

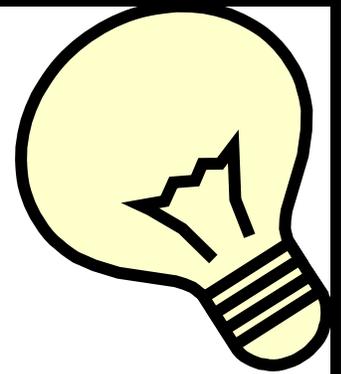
The

# Illuminator

Shedding Light on the HR World

11-2011

Article Directory



	<i>Page</i>
<b><i>Retirement, Life/Health Insurance, TSP, Social Security and Such</i></b>	
Targeting Early Retirement	3
Six Tips to Make your Nest Egg Last	5
Long-Term Open Season	6
Taxes and Your Social Security	8
<b><i>Employment-Related News</i></b>	
Union Opposes Pension Contribution Proposal	11
Job Duties Increasingly not Linked to Grade, Pay	12
MSPB: Perceptions of Prohibited Personnel Actions Hit 18-year Low	15
<b><i>Merit System Principle of the Month</i></b>	
Whistleblower Protection	17
<b><i>Management-Employee Relations</i></b>	
Improved Evaluations Key to Improved Performance	20
Don't Drop the Ball When Requesting FMLA Deployment-Related Leave	22
Senior Executive Service to Get Standard Evaluations	24
<b><i>Training, Self-Development, and Personal Improvement</i></b>	
Civilian Education System (CES) Courses Available	26
RPA and ART Workshop	26
Job Aids Available on the Web	27

This publication is issued to ensure the Fort Benning commanders, managers, supervisors, and employees are kept informed of employment and staffing issues. Monthly issuances will contain updated information on specific employment topics (i.e.,

compensation, recruiting procedures, travel entitlements, classification issues, the Maneuver Center of Excellence (MCOE) civilian transition, etc.).

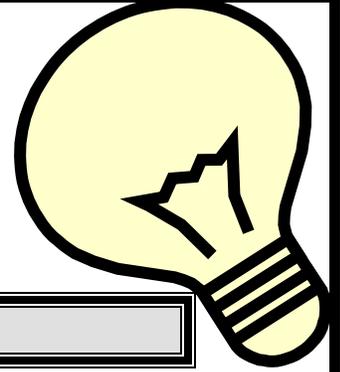
This newsletter is an apercu of articles written by CPAC staff [members] as well as information excerpted from various sources which include, but is not limited to, the Government Executive Newsletter, FedWEEK, the Federal Manager's Daily Report, FEDSmith, and the ABC-C Newsletter.

Some articles taken from FEDSmith were copyrighted. Where so warranted, permission was sought and granted to use them in their entirety. Further use of these articles requires permission from the author(s).

Please log on to our website at <https://www.benning.army.mil/MCOE/Cpac> . If you have suggestions for improvement or topic recommendations, please contact the CPAC Director at <mailto:blanche.d.robinson.civ@mail.mil>

# *The Illuminator*

11-2011



***Retirement, Life/Health Insurance, TSP, Social Security and Such***

**Targeting Early Retirement.** This article is written by Tammy Flanagan, senior benefits director for the National Institute of Transition Planning, Inc

Rep. John Duncan, R-Tenn recently proposed to curtail early retirement in government.

"Working as a waiter or waitress is more physically demanding than most federal government positions for which we now grant early retirement," he said.

The article sparked a huge number of reader comments. I thought I might be able to shed a little light on how and why federal rules around retirement -- both early and regular -- came into being.

Let's start with a look at the evolution of the federal retirement system to see how far we've come -- and where we might be headed back.

Before 1920, civil servants did not have a pension plan. The idea had surfaced from time to time, but the cost of military pensions dating back to the Revolutionary War always led to opposition. Many people believed that civil servants should rely solely on their own savings to provide for their old age.

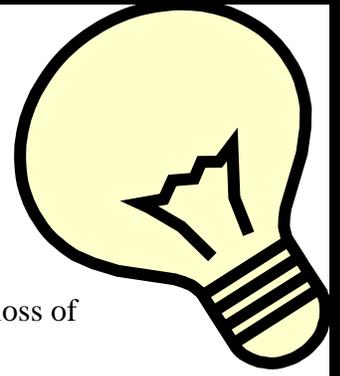
But on May 22, 1920, a civil service retirement law went into effect. According to [\*Biography of an Ideal\*](#), a history of the civil service prepared by the Office of Personnel Management, within two months, more than 5,000 employees retired -- some of them more than 90 years old. A mandatory retirement age of 70 was set for most employees who had at least 15 years of service, and employees in more strenuous positions, such as railway mechanics, were required to leave at 62.

Modern federal retirement eligibility rules, allowing retirement at 55 with 30 years of service, date back to 1942. And in 1948, provisions were instituted allowing for liberalized retirement benefits for certain employees engaged in investigations and law enforcement. They could retire at 50 with 20 years of service.

Over time, the Civil Service Retirement System became more generous with the addition of survivor's annuity benefits and cost-of-living adjustments, and a switch from using the average of an employee's highest five years of salary to compute retirement benefits to a high-three average. But federal employees did not contribute to Social Security and some critics said the retirement system bound workers to long-term employment with "golden handcuffs" in the form of stand-alone, single, defined benefit coverage. Few employees

# *The Illuminator*

## *11-2011*



left federal service at midcareer, because doing so would mean a significant loss of retirement benefits.

By 1984, CSRS had amassed an unfunded liability of about \$500 billion. So Congress put itself and all new federal employees under Social Security, requiring the implementation three years later of a new three-tiered benefits structure for them known as the Federal Employees Retirement System. In addition to Social Security, it relied on a smaller government pension and personal savings in the form of the Thrift Savings Plan.

### **Early vs. Full**

Now, as for the difference between early and full retirement, it's important to note that people use these terms in different ways. Some consider full retirement to mean receiving the maximum CSRS retirement benefit, which would be 80 percent of one's high-three average salary after performing 41 years and 11 months of federal service. Others consider full retirement to mean an unreduced and immediate benefit that a federal employee can receive after reaching the appropriate retirement age with the minimum amount of service required to be eligible for benefits for that age.

Under CSRS, optional, immediate retirement benefits are available at age 55 with a minimum of 30 years of service, age 60 with a minimum of 20 years of service and age 62 with a minimum of five years of service. Under FERS, eligibility comes at an employee's minimum retirement age, which is between 55 and 57, depending on year of birth.

Personally, I don't like to use the phrase "full retirement." I like to talk about being financially ready for retirement. This is a time when your income from retirement sources will meet your outgoing expenses and you have enough set aside for unforeseen financial emergencies. This income can be a combination of a federal retirement benefit from CSRS or FERS, a Social Security retirement or spousal benefit, other defined benefits (such as a military or private sector pension), and income generated from savings in the TSP or an individual retirement account.

With regard to the term "early retirement," it's important to know the context in which it is being used. It can refer to Voluntary Early Retirement Authority, a tool that agencies use to cut costs by reducing staff size. Sometimes this goes hand in hand with Voluntary Separation Incentive Payments, commonly known as buyouts.

For VERA, the minimum requirements are age 50 with 20 years of service or any age with 25 years of service. But many employees who are eligible for an early out may not be financially ready for full retirement. They may be at a stage of their career where they are still accumulating retirement assets and can't live on the savings and benefits they

# *The Illuminator*

11-2011



have available. They will sometimes need to embark on a second career to allow for additional accumulation of retirement savings and to be closer to the full age for Social Security retirement. Under FERS, this is fairly common -- the golden handcuffs tying employees to federal work have been removed.

There are some who consider that the federal early retirement age is 55, since that's when federal employees are eligible to retire and still be financially comfortable. But for employees who are going to rely partially on Social Security benefits, 62 is the earliest age that most of them would consider retirement. And even that is early, since they would be eligible only for 75 percent of their full Social Security benefit. So as much as beauty is in the eye of the beholder, retirement has different meaning to each person based on their willingness to make sacrifices both before and after their working career is over.

## **Special Cases**

The federal retirement system has long taken into consideration that some jobs are more physically and mentally demanding than others. Federal law enforcement officers, intelligence officers and Foreign Service officers must be willing to move their families across the country and around the world to support the missions of their agencies. Sometimes, performing their duties requires them to be in harm's way. Likewise, air traffic controllers face an intense kind of job stress.

To maintain what OPM calls a "young and vigorous" workforce in such areas, the government has deemed it essential to offer liberalized retirement eligibility and benefits. To anyone who thinks this is unfair, I dare you to walk in their shoes for a week. It might change your mind.

**Six Tips To Make your Nest Egg Last.** Retirement funds need to last a lifetime, which means more than just investing wisely. Certain steps can help maximize the amount of money you'll have when the paychecks stop.

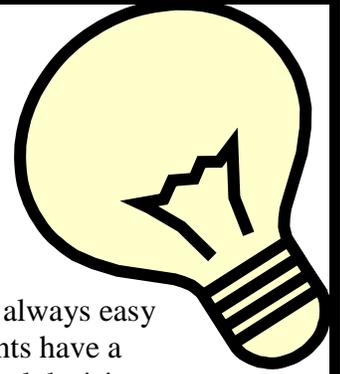
One of the worst situations to be in during retirement is running out of the money you've set aside for your golden years. Making your **retirement fund** last should be one of your top retirement-planning priorities.

So we are left to deal with market volatility and must trust that we will be rewarded for taking on additional, age-appropriate risk. Our investment portfolios must also be dynamic. We will need to adjust to a constantly changing financial picture in retirement.

Here are six things you can do to give your retirement funds a much better chance at lasting throughout your lifetime. (Are you saving enough for retirement?)

# *The Illuminator*

11-2011



**Take less out after a bad year.** This sounds obvious and simple, but it's not always easy to do. You have to be willing to make temporary sacrifices so your investments have a chance to recover in value. You also need to avoid making hasty and emotional decisions when you can least afford to do so. Decide ahead of time whether you will give up inflation adjustments after a bad year, or flat-out reduce the percentage of your assets that you will withdraw.

**Take more from the best-performing assets.** You will likely hold a diversified range of assets in retirement. It is likely that some of what you own will perform well in certain years, while other investments will do better in other years. One way to help make your retirement assets last is to withdraw what you need from the assets that are performing well. This way, you are naturally selling high.

**Have a plan.** With the exception of cutting withdrawal rates in years when your investments perform poorly, don't otherwise overreact to stock market swings. Some people get out of the markets at the worst possible time. And during retirement, you are the most vulnerable because your assets are at their highest point and your income is at its lowest. A well-thought-out retirement plan can help keep you calm so you don't act irrationally in times of short-term crisis. Create a plan ahead of time so you can go back to read it and realize that the recent market downturn has already been taken into account.

**Develop an income stream.** With the help of the Internet, many people are making side incomes working from home. This is perfect for people who are retired because they don't have to commute. Also, no one will know how old you are, so there is no opportunity for age discrimination.

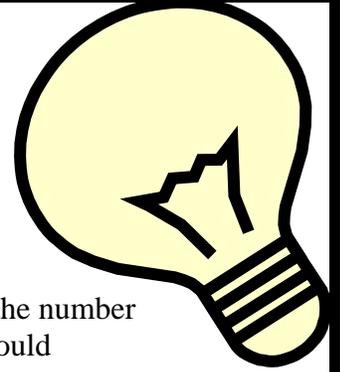
**Climb the corporate ladder now.** Work hard and do what you can to advance your career. Not only will you have more money to save, but both you and your employer will also pay more Social Security taxes on your behalf, boosting your future Social Security checks.

**Check out annuities.** It's hard to recommend annuities based on projected returns. But there's a certain amount of security that comes with knowing that you will get a check every month no matter what happens. Having Social Security and an annuity that covers a significant portion of your living expenses will free you from having to worry about stock market volatility in retirement. And that can be worth much more than striving to maximize your investment returns.

**Long-Term Open Season.** As employees and retirees begin to gather information for the upcoming Federal Employees Health Benefits Program open season (which runs from Nov. 14 to Dec. 12), it might be a good time to look back at another open season that occurred earlier this year, involving the Federal Long-Term Care Insurance Program. The

# *The Illuminator*

## *11-2011*



FLTCIP open season ended June 24 and resulted in a significant increase in the number of enrollees. Even though the open season is over, employees and retirees should consider the role that long-term care insurance could play in their future, because you can always apply for this insurance benefit with full underwriting.

Long-term care is defined as care you receive if you are in need of assistance to perform activities of daily living due to a chronic illness, injury, disability or the aging process. It includes the supervision you might need due to a severe cognitive impairment (such as Alzheimer's disease).

Long-term care is generally not covered by FEHBP, Medicare or Federal Employees Group Life Insurance. If you would like to receive care in your home or an assisted living facility, your retirement income may not be sufficient to cover the cost of care. For nursing home care, Medicaid and veterans benefits may be available, but they are limited to those with little income or few assets, which is why they are considered the "payer of last resort." Unless you have family members who can provide long-term care, it can be very expensive, and most of the expense will come out of your pocket. That's why many people purchase long-term care insurance.

### **Trading Premiums**

But how do you pay for the premiums? In some cases, you might be at a stage in life where your need for life insurance is less than it was 10 or 20 years ago, so you might be able to reduce your coverage. In the case of federal employees and retirees, it might be time to reevaluate your need for FEGLI, which could free up money to pay for long-term care insurance. In the insurance industry, this is referred to as "trading premiums."

Let's look at an example. Suppose Andrew is 55 and carries three multiples of FEGLI Option B in addition to FEGLI basic life insurance. His youngest child recently married and his house is almost paid off. He has 33 years of federal service and has been contributing to the Thrift Savings Plan since 1987. Andrew's wife would receive 55 percent of his CSRS retirement if he died before her, and she is the beneficiary of his TSP account.

Based on his current salary of \$75,000 a year, Andrew has \$77,000 of basic FEGLI coverage at a cost of \$300 per year. He also has \$225,000 worth of Option B coverage that costs \$1,638 per year. But that cost will increase to \$3,510 per year when he turns 60.

Andrew could trade some of that coverage for long-term care insurance. For a premium of \$116 a month, or \$1,398 a year, he could get long-term care coverage of \$150 a day for three years or a pool of \$164,250 worth of benefits (used at a maximum rate of \$150 a

# *The Illuminator*

## *11-2011*



day, or \$4,500 a month). The benefit would begin 90 days after he qualified for care, and would include a 4 percent automatic compound inflation option -- allowing the daily benefit amount and remaining portion of the maximum lifetime benefit to automatically increase by 4 percent compounded every year. It's important to remember that the premiums are not guaranteed and could increase in the future.

### **Signing Up**

Beth O'Brien, a senior account manager at Long Term Care Partners, which administers the FLTCIP, says more than 48,000 federal employees and family members applied for long-term care insurance during the FLTCIP open season. That was more than two and a half times the number anticipated, and resulted in a 20 percent increase in FLTCIP enrollment. FLTCIP is the largest group long-term care insurance program in the country, with more than 270,000 enrollees.

O'Brien says the program currently is paying out more than \$5 million a month in benefits. FLTCIP has received more than 8,000 claims for benefits. Of them, 66 percent are for home health care, 23 percent for assisted living facility care, 10 percent for care in nursing homes and 1 percent for adult day care.

Of those people getting benefits for home health care, 25 percent are using health aides, 32 percent are paying for care provided by informal caregivers (such as friends and neighbors), and 9 percent are receiving care from family members.

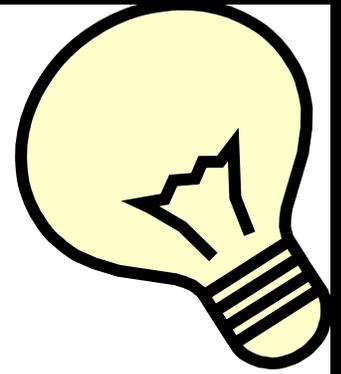
**Taxes and Your Social Security.** Your benefits may be taxed. But a little up-front planning today can minimize the hit tomorrow.

After years of planning for that perfect retirement — diligently investing your money, drawing up detailed budgets and investing assets wisely — many investors continue to miss one important detail. As much as 85% of your Social Security income could be subject to federal (and possibly state) income taxes. That can be a real shock when you collect your first check.

How much of your Social Security income is subject to tax depends on a variety of factors, including your marital status and any additional income you earn. But with a little up-front planning, which can include everything from rebalancing your portfolio to structuring certain transactions (like the sale of a home or a business), you don't have to let taxes derail your plans.

# *The Illuminator*

## *11-2011*



### How Taxes Are Calculated

Social Security benefit taxes are based on what is commonly referred to as your “provisional income.” That includes half your Social Security income for the year, plus your modified adjusted gross income, which includes (among other items) any tax-exempt income. (Tax-exempt income includes interest from municipal bonds — often a core component of retirement portfolios.) After you cross these income thresholds, a portion of your Social Security benefits will be considered taxable income. (See the chart below for specifics.) For example, married couples who file their tax returns jointly and have provisional income of at least \$44,000 could see up to 85% of their benefits get a haircut from the tax man.

### A Longer-Term Strategy

Because of these income thresholds, tax planning experts often advise looking for ways to lower your provisional income. “When you plan for retirement,” says Vinay Navani, a shareholder with Wilkin & Guttenplan, an accounting and consulting firm in East Brunswick, New Jersey, “you need to think in terms of multiyear projections.” For example, if you anticipate a big one-time event such as the sale of a business, you may be better off structuring the sale as an installment sale to be paid off over several years instead of an all-cash transaction. This can help lower your overall income and possibly keep you in a lower tax bracket, which would help minimize that tax hit on your SSI benefits.

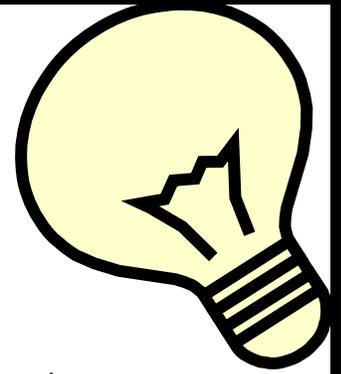
You may also want to consider a longer-term strategy for drawing out of your qualified retirement accounts. That’s because all withdrawals from a traditional IRA typically will be included in your provisional income calculations. Income drawn out of a Roth IRA, however, is not. So you may want to consider withdrawing from the Roth first.

On the other hand, if you’re earning income in retirement, you can still contribute to an IRA, and contributions into a traditional IRA may be tax-deductible, lowering your provisional income. A word of caution, though, if you are considering converting a traditional IRA to a Roth: Any amount you move will also be counted as income. That may be worth it, though, because of the Roth’s other tax advantages.

Another option is to convert an investment that earns taxable income, such as a taxable bond portfolio, into a tax-deferred account, such as a deferred annuity. You could structure the annuity to begin paying income in a few years, when you expect your provisional income, as well as your overall tax rate, to decline.

# *The Illuminator*

## *11-2011*



### Know the Penalties

Those hoping to work in retirement need to be especially careful if they're planning to claim Social Security benefits early. According to a 2010 study by the Families and Work Institute and the Sloan Center on Aging & Work at Boston College, three-quarters of workers age 50 and older say they expect to hold some kind of income-generating job after retiring. It's important to consider how that income will affect your benefits.

The Social Security Administration caps how much you are allowed to earn if you start taking your benefits before "full retirement age," which the SSA considers 66 for most baby boomers. In 2011, the annual earned income cap is \$14,160, and for every \$2 you earn over that limit, the SSA trims \$1 off the top of your benefits. So if you earn \$20,000 this year, and you haven't yet reached full retirement age, your benefits will be reduced by \$2,920 — on top of any income taxes you may have to pay on the remaining benefits.

There is some good news, however: Because the penalty is determined by your individual earned income, if you retire early and your spouse doesn't, and if you file separately, your spouse's earned income will not be factored into any benefit cuts that could apply. However, if you file jointly, your spouse's earnings will be included when calculating your provisional income. Additionally, when you reach your full retirement age, the earned income penalty disappears.

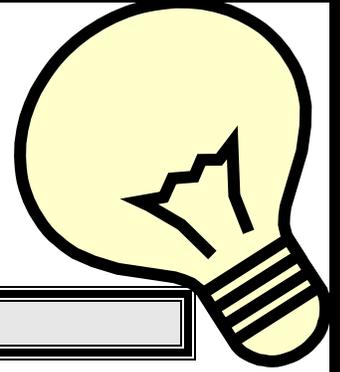
### Forewarned Is Forearmed

Lastly, do a bit of homework. Worksheets in IRS Publication 915, Social Security and Equivalent Railroad Retirement Benefits, available at [www.irs.gov](http://www.irs.gov), can help you compute your tax liability. Then check with your state to see whether it taxes benefits. You might not be able to avoid taxes, but at least you'll know what to expect and will be able to plan accordingly. As always, your Financial Advisor can work with your tax professional to find the best solutions.

Annuities are long-term investments designed for retirement purposes. Withdrawals may be subject to surrender charges, may be taxable, and if made prior to age 59½, may also be subject to a 10% additional tax. All annuity contract and rider guarantees, or annuity payout rates, are backed by the claims paying ability of the issuing insurance company. They are not backed by Merrill Lynch or its affiliates, nor do Merrill Lynch or its affiliates make any representations or guarantees regarding the claims-paying ability of the issuing insurance company.

# *The Illuminator*

11-2011



## *Employment-Related News*

**Union Opposes Pension Contribution Proposal**. A federal employee union is criticizing an Obama administration proposal to require employees of the Tennessee Valley Authority to contribute to their pensions beginning in 2013.

The proposal, included in [legislative language](#) the Office of Management and Budget sent to the joint congressional committee on deficit reduction this month, recommends TVA workers -- most of whom currently contribute nothing to their defined benefit plans -- begin contributing 0.4 percent over three years beginning in 2013. The provision is part of the administration's overall proposal to raise the federal employee contribution rate to their retirement plans by 1.2 percent over three years beginning in 2013 at a rate of 0.4 percent each year during that time.

The International Federation of Professional and Technical Engineers, which opposes the administration's overall recommendation, took particular issue with the provision affecting TVA employees. TVA is an independent federal entity that provides electricity for 9 million people in parts of the Southeast at prices below the national average. It does not receive taxpayer money and finances its own programs through revenues of more than \$10 billion annually. Most of the 12,000 workers at the utility provider are not enrolled in the Civil Service Retirement System or the Federal Employees Retirement System.

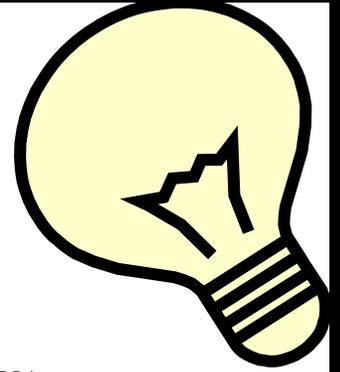
"This seems to be an effort by OMB to bundle TVA worker pension contributions in with those of most other federal employees under either the Civil Service Retirement System or the Federal Employees Retirement System," said an Oct 12 letter from Gregory J. Junemann, president of the International Federation of Professional and Technical Engineers, to members of the super committee. Under the administration's overall proposal, the policy change in the pension contribution level would be permanent and would affect all federal civilian employees.

About 200 TVA employees participate in CSRS or FERS, including the utility's board of directors. The law requires TVA employees who transfer from other federal agencies without more than a three-day break in service to remain in FERS or CSRS.

"While IFPTE opposes OMB's recommendation to your joint committee to increase FERS and CSRS pension contributions, we nonetheless understand that they have jurisdiction and standing to at least support such an increase," the letter said. "However, we do not feel that OMB can dictate to TVA how to run their pension system." The union said the utility's board is the appropriate entity to handle such matters.

# *The Illuminator*

## *11-2011*



OMB did not respond to a request for comment by the time of publication.

The utility's pension plan has struggled because of the dismal economy, so TVA put about \$270 million into the coffers in September and expects to add up to \$300 million more next year. As of September 2010, TVA's retirement plan had \$6.8 billion in assets and \$10.4 billion in liabilities.

**Job Duties Increasingly not Linked to Grade, Pay.** Federal employees are being increasingly concentrated into higher pay grades without taking on greater responsibility, according to a Federal Times analysis of government data.

Since 1998, the percentage of employees in grades 12 to 15 — the highest four grades before reaching the executive ranks — increased from 48 percent to nearly 64 percent.

Experts say inflated grades — and the higher salaries that come with them — unnecessarily cost the cash-strapped government at a time when it can least afford waste.

"Everybody complains that more of [the] budget goes to paying salaries, and you wonder how much of that could be savings if people were properly classified," said former Office of Personnel Management pay policy executive Henry Romero. "It's not going to [eliminate] the government's deficit or anything. But if you think about how many tens of millions of dollars go to salaries of people who are overgraded, could they be better spent somewhere else? Equipment, facilities or other improvements?"

John Palguta, vice president for policy at the Partnership for Public Service and a leading advocate for civil service reform, agreed.

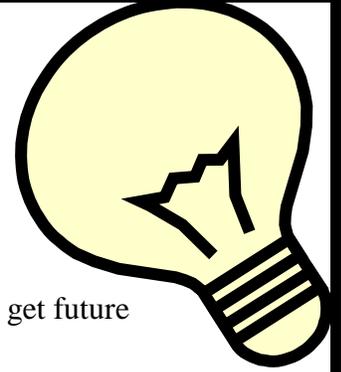
"It's not a healthy situation," Palguta said. "These numbers tell me there's something going on. In these tough budget times, this suggests we could do better."

President Obama last month called for a new high-level commission as part of his deficit-reduction plan that would recommend ways to overhaul the General Schedule to make it more market-sensitive and performance-focused. Palguta said that task force should take a close look at grade creep and poor job classification.

Grade inflation has been going on for decades and the reasons behind it vary, Romero said. Some employees take on more responsibility and duties, and receive a new pay grade and salary that reflects their higher work level — as the system is supposed to work. But some see grade promotions as a reward for doing a good job — not a recognition that their job has changed. As a result, the government is paying higher

# *The Illuminator*

11-2011



salaries for life — and resetting employees' step increase schedules so they'll get future raises faster — for essentially the same work, he said.

"There is a cost to satisfying one person's desire to have a higher grade," Romero said.

These promotions add up and prompt other employees to demand grade promotions, as well. Over time, an office has redefined how it classifies an entire job category.

"Some see it as an entitlement — the expectation that if I get hired as a [GS] 7 to 9, and if I'm a good worker, I should be promoted to a higher grade level, regardless of whether I have higher duties to perform," Romero said. "Then that becomes the new norm. If they get promoted to a 9, the person across the hall says, 'Hey, we do the same work.' Pretty soon, in the interest of equity, everybody gets upgraded. And that's the target for the next vacancy, because that's what people [in those jobs] are already being paid."

This turns the GS system into a de facto pay band, Romero said, and renders the GS system's classification of jobs in specific grades meaningless.

The trend is apparent in several of the government's most common occupations — accountants, budget analysts, contracting specialists, program analysts and others.

New hires are creeping up, too

Grades GS-12 to 15 also make up a larger portion of new hires at many leading agencies.

Palguta said agencies sometimes have difficulty finding qualified job candidates and will bump up the vacancy's paygrade and starting salary to lure better-qualified candidates. This is a sign that the GS system is flawed and does not effectively track market rates, he said.

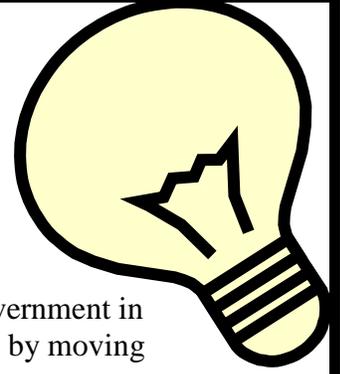
"Since they can't adjust pay based on the market, they adjust it by pushing up the grade level," Palguta said. "It's not random greed or nefariousness. Sometimes it's managers doing the rational thing when faced with an irrational system."

This kind of jury-rigging of the GS system doesn't cause a problem when the economy is booming and the government has a hard time competing for top talent, Palguta said. But when the job market softens and candidates flock to federal job vacancies, he said, the floor has already been set higher, and agencies rarely push the grades back down.

"I've never seen an organization where managers are campaigning with HR staff to lower grade levels," Palguta said. "It's the kind of upward pressure that never entirely goes away."

# *The Illuminator*

11-2011



Romero said when the rules for grade promotions get blurred, it hurts the government in less tangible ways. Traditionally, federal employees are supposed to advance by moving to different jobs or seeking out new responsibilities, he said.

But if they think they can stay in their current job with the same responsibilities and still get promoted to a higher grade, they have no incentive to excel, he said.

"People strive less to stand out and go above and beyond," Romero said. "All they have to worry about is demonstrating competence to their current boss."

This is unfair to employees who take on new responsibilities and genuinely deserve a promotion, he said.

Not everyone agrees that grade creep is largely to blame for the upward shift in the federal workforce. John Crum, director of the Merit Systems Protection Board's Office of Policy and Evaluation, said that even within individual jobs such as contracting and information technology, the level of work expected is increasing and growing more complicated. As a result of those increased responsibilities, Crum said agencies may be rightfully beefing up their grade levels — though he said grade creep probably also plays some part.

## Fixing the problem

Palguta said the only way to solve grade creep is to change the government's pay system so salaries are not determined by hard-and-fast grades — where a GS-13 attorney is paid the same as an equally graded contracting specialist or human resources specialist.

Instead, pay scales for specific grades in specific occupations should reflect what the market is paying. This would allow agencies to offer more money to hire a new employee, or keep an existing employee, when a particular skill is in demand, and bring the salaries back down when the market cools.

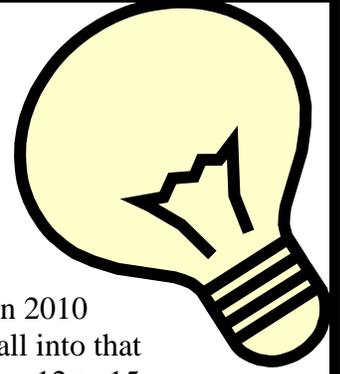
"The only real answer to this is to change the pay system," Palguta said. "You give people a system that doesn't work very well, you get unintended outcomes."

The government currently adjusts its pay scales based heavily on salary averages within broader occupational categories — averaging salary changes for, say, accountants together with information technology specialists, even if one job's average pay goes up and another's drops.

Palguta and other critics say this means that any distinction in how different jobs are compensated is lost.

# *The Illuminator*

## *11-2011*



The Agriculture Department, which hired 602 employees at grades 12 to 15 in 2010 compared with 397 in 2006, said it is hiring to replace retirees, which often fall into that grade range. As a percentage of all new hires at the department, those at grades 12 to 15 dropped from 37 percent in 2006 to 32 percent in 2010.

The Justice Department hired more than 1,000 GS-12s to 15s in 2010, nearly three times the number hired in 2006. The department says it needs seasoned employees to fill mission-critical occupations related to counterterrorism and violent crime, and that the economic downturn is causing midcareer job seekers to apply in droves.

But as a proportion of all new hires at Justice, those in the GS-12 to 15 range dropped from 27 percent in 2006 to 25 percent in 2010.

Most agencies hiring greater numbers and percentages of new employees in grades 12 to 15 declined requests for comment for this story, or said they did not know why they were hiring more employees at higher grades. OPM declined to comment.

For this analysis, Federal Times examined the demographics of professional and administrative, full-time permanent nonseasonal employees in the GS system and related pay plans using data from OPM's Central Personnel Data File.

Professional and administrative employees make up nearly two-thirds of the nonpostal federal workforce, usually hold college degrees and help run programs and conduct analyses.

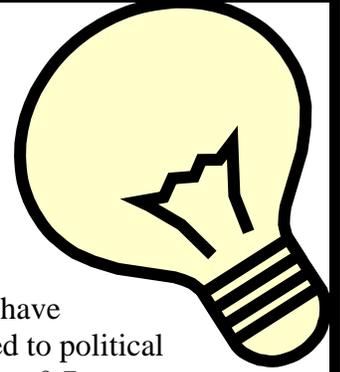
Clerical, law enforcement, blue collar and technical jobs do not fall under that category and were not analyzed for this story. That means the government's grade inflation cannot be attributed to its fast-dwindling ranks of clerks and other lower-graded, unskilled support jobs.

**MSPB: Perceptions of Prohibited Personnel Actions Hit 18-year Low.** Federal employees' perceptions of discrimination, retaliation and nepotism have declined since 1992, but prohibited personnel practices could continue to affect employee engagement, according to a new report.

A Merit Systems Protection Board study, recently released, found that federal workers reported that they observed or experienced the 12 prohibited personnel practices less frequently than at any point during the last 18 years. In a survey of more than 42,000 employees, 8 percent said they had been affected by one prohibited practice, while 1.3 percent said they had experienced more than three.

# *The Illuminator*

11-2011



Perceptions of discrimination based on age, race, disability and other factors have steadily declined since 1992, the report found. Experiences of coercion related to political activity were slightly more common than 18 years ago but still were rare at just 0.7 percent. Nearly 7 percent of employees reported perceptions that management had granted an unfair advantage during the recruitment or promotion process, higher than other practices studied but lower than in previous years.

Personnel actions based on subjective decisions, such as those in hiring and promotion, are especially vulnerable to perceptions of inappropriate practices and may never be fully eliminated, according to MSPB. In addition, though reports of prohibited activities have dropped dramatically, employees who observe or personally experience these practices could grow less engaged in their work, the report found.

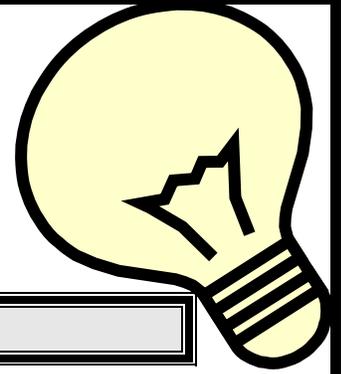
"An employee does not need to be personally affected by the outcome of a PPP to be affected by an official's decision to commit a PPP," said MSPB Chairman Susan Tsui Grundmann. "This report shows that when employees believe that their managers are basing personnel decisions on prohibited criteria, it has real consequences for the agency's ability to have a productive and engaged workforce."

According to MSPB, managers -- and new political appointees in particular -- should receive information about unacceptable actions and what is considered a violation of these policies. Agencies also should promptly investigate reported violations, take necessary disciplinary action and better communicate with employees the reasons behind management decisions, the study found.

"Agencies should make an effort to ensure that decisions are based on the best information available and are grounded in merit-based reasons," MSPB wrote. "Awareness that this transparency will occur may also dissuade officials from knowingly attempting to take an improper action. Sunlight is the merit system's best ally."

# The Illuminator

11-2011



## Merit System Principle of the Month



### NUMBER 9

*"Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—  
(A) a violation of any law, rule, or regulation, or (B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety."*

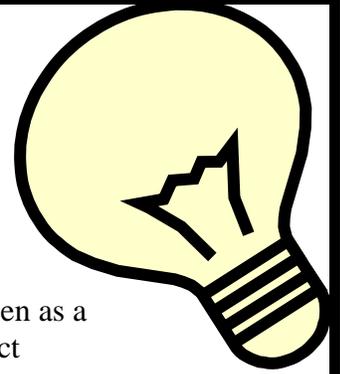
#### **What is the intent behind the ninth Merit System Principle?**

The intent of this principle is to protect whistleblowers against reprisal when they disclose wrongful conduct in an attempt to create a more effective civil service. Whistleblowers help to create an effective civil service because they often are in the best position to witness agency wrongdoing. Without their disclosures, wrongdoing might go unchecked. One of the first pieces of legislation to recognize the value of whistleblowers was the False Claims Act of 1863, which sought to protect the U.S. Government against rampant fraud from unscrupulous suppliers during the Civil War by offering a percentage of the recovered damages to people who disclosed such fraud. Nevertheless, nothing in the False Claims Act specifically protected Federal employees from whistleblower reprisal.

In 1912, Congress enacted the Lloyd-LaFollette Act, which gave Federal employees certain statutorily defined minimum rights in the event that their employing agencies

# *The Illuminator*

11-2011



sought to remove them from the civil service. This legislation can now be seen as a forerunner to laws that Congress later passed because it was the first to protect whistleblowers. During a Congressional debate regarding this legislation, Senator LaFollette noted an example of the type of abuse the law sought to correct: the Government had removed a Federal employee from the civil service after he had disclosed to the press the unsanitary and “simply horrible” conditions at the Chicago Post Office.

In its next significant legislation affecting Federal whistleblowers, Congress passed the Civil Service Reform Act of 1978, which, among other things, attempted to protect Federal whistleblowers by giving them an appeal right to the Merit Systems Protection Board (MSPB) when they suffered reprisal for disclosing specific types of wrongdoing.

This was the first time that Congress expressly recognized the need of Federal employees to be protected against reprisal for disclosing the wrongdoing of their employers. Nevertheless, various studies showed that Federal employees were still reluctant to bring their employer’s wrongdoing to light due to fear of reprisal. For example, findings from one of these studies showed that 45% of all surveyed Federal employees knew of at least one incident of illegal or wasteful activity within the past 12 months, that 70% of them chose not to report it, and that about one-fifth of that number cited fear of reprisal as their reason for remaining silent.

Congress thereafter revisited the issue and passed the Whistleblower Protection Act of 1989 (WPA), which – unlike the broader Civil Service Reform Act – was specifically tailored to help Federal employees who jeopardized their careers by making whistleblower disclosures in the public interest. The purpose of the WPA is to:

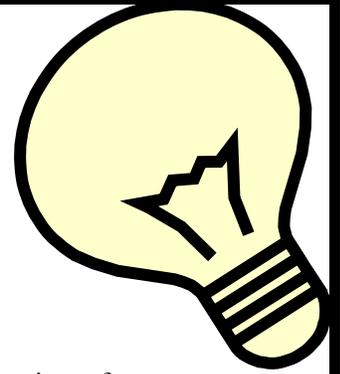
***[S]trengthen and improve protections for the rights of federal employees, to prevent reprisals, and to help eliminate wrongdoing within the government by (1) mandating that employees should not suffer adverse consequences as a result of prohibited personnel practices; and (2) establishing . . . that while disciplining those who commit prohibited personnel practices may be used as a means by which to help accomplish that goal, the protection of individuals who are the subject of prohibited personnel practices remains the paramount consideration.***

Whistleblower Protection Act § 2(b).

Congress found that protecting employees in this way would be a “major step” toward a more effective civil service and would serve the public interest by assisting in the elimination of fraud, waste, abuse, corruption, illegality, and unnecessary Government expenditures. Whistleblower Protection Act § 2(a). Together with the provisions of the Civil Service Reform Act, the WPA makes it possible for MSPB to hear and take corrective action over a broad range of whistleblower appeals.

# *The Illuminator*

11-2011



## **What is whistleblowing?**

Whistleblowing occurs when an employee makes a specific and detailed allegation of instances of wrongdoing. Under the WPA, employees are protected when they make allegations of wrongdoing by disclosing a violation of law, gross mismanagement, a gross waste of funds, an abuse of authority, or a “substantial and specific danger” to public health or safety.

## **How does MSPB protect whistleblowers?**

Unlike many of the Merit System Principles, for which there is no specific law or regulation that allows an affected employee to appeal a violation, MSPB can order an agency to take corrective action for whistleblower retaliation. This would require an agency to place the whistleblower, as nearly as possible, in the position the individual would have been in had the prohibited personnel practice not occurred. The MSPB can even award the whistleblower back pay and certain reasonable and foreseeable consequential damages such as medical costs and travel expenses. In some cases, it may also award attorney fees.

However, only whistleblowers who legally fall within MSPB’s jurisdiction may seek such relief. The WPA allows a whistleblower who has suffered reprisal to appeal a personnel action that is not normally appealable if he or she first files a complaint with the [Office of Special Counsel](#) (OSC) and exhausts his or her administrative remedy with OSC. An individual who is challenging an action that is already directly appealable to MSPB (e.g., a removal or suspension for more than 14 days) may raise his or her whistleblowing activity as an affirmative defense to that action.

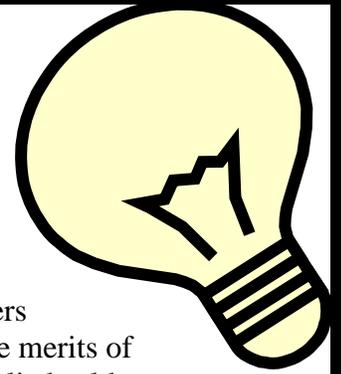
## **Are there any recent decisions of note by the courts or MSPB that address the ninth Merit System Principle?**

Although the Board’s case law states that disclosure of information that is publicly known is not a disclosure under the WPA, the Board qualified this requirement when it held that if an employee’s disclosure adds “additional information necessary to recognize” the nature or seriousness of a publicly known problem, and this is information the public would not have otherwise had, then the disclosure is protected under the WPA. *Wadhwa v. Department of Veterans Affairs*, [110 M.S.P.R. 615](#), ¶ 9 (2009).

For many years, the Board and the courts found the WPA did not protect disclosures regarding policy disputes where “reasonable people” might disagree over the merits of a given policy. *See, e.g., White v. Department of the Air Force*, [391 F.3d 1377](#), 1382 (Fed. Cir. 2004). In effect, a policy disagreement can serve as the basis for a protected disclosure only if the legitimacy of a particular policy is not debatable among reasonable people. Nevertheless, the U.S. Court of Appeals for the Federal Circuit has refined and

# *The Illuminator*

11-2011



clarified this legal principle to the effect that the WPA’s protection now covers disclosures about policy, even where reasonable people might disagree on the merits of that policy, when the policy concerns a substantial and specific danger to public health or safety. *Chambers v. Department of the Interior*, 515 F.3d 1362, 1368-1370 (Fed. Cir. 2008); see also *Chambers v. Department of the Interior*, 116 M.S.P.R. 17, ¶¶ 16-24 (2011).

## **Has MSPB ever studied whistleblower protection issues?**

Since 1981, MSPB has published several studies tracing the effectiveness, challenges, and successes of whistleblowers in the Federal service. See, e.g., *Do Federal Employees Face Reprisal for Reporting Fraud, Waste, or Mismanagement?* (1981). The MSPB’s most recent study focused on the challenges that a whistleblower must face in order to prevail on his or her claim. This study cautioned that it is critical for a whistleblower to know precisely what must be proven in order to prevail on his or her claim, as any criteria found lacking will strip MSPB of jurisdiction over the appeal. The report describes these criteria and explains what constitutes wrongdoing, how disclosures must be reported, what qualifies as reprisal or retaliation, and what other important issues must be considered in a whistleblower claim. *Whistleblower Protections for Federal Employees* (2010). These studies and others are available online on MSPB’s website at <http://www.mspb.gov/studies/viewallstudies.htm>.

## **Where can I go to learn more about whistleblowing and the MSPB?**

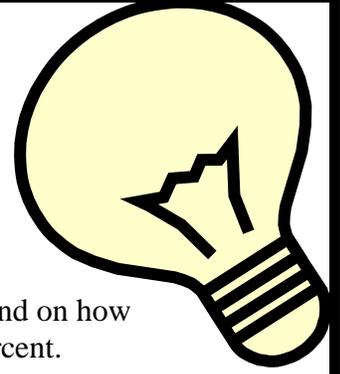
In addition to the MSPB studies, there is other helpful information, such as “Questions and Answers About Whistleblower Appeals,” available online at <http://www.mspb.gov/appeals/whistleblower.htm>. It describes the appeal process for whistleblowing cases in an easy-to-follow format. Also, from time to time, MSPB addresses current developments in whistleblower law in its newsletter, *Issues of Merit*, an archive of which is available on MSPB’s website at <http://www.mspb.gov/studies/newsletters.htm>.

## ***Management-Employee Relations***

**Improved Evaluations Key to Improved Performance.** The performance of federal employees is under increased scrutiny by many stakeholders, but many federal employees believe that the federal performance management system needs improvement. They once again gave low marks to performance management in the Office of Personnel Management’s latest employee satisfaction survey, conducted in April and May.

# *The Illuminator*

## *11-2011*



For example, the percentage of employees who said they felt pay raises depend on how well people do their jobs dropped from an already-low 26.3 percent to 24 percent.

Managers can do better at employee performance management by heeding lessons from a 2009 Merit Systems Protection Board study, "Managing for Engagement — Communication, Connection and Courage." Among the findings:

- Many employees do not receive adequate feedback on their progress.
- Most employees have written performance goals but the goals do not always accurately define current expectations.
- Employee development needs more attention.
- It is important to hold employees accountable for their performance.

In many organizations, both the raters and ratees are often dissatisfied with performance evaluation systems. Raters lament that agencies often promote the systems without devoting the time, supervision and financial resources needed to make the system work.

Raters are often expected to evaluate employees and provide feedback without first receiving training, which leaves them unprepared to coach and counsel their employees. Raters are also not held accountable for the accuracy and quality of their ratings.

Ratees often do not feel the evaluation is balanced and reflective of their job performance. Often, the performance criteria are not related to the most important activities of the position; sometimes, performance standards are not clearly defined.

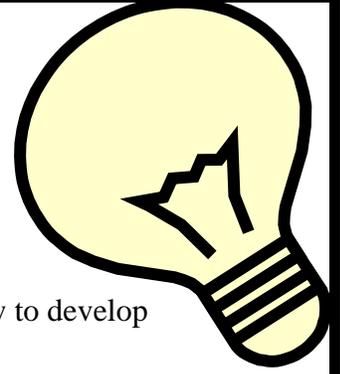
Accurate evaluations provide information and feedback to employees. Supervisors must communicate to employees their strengths and deficiencies.

Performance evaluations can also be used for career development, identifying employee strengths and identifying areas for promotion or other job-related opportunities. The evaluation process also can identify training and development needs.

Some of the problems identified in performance evaluation research conducted and noted by participants attending seminars:

# *The Illuminator*

11-2011



- Supervisors do not receive training. As a result, they do not understand how to develop goals that relate to job performance. This can inflate employee ratings.
- Because supervisors dislike conflict, they deliberately inflate ratings because they are not held accountable for the accuracy of their ratings.
- Performance measurement is often perceived as punitive if realistic feedback is provided.
- In some agencies, there is little management and union cooperation. Many raters feel that the union defends marginal performers and the union believes that managers deliberately distort the process.

The MSPB report found that effective performance management is a key factor in generating better employee engagement. For performance management systems to be effective, some critical components must be in place.

The raters and ratees must believe that the performance criteria are job related. Both should participate in development of performance standards. They should understand the performance evaluation process and criteria used to assess performance.

Both should be trained so they understand the purpose of the performance evaluation process, and the results of performance evaluations should be used as the basis for personnel decisions.

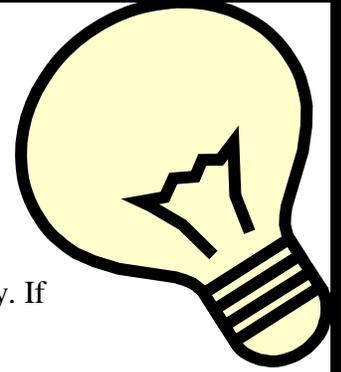
There also needs to be a belief that the system is fair. It must be consistently applied, free from rater bias and accurate, and must have a mechanism to correct flawed decisions.

For a performance evaluation system to work, agency executives need to be committed to the evaluation process. They can demonstrate this by budgeting for performance evaluation training, attending performance evaluation training themselves, and holding raters accountable.

**Don't Drop the Ball When Requesting FMLA Deployment-Related Leave.** Federal employees have long had to juggle work, home and financial responsibilities, along with parting goodbye to loved ones, when family members were called to active duty in the armed forces. Soon, changes to the Family Medical Leave Act (FMLA) will take federal work responsibilities out of the juggling mix, and they will be replaced with

# *The Illuminator*

## *11-2011*



strict leave certification requirements when a family member is called to duty. If employees drop this ball, their jobs could be at risk.

Beginning Oct. 31, federal employees will be allowed to take up to 12 weeks of unpaid leave to address “qualifying exigencies” stemming from an immediate family member’s call or order to active military duty. There are eight situations when a federal employee, whose son, daughter, spouse or parent has been called to active duty, is eligible for FMLA leave. A [final rule](#) promulgated by the Office of Personnel Management provides FMLA coverage for a federally employed family member of a deployed serviceman when any of the following apply:

1. short-notice deployments;
2. military events or related activities;
3. childcare and school activities;
4. financial and legal arrangements;
5. counseling;
6. rest and recuperation;
7. post-deployment activities; and
8. additional agency and employee-approved activities.

Traditionally, the FMLA allowed qualified private and public sector employees to take up to 12 weeks of unpaid leave over a 12-month period for the purpose of addressing certain medical-related situations, including birth of a child, newborn care, adoption, foster care placement, care for the employee, or care for an employee’s family member.

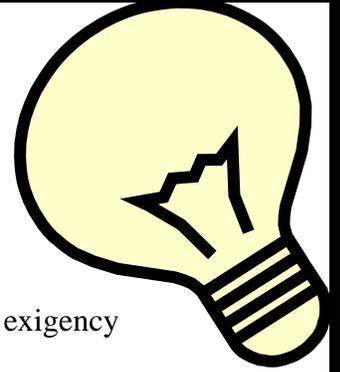
As with the traditional types of FMLA leave, federal employees requesting deployment-related leave must submit a formal request and provide supporting documentation. As in the past, when employers doubt the validity of any such request, they may go so far as to demand employees obtain second or third opinions from health care providers. Earlier this year, the 9<sup>th</sup> U.S. Circuit Court of Appeals said in [Lewis v. U.S.](#) the U.S. Air Force was justified in removing an employee who went on unpaid leave without providing sufficient medical certification.

### **What federal employees need to know:**

- On the first occasion leave is requested for a deployment-related exigency, a federal employee must provide an employer with a copy the family member’s active duty orders or call to active duty papers.
- Additional copies of documentation must be provided if subsequent leave requests are as a result of different active duty orders or calls to active duty.

# *The Illuminator*

## *11-2011*



- Agencies can require the following information to support qualifying exigency leave:
  - A statement of facts signed by the employee, which describes the need for leave and when a deployment-related exigency started or will start.
  - Beginning and end dates should be identified in the statement of facts.
  - An estimate of the frequency and duration of a qualifying exigency in the event the exigency requires an intermittent leave schedule.
  - If applicable, the name, title, organization, phone number, fax number, and/or e-mail address of any third parties an employee met with for a qualifying exigency, along with a short meeting description.
  - Supporting documentation, such as a copy of a meeting announcement for a military-sponsored informational meeting, documentation confirming school-related activities, or copies of bills for legal or financial services.
- Agencies can take steps to verify leave certification, including contacting third parties identified by the employee.

Federal employees who fail to provide sufficient documentation supporting their FMLA leave requests run the risk of being declared absent without leave (AWOL). Such determinations can lead to serious personnel actions, including removal from the federal service. Federal employees experiencing problems over their FMLA leave procedures should immediately contact a federal employment attorney.

**Senior Executive Service to Get Standard Evaluations.** The Senior Executive Service's 7,000 or so members will get a new performance management system as early as this month. The new system, being finalized by the Office of Management and Budget, aims to evaluate SES members on how well they demonstrate the SES's five "core qualifications": leading people, leading change, business acumen, building coalitions and being results driven.

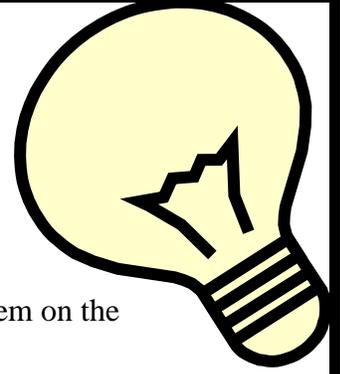
The new system aims to correct a recent trend at some agencies to overemphasize results when evaluating executives' performance, and guarantee at least some consideration for the other four qualifications.

Agencies will be able to weight the five qualifications differently, but OMB will require the "results driven" qualification to make up at least 20 percent of someone's final score. The other four qualifications will have a minimum weight of 5 percent, the Senior Executives Association said.

"It's going to provide some level of uniformity government-wide on what appraisals look like, while allowing agencies some local discretion," said Bill Bransford, general counsel

# *The Illuminator*

## *11-2011*



for SEA, which represents thousands of SES members. "The idea is to get them on the same page."

SEA published details on the plan last week in its latest newsletter, Action.

Some agencies currently don't consider all five core qualifications when evaluating executive performance, Bransford said. Over the last several years, he said, several agencies have overwhelmingly focused on results, to the exclusion of other core qualifications.

But the new system will still emphasize executives' need to show results.

"If you're a good leader, results will follow," Bransford said.

According to SEA's newsletter, OMB sent an email Sept. 21 that said the new system "will provide a consistent and uniform framework for agencies to communicate expectations and evaluate the performance of SES members, particularly centering on the role and responsibility of SES employees to provide executive leadership."

Currently, some agencies have four rating levels and others have five levels. The new government-wide system will require all agencies to have a five-level rating system. If an executive receives an unsatisfactory rating in even one category, his overall rating will be unsatisfactory.

SEA said it was originally concerned that the rules were skewed to allow only executives serving at the highest ranks to receive the highest rating, "outstanding," and it objected to the way the plan was written. A later draft addressed those concerns, SEA said.

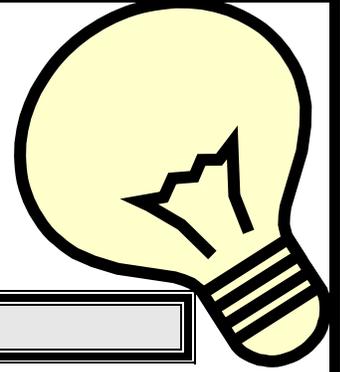
The final plan will be unveiled this month, and all federal agencies will transition to it within two years.

But SEA said that designing a new performance management system isn't the hard part — executing it well is.

"Efforts to re-tool the performance management system are really only valuable in terms of focusing people's attention on executing the system consistently and well," SEA said in comments sent to the Office of Personnel Management. "The actual structure is less important than how its implemented".

# *The Illuminator*

11-2011



## *Training, Self-Development, and Personal Improvement*

**Civilian Education System (CES) Courses Available.** The Civilian Education System (CES), launched in November 2006, is a progressive, sequential, leader development program that provides enhanced leader development and education opportunities for Army civilians throughout their careers. Enrollment in the CES is mandatory for all supervisors/managers who have not completed the appropriate courses at each stage of their civilian career or have not received appropriate course/experience substitution. The CES includes five courses - the Foundation Course (FC), Basic Course (BC), Intermediate Course (IC), Advanced Course (AC), and the Continuing Education for Senior Leaders Course (CESL), all of which culminate with attendance at a Senior Service College (SSC) and the Defense Leader Development Program (DLAMP).

With the exception of the Foundation Course which is completed in its entirety via distributed learning, the remaining courses are accomplished via a combination of distributed learning and classroom training at Fort Belvoir, VA or Fort Leavenworth, KS.

Also available under the auspices of CES are the Action Officer Development Course (AODC), Supervisory Development Course (SDC), and Management Development Course (MDC), all available on-line as correspondence courses.

For an up-to-date course schedule, please click the link immediately below:

<http://www.amsc.belvoir.army.mil/registrar/schedule/ces.jsp>

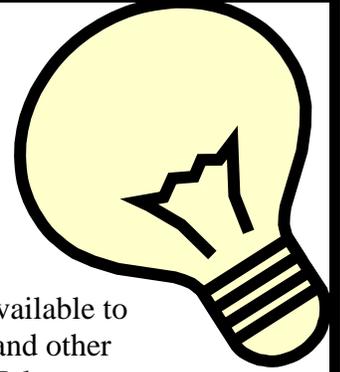
For additional information on the CES, please click on the link below, or contact your servicing HR Specialist.

<http://www.amsc.belvoir.army.mil/ces/>  
<http://www.train.army.mil>. Click on the [Login] button upper right and key in your AKO

**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 HR liaisons, managers/supervisors, and new DCPDS account holders with accessing and using DCPDS, ART, initiating RPAs, 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.

# *The Illuminator*

*11-2011*



**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).

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; and, generating reports and printing a Notification of Personnel Action (i.e. 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.

*BLANCHE D. ROBINSON*

*Human Resources Officer*

*Fort Benning CPAC*

*Phone: 545-1203 (ComL); 835-1203 (DSN)*

*E-Mail:*

*[blanche.d.robinson.civ@mail.mil](mailto:blanche.d.robinson.civ@mail.mil)*