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PECP-SCR-H

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SUBJECT: Fort Benning CPAC Staffing Update 9-2006

1. This publication is being issued to ensure that Fort Benning managers and employees are kept informed of employment and staffing issues. Future staffing updates will be published on a monthly basis.

2. **Another Raise Recommendation Could Be on Way.** The White House has another opportunity coming to stake out its position on the January 2007 federal pay raise, since under federal pay law the President may recommend by the end of August an "alternative" pay raise. The administration might use its opportunity to once again advocate the 2.2 percent increase it recommended in its budget proposal earlier this year, rather than the 2.7 percent amount being considered in Congress. That would be one more factor at play in the appropriations process as Congress works after reconvening following Labor Day on spending bills for the budget year that starts October 1.

The "alternative" raise figure is important mainly only if Congress fails to enact a figure before the raise is due to be paid. In that scenario, which has happened in several recent years, the alternative figure would kick in by default if Congress doesn't enact, and the President doesn't sign, legislation containing a different figure by the end of the calendar year. However, that is rare; in most cases, the alternative figure is overridden by a final action on the raise agreed to by Congress and the White House by the end of the year. It appears increasingly likely that Congress will have to return for a lame-duck session after the November elections, when final action on spending bills is expected to take place.

3. **FEHB Premium Announcement in Offing.** New rates and coverage terms under the Federal Employees Health Benefits (FEHB) program are typically announced in early September, in preparation for the open season that runs from mid-November through mid-December for electing coverage for the following calendar year. Premiums are expected to increase once again as FEHB follows general trends in the health insurance market and continues to see the effects of a relatively aged enrollee population that is reflected in many ways, including in prescription drug costs. Coverage terms are not expected to change greatly, in part because the Office of Personnel Management earlier this year in its "call letter" to carriers outlined only relatively modest changes. Any plan dropouts or new joiners also are announced at the same time; one aspect that will be watched will be the trend in high deductible health plans, which the Bush administration has been encouraging.

4. **Dental-Vision Program Premiums Coming.** OPM expects to make final contract awards at the end of August and announce in September the premiums for the new Federal Dental and Vision Insurance Program, an offering that will be separate from the FEHB but whose open seasons will run concurrent with the FEHB open seasons, starting in November. OPM will conduct an educational campaign in the period leading up to the open season. There will be several carriers for each of the types of coverage; employees and retirees will be free to choose either type, both or neither.

5. **EEOC Releases Data on Workforce.** The EEOC has released a new statistical report on the demographic makeup of the federal workforce and discrimination complaints, noting that as of fiscal 2005, Hispanics and women remained under-represented in the federal workplace in relation to their representation in the overall American workforce, while African Americans, Asian American/Pacific Islanders and American Indian/Alaskan Natives remained above their overall availability. While the average grade level for GS employees was 9.9, Hispanics (9.3), African Americans (8.9) and American Indians/Alaskan Natives (8.3) all had lower average grade levels, and the average GS grade for women was 9.2, compared to the average grade level for men of 10.7.

The report also noted while the number of complaints in fiscal 2005 fell by about 5 percent, agencies regularly continue to miss the 180-day target for investigating complaints by employees, with just 55 percent completed within that time frame. That's up from 43 percent in fiscal 2004, an improvement EEOC largely attributed to alternative dispute resolution procedures, but the average time for such an investigation is still 237 days, EEOC reported.

EEOC also announced a new initiative for creating greater opportunity in federal agencies for individuals with targeted disabilities; identified as blindness, deafness, partial paralysis, complete paralysis, mental illness, mental retardation, convulsive disorders, and distortion of limbs or spine. Fewer than 1 percent of federal employees fall into those categories, reflecting a continuing decline in that percentage over recent years.

6. **More Leeway in Retiree FEHB Coverage Proposed.** OPM has proposed to give itself more leeway in allowing retiring employees to keep their FEHB coverage when they don't meet the basic requirement of having been enrolled for the five years before retirement, or from the first opportunity to enroll, if later, in order to continue FEHB as an annuitant. Current rules list specific situations where a waiver will not be granted by

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OPM such as when an individual's retirement is based on a disability or an involuntary separation, or when an individual was misadvised by the employing office. The proposed regulation in the 7 August 7 Federal Register would eliminate those specific situations although the requirement that waivers would be granted only in "exceptional circumstances" would remain. Under the proposed regs, individuals requesting waivers would have to provide OPM with evidence that they intended to have FEHB coverage as an annuitant, the circumstances that prevented them from meeting the enrollment requirements were beyond their control, and they acted reasonably to protect their rights to continue coverage into retirement.

7. **COLA Count Up to 3.4.** Through ten months of the countdown to the January 2007 retiree COLA, 3.4 percent has been accumulated, following a rise in the July index used to set that COLA of 0.3 percentage points. CSRS retirees would get the full adjustment while FERS retirees who are eligible for COLAs would get 1 percentage point less, assuming the COLA count finishes above 3 percent.

8. **Guard Against Hitting TSP Dollar Cap.** This time of year is a good point for higher-paid FERS employees to check to make sure they won't lose government contributions due to hitting the annual investment dollar cap too early. The annual TSP investment dollar cap in 2006 is \$15,000. Since the lifting of the old percentage limits on investing, some employees have chosen to invest at high rates early in the year in order to get their money in the TSP sooner and take advantage of potential tax-advantaged growth for longer periods. FERS employees who have been doing so might want to examine their situation around now. FERS employees should take care to structure their investments so that they can continue investing at least 5 percent of salary, the amount that produces the maximum government contribution, through every pay period of this year.

If FERS investors hit the dollar cap before the last pay period of the year, their contributions will shut off until 2007 and so will government matching contributions (although the automatic 1 percent of salary government contribution for FERS employees would continue). Once lost, matching contributions can't be recouped. There is no similar consideration for CSRS investors, who get no government contributions in any event.

Although some investors have begun asking about the 2007 investment limits already, that figure won't be known until late October. For the last several years, the annual limits have been set by a tax reform law that boosted the allowable amounts over a schedule outlined in that law. However, 2006 is the last year of the schedule under that law and starting in 2007 and beyond, the policy will revert to the former practice of being adjusted by the IRS according to an economic measure. The maximum "catch-up"

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contributions allowed for investors age 50 and older, currently \$5,000, which also was determined in recent years by a pre-set schedule, will be similarly adjusted moving forward.

9. **New Per Diem Rates Released.** The General Services Administration has announced revised per diem rates for federal travelers for the fiscal year starting 1 October that as in most past years shows increases in total reimbursement in many travel destinations, particularly major cities and resort destinations. The "meals and incidentals" portion will range from \$39 to \$64 a day, as it does currently, and the standard lodging rate for destinations that do not have their own lodging rates will remain at \$60 per night, with a standard \$39 meals and incidentals payment. There was some change in the structure of the program, however, mainly involving splitting off some outlying parts of certain metropolitan zones into their own zones and changing the seasonal dates in some cities.

As is the case in the current fiscal year, Vail, Colo., will have the top per diem rate in fiscal 2007, \$365 total, \$301 for lodging and \$64 for meals and incidentals, from December through March. That's up \$21. Manhattan, a total of \$338 in September through December, is in second place, up \$48 from the peak period in fiscal 2006. Other destinations at the top end, by their peak seasonal rates, include Aspen and Crested Butte, \$289, Nantucket, \$288, Key West, \$278, Boston, \$267 and Washington, D.C. \$259.

10. **No Change in Special COLAs.** A study performed for OPM using differing methodology to compute housing costs for federal employees who receive special COLAs in non-foreign areas outside the contiguous 48 states has found no justification for raising the COLA amounts, OPM said in a 31 July Federal Register notice. The COLAs are paid to executive branch and postal employees in Alaska, Hawaii, Guam and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. The different methodology was ordered as part of a settlement in a class action suit brought by affected employees.

11. **F Fund Leads TSP Returns.** The bond (F) fund of the TSP led in returns in July, posting a 1.32 percent gain, while the international stock (I) fund gained 0.98 percent, the large company U.S. stock (C) fund gained 0.65 percent, the government securities (G) fund gained 0.44 percent and the small company U.S. stock (S) fund lost 2.79 percent. Over the past 12 months, the returns for the funds are, respectively, 1.42, 24, 5.42, 4.84 and 5.35 percent. The lifecycle income fund gained 0.49 percent, the 2010 fund 0.37 percent, the 2020 fund 0.35 percent, the 2030 fund 0.2 percent and the 2040 fund 0.13 percent in July, for 12-month gains, respectively, 5.51, 7.32, 8.15, 8.15, 8.5 and 9.12 percent.

12. **EEOC Reinstates "Untimely" EEO Complaint Due to Agency's Failure to Make EEO Counselor Available**. In *Kapiko v. Department of the Air Force*, 2006 WL 1584004 (2006), the EEOC permitted a rare extension of the 45-day period to initiate an EEO complaint, i.e. to seek "counseling." The complainant, an Air Force employee, attempted to initiate EEO contact on several occasions during a three-week period but the EEO counselor was absent and the EEO office closed. By the time contact was initiated, the 45-day period had passed, and the Agency denied the complaint as untimely. The Commission, however, reversed the Agency's dismissal and permitted an extended filing period.

In March 2004, the complainant was suspended for five days from his duties as an Air Force employee. The complainant contended that his suspension was the result of discrimination based on his race and national origin and in retaliation for his past EEO activity. After efforts to resolve his concerns were unsuccessful, the complainant proceeded to the EEO office to initiate a complaint. For the next three weeks, the complainant asserted that he stopped by the EEO office, but "the office was closed." Eventually, on May 11, 2004, the complainant was able to contact an EEO counselor and file a complaint. In June 2004, the Agency dismissed the complaint on the grounds that it was untimely.

The Agency opined that the complaint was filed 50 days after the alleged discriminatory conduct, while EEOC Regulations requires that complaints be filed within 45 days of the discriminatory conduct.

On appeal to the Commission, the complainant argued that he shouldn't be punished for filing five days past the deadline because, on several occasion, he attempted to contact the EEO office but it was closed. On the other hand, the Agency contended that, even though its EEO counselor was absent during 19 days of the complainant's 45-day period, he should have made other reasonable efforts to initiate contact through other means such as mail, email, fax, or telephone.

The Commission disagreed with the Agency, finding that the complainant provided adequate justification for filing outside the 45-day period. Pursuant to EEOC Regulation 29 C.F.R. § 1614.105(a)(2), the agency or Commission is permitted to extend the 45-day filing period for circumstances beyond the complainant's control, or for "other reasons considered sufficient." Therefore, based on the extended absence of the EEO counselor and lack of Agency evidence supporting other available methods to initiate EEO contact, the Commission found the complainant had adequately justified an extension of the 45-day period.

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The above case is a rare exception to the bright line rule which only permits EEO complaints to be filed within 45-days of the discriminatory conduct. In this case, the Commission easily could have found that the complainant should have initiated contact by other reasonable means such as email or voicemail.

Fortunately for the employee, the extension was permitted and his complaint will be investigated. However, to say this was a complete victory for the complainant may be an overstatement. Resolution of this issue has taken nearly two years, thereby, pushing back the investigation of his complaint. To ensure prompt investigation and resolution of EEO complaints, federal employees are urged to file complaints well before the 45-day deadline to prevent unforeseen circumstances which may cause complaints to be found untimely. This information is provided by the attorneys at Passman & Kaplan, P.C.

13. **MSPB Upholds AJ's Reversal of Removal.** In a split decision in Carolyn Miller v. Dept. of the Army, 2006 MSPB 219 (7/21/06), the Board upheld the administrative judge's reversal of the appellant's removal for carrying on an extramarital affair with an unmarried Warrant Officer in violation of Georgia law and falsely reporting to the state police that he had raped her. While the AJ sustained the first charge, he did not uphold the second charge and mitigated the removal to a 60-day suspension. However, Board Chairman Neil A. G. McPhie dissented and would have upheld the removal because the appellant worked for the Inspector General at Fort McPherson as an Investigative Specialist, GS-7.

According to Chairman McPhie, the appellant's adulterous affair with a member of the military went directly against military mores, and she should have been held to a higher standard as an employee of the Inspector General's office. He cited the appellant's short tenure although noting that the state of Georgia appears not to enforce its prohibition against adultery.

Chairman McPhie also disagreed with the AJ's finding that the Warrant Officer was primarily responsible for creating the situation, noting that the appellant's affair was consensual, and deemed the AJ's approach as "paternalistic."

The two other Board members did not see the need to write a majority opinion but summarily affirmed the AJ's initial decision without comment. When an agency proves fewer than all of its charges, the Board may not independently determine a reasonable penalty but may mitigate to the maximum reasonable penalty so long as the agency has not indicated that it desires that a lesser penalty be imposed for fewer charges. The Board has discretion to impose the same penalty chosen by the agency even when not all of the charges are sustained on appeal after balancing the mitigating factors.

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This decision bucked a pronounced trend by the Board to reverse AJs' decisions mitigating the penalties in adverse action cases. It is important that AJs be given sufficient leeway to mitigate penalties as they are more familiar with the facts in each particular case. Such mitigation is necessary to avoid unduly harsh and severe penalties for federal employees whose careers can be salvaged. This information is provided by the attorneys at Passman & Kaplan, P.C.

14. **Human Resources (HR) for Supervisors.** The HR for Supervisors Course is mandatory 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)
- Position Classification (includes an introduction to CHR automated tools such as CPOL, ART, Gatekeeper and FASCLASS)
- Staffing
- Human Resource Development
- Management Employee Relations
- Labor Relations
- EEO

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 Nonappropriated Fund (NAF) or contractor employees. The training will be conducted from **0800 to 1630 18-22 September 2006**, at the Fort Benning CPAC, Classroom #225, Building #6. The point of contact for this course is Ms. Stephanie Carpenter, Fort Benning CPAC, 545-2681.

15. **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.

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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).

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 Area II CPAC 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 Fort Benning CPAC servicing HR specialist to arrange a time so we can come to your office to help you.

16. **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. .

//Signed//BLANCHE D. ROBINSON
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