPARTMENT OF THE ARMY
OFFICE OF THE DEPUTY CHIEF OF STAFF, G-1
6600 MELOY DRIVE, SUITE 134
FORT BENNING, GEORGIA 31905



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1 June 2007

SUBJECT: Fort Benning CPAC Staffing Update 6-2007

1. This publication is issued to ensure the Fort Benning Commanders, managers, supervisors, and employees are kept informed of employment and staffing issues. Future updates will contain updated information on specific employment topics (i.e., compensation, recruiting procedures, travel entitlements, classification issues, NSPS implementation information, etc.) and will be issued on a monthly basis.

This document is a compilation of articles written by CPAC staff members as well as information excerpted from various sources which include, but is not limited to, the Government Executive Newsletter, FedWEEK, the Federal Manager's Daily Report, and the ABC-C Newsletter.

2. Hiring Graduates of the National Security Education Program (NSEP).

The NSEP was created in 1991 to enhance the capacity of the Federal sector to deal effectively with challenging global issues, specifically strengthening our nation's economic competitiveness and enhancing international cooperation and security. National Security Education Program participants are awarded scholarships and fellowships to study abroad in areas deemed critical to U.S. national security. Students' fields of study cover a wide range of disciplines including business, economics, law, applied sciences, history and social sciences, all with special focus on cultural areas and associated languages of particular interest to the Department.

Selecting officials may take advantage of this opportunity. The NSEP produces a vital pool of highly motivated applicants who are uniquely skilled in critical foreign cultures and languages. Recipients of NSEP scholarships and fellowships incur a service requirement. To meet these service requirements, NSEP graduates may be hired using the Schedule A 213.302® excepted service appointing authority, in addition to any other appointing authority for which they are eligible (e.g., competitive examining authority, Veterans Readjustment Authority, Veterans Employment Opportunity Act). The Schedule A 213.3102® authority allows individuals to be appointed on a time-limited appointment for up to 4 years. This Authority can be used for any position for which you are recruiting, without regard to whether it was designated an NSEP position.

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The website at <http://www.nsepnet.org/> contains a database of NSEP graduates with foreign language and cultural knowledges. These individuals are immediately appointable for time limited appointments under schedule A 213.3102 (r) up to 4 years, but can also be considered under any other applicable appointing authority, e.g., the Federal Career Intern Program (FCIP). Managers and supervisors are highly encouraged to consider this source of candidates.

Log on to <http://www.iie.org/programs/nsep/default.htm> or contact your servicing HR professional for additional information.

3. **Relatively Few Use Dependent Care Benefits.** About 54 percent of federal employees reported having either child or adult dependent care needs, or both, and about 19 percent of employees currently without dependent care needs expect to have them in the future, according to an analysis of survey results done by GAO. However, less than 10 percent of employees with children in care prior to first grade reported using federal child care centers, in many cases saying they could not because of lack of availability and the cost. Only 2 percent of employees are receiving dependent care benefit subsidies from their agencies and only 7 percent are using dependent care flexible spending accounts--either because they do not pay for such benefits, do not know about them or do not know how to use them.

4. **Lawmakers Probe Agencies' Diversity Efforts.** Outreach to the broadest possible pool of applicants is essential to increasing diversity in the senior levels of government, agency officials have said.

At a hearing before the House Oversight and Government Reform Subcommittee on the Federal Workforce, representatives from six agencies and the U.S. Postal Service indicated that while they have made great strides in increasing the number of women and minority employees at their respective agencies, their greatest challenge is drawing a more diverse pool of applicants.

"This issue is important because the federal workforce should be as diverse as the people it serves," said Rep. Danny Davis, D-Ill., chairman of the subcommittee. "It is simply good business and good government."

The hearing came as officials are becoming increasingly concerned over the government's aging workforce, with 90 percent of senior executives eligible to retire within the next decade.

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Nancy Kichak, associate director for strategic human resources policy for the Office of Personnel Management, said OPM has several initiatives aimed at diversifying the applicant pool, including an eight-part television ad series launched last year and proactive participation in federal career day and job fairs nationwide. Both programs "have been targeted for their potential to help us build a highly qualified and diverse applicant pipeline," she said.

Kichak also pointed to OPM's latest annual Federal Equal Opportunity Recruitment Program report to Congress, which found the government to be a leader in employing minorities. The report found that minority representation increased overall between 2005 and 2006, with minority groups better represented in the federal workforce than in the civilian labor force.

Additionally, OPM provides agencies with a tool that shows them how to integrate diversity values into their leadership succession planning, Kichak said.

Davis asked how performance-based pay systems in some agencies, particularly the Patent and Trademark Office, have affected agencies' ability to promote diversity.

Vickers Meadows, chief administrative officer for PTO, said performance management actually enhances her agency's ability to promote diversity. "It holds executives more accountable to leadership and ensuring diversity," she said.

Still, some groups argued that the government is not doing enough, especially in the face of a retirement wave. "We must have a replacement workforce that will represent the mosaic of America," said William Brown, president of the African American Federal Executives Association.

Brown recommended that Congress work to ensure that OPM expand its SES Candidate Development Program, which trains and prepares employees to become senior executives. He recommended the program be expanded and funded to accommodate 200 positions, adding that last year, OPM received approximately 5,000 applications, but accepted only 20 people.

Rhonda Trent, president of Federally Employed Women, argued that agencies also need more training programs for women and minorities, providing them with the skills necessary to move into the senior ranks.

Trent and representatives of other groups also said the federal government lacks a mentoring program for women and minorities. They recommended that OPM

promote such a program across government and make incentives available for senior leaders to participate.

Davis said he planned to ask the Government Accountability Office to conduct a new study on diversity in the SES and the Postal Career Executive Service. "The purpose of the study will be to continue to track agency results in increasing diversity," he said.

5. Bill to Bar Contractors From Running Defense Programs. Concerned the Defense Department is ceding too much program management to contractors, the House Armed Services Committee has included language in the fiscal 2008 defense authorization bill that would curb the military's growing reliance on major defense firms to execute large, complex acquisition programs.

This unpublicized provision in the bill, scheduled for House floor action Wednesday, would prohibit the Defense Department from issuing any new contracts to private-sector "lead system integrators" to manage and supervise major weapons programs after Oct. 1, 2011.

That effective date would give the department four years to hire and train new acquisition managers to run its massive weapons programs, reversing a decade-long trend that has seen cuts to in-house acquisition staff and the outsourcing of many development and procurement responsibilities, House aides familiar with the language said.

Current programs that have relied on industry lead system integrators -- such as missile defense and the Army's Future Combat Systems -- would be largely unaffected by the language, aides said. One aide said the provision would likely only apply to current programs if the Pentagon decides to put an existing contract up for competitive bid again.

Also apparently not covered by the provision would be the Coast Guard's troubled Deepwater modernization program, managed by a joint venture of Northrop Grumman Corp. and Lockheed Martin Corp. for the Homeland Security Department.

The defense industry has yet to react publicly, as officials at some major firms and defense trade groups were still reviewing the bill Tuesday while others said they were unaware of the provision.

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But two defense industry officials defended the use of private sector lead system integrators, saying they can bring technological expertise to the development of weapons systems. Many cost overruns, schedule delays and other problems that plague some major defense programs are often the result of changing requirements and funding cuts, and cannot be attributed solely to industry teams, they added.

The provision, sponsored by Armed Services ranking member Duncan Hunter, R-Calif., and Seapower and Expeditionary Forces Subcommittee Chairman Gene Taylor, D-Miss., was added to the bill as part of a package of noncontroversial amendments approved during the full committee markup last week.

In addition to curtailing the use of lead system integrators, the language also would require the Defense Department to study its acquisition workforce and identify and fill gaps in skills needed to effectively manage programs. The Defense Department cut its acquisition workforce by more than 50 percent between 1994 and 2005.

"I think this is really a savvy move by [the House Armed Services Committee] to address the acquisition workforce issue," said Jeff Green, a former Republican committee aide who now runs a lobbying firm that represents several small defense contractors.

Supporters of the LSI concept have long argued that placing a system integrator in charge of a program could result in better technology innovations because industry often has better knowledge and expertise of rapidly developing commercial technologies that could be applied to weapons systems.

But the LSI concept, in which the government hands over to a contractor or team of contractors the broad responsibilities to do everything from technology development to final testing of a new weapons system, has been a concern of lawmakers worried that the arrangement could limit government oversight and ultimately drive up costs on programs that already are very expensive.

Indeed, Paul Francis, director of acquisition and sourcing management at GAO, told the House Armed Services Air and Land Forces Subcommittee March 27 that the Army's relationship with Boeing Co., which has teamed up with Science Applications International Corp. as the lead system integrator for the Future Combat Systems program, posed "long-term risks" to the government.

"The government can become increasingly vested in the results of shared decisions and runs the risk of being less able to provide oversight compared with an arms-length relationship, especially when the government is disadvantaged in terms of workforce and skills," Francis said.

Besides Future Combat Systems and missile defense, many large ship programs -- including the Littoral Combat Ship and the DDG-1000 destroyer -- rely on private sector lead system integrators.

Irked by cost increases on the Littoral Combat Ships being built by Lockheed Martin, Navy Secretary Donald Winter announced last month he wanted to abandon the lead system integrator approach to shipbuilding and have the Navy reassert its control over the program.

6. Group Urges Funding of Civilian Units to Back up Guard. With National Guard units continuing to deploy overseas in large numbers, a Washington-based think tank is urging the federal government to provide funding for a civilian corps in every state to serve as a backup to the Guard during natural disasters and other domestic crises.

In its report "Caught off Guard: The Link Between our National Security and Our National Guard," the Center for American Progress recommended increasing the Homeland Security budget by \$1 billion to establish a corps of doctors, firefighters, city planners and other emergency officials in each state.

Over the last several years, 23 states and Puerto Rico have set up -- and funded -- civilian corps, which typically report to the top National Guard official in each state and fill in any gaps left when Guard units deploy, said Lawrence Korb, a senior fellow at the Center for American Progress and the Pentagon's personnel chief during the Reagan administration. In Virginia alone, the volunteers logged roughly 1.3 million working hours last year.

The extra \$1 billion for the Homeland Security Department would help set up these civilian teams in other states and also contribute needed money to train volunteers, Korb said.

With their exclusive focus on responding to local emergencies, such civilian teams are different from the "Civilian Reserve Corps" that President Bush proposed in his State of the Union address in January. Bush tried to jumpstart a moribund proposal to create a unit of civilian volunteers to augment U.S. reconstruction and stabilization efforts in Iraq or Afghanistan.

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The report released Monday is yet another in a string of sobering assessments on the state of the National Guard, which is struggling to meet the demands of both state and federal mission requirements.

More than 417,000 National Guard and Reserve troops have deployed to Iraq or Afghanistan -- roughly 80 percent of the military's reservists. Of those, more than 84,200 troops have deployed more than once, according to the study.

Within the National Guard, all 16 of the force's enhanced brigades -- which have been set up to deploy rapidly -- have deployed overseas at least once in the last several years.

The constant deployments have contributed to a \$40 billion equipment shortfall for the Army and Air Guard. On average, Army Guard units, which have borne the brunt of the overseas deployments, have only 40 percent of their equipment on hand.

"Ground troop levels in both [Iraq and Afghanistan] could not be sustained at the current rate without the numbers and skills provided by the men and women of the Army National Guard," according to the report. "Continued heavy use of Guard forces, however, has raised concerns about whether it can successfully perform both its domestic and international missions effectively."

To alleviate stress on the Guard forces, the report recommends increasing active Army and Marine Corps end-strength levels by at least 100,000 troops -- slightly higher than the 92,000 additional troops requested by the White House. The report also suggests making the military's TRICARE healthcare system available to Guard troops once they join. That effort, Korb said, would cost roughly \$5 billion over the next five years.

7. Supervisors More Likely to be Disciplined than Non-Supervisors.

Contrary to a commonly held notion among federal employees, supervisors are more likely to experience adverse actions for cause than non-supervisors, the Merit Systems Protection Board has said.

It said OPM's Central Personnel Data File bears this out, but only after controlling for factors such as age, length of service, race, gender, agency, etc., because supervisors tend to serve for a longer period of time than other employees.

For example, a white, 40-year old male GS-14 supervisor with 15 years of service is more likely than a non-supervisor with like- traits to receive adverse action for cause, MSPB said.

It said that while the supervisor would only be 10 percent more likely to receive adverse action, it's worth noting that pay, length of service and other factors play a larger role in who receives adverse action.

8. **DoD Should Plan for Lost NSPS Momentum, OPM Says.** Given the complexity of the Defense Department's National Security Personnel System and turnover in senior leadership, DoD should anticipate and plan for losing implementation momentum, OPM has said.

It said DoD effectively planned for NSPS, and that although the rollout has been limited that data so far indicate it is on track to meet published milestones.

OPM said the establishment of a NSPS program executive office has been key to successful implementation and that DoD has structured a well-organized and integrated phased implementation approach -- though it added that several progress elements could not be assessed because data is lacking.

As a result of the department's "meet and confer" process with unions, focus groups and employee surveys, final NSPS regulations were changed, the report said, adding that Department should continue to engage employees as NSPS evolves and is implemented.

Continued success in implementing NSPS is dependent on continued stakeholder involvement, OPM said.

It also said DoD should consider making some NSPS training courses mandatory throughout the department.

9. **Breach of Settlement Agreement Decision.** In *Greenhill v. Dept. of Education*, D.C. Cir. No. 06-5030 (April 6, 2007), the United States Court of Appeals for the District of Columbia Circuit held that a former federal employee's claim for a breach of a Title VII settlement agreement was a contract claim (in excess of \$10,000) and thus was under the exclusive jurisdiction of the Court of Federal Claims. The alleged breach in this case came from a negative reference from the employee's former supervisor, which resulted in the employee losing a job offer.

This case is interesting for several points. First, it is the amount of damages claimed that established jurisdiction. In this case, Ms. Greenhill claimed over \$200,000 worth of damages. However, to get her case back to district court, it was alleged that the settlement agreement barred damages for a breach. The

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court noted that since Ms. Greenhill claimed damages in excess of \$10,000, and was not relinquishing that claim, jurisdiction lay in the Court of Federal Claims.

Another argument rejected by the court was that the court should have "read" a claim of retaliation in the complaint, and thus found that the district court had jurisdiction over the retaliation claim, and the appended breach claim. Although noting that pro se complaints (those filed without a lawyer) are held to a less stringent standard than formal pleadings drafted by lawyers, the court of appeals found that the vague references to discrimination did not require the district court to go on a "fishing expedition" and read a claim of retaliation into the complaint.

Lastly, the court of appeals rejected the claim that the Court of Federal Claims did not have jurisdiction over this matter because it would have to "interpret" a federal statute such as Title VII. The court noted that the Court of Federal Claims repudiated this argument and drew a critical distinction between actual discrimination claims which Title VII provides the exclusive remedy and breach of settlement claims which fall outside the scope of Title VII. In those cases, held the Court of Federal Claims, the cases involve settlement agreements which are straightforward contract claims within the purview of that court.

This information is provided by the attorneys at Passman & Kaplan, P.C.

10. **Court Backs Pentagon on NSPS Rules.** A federal appeals court has sided with DoD and against a group of federal unions contesting the labor-management relations and several other provisions of the national security personnel system, overturning an injunction issued by a lower court against the rules a year ago. The appeals court for the District of Columbia in a split 2-1 decision held, in essence, that under the law creating NSPS, DoD gained authority but in the case of union rights only for about 30 more months, unless re-authorized--to waive many standard provisions of civil service law.

The decision turned on a detailed analysis of the 2003 law authorizing NSPS, which in various sections speaks of retaining such rights and in others of waiving them.

Unions objected to numerous provisions of NSPS relating to labor relations, in particular: imposing conduct restrictions on union representatives that unions said would hamper their ability to advocate for employee interests; making DoD policy issuances override any conflicting provisions of bargaining agreements; and allowing management to avoid negotiations over issues including assigning work, determining the technology, methods and means of performing work and

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the arrangements for employees adversely affected by the exercise of management rights. The court majority found that the law's language is structured so as to give DoD temporary authority through November 2009 to carve out a separate labor-management system on labor issues and that the NSPS rules were within the department's discretion. The dissenting judge said that the law was too ambiguous to justify the planned changes in bargaining rights. The majority also found that certain labor provisions are not subject to the sunset clause, and grant management sole rights in areas such as establishing job qualification requirements, methods of assigning or promoting employees, and methods of reducing staff levels.

The appeals court's ruling also sided with DoD on several other objections the unions raised to the NSPS rules. It rejected the union contention that an internal DoD "national security labor relations board" that would take over many of the adjudicatory powers of the Federal Labor Relations Authority for DoD employees would not be sufficiently independent from management. Also, it found that the revised appeal rights--including a new layer of internal review before employees can appeal to MSPB--were sufficient to give employees the required "fair treatment."

However, as in a similar case involving DHS that was decided last year, the court held that certain other appeals provisions were not yet ripe for review because no one has been subjected to them yet. Those include limits on MSPB's discretion to lessen the penalties chosen by management in disciplinary cases, and mandating firing for certain offenses.

Changes in job classification, performance evaluation and pay were not before the court.

Although the lower court decision had blocked the labor relations and appeal rights provisions, DoD has moved forward with carrying out other parts, such as pay banding with pay for performance, although only for about 114,000 non-union general schedule employees. The decision apparently frees DoD to apply NSPS on a much broader scale, but the unions plan to appeal further, starting with a request that the full appeals court hear the case. The dispute could remain in legal limbo for some time, potentially ultimately to be decided by the Supreme Court. Also, it's uncertain as a practical matter how fast DoD could move to more broadly implement NSPS, given the amount of groundwork that would require. It's unclear, for example, when or if DoD will apply the revised appeals rights to those already in NSPS, or apply NSPS to unionized employees, knowing that the labor provisions could expire in just over two years and with

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possible further court action hanging over its head. In addition, Congress is considering repealing the labor relations and appeal rights provisions of NSPS, while providing for bargaining on the pay provisions (see below). DoD said it is "evaluating the ruling prior to making any decisions on the next steps."

The House has passed and the White House has threatened to veto a DoD authorization bill (HR-1585) that would repeal much of DoD's national security personnel system. The measure would repeal the department's authority to restrict union rights and revamp adverse action procedures and employee appeal rights, while requiring that a revised pay system under NSPS be subject to union negotiations. An administration statement said that DoD is phasing in NSPS to assess and adjust it and that DoD "already has made some adjustments based on employee feedback.

Flexibility is needed given the department's role in preparing for and responding to ever-changing national security threats," it said. The statement also said that the changes would "back away from pay for performance" and that bargaining on the pay system would "so administratively burdensome to design and operate that the effect of the bill is in essence a total revocation of the flexibilities Congress granted the department."

The measure also recommends a 3.5 percent January 2008 military raise, a figure that could be applied to federal employees later in the budget process in the name of pay parity. It further includes several continuing or new restrictions on contracting out studies. The administration opposed those changes as well, although it did not threaten a veto over them. It called boosting the raise "unnecessary" and said the changes to contracting policy would delay, complicate and restrict the use of that policy while hampering management's ability to decide where to obtain needed services.

The House passed the bill by a margin easily large enough to override a veto, although the annual DoD spending bill typically commands such bipartisan support so the margin does not necessarily indicate the outcome of a veto and override fight.

The House Armed Services Committee said in a statement that while DoD could carry out a pay for performance system for those under NSPS under the language, it would have to do so under the general policies that have been used in alternative personnel policy "demonstration projects" at DoD and elsewhere. That would mean, among other things, that an agreement would have to be negotiated between the department and the unions. "In addition, the modified NSPS pay-for-performance system would guarantee that employees continue to

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receive their annual nationwide and locality adjustments," the statement said. "The committee makes this recommendation out of concern that under the current implementing regulations for NSPS, it is possible for employees to receive a bonus, but not receive a nationwide or locality adjustment. Such a practice affects the employee's base pay, which is used for calculating retirement benefits."

11. **New Job Search Site Aims to Enhance Federal Recruitment.** An online job search company has unveiled a Web site dedicated to matching job seekers with opportunities in the federal government.

WorkforAmerica.com, launched May 7 by CareerBuilder.com, aims to help expedite the federal government's recruitment process by connecting job candidates interested in public service with key federal agencies.

To develop the site, CareerBuilder worked with the nonprofit Partnership for Public Service, which provides content and information to help prospective employees not only learn about the opportunities in government but also work through the federal hiring system, said Max Stier, president of the Partnership.

"We need to see more information out about job opportunities in the federal government," Stier said. "Lots of quality people who are looking for jobs go to the CareerBuilder site ... this is information about government service that is sorely needed across the board."

The move comes as the government faces a potential wave of exits over the next decade, as about 60 percent of federal workers overall and 90 percent of senior executives become eligible for retirement.

"The U.S. labor force is shrinking as a large number of baby boomers retire and smaller generations enter the workforce," said Stan Paul, general manager of CareerBuilder.com's government services group. "Realizing the expansive reach of the Internet, more government employers are adopting online recruitment as an integral part of their recruitment strategy."

CareerBuilder.com facilitates an average of more than 1.2 million searches for government jobs each month, according to a release. But the new federal-centric site will allow agencies to brand themselves through job postings and specialized Web pages with details on their mission, benefits, news and career opportunities.

"We felt that there was a void in the market for the agencies to brand themselves," Paul said. "One of the biggest things we hear from job seekers is that they don't hear about opportunities in the government."

While job searches are conducted directly through CareerBuilder.com, which charges agencies to post ads, WorkforAmerica is designed to provide additional exposure and in-depth information about federal opportunities, at no additional cost to the agencies that advertise, Paul said.

The Office of Personnel Management maintains a federal job search site, USAJobs.gov, which has proved to be one of the government's most successful tools for recruiting and retaining top talent. The agency also has run a televised and online ad campaign, which has resulted in a spike of tens of thousands of additional visits to USAJobs from residents living in the media markets where the ads have aired, OPM Director Linda Springer said in March.

OPM declined to comment on the new site.

So far, agencies like the CIA and the Homeland Security, Veterans Affairs, Energy and Navy departments have used WorkforAmerica. It is "something they have found value in," said Jennifer Sullivan, a spokeswoman for CareerBuilder.

Paul said the company will begin marketing the site through print and local radio in Washington. He said the site is not designed to compete with USAJobs, but rather to enhance the government's ability to promote and hire talented people.

12. **Getting to the SES.** A federal employee's ultimate pay raise comes with entrance to the Senior Executive Service, where salaries top out at about \$170,000 a year.

But to snag one of the 6,000 or so spots in the SES, employees have to attain a very specific set of skills and knowledge. The Office of Personnel Management calls them [Executive Core Qualifications](#). There's a myriad of them, and they can be hard to demonstrate. Employees looking to make the jump to the SES are advised to tailor their career moves with the qualifications in mind.

The criteria were developed from a 1991 OPM survey of 10,000 supervisors and managers in public and private sectors.

The five qualifications are broken down into a number of subsections. For the "Leading People" category, for example, employees must demonstrate that they

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can develop other employees, leverage diversity, build teams and manage conflicts. That's hard to prove. OPM suggests training as one way to get there.

As a result, such training has an audience. In late April, the African American Federal Executives Association announced a new training initiative for its members at its annual conference in Williamsburg, Va. It's a leadership development program that will pair current and retired SES members with up-and-coming federal employees to help them with resumes and interview techniques, and give them a chance to gain needed experience.

The program will start in September, and about 75 people immediately signed up.

"We're swamped, absolutely," said William Brown, the association's president and a former senior executive retired from the Army Corps of Engineers. "I was surprised at how quickly everyone jumped on it."

For employees who don't belong to the AAFEA, there are many similar organizations that offer training courses, though not all are as comprehensive. These include Federally Employed Women, the Society of American Indian Government Employees, and the Deaf and Hard of Hearing in Government group. The Chief Human Capital Officers Council houses the announcements for many of these training programs on its [Web site](#).

OPM also offers workshops on obtaining the qualifications to reach the SES. Check with your human resources office to see if OPM is coming to your agency, or to request a workshop. In the meantime, the Commerce Department keeps a Webcast of a session from last year on its [Web site](#).

OPM also suggests -- not surprisingly -- that wannabe SESers attend its [overnight training programs](#) at the Federal Executive Institute and Management Development Centers. They've even got a class called the Senior Executive Assessment Program in Colorado. For about \$6,000 and one week of your time, you will "receive feedback from multiple sources, including superiors, peers, subordinates, coaches, assess your potential for SES selection or rising to higher SES levels, receive personalized performance assessments on the ECQs necessary for the SES and develop an Individual Development Plan to improve your ECQs."

Perhaps the clearest road to the SES is the [Senior Executive Service Federal Candidate Development Program](#), which after completion allows employees to

be selected for SES jobs without normal competition. The program is tough to get into, though. In 2004, 50 were accepted out of 4,700 applicants. Brown's group and others are asking OPM to expand it.

13. **Properly Compensating Employees: "Suffer of Permit" Overtime Work.**

Scenario: Without advising his supervisor of the need for additional time to complete assigned work, an employee comes in over the weekend to work on a major project. The following Monday morning, the supervisor accepts the completed project. Two years from the date on which the [weekend] work was performed, the employee submits a claim for 18 hours overtime pay. Must the Agency pay the employee?

The 1938 Fair Labor Standards Act* (FLSA), as amended, introduced a new concept regarding overtime work into the Federal Service. Under this concept, a covered employee becomes entitled to overtime compensation for hours worked in excess of 40 in a week for all overtime work which management approves or "**suffers or permits**" to be performed. Suffered or permitted work means any work performed by an employee for the benefit of an agency, whether requested or not, appropriately approved or not, when the employee's supervisor accepts the benefits of that performed work. Left unchecked, this practice could potentially lead to unexpected budgetary obligations.

Under FLSA, management cannot accept the benefits of a covered employee's work without compensating the employee for that work. FLSA covered employees, who work for the benefit of the agency, prior to or after the established shift hours or during the prescribed lunch period, are entitled to compensation. Accordingly, if a manager/supervisor knows of or has reason to believe work is being performed and has not curtailed the work, overtime or compensatory time) *must* be paid for the extra work. This principle applies whether or not the employee was specifically requested to do this work. It follows that if the supervisor did not know the work was being performed nor accepted the benefits of the work performed, he/she had no opportunity to prevent the work; therefore, the supervisor did not "suffer or permit" the work.

Suffer or permit overtime payment could occur if a manager notices his/her employee answering the phone or scheduling work during his/her lunch period. If Management wishes not to be accountable for potential, future overtime claims, he/she may preclude reoccurrence of this work by having workers eat in a different area (i.e., not at the reception desk); preventing access to the reception area during lunch; or, simply by directing that no work be done during the scheduled lunch period and following up with disciplinary action as necessary.

Additionally, supervisors may inadvertently fall into payment of suffer and permit overtime by assigning a report at the end of the day with a suspense for the following morning. This would be considered work requiring compensation. Obviously the report would have to be done after work hours [when the employee was *not* scheduled for work]. The manager needs to decide in advance, if they want to pay overtime or change the suspense.

The same concept exists for employees who are exempt from FLSA; however, in these instances, the supervisor may *require* the employee to work for compensatory time instead of overtime.

Ignorance of the intricacies of suffer or permit overtime can have serious, costly repercussions. The American Federation of Government Employees (AFGE) won additional money for non-paid overtime to the tune of \$200 million from the Social Security Administration approximately 10 years ago. Twenty million was awarded in June 2005 to Department of Security, Immigration and Customs Enforcement employees, [formerly a separate entity but now a part of DHS], due to "off the clock" lunch and travel to a duty stations performed between June 2, 1991 through May 28, 1998.

Claims are subject to a six year statute of limitations.

*For additional information on the FLSA, see "Tips and Tidbits 4-2007".

14 **Human Resources (HR) for Supervisors**. The HR for Supervisors Course is highly recommended for all Department of Army civilian (DAC) and military supervisors of appropriated fund (APF) civilian employees who supervise at least 3 appropriated fund DAC employees. The course is 40 hours long and is intended to help the supervisor in performing his/her HR management duties. In addition to teaching the participants about HR regulations and processes, the course introduces them to the automated HR tools. Completion of this course can enhance the supervisor's confidence and performance. The course includes the following modules:

- Overview of army CHR (includes coverage of Merit System Principles and Prohibited Personnel Practices)
- Staffing
- Position Classification (includes an introduction to CHR automated tools such as CPOL, ART, Gatekeeper and FASCLASS)
- Human Resource Development
- Management Employee Relations
- Labor Relations

- Equal Employment Opportunity

The course includes lectures, class discussion and exercises. There is a pre and post test administered at the beginning and end of the course. The course does not address supervision of non-appropriated fund (NAF) or contractor employees. The next course is scheduled for **16-20 July 2007 and will be conducted from 0800 to 1630** in building #6, classroom #225. Please see the schedule below for other class start dates. The point of contact for this course is Ms. Stephanie Carpenter, Fort Benning CPAC, 545-2681.

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15. **RPA and ART Workshop**. The Fort Benning CPAC HR specialists are available to conduct RPA and ART desk-side walkthroughs and/or workshops to assist managers/supervisors and new DCPDS account holders with accessing and using DCPDS, ART, initiating RPAs, creating Gatekeeper Checklists, forwarding and tracking RPAs, generating reports and printing SF 50s. Training can be accomplished via individualized sessions or activity specific workshops upon request. If you desire training of this nature, please contact your servicing HR specialist to arrange for scheduling.

16. **Job Aids Available on the Web**. Lotus ScreenCams (how-to-movies) are available to assist DCPDS users with DCPDS, Army Regional Tools (ART), Oracle 11i and other automation tools. ScreenCam movies ART Logon, Ghostview, Gatekeeper, Inbox Default, Initiating an RPA, Logging On, Navigator, RPA Overview and RPA Routing are available on the web at: <http://www.chra.army.mil/>. Click on HR Toolkit and then click on the name of the movie to download or play it. Managers/supervisors and administrative personnel responsible for initiating RPAs are encouraged to review this site and check out these new tools. ART Users Guide has been updated and provides descriptions of and instructions for using tools available in ART, including such tools as Employee Data, Inbox Statistics (timeliness and status information about personnel actions), Organization Structure (information about positions in various organizational elements), and many more tools. It is intended for use by managers, resource management officials, administrative officers, and commanders as well as CPAC and CPOC staff members. There is both an on-line and downloadable Word version (suitable for printing).

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In addition, to the ART Users Guide, there is a Defense Civilian Personnel Data System (DCPDS) Desk Guide which provides how-to information about tasks and functions that end users might need to perform in DCPDS, such as initiating a Request for Personnel Action (RPA) and creating a Gatekeeper Checklist. The ART Users Guide and the Desk Guide can be accessed from the CHRA web page at: <http://www.chra.army.mil/>, by clicking on HR Toolkit. In addition to these tools the Fort Benning CPAC staff is available to assist you in accessing DCPDS, ART, initiating RPAs, creating a Gatekeeper Checklist, forwarding and tracking RPAs, generating reports and printing an SF 50. If you have any questions or need assistance, please contact your servicing HR specialist to arrange a time so we can come to your office to help you.

17. **Emergency Contact (Next of Kin) Database**. Information on the Emergency Contact Database is located on the Civilian Personnel on Line (CPOL) website <http://www.cpol.army.mil/>. It can be accessed from the CPOL homepage by clicking on the link for "Emergency Guidance and Resources," and then clicking on "Emergency Contact Database" Managers need to keep reminding their civilian employees of the need to have their current emergency contact information on file in the Emergency Contact Data Base. In addition, supervisors and managers are required to conduct periodic validations, with employees, to ensure the accuracy of their data. If assistance is needed, please contact project e-mail account at echelp@asamra.hoffman.army.mil.

18. **Fort Benning CPAC Homepage**. Please log on to our website at <https://www.benning.army.mil/Cpac/Index.htm>. If you have suggestions on ways to improve or recommendations for information to add, please contact the undersigned.

*BLANCHE D. ROBINSON
Human Resources Officer
Fort Benning CPAC
Phone: 545-1203 (ComL); 835-1203 (DSN)
E-Mail:
blanche.d.robinson@us.army.mil*