

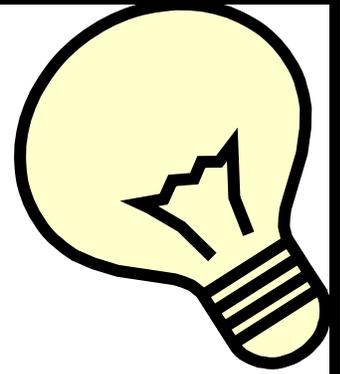
The

# Illuminator

Shedding Light on the HR World

2-2012

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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.).

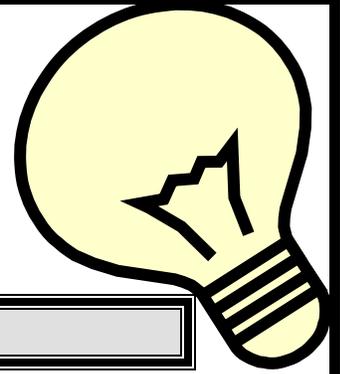
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***Retirement, Life/Health Insurance, TSP, Social Security and Such***

**Five Ways to Add to Your Retirement Income.** Many of us want to retire and enjoy the relaxation that comes with that retirement. Others want to stay active and keep working, and for some, earning extra money is a necessity. Whether you want to work or have to work, there are many options available to help you find jobs, extra income or even second careers.

Retirees have many job skills to offer employers, but many also have the expertise to start their own businesses, to finally follow the dreams they've put off or to create an entirely new work path.

Wondering how you can keep the money coming in retirement? Here are a few ideas to get you started:

## **1. Be a consultant**

You've probably worked in several occupations over the course of your career. Use that accumulated knowledge to your advantage. One of the first places you might look for opportunities is the company you retired from. You know that they now have an opening. You might suggest to them that you'd like to return as a consultant on a contract or part-time basis. After all, you're already familiar with the company, its product and its operations, so you'd be a perfect consultant.

You can also consider working for a startup company. Many young entrepreneurs just starting their companies are in need of your vast business experience. While many won't be able to hire you full time, they can use you as a consultant on an "as-needed" or freelance basis. The opportunities to use your work experience vary. You just have to take a few minutes to consider the places you could find a niche and market your skills where they could be put to use.

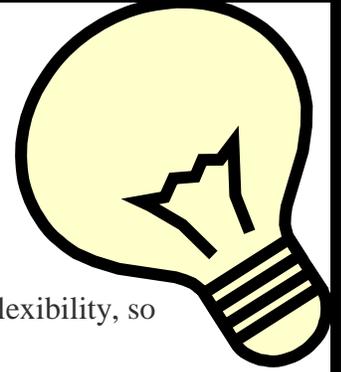
## **2. Seek out temp agencies**

According to the **Bureau of Labor Statistics**, temporary employment accounted for 3.1 million jobs in 2008, and that number is expected to rise. Traditionally, when the economy sees a resurgence, corporations hire temporary workers first, waiting to create permanent jobs when confidence in the economy rises further. Temporary agencies receive requests for a vast array of occupations.

This provides a great opportunity for retirees. Many agencies specialize according to employment field, so you may have to research them to find a good fit with what you are looking for. This could be your best opportunity to re-enter the job market after

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retirement. Further, temporary employment generally boasts a good deal of flexibility, so you can test-drive the type of job you want.

### **3. Consider health, child care and social services**

These are booming fields, and they are always in need of qualified workers. If you're a retired nurse or health care worker, chances are your skills are still needed. Consider returning to work on a part-time basis, or, if money isn't an issue, as a volunteer. Child care workers are also in huge demand, and most retirees have children and grandchildren who have provided them with years of child-care experience. Opportunities can be found at YMCAs, child care facilities, churches and after-school programs that provide care for working parents.

### **4. Make your hobby your job**

Remember when you were working and your mind would wander to thoughts of the golf course, the ski slopes or the campground? Consider making your hobby a retirement job. Remember wanting to run out the door and hit the links? Teach kids to play golf at a community golf club. Do you like to fish? Ask the marina if there are any part-time jobs like a harbormaster, fuel attendant or boating safety instructor. If you have an RV, consider being a campground host for a summer.

Perhaps you like basketball, hockey, football or tennis. Is there a sports center or arena near you? Such venues have jobs like ticket taker, event planner or host for incoming sports stars. These can be perfect jobs for retirees who are looking for part-time income -- and a chance to watch their favorite teams.

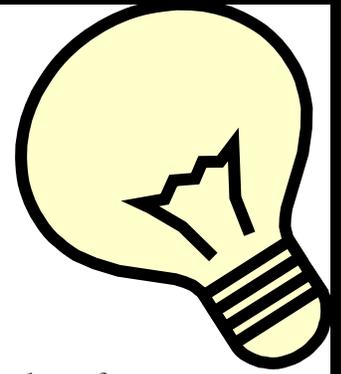
### **5. Think like you're 20**

Looking for extra income, want to interact with people or just need to get out of the house? One of the best pieces of advice I've seen given to retirees looking for extra income is to think like a college student. Most young adults today work two, three and sometimes four part-time jobs while juggling classes.

These jobs are usually minimum wage, require only a few hours a week and give you many opportunities to try different occupations. The positions often give you the option of working as many or as few hours as you want. They also don't require the same time commitment as a full-time job, and they can give you the flexibility to pursue other things, like taking college classes.

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### **The bottom line**

Whether you need to work to supplement your retirement income, just want to have fun or are eager to launch a second career, the opportunities are there. It often takes just a dash of imagination, a positive attitude and a little hunting to land a dream retirement job. Don't forget that you have a wealth of life skills to offer the workplace. Many leading corporations seek out older workers for their knowledge and work ethic. Retirement is a perfect to have some fun and enjoy another career.

**Secrets of the 401K Millionaires.** Those hoping to occupy Easy Street in retirement may want to follow the lead of the 0.2% -- that topmost tiny fraction of savers who have managed to sock away more than \$1 million in their 401ks.

That figure, based on data from the Employee Benefit Research Institute, may depress those with sums closer to the median 401k balance of roughly \$60,000 -- and for good reason. Even among employees 55 and up who have been contributing to the same 401k plan for more than 20 years, just 2% are estimated to have cracked the \$1 million mark, says Jack VanDerhei, EBRI's research director.

To some, the remaining 98% of savers 55 and older who haven't cracked \$1 million show that the 401k, the principal vehicle for U.S. retirement savings, is at best inadequate and at worst a colossal failure. Even Ted Benna, the man credited with developing the first 401k plans out of an IRS tax loophole in 1981, now concedes that they've grown overly complex, with too many options, too-high fees and too many ways to cash out one's nest egg.

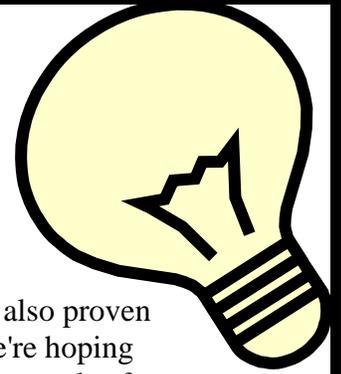
### **401k providers aren't happy, either**

Even some 401k providers don't disagree. With traditional pensions, employers hired teams of experts to make the tough investing decisions now entrusted to individual employees, says Catherine Golladay, vice president of participant services for Charles Schwab. "Left to their own devices, most people do not have the knowledge or the discipline to do this themselves," she says.

Schwab, like other 401k providers, has found that efforts to educate employees haven't proved to be very successful -- and that only 10% of workers take advantage of such offers of help. In response, the company has announced a new index-fund-only 401k, which will keep expenses down and include mandatory advice on investments. "Many employees don't understand what they are losing to expenses -- sometimes 55 to 110 basis points," says Jim McCool, an executive vice president at Schwab. "They don't realize what a drag it is on their retirement savings."

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Target-date funds, which allocate investments based on the saver's age, have also proven inadequate, McCool says. "It's a cookie-cutter, one-size-fits-all approach. We're hoping that by adding independent, one-on-one advice, we can help tailor plans to the needs of individuals and stop them from panicking and making bad decisions when the market gets scary."

## **How some make it work**

So if that's what's wrong with the 401k, who are these super-rich among retirement savers who have managed to make the system work? And what are they doing differently? They don't necessarily have higher than average salaries or the investing IQ of Warren Buffett, VanDerhei says. "The one characteristic that differentiates the winners from the nonwinners here is contribution rate -- a high percentage of those million-dollar savers had constant participation and high contribution rates," he says.

Though many savers may be scarred by the past decade of lousy returns, getting to \$1 million over the course of a 40-year career should be a manageable goal -- even for some lower-income employees, says Greg Burrows, a vice president of Principal Financial. Someone who earns \$35,000, saves 12% to 13% (including a company match) and who gets an annual raise of 3.5% and annual returns of 7% would save a million dollars. Despite the current volatility, many may still do that, he says. "One thing you have to keep in mind is that the 401k hasn't been around long enough for us to see people take full advantage of it over the course of an entire career."

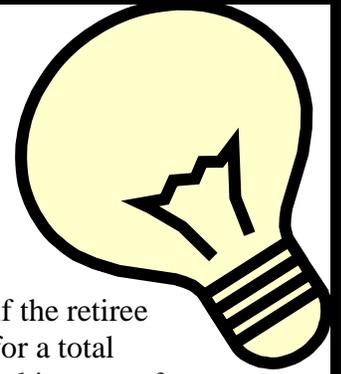
Of course, those who earn big salaries are more likely to have big balances in their 401k's, says Mike Alfred, the CEO of Brightscope, which monitors and rates retirement plans. Further, the **Great Recession** not only wiped out many 401k balances, but its fallout also has hampered saving -- particularly among the middle class, he says. "There are a lot of families who have to simply stop saving because of a job loss or major health-care issue," he says.

On top of that, most participants can't -- or don't -- take full advantage of their 401k's, says Alfred. Advisers recommend savers max out their 401k contributions. But while the IRS raised the cap \$500 to \$17,000 for 2012, just 9% contribute the maximum, according to EBRI.

And to put \$1 million in perspective: As nest eggs go, it's not exactly Fabergé. The rule of thumb, advisers say, is to accumulate enough to be able to replace 75% to 80% of one's income in retirement, without -- ideally -- having to draw down more than 5% of the balance per year. So a \$1 million nest egg would give off just \$50,000 annually,

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enough to replace 75% of the income of someone who made \$66,666. Even if the retiree collects the current maximum Social Security payment of \$30,156 annually for a total income of \$80,156, that's still just the recommended replacement for an annual income of \$106,874.

### **How the big money gets saved**

The IRS says it doesn't keep data on the highest 401k balances, and providers of the plans refuse to disclose the figures. Anecdotally, however, advisers say it's not uncommon for savers to rack up balances in the \$3 million to \$5 million range.

Bedda D'Angelo, the president of Fiduciary Solutions in Durham, N.C., says one of her clients amassed \$6 million in her 401k. An executive at a pharmaceutical company, the client maxed out her pretax contributions each year, and, including after-tax contributions, saved close to 30% of her earnings annually.

She was the kind of person who never had debt -- not even mortgage debt, D'Angelo says. "She was a disciplined saver, whenever she got a bonus -- she would invest half of it." Her plan had a mix of large cap, small cap, international equities and a bit of bonds, and at 56, when she retired, she was earning \$450,000.

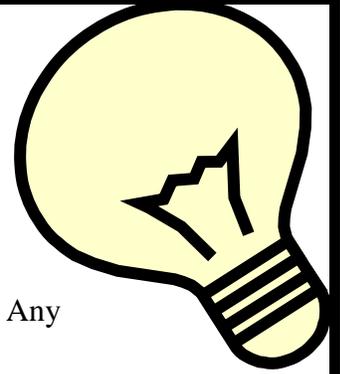
Another client who saved more than \$1 million worked his entire career at **General Electric (GE 0.00%, news)** and invested only up to the company match, but entirely in company stock, D'Angelo said. Though such a strategy seemed dangerous -- even before the collapse of Enron, when many employees suddenly found themselves holding worthless shares -- the employee refused to diversify, she says.

"As soon as I met him, I tried to convince him not to, but he wouldn't hear it," she says. Other advisers also shared tales of employees making millions with only company stock in their plans. "Those who bet the entire house on a particular stock are always going to have a higher probability of a big win, but they also may end up in big trouble," VanDerhei says.

Kathleen Campbell, the founder of Campbell Financial Partners in Fort Myers, Fla., says the handful of her clients who have saved from \$1 million to \$2 million in their plans all maxed out their contributions. In addition, they refrained from jumping in and out of investment selections based on the whims of the market. But she also had clients get rich on company stock, a strategy she discourages. "Best not to be holding the bag with your retirement savings in another Enron or Bear Stearns," she says.

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**Reductions and Withholdings.** This article is written by Tammy Flanagan. Any references to "T" pertain to her as an author.

I recently received an email requesting that I write a column describing the deductions from benefit checks that are common for retirees. The emailer wrote:

Some of my colleagues look at the gross figure of their retirement benefit, but don't realize that by the time you take out your deductions, the gross gets dwindled down. Do you know the difference between something that will reduce your Civil Service Retirement System or Federal Employees Retirement System benefit and something that will be withheld from your retirement? It's important to know because the reductions will lower the income on which you'll pay taxes, but the withholdings are taken after taxes.

## Reductions

The possible reductions are different for CSRS and FERS. Let's look at CSRS reductions first, in the order in which they would reduce your retirement:

**Age:** This reduction is only taken if the employee is taking early retirement under age 55 -- either voluntary or discontinued service.

**Deposit:** This applies to unpaid deposits for service that was not subject to CSRS retirement deductions and was performed prior to Oct. 1, 1982. It is 10 percent of the unpaid deposit. Such reductions are fairly common for people hired in the 1960s or 1970s under a temporary appointment, or who have seasonal work or summer employment on their record.

**Survivor Benefit Election:** This could be a reduction for a spousal benefit or an insurable interest survivor benefit election. It could be significant: The reduction for the maximum spousal survivor (providing your surviving spouse with a benefit equal to 55 percent of your unreduced retirement) is almost 10 percent of your CSRS benefit. An insurable interest election can be even higher, depending on the age difference between you and the person you are naming to receive the survivor annuity.

**Redeposit:** A redeposit is the repayment of a refund of retirement contributions that occurs when an employee has a break in service and chooses to withdraw their CSRS retirement contributions. If your break in service was prior to March 1, 1991, there will be a reduction to your retirement if you decide not to repay refunded contributions. On the other hand, if you took a refund of retirement contributions for service that ended on or after March 1, 1991, this service would not be used towards your length of service in the retirement computation unless you pay back the refund with interest.

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**Alternative Annuity:** Another reduction would occur if you elect an Alternative Form of Annuity. This option is available to employees who retire on a nondisability retirement, but who have a life-threatening illness. This option allows a lump sum payment of retirement contributions in exchange for a reduced annuity.

**CSRS Offset:** The annuities of a CSRS Offset employee are computed in the same manner as if covered under CSRS only. The benefit is reduced (that's where the "offset" comes in) when the retiree becomes eligible for Social Security -- usually at age 62 -- even if the individual does not apply for Social Security.

Here are the possible reductions to a FERS annuity in the order that they would apply:

**Age:** Although a FERS annuity is not reduced for early retirement, there is an age reduction for employees who retire at their minimum retirement age with at least 10 years of service, but less than 30, or at age 60 or 61 with at least 10 years of service, but less than 20. This is referred to as an MRA+10 retirement. To avoid this reduction, employees can postpone receiving the retirement benefit until they reach the age where they would have no reduction.

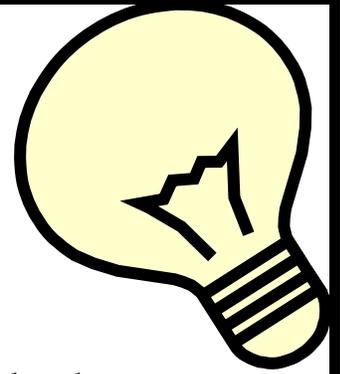
**Survivor Benefit Election:** This could be a reduction for a spousal benefit or an insurable interest survivor benefit election. As under CSRS, it could be significant: The reduction for the maximum spousal survivor benefit -- providing your surviving spouse with a benefit equal to 50 percent of your unreduced retirement -- is 10 percent of your FERS benefit. An insurable interest election can be much greater than a 10 percent reduction, depending on the age difference between you and the person you name to receive the survivor annuity.

**Alternative Annuity:** As under CSRS, the Alternative Form of Annuity is available to employees who take nondisability retirement, but who have a life-threatening illness. This option allows a lump-sum payment of retirement contributions in exchange for a reduced annuity. The reduction is computed actuarially based on the age of the employee and the amount of money in his or her retirement account.

In addition to these reductions, there are other factors that could make your retirement smaller than you might expect under either CSRS or FERS. These include whether your service was intermittent, part-time, or simply not creditable toward retirement; and whether a former spouse was awarded part of your benefit in a divorce settlement.

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### Withholdings

Now that we've considered the permanent reductions to your annuity, let's look at the items that the Office of Personnel Management will withhold from your retirement benefit.

First, taxes. OPM will withhold federal income tax while your retirement is being processed and you are receiving interim retirement payments. OPM will make any necessary tax withholding adjustments when your retirement is finalized.

OPM will not withhold state income taxes while you are receiving interim retirement payments. New retirees might consider making quarterly tax payments to their state. Another option is to increase state income tax withholding from your spouse's salary -- or your own, if you're starting a second career. Keep in mind that you could be in interim retirement status for more than six months. If you wait to pay your back taxes until you file your return, you may have to pay a penalty. Not all states tax federal retirement benefits: here's state-by-state information.

Retirees do not pay FICA tax or the Medicare tax on retirement benefits.

You also will receive a portion of your reduced retirement tax-free that represents the contributions that you've made to CSRS or FERS throughout your career. OPM has a calculator to help you compute the tax-free portion of your retirement.

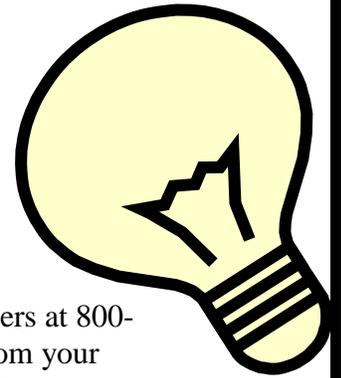
In addition to taxes, you'll also have money withheld from your retirement for various forms of insurance, depending on the benefits you've chosen to receive:

**Federal Employees Health Benefits Program and Federal Employees Group Life Insurance:** You will be notified at retirement that your FEHBP and FEGLI coverage will be transferred to OPM and will follow you automatically into retirement. As long as you are eligible to maintain these benefits, you don't need to do anything after you retire. You will need to decide how you wish your FEGLI coverage to continue when you complete your retirement application. Your health and life insurance coverage will continue while you are receiving interim pay while your retirement application is being processed. OPM will begin withholding health and life insurance premiums retroactive to the date you begin to receive your annuity, when the agency finishes processing your application.

**Federal Employees Dental and Vision Insurance Program:** You shouldn't need to take any action with your FEDVIP plan when you retire. You will receive a letter informing you that plan administrators have been notified of your retirement and that your premiums will be deducted from your annuity once your retirement has been finalized. While you are receiving interim retirement checks, you may receive direct bills for your premium.

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Federal Long-Term Care Insurance Program: Contact Long Term Care Partners at 800-LTC-FEDS if you have your long term care insurance premiums withheld from your salary and you are retiring. You have various billing options. Here's more information.

Savings Bonds: After you retire, OPM no longer will withhold for savings bonds. Here's more information.

Checking or Savings Allotments: These are voluntary deductions sent by direct deposit to a checking or savings account in your name. You may have up to two allotments, and the accounts must be maintained at a domestic financial institution. You must maintain at least \$100 net annuity payment, and the allotments must be for a minimum of \$50.

Retirees can use OPM's online service to make changes to allotments

## ***Employment-Related News***

**Public Satisfaction with Federal Services Increases.** Americans today are happier with federal services than they were a year ago, but overall trust in government has declined, according to a new survey.

The public's satisfaction with federal services increased 2.3 percent to a score of 66.9 in 2011, after a 5 percent decrease between 2009 and 2010, the American Customer Satisfaction Index found. People's trust in Uncle Sam, however, dropped 12 percent from a score of 41 in 2010 to 36 in 2011. The index is based on a 0 to 100 point scoring scale.

Respondents in general were more pleased with experiences at specific departments than with the government overall.

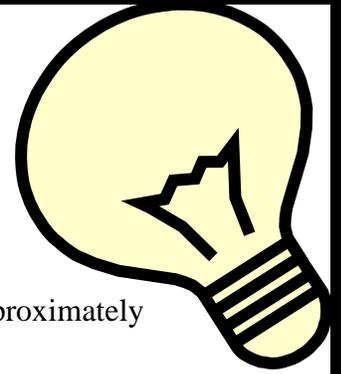
"While people generally distrust federal government as a whole, they are much more positive toward the job that individual agencies are performing," said Claes Fornell, ACSI founder and author of *The Satisfied Customer: Winners and Losers in the Battle for Buyer Preference* (Palgrave Macmillan, 2007).

"Paradoxically perhaps, these findings suggest that the more people come into contact with government service, the more they actually like it," Fornell said. "The lack of trust has much more to do with politicians than it does with federal workers and the services of the federal government."

The Michigan-based ASCI is a national economic indicator of customer evaluations of the quality of products and services available to household consumers in the United States. Data from interviews with approximately 70,000 customers annually are used to measure satisfaction with more than 225 companies in 47 industries and 10 economic

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sectors, along with more than 200 services, programs and the websites of approximately 130 federal government agencies.

Federal agencies that administer benefits largely received higher scores than those with a regulatory mission, the survey found. Some federal agencies, such as the National Weather Service and the State Department's Bureau of Consular Affairs, received scores on par with the highest-rated private sector firms, including Amazon.com and FedEx, according to the report.

People were not as happy with departments such as Homeland Security and Treasury, largely due to negative impressions of and experiences with their two best-known agencies: the Transportation Security Administration and the Internal Revenue Service. DHS' Office of U.S. Citizenship and Immigration Services, however, scored highly in the information and news category, and taxpayers who filed their taxes electronically were more satisfied than those who submitted paperwork.

DHS and Treasury can take solace in the fact that they scored higher than the two worst private sector companies included in the survey: Pepco Holdings and Delta Air Lines.

Despite the increase in satisfaction with federal services, the government still trails the lowest scoring private sector segment in the index. One weak spot is handling complaints, the report said. The government received a score of 44 out of 100 for its performance in handling complaints, which was only slightly better the airline industry's score of 43.

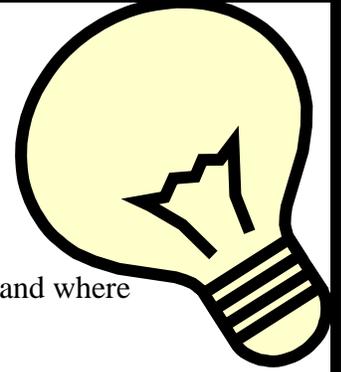
The index also found that political ideology played a role in how respondents felt about government. Respondents who identified themselves as liberal were more satisfied with and had more trust in government than those who characterized themselves as conservative.

In addition to its report on the federal government, ACSI this week released its fourth quarter 2011 report on the public's satisfaction with e-government, which received a score of 75.1 "Citizens remain considerably more satisfied when they interact with the government online than they are with their government experiences overall," said a press release accompanying the report. ACSI and customer experience analytics firm ForeSee produced the e-gov findings.

**Federal Jobs: What's Hot for 2012?** There are many pundits out there these days that will tell you Federal jobs are all but extinct. However, recent data would argue that point and when it comes right down to it, the Federal job market is really no different than any other job market in the fact that there are plenty of opportunities to be had if

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you know where to look. So, what are some of the hot Federal jobs for 2012 and where can you find them?

## **Best Places to Be**

Of course knowing that there are Federal jobs available is one thing, but where they are located is still another. While critics will argue this list to a certain extent, for the most part the cities that boast the best opportunities for Federal work as well as the happiest Federal workers continue to be:

- Washington, DC
- San Antonio, TX
- Atlanta, GA
- Philadelphia, PA
- New York, NY
- Dallas, TX
- Baltimore, MD
- Tampa, FL
- Chicago, IL
- Los Angeles, CA

While these ten cities are not the only places where the Federal government will be looking to hire in 2012, they will more than likely be the strongest. Fortunately, for anyone who is close to any one of these Federal hot job factories, plenty of opportunity will abound in several areas

## **Hot Areas for the Fed in 2012**

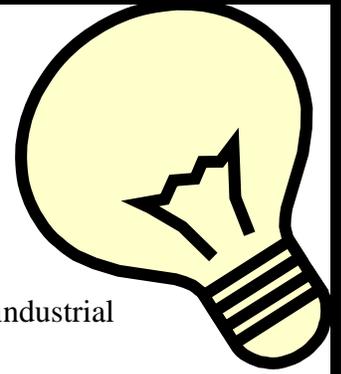
While the Federal government continues to provide steady work for those who qualify, there are five fields in particular that have seen a dramatic increase in hiring over the past few years. Even heading into 2012, these jobs show no signs of letting up in the sheer number of qualified people that are going to be able to be hired.

Mainly, the Federal jobs that have been hot and that are looking to stay hot are in fields that will likely always be in high demand. These types of fields are ones that will need to have qualified applicants filling the job demand at all times regardless of what the economy might look like. The top five Federal hot job fields include:

**Medical:** It is estimated that the medical field as a whole will see over 54,000 new hires for the time period of 2009 to 2012. This includes many sectors of the medical industry

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including nursing, all disciplines of physicians, consumer safety, pharmacy, industrial hygiene, radiology, and rehabilitation therapy.

Of course the most of job opportunities in the medical field at the Federal level will be in the larger metropolitan cities. Wherever there is an influx of Federal workers, there will be a need for their well-being being tended to by professionals in the medical field.

**Protection and Security:** Coming in just below the medical field is the protection and security field with an estimated 52,000 plus hires for the same time period. Because America is in a time where there is a lot of uncertainty, both here and abroad, there will always be an ongoing need for protection and security.

Again, these hires are, and will continue to be, in a variety of areas including analysis for intelligence, foreign security affairs, international relations, Federal level security administration, transportation security officers, and even Federal level park rangers. Again, the edge will go to the larger metropolitan areas when it comes to the level of opportunity in the protection and security field.

**Compliance and Enforcement:** With over 31,000 projected hires over the 2009 to 2012 time period, the field of compliance and enforcement is one that continues to surge. With immigration being a main concern among many of the American people, this is a field that might see an even bigger bump than it already has moving forward into 2012.

Sectors that will be hiring will include border security, customs enforcement, customs inspection, as well as various levels of Federal inspectors and investigators. Many of these Federal jobs will be found in the border states that have large metropolitan areas.

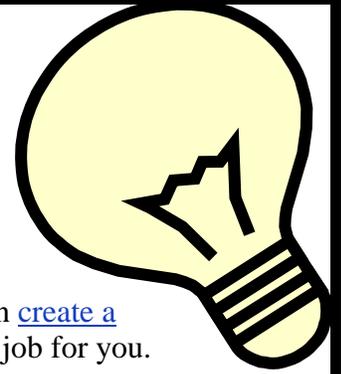
**Legal:** Next on the list of hot Federal jobs for 2012 is the legal field. Recent changes to the way in which visas and passports are handled and processed are a likely reason that this field continues to add jobs to the tune of over an estimated 23,000 from 2009 and going into 2012.

Contract representatives, various attorneys, and all areas of visa and/or passport assistance will likely continue to see nice growth for 2012 and beyond. As most of the Federal jobs in the legal field are needed all over the country that means that qualified people can find opportunity nearly everywhere they look. However, the top metropolitan areas will likely still continue to offer the most amount of openings.

**Administrative:** For the 2009 to 2012 time frame, this field of Federal jobs is estimated to hire well over 17,000 people. That means a lot of opportunity in 2012 for those who are qualified for a variety of support activities for clerical positions, human resources for various Federal departments, program analysts, management analysts, and

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telecommunications for Federal resources. If you are computer savvy and can [create a website](#), manage data, or organize projects, then there may well be a Federal job for you.

While these [Federal jobs](#) are not as plentiful as some of the other fields of Federal hot jobs, they do provide a distinct advantage. Nearly every corner of the country that has a need for an abundance of Federal workers will also have the need for highly trained and qualified administrative personnel. So, the amount of Federal jobs may be less for this field, but the areas of opportunity are indeed greater.

Again, there are more than just these five Federal job fields that will be looking to staff up in 2012, but these fields are going to no doubt be the hottest. Again, because these fields are ones that need to be filled no matter what is going on with the economy, they will likely stay on the Federal hot jobs list for 2012 and even further out. While there may not be enough Federal jobs to solve the unemployment problem in America, there are plenty

**Fewer Feds Tax Delinquent.** Federal employees' tax delinquency rate fell slightly in 2010, according to statistics provided by the IRS.

The IRS said 98,291 federal civilian employees were behind on their taxes as of Sept. 2010, which equated to a 3.33 percent delinquency rate. That is down from 99,036 tax-delinquent feds, or 3.35 percent of the total workforce, a year earlier.

But the amount of taxes feds owed increased nearly \$32 million in 2010, to more than \$1.03 billion.

The IRS said 2011 statistics are not available yet. Its statistics do not include feds who have entered into a repayment plan with the IRS.

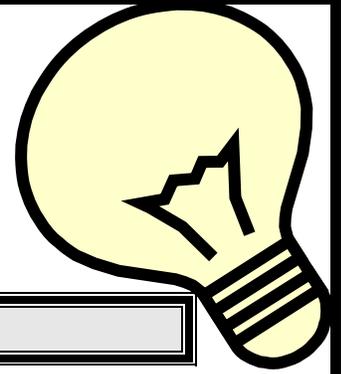
When military service members, civilian retirees and military retirees are factored in, the total tax delinquency rate among government employees and retirees fell slightly in 2010, from 2.89 percent to 2.85 percent. The IRS said 279,381 total government employees were behind on their taxes in 2010, down 3,173 from 2009.

The total amount owed by government employees and retirees increased about \$108 million, to \$3.4 billion.

Although the number of government employees and retirees behind on their taxes fell in 2010, it was still higher than in 2008.

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## Prohibited Personnel Practice of the Month

### Number 3: Coercing Political Activity



*Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—  
(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity*

#### Where can I find this prohibition covered in the law?

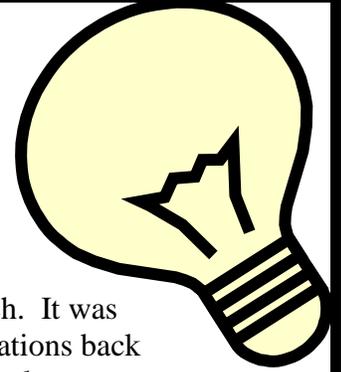
This prohibited personnel practice (PPP) is listed at section [2302\(b\)\(3\) in title 5 of the United States Code](#).

#### Where did this provision come from?

While this provision was codified in 1978 within the Civil Service Reform Act of 1978, [Pub. L. No. 95-454](#), 92 Stat. 1111, it has an interesting history dating back nearly 100 years earlier. From the earliest days of our Nation until 1883, it was common practice for the incoming President's administration to reward members of his political party with

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Federal Government appointments within every level of the Executive Branch. It was likewise expected of such Federal employees to make generous political donations back to their political patron. Such practices led to public perceptions of widespread corruption and incompetence within the Federal Government. Michael Bogdanow and Hon. Thomas Lanphear, [History of the Merit Systems Protection Board](#), *Journal of the Federal Circuit Historical Society*, Vol. 4, 109 (2010).

In 1883, Congress began to reign in such practices by passing the Civil Service Act, also known as “[The Pendleton Act of 1883](#).” This statute required for the first time that a sizeable portion of Federal appointments be made solely based upon the relative merits of the applicants, without regard to their political loyalties. Over time, this principle was expanded and strengthened to protect all competitive and excepted service positions.

Today, it is a PPP under this statute for a Federal official to coerce any applicant or employee to engage in political activity, or to retaliate against such individuals based on partisan politics. The Hatch Act of 1939 contains many similar prohibitions, and carries severe penalties. See [5 U.S.C. § 7321 – 7326](#).

### **If I file an appeal with the Merit Systems Protection Board (MSPB) and claim that the agency violated this provision, will the MSPB hear my claim?**

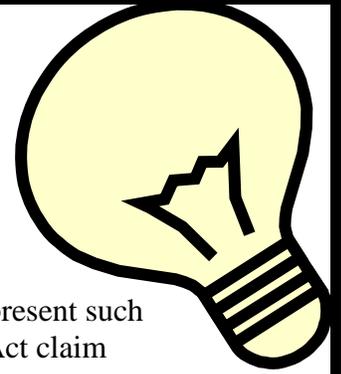
Under [5 U.S.C. Section 7701\(c\)\(2\)\(B\)](#), the MSPB may not sustain a personnel action “based on” a PPP. Generally, a PPP may be raised as an affirmative defense in an otherwise appealable action in an appeal filed with MSPB. An otherwise appealable action is a personnel action that can be appealed to MSPB on its own, which would include, for example, a removal or suspension of 15 days or more, and means that MSPB has jurisdiction in the case.

As with the other PPPs, if your claim is filed with MSPB in connection with an otherwise appealable action, we will hear your PPP claim, but only if it is related to the underlying personnel action being appealed. Such PPP claims will not be heard if your appeal is filed under the [Veterans Employment Opportunities Act of 1998](#) (violation of veterans’ preference rights), the [Uniformed Services Employment and Reemployment Rights Act of 1994](#) (discrimination based on military service), or the [Whistleblower Protection Act](#) (individual right of action appeals based on retaliation for making protected disclosures), as such appeals are not filed under MSPB’s otherwise appealable action authority, but rather specific subject-matter based statutory authorities.

If your PPP claim is not within the MSPB’s jurisdiction as explained above, you may still be able to file such a PPP claim with the Office of Special Counsel (OSC), which is a separate and independent executive agency. As noted above, many of the prohibitions contained in this PPP on political coercion are also covered by the Hatch Act of 1939.

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The OSC has authority to investigate potential Hatch Act violations, and to present such claims to MSPB for consideration. Instructions for filing a PPP or a Hatch Act claim with OSC are provided at <http://www.osc.gov>.

In addition, although probationary employees have no statutory right of appeal to MSPB, under [5 C.F.R. §315.806\(b\)](#) they may appeal the termination of their appointment if they allege that the action was based on partisan political reasons.

### **Who has the burden of proving a claim under this section?**

If raised in an otherwise appealable action appeal, a PPP claim is an affirmative defense. An appellant bears the burden of proving such affirmative defenses by preponderant evidence. Preponderant evidence is defined in [Section 1201](#) of the MSPB's regulations as the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue. The MSPB's regulations can be accessed through our website at <http://www.mspb.gov/appeals/appeals.htm>.

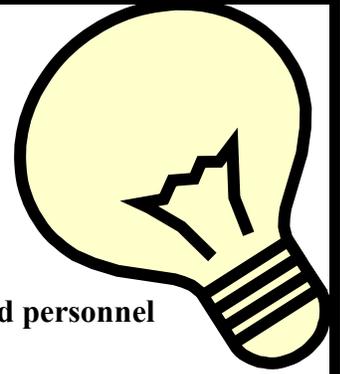
### **Does political coercion have to be extreme or perpetrated by a supervisor?**

The answer to both questions is no. The coercion does not have to be extreme to qualify for this PPP, and the employee need not be a supervisor. For example, in [Special Counsel v. Ware](#), [114 M.S.P.R. 128](#) (2010), a Contracting Officer Technical Representative was removed for using her Government computer to send fundraiser emails to 14 or more individuals, three of whom were not Federal employees, but who she nevertheless exercised some control over because of her influence over a contract. In its decision to remove the employee, the Board noted its holding in an earlier case, that “[t]he proscriptions of the Hatch Act fall equally on clerks and managers alike.” (The improper political activity in [Ware](#) was addressed solely under the Hatch Act, and was not prosecuted as a PPP violation of 5 U.S.C. § 2302(b)(3)).

In another case, [Special Counsel v. Acconcia](#), [107 M.S.P.R. 60](#), ¶ 5 (2007), the Board explained that “the coercion of political contributions[] is one of ‘the most pernicious of the activities made unlawful by the Hatch Act’” and that a single occasion of soliciting funds from a subordinate for a political campaign warranted removal, even though the supervisor did not specifically attach any threats of consequences for failing to make the requested political contributions.

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## **What penalties are possible for an employee who commits this prohibited personnel practice?**

Violation of this PPP carries potentially devastating consequences for the offending employee. This is because when such conduct also violates the Hatch Act, it carries a presumptive statutory penalty of removal. Under the Hatch Act, the penalty of removal may be mitigated to no less than a 30 day suspension by a unanimous vote of the Board Members. See [5 U.S.C. §§ 7324\(a\)\(1\)](#) and [7326](#).

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

**Agencies Try Out New Performance Management System.** More details are emerging about a pilot program that aims to improve the performance management system for all government employees, with some agencies pledging to start the first training sessions this spring.

The Office of Personnel Management will begin training managers on the new system by March or April, OPM Deputy Chief of Staff Justin Johnson said. OPM hopes to implement GEAR (goals, engagement, accountability and results) for the agency, collaborating with its local bargaining units, by the end of the year, he said.

John Gage, president of the American Federation of Government Employees, questioned the usefulness of GEAR. He said he did not plan to "put out a recommendation" to work with the pilot.

"I don't see anything different here when it comes to performance management," he said at the monthly meeting of the National Council on Federal Labor-Management Relations.

Gage spoke following presentations from some of the agencies involved in the pilot, including the Energy, Homeland Security, Housing and Urban Development departments, and OPM.

Gage said he "did not see any difference" between the pilot and existing performance management programs.

"Especially with some of these agencies -- HUD, DOE -- it's going to be a big year for these agencies," Gage said. "Laying on this type of human resources program . . . it just doesn't excite me."

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Johnson said OPM had the cooperation of its local unions and was working through the pilot to make sure a new system would not "do more harm than good." He described Gage as taking a "wait-and-see approach."

"We're trying to make sure it adds value. We're confident it's going to," Johnson told *Government Executive*.

GEAR focuses in particular on aligning employee performance with agency performance. At HUD, Senior Executive Service members have floated the idea of withholding SES eligibility for receiving an "outstanding" ranking if the agency did not perform well by certain metrics, said HUD Chief Human Capital Officer Karen Newton Cole.

"This was kind of radical," Cole said in a presentation to the labor management council Wednesday. "We know there are severe problems in terms of how we're managing performance and linking that performance to agency goals. The SES corps [at HUD] took that to heart and said, OK, we need to lead this effort using ourselves, essentially as a guinea pig."

Energy also plans to develop milestones with actions over the next several months and is working with eight local bargaining units covering 7,500 employees.

According to materials provided by Energy on Wednesday, the department's plans for GEAR include online performance management training, ePerformance software to support reporting and accountability for both SES and non-SES employees and quarterly progress reviews.

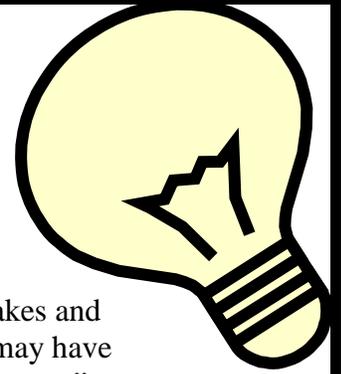
Energy's CHCO, Michael Kane previously advised a Government employee-oriented newsletter that this agency already was doing many of the things GEAR working groups were looking at. Secretary Steven Chu has agreed to what is known as 360 employee performance surveys -- where all SES employees, including department secretaries, must get input from colleagues at a variety of levels.

Other agencies involved in the pilot -- Homeland Security, U.S. Coast Guard and Veterans Affairs were in earlier stages of developing their pilot programs.

**Past Transgressions don't Necessarily Spell Doom for Clearances.** Career consultant Derrick Dortch has reassuring words for security clearance applicants who are worried about being approved:

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“No one is perfect,” he said in a recent interview. “All of us have made mistakes and have blemishes in our backgrounds. So don’t assume that any mistakes you may have made in the past would necessarily doom your application for a security clearance.”

A variety of factors, including the particular clearance policies of your target agency, would likely influence the importance of your mistakes or liabilities, said Dortch, who is president of the Diversa Group, a career consulting firm focused on federal jobs.

For example, the FBI considers marijuana use within the previous three years, or use of other illegal drugs within the previous 10 years, to be automatic deal-busters. By contrast, the CIA only requires applicants to have refrained from using illegal drugs within the previous 12 months — but does evaluate illegal drug use prior to the previous 12 months.

Dortch also said that, in many cases, you may mitigate liabilities in two ways: accountability and time. This means that your liabilities might not be held against you if you have assumed accountability and responsibility for them and you have already corrected them, or are following a plan to correct them; or sufficient time has passed since your transgressions occurred without repeating them.

Some examples of how such mitigation might work:

- Suppose you’re applying for a CIA clearance, and the last time you abused drugs was two years ago. Because the CIA does not consider drug use that occurred more than one year ago to be an automatic deal-buster, you might be able to mitigate concerns about your past drug use by explaining to investigators that you only used drugs infrequently in college and, since graduating, you completely stopped using drugs.

You would thereby show that your drug use would be unlikely to recur and should not cast doubt on your reliability, trustworthiness or good judgment.

- Suppose you used to be a problem drinker. You might be able to mitigate concerns about your drinking by proving to investigators that you successfully completed a treatment program and received a favorable prognosis by a qualified medical professional or a licensed clinical social worker and have, since completing the program, lived an alcohol-free life and changed your friends and other relevant lifestyle habits accordingly.

- Suppose you were once treated for depression. You might be able to mitigate concerns about your mental health by explaining, with corroboration from your psychologist or psychiatrist, that your depression was an understandable response to the death of a loved one, a divorce or other traumatic event, and by proving that your treatment led to your successful recovery without relapses.

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- Suppose you have or have had financial problems, such as a bankruptcy, outstanding debts or outstanding loan payments. You might be able to mitigate concerns about your financial status by showing evidence of some combination of the following: The underlying conditions that caused your financial problems were largely beyond your control because of loss of employment or an unexpected medical emergency, for example; you have conquered the conditions that caused your financial problems; you have taken responsibility for your financial problems by getting counseling from a certified credit counselor; you have or are currently following a payment plan that will eliminate your debts and return you to good standing; or you have reason to dispute the legitimacy of the past-due debt at issue, and you provide evidence that you have taken actions to resolve the issue.

Dortch warns, however, that even small debts, including student loans and mortgage loans, may doom security investigations for applicants who have not taken steps to deal with them.

**45 Days of Free Leave? COP (Continuation of Pay) Explained.** Most Federal workers know that if they are injured on the job they may file a claim with the Office of Workers' Compensation Programs (OWCP). However, Continuation of Pay (COP) seems to be a subject that most Federal workers and many Injury Compensation Specialists have difficulty understanding. The rules of COP can be tricky, so I will attempt to simplify and explain what COP is, and how to properly receive up to 45 days of disability leave from your employing agency.

To be eligible for COP the injured Federal worker must first sustain a Traumatic Injury and report the injury to their employing agency on Form CA-1 or other authorized form **within 30 days** of the date of injury. The injured worker must also supply medical evidence showing that he or she was disabled for work as a result of the injury during workdays missed. To clarify, an Occupational Disease claim (such as Carpal Tunnel Syndrome) is not entitled to COP. Further, if the injured worker waits over 30 days from the date of injury to submit the Traumatic Injury claim, they are no longer eligible for COP. In this case, time missed with medical documentation may be claimed on OWCP Form CA-7, if desired.

Continuation of Pay begins on the day following the date of injury, and runs for 45 straight calendar days. The only exception to the start date is if the injury happened before the workday starts, such as a trip and fall entering the workplace (then begin the 45-day count on that date). In most cases, the first 45 days following the date of injury of any time missed due to the work injury (documented by a medical note of some kind) is covered by COP and not charged to the injured employee's leave. This is an administrative function carried out by the Injury Compensation Specialist and / or the timekeeper.

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The injured worker must present the employing agency with medical evidence supporting disability resulting from the claimed traumatic injury within 10 calendar days after filing a claim for COP. The agency is responsible for advising the claimant of his or her obligation to return to work as soon as possible in accordance with the medical evidence. The employing agency must also inform the claimant of any decision to challenge COP entitlement and/or terminate pay, and the basis for doing so.

The employing agency may challenge a claim for COP on the basis of the information submitted by the claimant, or information garnered by an investigation. OWCP refers to the agency's right to challenge payment of COP as "controversion." To "controvert" means to dispute, challenge, or deny validity. Even though a claim is controverted, the employing agency **must** continue the employee's regular pay unless one of nine specific conditions is met.

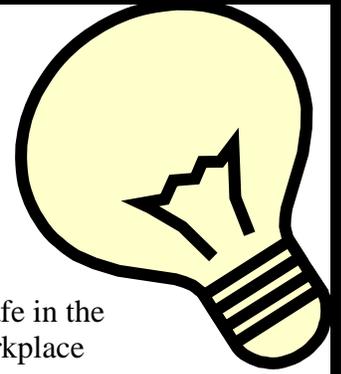
### **Nine Reasons for COP Controversion**

1. The disability is a result of an occupational disease or illness.
2. The claimant is not an "employee" under the provisions of the Act; that is, serves without pay or nominal pay, is appointed to a position on the office staff of a former president, jurors, etc.
3. The employee is neither a citizen nor resident of the United States, or Canada.
4. The injury occurred off the Employing Agency's premises and the employee was not engaged in official "off-premises" duties.
5. The employee caused the injury by his or her willful misconduct, or the employee intended to bring about his or her injury or death or that of another person, or the employee's intoxication was the proximate cause of the injury.
6. The injury was not reported on a form approved by OWCP within 30 days of the injury.
7. Work stoppage first occurred more than 45 days after the injury.
8. The employee first reported the injury after employment was terminated.
9. The employee is enrolled in the Civil Air Patrol, Peace Corps, Job Corps, Youth Conservation Corps, work study program, or other group covered by special legislation.

In any case, OWCP makes all final determinations and can overturn the agency controversion and require that COP be paid. Also note that United States Postal Service employees **ONLY** must have an initial three-day waiting period before COP will be granted.

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I hope that this article sheds some light on Continuation of Pay. Please be safe in the workplace, but be aware of your rights and obligations if you do suffer a workplace injury.

**Performance Standards Upheld.** The U.S. Court of Appeals for the Federal Circuit recently affirmed a decision of the Merit Systems Protection Board which had in turn previously affirmed the Social Security Administration's removal of an employee for deficient performance. In *Salmon v. Social Security Administration*, No. 2011-3029 (December 9, 2011), Victoria Salmon, a former service representative with the SSA, unsuccessfully argued to the Federal Circuit that the Performance Assessment and Communications System (PACS), the performance appraisal system which governed her performance plan, was unlawful for three reasons: 1) PACS failed to adhere to Congress'

requirement that performance appraisal systems be as objective as possible; 2) that her own performance standards did not meet the criteria for employee participation in their development; and 3) that PACS had not been legally approved by the Office of Personnel Management.

Regarding the first issue, Salmon argued that SSA should have used more quantitative (e.g., numerical) criteria for her standards. The court pointed out that Salmon's performance plan had four critical elements and numerous elaborating bullet points. Moreover, Salmon's supervisor gave her direct and precise feedback regarding her performance and areas where she needed to improve. The Federal Circuit cited a leading 1985 case entitled *Wilson v. Dept. of Health and Human Services*, 770 F.2d 1048 (Fed. Cir. 1985), where it had held that "objective" did not necessarily mean quantitative, and that supervisory instructions could count toward the "objective" component of the standards. The court stated that a standard "should be sufficiently precise and specific as to invoke a general consensus as to its meaning and content." Thus, the court found that there was nothing unlawfully subjective about Salmon's performance standards.

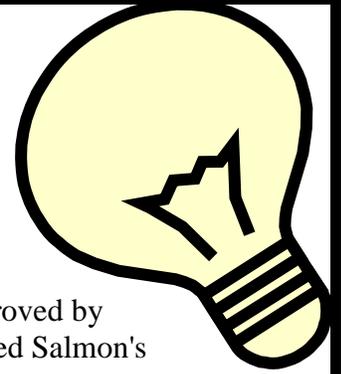
The court looked to the congressional intent behind allowing the employees to participate in the development of their own standards. In sum, the court found that while employees can have some say in the creation of performance standards, much discretion was left to the agency to determine what this "say" or "input" was.

In this case, the Federal Circuit noted that PACS was specifically endorsed by the union, and that employees were all judged on identical performance standards. Thus, the court rejected Salmon's second argument.

Salmon also claimed that if an agency alters a previously OPM-approved performance appraisal system, it needed to re-seek approval with OPM. In this case, Salmon pointed out that OPM approved SSA's performance approval system in 1995, but that PACS began in 2005. Thus, she argued it needed to be again reviewed by OPM. However, the

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Federal Circuit found that PACS was substantially similar to the system approved by OPM in 1995 as it had made a framework-type review. The court thus rejected Salmon's third argument and affirmed the removal.

The decision serves as a reminder to federal employees as to the difficulties in appeals of performance-based removals or demotions. Although appeals or replies to performance-based removals or demotions frequently are aimed at allegedly defective performance standards, federal employees should also concentrate on procedural errors when performance-based actions are proposed and/or taken against them.

\* This information is provided by the attorneys at Passman & Kaplan, P.C., a law firm dedicated to the representation of federal employees worldwide.

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

**Launch of the CPAC ICARE IProgram.** The Civilian Human Resources Agency (CHRA) formally launched the ICARE Initiative January 15, 2012. The purpose of the Initiative is to create a culture of customer excellence throughout the Agency.

ICARE consists of five standards – integrity, compassion, advocacy, resourcefulness, and excellence. Throughout the current calendar year, each month a standard and an associated, supporting behavior will be highlighted.

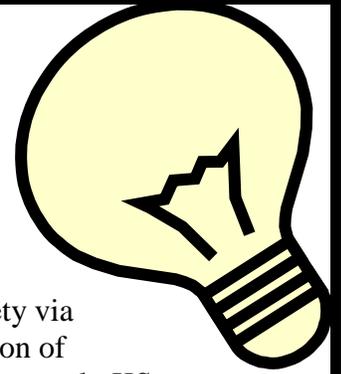
This month integrity is the standard to be featured with attitude as the supporting behavior. Some say integrity is the foundation upon which all other values are built. John Quincy Adams said, “Always stand on principle, even if you stand alone.

Please stay tuned as we immerse ourselves in and explore the limitless possibilities of this timely initiative.

**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).

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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, contact your servicing HR Specialist, or refer to Tips and Tidbits 3-2007.

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

**Employment Briefings for Military Spouses.** Members of the Fort Benning CPAC staff conduct regular briefings for military spouses to outline the benefits of Executive Order (EO) 13473. Executive Order 13473 became effective September 11, 2009 and it is intended to provide military spouses an opportunity to obtain employment with the Federal government. The briefings detail spouse preference and eligibility; outline how to apply; confirm which documents should be submitted; and, provide general tips on resume completion. The briefings are conducted the third Wednesday in the month from 1000-1130 April through October, December, and February. Locations of the briefings vary and are disseminated through various media sources.

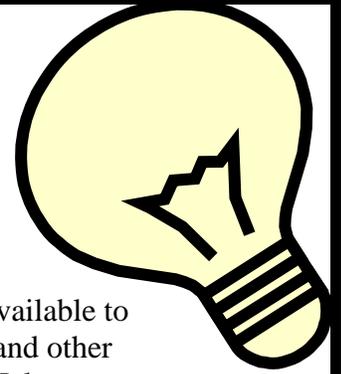
**The February briefing will be held in McGinnis-Wickham Hall in classroom W110.**

Anyone seeking additional information or interested in attending should contact Deb Quick, 706 545-3517.

**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.

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