

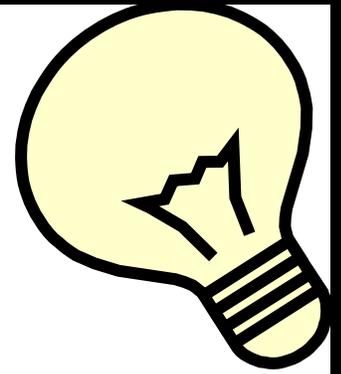
The

Illuminator

Shedding Light on the HR World

3-2011

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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.).

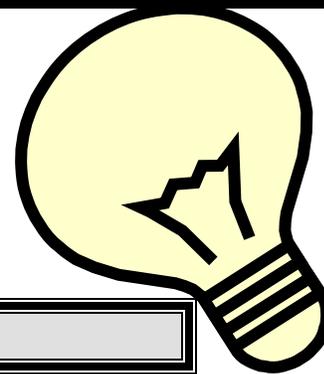
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Retirement, Life/Health Insurance, TSP, Social Security and Such

Retirement Savings Tips for Federal Employees. There are many benefits to working in the federal sector. One reason why many people choose to work in federal jobs is that they tend to offer better retirement benefits than the majority of positions in the private sector. If you take full advantage of the benefits while you can, even eight or ten years spent in a federal job can help boost your retirement income when it comes time.

If you want to retire in comfort, however, you need to have an active plan for saving for your retirement now, while you still hold your federal position. While you can do nothing and still have some amount of financial support when it comes time to retire, depending on how long you've worked in the federal sector, the system works best when you actively plan and contribute to your own retirement.

Here are a few tips to help you make the most of your federal retirement benefits.

1) Understand the Benefits

The first thing you need to do as a federal employee is make sure that you understand your retirement benefits, and how they work. Federal retirement benefits are a three-pronged system that is designed to provide a pension and Social Security benefits for long-time employees, but also to help you save for your own retirement.

Known as the Federal Employees Retirement System, or FERS, your retirement benefits are made up of 3 parts:

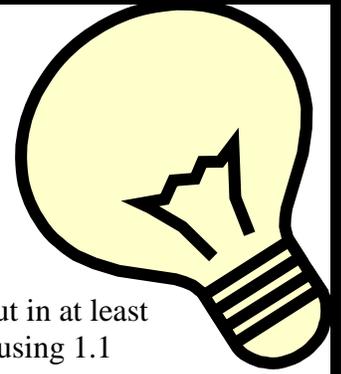
The Basic Benefit Plan,
Social Security, and
The Thrift Savings Plan, or TSP.

The Basic Benefit Plan is your pension with the federal government, which you are eligible for once you have worked there for five years. Unlike the other two pieces to the puzzle, you must be working in the federal sector when you retire in order to take advantage of it. (Your benefits with Social Security and the Thrift Savings Plan can be taken with you if you take a different job.) Your contributions to the Basic Benefit Plan are automatically deducted from every paycheck.

The amount you get from the Basic Benefit Plan is based on your salary, the number of years you worked in the federal sector, and what age at which you retire. In other words, the longer you work for the government, the better your pension will be. The pension is calculated by taking 1 percent of the average salary for your three highest-paid

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consecutive years, and multiplying it by your total years of service. If you put in at least 20 years and work until you are 62 or older, however, the pension is figured using 1.1 percent of the average of your highest-paid years, instead of just 1 percent.

The Thrift Savings Plan, or TSP, on the other hand, operates like a 401(k). If you don't do anything, the government will give you an amount equal to 1 percent of your basic pay every pay period, deposited into your TSP account. Like many big companies do with their employees' 401(k) accounts, some agencies will also match your contributions to your TSP account, up to a certain amount. For instance, they will match 100 percent of your contributions up to 3 percent of your pay, and 50 percent of your contributions up to 5 percent of your pay.

Because you make before-tax contributions to your TSP account, reducing your tax liability for the year, there is an annual cap on how much you can contribute. In 2011, for example, you can only contribute up to \$16,500. If you are 50 or older, however, you are allowed an additional \$5,500 in "catch-up" contributions throughout the year.

Much like a 401(k), you have some choices in how to invest your money in your TSP account. Currently there are 10 different funds to choose from, and you can change how you have invested your money at any time. You are not taxed on the money in your TSP account until you withdraw it, presumably starting at retirement age, as you will incur penalties if you make withdrawals too soon. You can start making a limited amount of withdrawals at age 59 ½ without having to pay any penalties, and at age 70 ½ you can withdraw freely without paying any penalties at all.

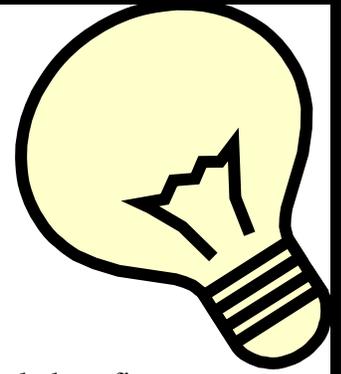
2) Take Advantage of Employer Match

One of the most powerful advantages to the TSP is the employer match. This is essentially free money from your agency; even though you won't be able to use this money for years to come, it's essentially a bonus on top of your regular salary, and it's earning interest as we speak.

Remember, the agency pays 1 percent of your basic pay into your TSP account every pay period. On top of that, if you contribute 3 percent of your pay to your account, most agencies will match that amount by 100 percent. If you contribute 5 percent of your pay, on the other hand, they will match the first 3 percent at 100 percent, and the next 2 percent at 50 percent, for a total of 4 percent of your pay. When you consider the base 1 percent that you are given before making any contributions, your agency will essentially give you an extra amount equal to 5 percent of your pay toward your retirement every pay period -- IF you take full advantage of the employer match.

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3) Know Your Limits

Once you take advantage of the employer match on the first 5 percent, the only benefit of contributing more of your pay toward your TSP account is that you will be lowering your taxable income from the year. There is a cap, however, on how much you can contribute to your TSP account in a one-year period. In 2011, for example, you can only contribute a maximum of \$16,500 to your account. If you are 50 or older, you are allowed an additional \$5,500 a year in "catch-up" contributions; however, these contributions must be designated as such, and spread out throughout the year, as your TSP account will simply stop accepting contributions once the regular \$16,500 limit is reached.

It is important to know your limits, and to plan your contributions for the year accordingly. If you want to take full advantage of the employer match, you won't want to contribute too much per pay period. Your agency matches up to 5 percent contributions each pay period, so if you contribute too much and reach your \$16,500 limit, say, halfway through the year, you lose the employer match on the remaining half of the year. That's six months of employer contributions you are missing out on!

4) Make Career Decisions with Your Retirement in Mind

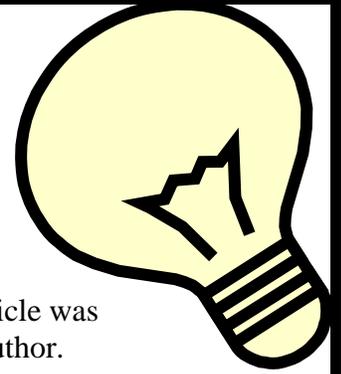
The impact on your retirement should be a major consideration in every career move you make. How long do you plan to work in your job? Will a job move be beneficial to your retirement, or will it hurt it? For instance, as a federal employee, your TSP plan earnings and the non-matched 1 percent employer contributions are only vested after you have worked in the federal sector for two or three years.

What are you giving up if you take a job in the private sector? What do you have to gain if you remain a federal employee? There are questions to ask yourself before making any significant decision about your career. It is important to make sure you have a plan for your retirement, and that any career change you make will benefit your future, or at least not hurt it.

Retirement is an important, and for some people, scary time in your life. As we get older, we need to have a system in place -- a pension, savings, or generous children -- to take care of us when we are no longer able to support ourselves. As a federal employee, the best way to make sure you are prepared for your retirement is to understand how you can make the most of the benefits available to.

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3 Reasons for Federal Employees NOT to Do a "Pension Max". This article was written by Micah Shilanski, CFP. Any references to I pertain to him as an author.

I was doing a retirement check up for a federal employee and a spouse a while ago. When I asked about their plans for survivor benefits, they said they didn't want to leave a survivor annuity from their federal pension. I asked why... they said they were doing "Pension Max."

What is Pension Max?

Most people aren't familiar with Pension Maximization, aka "Pension Max." To understand it, you first need to understand how your survivor benefits work.

When you elect a survivor annuity, your federal pension is reduced. In general, if you choose the 'full survivor' benefit..which means they'll get 'half' of your pension when you die...it costs you 10% of your initial pension amount.

So if you were going to get \$1,000 from your FERS retirement, you elect a 'full' survivor benefit... your spouse will get \$500 a month when you pass away. But while you're alive, instead of \$1,000 a month, you'll now get \$900 a month. That \$100 reduction is the 'cost' to provide a survivor benefit.

The idea behind Pension Max is that you can replace that survivor benefit with life insurance. The goal is to increase your retirement take home pay while you're alive -- and when you pass away, that life insurance provides the income your spouse should need. Another way to look at it is that \$100 a month is the 'cost' of providing an annuity to your spouse...Pension Max presumes that you can provide the same benefit -- but at a lower cost -- by using life insurance products.

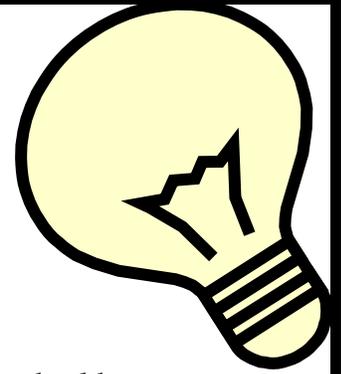
In Concept vs. In Practice...

I like the concept of Pension Max...the problem is that most people set it up wrong. And when Pension Max goes wrong...it doesn't really affect you...it affects your spouse after you die.

Most people don't hear about Pension Max unless they've been pitched the idea by their insurance person. But most insurance agents don't understand your federal benefits. This can lead to serious, even disastrous consequences for your spouse when you pass away.

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What's Your Biggest Benefit?

Of all of your federal retirement benefits, I believe that being able to keep your health insurance (FEHB) in retirement is your biggest benefit.

If you want your spouse to continue to have FEHB after you pass away, you **MUST** leave a survivor annuity from your federal pension. It can be the reduced survivor annuity, but you must leave something. Otherwise, when you die, your spouse loses FEHB.

Even if your spouse is on your FEHB plan during retirement -- once you die -- if your spouse is not receiving a survivor annuity your spouse will lose the federal employee health insurance.

Most insurance salesmen don't know this. So they highlight all of the benefits of Pension Max, without understanding what consequences it has for your federal retirement benefits.

My 3 Biggest Problems with Pension Max...

Problem #1) Your Spouse Loses FEHB in Retirement

If you don't leave a survivor annuity for your spouse (full or reduced... but something), your spouse will **LOSE** FEHB after you pass away.

Now not only is your spouse dealing with your passing, but now just lost your federal employee health insurance. If they want to get health insurance now, they'll have to pay astronomical prices for private insurance. (Recently, I was helping a client in good health look for private health insurance... the premiums were in excess of \$2,400 a MONTH) But even if they can afford high prices... they may no longer be insurable. Depending on their age and health, they may not be able to get private health insurance at all.

So if you want your spouse to be able to keep FEHB after you pass away, you must leave some amount of survivor annuity from your federal pension. Otherwise they lose it.

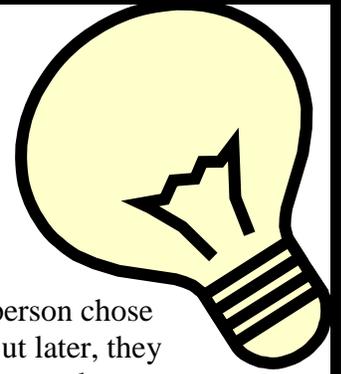
Problem #2) When Times Get Tough...

With Pension Max, you buy a fairly large insurance policy to provide income for your spouse when you pass away. But you start paying the premiums for that insurance while you're alive.

When times get tough, people look for expenses they can cut. Too often, people decide to cut life insurance.

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This is the second biggest problem I see with Pension Max in real life... the person chose to pay for a big life insurance policy instead of leaving a survivor annuity. But later, they stop paying the premiums on that life insurance policy when they were tight on cash flow.

So now their spouse has no survivor annuity... and no life insurance.

As long as you live forever, this isn't a problem. But what happens to your spouse when you die?

Problem #3) Underfunded Policies

In theory, Pension Max can work if you provide enough life insurance. When federal employees do Pension Max, they buy 'permanent' life insurance policies. These policies accumulate cash value, which typically grows based on a certain interest rate.

When I see people who've done Pension Max, 9 times out of 10, their insurance policy is underfunded. This means that when they die, their spouse may not have enough money.

Two reasons policies are 'underfunded' ... either the person didn't buy enough life insurance in the first place, or the cash value of the policy didn't grow as well as they had expected.

Either way, your surviving spouse pays the price. And I've worked with too many widows who paid the price for someone else's poor planning.

Does Pension Max Ever Make Sense?

Most of the time when I see people doing Pension Max...it's fouled up.

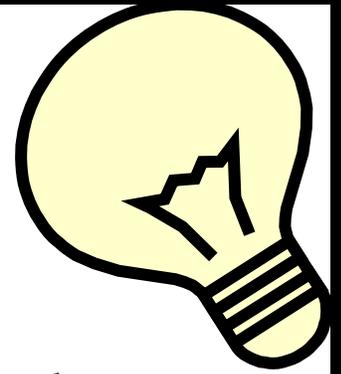
The problem is that people don't understand how their benefit choices impact other areas of their financial life. People get into trouble when they only look at one 'slice of the pie'. They don't fully see how changes in one area can have a big impact on other areas.

Can Pension Max ever work? Sure. And I've seen it work very well for a few people. Pension Max can make very good sense for some people.

It can work particularly well when you have two federal employees who each have their own retirement pension and are able to keep FEHB in retirement. Or a federal employee married to a state government worker. If your spouse has a way to 'pick up' health insurance benefits after you die, there's a great chance Pension Max could work for you.

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Understanding Your Benefits

Pension Max is just one example of something that is ‘great in theory’ -- but can have serious consequences for your federal benefits if it’s done wrong.

This is why I think it’s so important to understand your federal benefits from a financial planning perspective. You need to know how benefits choices impact other areas of your financial life.

You can learn more about how your Survivor Benefits work at FERS Survivor Benefits <http://www.plan-your-federal-retirement.com/fers-survivor.html> and CSRS Survivor Benefits <http://www.plan-your-federal-retirement.com/csrs-survivor.html>.

The Federal Employee Long Term Care Insurance Program (FLTCIP). The Federal Long Term Care Insurance Program, authorized by Public Law 106-265, the Long Term Care Security Act of 2000, covers services that individuals may need because they are unable to care for themselves due to a chronic mental or physical condition. Included are services such as nursing home care, home health care, assisted living facilities, adult day care and personal/homemaker care. The coverage is provided by LTC Partners, LLC, a partnership of the John Hancock and Metropolitan Life insurance companies under contract with the Office of Personnel Management.

Coverage is voluntary and enrollees pay the entire cost of the premiums; there is no government contribution. The FLTCIP is “guaranteed renewable”—it cannot be canceled as long as you pay your premiums for reasons of age, change in health or any other reason, including leaving the eligible enrollment group.

Eligibility

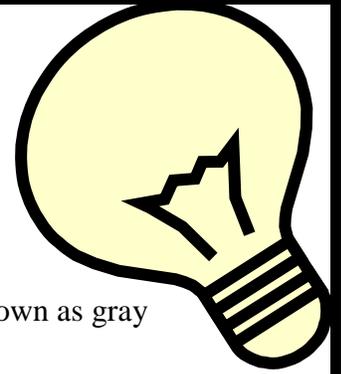
Individuals eligible to apply for this insurance coverage are:

Federal employees and members of the uniformed services. This includes employees of the U.S. Postal Service and Tennessee Valley Authority, but does not include employees of the District of Columbia government. For federal and postal employees in general, if you are in a position eligible for Federal Employees Health Benefits program coverage, you are eligible for FLTCIP (whether enrolled in FEHB or not—the key is eligibility).

Federal annuitants, surviving spouses of deceased federal or postal employees or annuitants who are receiving a federal survivor annuity, individuals receiving compensation from the Department of Labor who are separated from the federal service, members or former members of the uniformed services entitled to retired or retainer pay,

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and retired military reservists at the time they qualify for an annuity (also known as gray area reservists). Retired employees of the D.C. government are not included.

Current spouses of employees and annuitants (including surviving spouses of members and retired members of the uniformed services who are receiving a survivor annuity).

Adult children (at least 18 years old, including natural children, adopted children and stepchildren) of living employees and annuitants. Foster children are not eligible.

Parents, parents-in-law, and stepparents of living employees (but those of annuitants are not eligible).

There is no upper age limit for who can apply for this insurance but there is a minimum age; you must be at least 18 years old at the time you submit your application.

Enrollment

Eligible individuals may enroll at any time; it is not necessary to wait for an open enrollment period. An early enrollment period was offered March 25 - May 15, 2002, with an open season running July 1 - December 31, 2002. Dates of subsequent open seasons are yet to be determined, although they will not be held on an annual basis. During the 2002 early enrollment and open season periods, active employees and their spouses were subject only to abbreviated underwriting.

Newly hired employees and their spouses have 60 days to enroll and use abbreviated underwriting. Afterward, they must use full underwriting.

All other enrollments are subject to full underwriting.

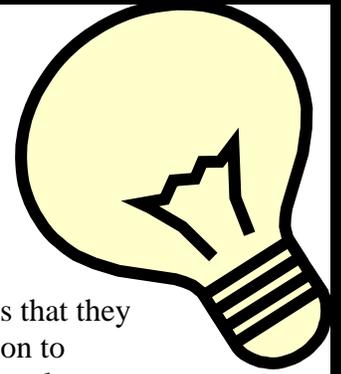
Underwriting

“Abbreviated” underwriting applies to newly hired employees and their spouses and also applied to all active employees and their spouses during the initial 2002 open season. (Note: It is still to be determined whether abbreviated underwriting would apply to current employees during any future open seasons or whether they will have to undergo full underwriting.)

The abbreviated underwriting application has seven health-related questions designed to determine who may be immediately eligible for benefits, or eligible for benefits within a short period of time. Spouses of active employees eligible for abbreviated underwriting also are subject only to abbreviated underwriting, although they must answer two additional questions regarding their mobility and any need for help with everyday tasks.

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All other applicants are subject to “full” underwriting at all times. This means that they must answer numerous health-related and lifestyle-related questions in addition to questions asked of active employees and their spouses qualifying for abbreviated underwriting.

Benefit Choices

Enrollees can choose a maximum benefit, the length of the policy, the type of inflation protection and the waiting period before benefits begin. They also can choose between comprehensive coverage and coverage for only facility-based care. The program offers four standardized packages known as Facilities 100, Comprehensive 100, Comprehensive 150 and Comprehensive 150+. However, enrollees may tailor their coverage as they see fit. Also, you may change coverage levels after you are first insured.

Benefit Amount—The maximum daily benefit can range from \$50 to \$300 a day in a multiple of \$25; weekly benefit amounts also can be elected.

Length of Policy—The length of policy can be three years, five years or lifetime coverage. If you select a three-year or five-year policy, that length and the maximum weekly benefit you chose determine a “pool of money.” The insurance will pay benefits until your pool of money is exhausted, a process that may take longer than the length of the policy. For example, a \$700 weekly benefit and a three-year policy would produce \$109,200 ($\$700 \times 52 \text{ weeks} \times 3 \text{ years}$) for covered services. When the pool is gone, your insurance ends.

A lifetime benefit has a limitless pool of money.

Inflation Protection—Two inflation protection features are available. Under Automatic Compound Inflation Protection, your benefit would automatically increase by 5 percent every year, regardless of actual inflation. Your premiums would remain level for life, even as your weekly benefit increases.

Under the Future Purchase Option, every two years you would have the option to increase your benefits based on a medical inflation index. Your premiums would increase as your benefit increases; they further would be based on the age at that election, not the age at which you first took out the policy. If you decline more than two FPO offers, you can still apply for future inflation increases but would have to show satisfactory evidence of insurability.

You can switch from the Future Purchase Option to the Automatic Compound Inflation Protection option without proof of good health at the time of a Future Purchase Option notification if you have not declined more than two notifications in the past and are not

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eligible for benefits at that time. Premiums for those who make this change will be based on age at that time and premiums already paid in, not on the standard rate tables for new enrollees.

Waiting Period—Enrollees also can choose the waiting period—also called an elimination period or deductible—which is the number of days of covered care that you (or other insurance coverage you may have) must pay for before the insurance begins to pay. The choice is either 90 days or 30 days.

Types of Coverage—Two basic types of coverage are available. A Facilities-only Plan covers care in assisted living facilities, nursing homes and inpatient hospice care. It also provides benefits for respite services in a facility. It does not cover home care.

A Comprehensive Plan covers everything a facilities-only plan covers plus care at home (formal or informal care), in adult day care centers, hospice care at home and respite services at home.

Changing Coverage Levels—You can request a decrease in your coverage at any time. You can decrease to anything that is available under the program, and your premiums (which will be based on your age at time of original enrollment) will also decrease. For example, if you have the five-year benefit period, you can decrease to a three-year benefit period. But you could not decrease to a two-year benefit period, because such a benefit period is not available under the program. You do not have to undergo new underwriting in order to decrease your coverage. However, you don't get paid-up benefits.

At any time, you also may request an increase in your coverage by contacting LTC Partners. To receive approval of a request for an increase outside of an open season, you must provide, at your expense, evidence of your good health that is satisfactory to LTC Partners. The amount of an increase is subject to what's then available under the program. If you request and LTC Partners approves an increase in your daily benefit amount (not counting an increase due to your inflation protection option), your additional premium will be based on your age and the premium rates in effect at the time the increase takes effect. Other coverage increases you request that LTC Partners approves will cause your entire premium to be based on your age and the premium rates in effect at the time the increase takes effect.

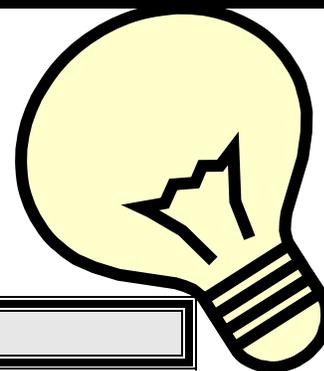
Additional information located at the following websites:

<http://www.ltcfeds.com/help/faq/faq.html>

<http://www.ltcfeds.com/programdetails/index.html>

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Employment-Related News

Competitive vs. Excepted Service: What's the Difference? The excepted service and the competitive service are two different classifications for federal jobs. Whether you are already a federal employee, or are applying for a federal job for the first time, either of these could present some significant advantages and disadvantages in your career. But what is the difference, and what do these differences mean to you?

What is the Excepted Service?

If you are in the excepted service, it means that you didn't have to undergo the same hiring process as federal employees in the competitive service. Simply put, the competitive service has to follow the U.S. Office of Personnel Management's hiring rules, pay scales, and so on. Agencies or positions in the excepted service don't. In addition, Veteran's Preference -- which means if there is a veteran who meets the qualifications of the job, he or she gets priority over other equally qualified candidates -- applies to competitive service jobs, but not to the excepted service.

This has many implications for federal employees. If you have a job in the competitive service, you have already gone through the OPM's hiring process, including the thorough hiring examination. Once you have done it once, you don't have to do it again, even if you want to transfer to another job in the competitive service.

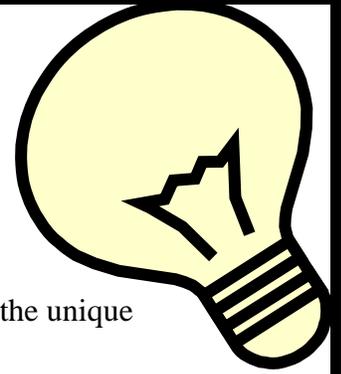
If you have a job in the excepted service, on the other hand, you may not have the same mobility. Some excepted service agencies have an agreement that allows employees to transfer to the competitive service without undergoing the hiring examination, but not all of them do. Usually, in order to have this sort of agreement, an excepted service agency must have a similar merit scale to what the competitive service uses.

Just because excepted service jobs use different a hiring process than the thorough OPM hiring exam, doesn't mean they are necessarily easier jobs to get. Many excepted service jobs have much more difficult hiring standards, such as the Central Intelligence Agency (CIA), which has an extensive background check that can take as long as a year to complete. Because of the strict requirements and the sensitive nature of the job, the agency has to be excepted from OPM hiring standards.

Although calling it the excepted service makes these jobs sound like an exception, and therefore fewer than those in the competitive service, in fact the excepted service makes up about half of all federal jobs. Thirty-one percent of federal jobs are with the U.S. Post Office, the biggest excepted service agency, and about 20 percent are with other agencies within the excepted service. Individual positions can also fall under the excepted service,

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even if the agency the position is in is part of the competitive service, due to the unique requirements of the job.

How Do Positions or Agencies Become Excepted?

Positions and agencies in the excepted service are usually there for one of a few different reasons. As already discussed, jobs are often in the excepted service because the hiring requirements have to be stricter, such as in the case of the CIA. Agencies that require a very narrow specialty, such as the Nuclear Regulatory Commission (NRC), may also be in the excepted service, which allows them to offer better pay scales and benefits in order to attract highly specialized professionals.

A third group of excepted service jobs are there because a person's qualifications for the job can't be judged as well as in other fields. A few examples are attorneys, special agents, and chaplains. And finally, if the position deals with confidential information, such as a cabinet advisor or secretary, it typically falls into the excepted service.

In order to become part of the excepted service, however, an agency or a position has to be defined as such by statute, by the President, or by OPM. Excepted service positions are further classified into Schedules A, B, and C, as well as non-career executive assignments.

Should I Take the Job?

Competitive service versus excepted service can limit your career options somewhat. For instance, if you already have a federal job, you may not be able to transfer easily if you are in the excepted service. Competitive service employees, on the other hand, can transfer to another federal job without having to undergo the OPM hiring exam again, as can employees in certain excepted service agencies, such as the NRC.

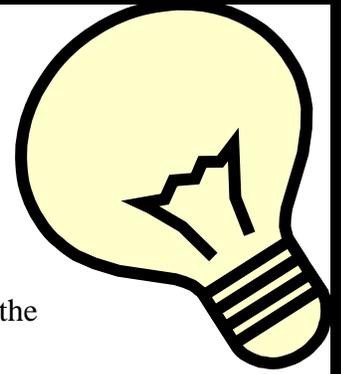
If you are applying for a federal job for the first time, you might want to consider this as a significant disadvantage of taking a job in the excepted service. Before taking the job, find out if the agency has an interchange agreement that would allow you to more easily move into a competitive service position at a later date.

One other disadvantage is the lengthy hiring process of some agencies or positions in the excepted service. The CIA is a good example, as its background check can take as long as a year.

However, there are some advantages to taking a job in the excepted service, whether or not you are already a federal employee. For instance, some excepted service agencies, such as the NRC, offer better pay scales and benefits packages than the competitive

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service. It is definitely worth comparing these factors to comparable jobs in the competitive service.

In addition, first-timers may find it easier to "break into" a federal job in the excepted service. Whereas competitive service position openings often hire internally, only considering applicants who already work in the competitive service, excepted service positions are more often open to all applicants. Also, even though you cannot transfer as easily from the excepted service, you may still find it easier to move into a competitive service job later on, since you will be more likely to have the correct qualifications.

It's impossible to say whether the competitive or excepted service is right for you, since this varies for everyone and every individual situation. The first step toward making this decision, however, is understanding the differences between the two, as well as the advantages and disadvantages offered by both.

Best Employees May Leave in Difficult Times, Report Warns. Agencies must shore up their retention efforts to keep employees from jumping ship because of the pay freeze and other possible cuts, according to a report from the Partnership for Public Service.

With Congress considering limits on hiring as part of a work-force and deficit reduction strategy, managers soon may not be able to replace all the employees who leave, the Partnership said in its report, "Keeping Talent: Strategies for Retaining Valued Federal Employees." And this means retaining talented employees may become increasingly important, even though the government's overall attrition is well below private-sector rates.

"Even in difficult economic times, highly qualified workers important to agency operations have other employment opportunities, retire, or leave for a variety of reasons," the report said. "In fact, in difficult times, it may be the best employees who leave."

The report, scheduled to be released early Wednesday, said building strong, cooperative relationships between supervisors and employees is one of the most important ways to hold on to talented employees. Agencies should provide more training so all managers can better oversee employees who telework or use flexible work arrangements. Bad managers should also get training to improve, and agencies should survey employees to find problem areas, the report said.

"People don't leave jobs, they leave their managers," the report quoted an anonymous manager as saying.

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Some agencies, such as the Veterans Affairs Department and National Security Agency, have held on to employees — even in high cost-of-living areas — by emphasizing their prestige as rewarding places to work, the report said. For example, the VA Palo Alto Health Care System in California stresses the unique opportunities employees have to research cutting-edge spinal cord injury treatments and other health areas with top academics.

"The prestige of working with the best and being at the forefront of their fields helps the organization attract and retain top talent," the report said. "Further, employees can see clearly how they make a difference to veterans and non-veterans through their research results."

The report said other agencies have tried to bolster morale by improving the performance management process, reimbursing student loans and tuition, and offering flexible work schedules, retention bonuses, and family-friendly benefits such as on-site day care and gym facilities.

That Question Was Really Hard...But Debarment from Federal Employment

Stands Anyway. A recent court case underscores the perils of lying to the government on the SF-86 (Questionnaire for National Security Position). ([Grayton v. Office of Personnel Management](#), C.A.F.C. No. 2010-3161 (nonprecedential), 2/16/11)

Grayton found himself not only out of a job, but placed on the Office of Personnel Management's "debarment" list that prevents him from being appointed to certain positions in the Federal Service until October 2012. (Opinion, p. 2)

Grayton applied for Industry Operations Assistant with the Department of Alcohol, Tobacco, Firearms and Explosives (ATF). He completed an SF-86 online and certified the information provided was accurate, acknowledging by his signature that a false answer could be grounds to not hire him or to fire him after appointment. (p. 2)

Question 23f asked if Grayton had been arrested, charged with or convicted of any offense within the previous seven years. The question specifically excluded traffic fines less than \$150 unless alcohol or drug related. Grayton's answer was "no." (pp. 2-3)

Lo and behold when ATF completed a background investigation they discovered he had been charged with "spousal abuse, battery, and vandalism" the year before his application. (p. 3) Not surprisingly, OPM charged Grayton for intentionally making a false certification and determined that he was not eligible for the ATF position, canceled his eligibility for Federal employment, and debarred him from competing for Federal jobs for a prescribed period of time. (p. 3)

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The Merit Systems Protection Board sustained OPM's actions. The Administrative Judge concluded that Grayton had made an "intentional, material false statement" by answering "no" to question 23f, even though the criminal charges against Grayton had eventually been dismissed. (p. 4) Grayton admitted at the hearing that he was aware that he had been criminally charged at the time he answered "no" to the question. This added up to being "dishonest" and a "lack of good judgment" on Grayton's part.

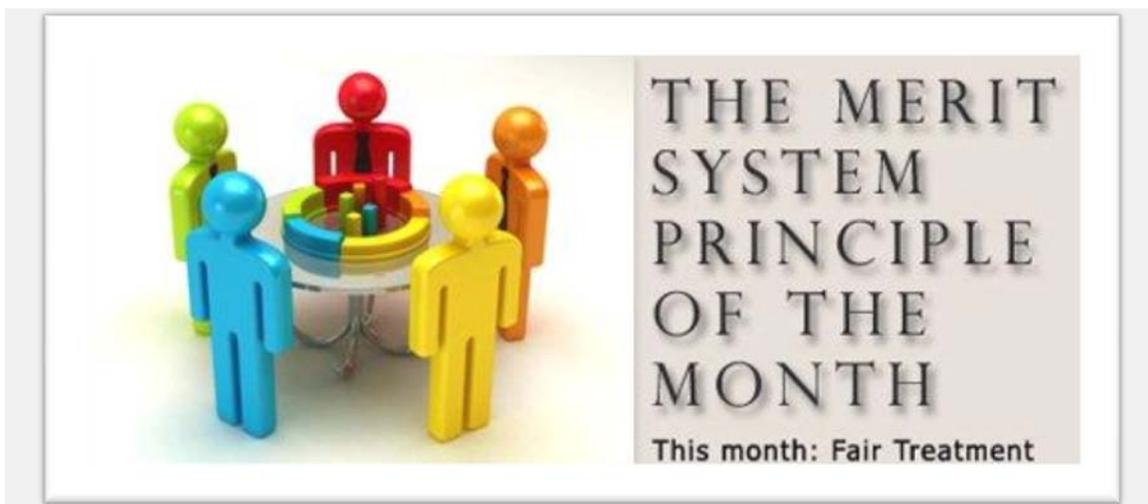
Grayton took his case to court. He didn't dispute the facts. Instead he argued among other things that OPM discriminated against him (based on race, disability and sex), that the question (23f) is ambiguous, violates various laws, and violates his 5th Amendment constitutional rights, and subjects him to double jeopardy. (p. 5)

The court has upheld the actions of OPM and the MSPB, finding there was substantial evidence to support the AJ's findings. The court points out is it "undisputed" that Grayton certified twice that his answers were truthful when in fact he knew they were not: "These false statements alone constitute substantial evidence supporting the AJ's finding that the OPM properly removed Grayton from Federal service." (p. 7) The court specifically found that question 23f was not ambiguous or unduly complex. (p. 8)

The upshot is that Grayton cannot even apply for a federal position until after October 15, 2012.

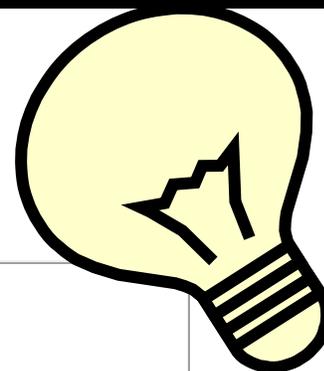
[Grayton10-3161](#)

Merit System Principle of the Month



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NUMBER 2 FAIR AND EQUITABLE TREATMENT

“All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.”

What is the intent behind the second Merit System Principle?

The second principle, concerning fair and equitable treatment, sets forth the vision that Federal personnel management be free of unfair treatment and discrimination, where decisions are made solely on legitimate merit-based considerations. Requiring decision making without regard to political affiliation echoes the intent of the Pendleton Act of 1883 which replaced the patronage system with a merit system. Requiring decision making without regard to race, color, religion, national origin, sex, marital status, age, or handicapping condition echoes the purpose behind Title VII of the Civil Rights Act of 1964 and related laws barring discrimination in employment. The final clause makes clear that employees and applicants for employment are entitled to the protections of the Bill of Rights and the Privacy Act.

What is the MSPB’s role in protecting the second Merit System Principle?

As its name implies, the Merit Systems Protection Board (MSPB) protects the merit system by adjudicating appeals within its jurisdiction. The employee may engage in discovery and request a hearing. Among other things, Board review will consider whether the disciplinary action was taken based upon prohibited discrimination, retaliation, or for reasons which do not promote the efficiency of the Federal service.

When an employee has proven intentional discrimination, the Board may award compensatory damages except where the discrimination was based on marital status or age. The Board may even review appeals filed by probationary employees who allege that they were terminated based on partisan political reasons or marital status discrimination. However, the MSPB’s review authority is limited to those matters Congress and the Office of Personnel Management have given it. Thus, although this merit principle seeks fair treatment “in all aspects of personnel management,” the Board may not review a claimed violation of the principle relating to a matter over which it lacks authority.

Doesn’t the EEOC also handle discrimination cases? I’m confused.

The authority of the MSPB and the Equal Employment Opportunity Commission (EEOC) overlap in “mixed cases,” those cases involving an action otherwise appealable

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to the MSPB (e.g., a removal) and allegations of discrimination. While the EEOC has responsibility for enforcing all Federal equal employment opportunity (EEO) laws and the duty to coordinate and lead the Federal government's effort to eradicate workplace discrimination, the MSPB also has the responsibility to determine if the personnel actions it has authority to review were taken in accordance with law, to include the anti-discrimination laws. In certain circumstances, the employee may choose whether to file an EEO complaint or an MSPB appeal in the first instance. Regardless of that election, both agencies may ultimately review the case. If the employee files an EEO complaint first, they can appeal to the Board after receiving a Final Agency Decision on the EEO complaint, or 180 days after he filed the EEO complaint if they have not received a final decision. If the appellant files an MSPB appeal first, they may appeal the Board's finding on the discrimination issue to the EEOC's Office of Federal Operations.

Has the Federal government achieved the goals of this merit principle?

The MSPB recently studied workforce data and Federal employee perceptions of their treatment and issued a report to the President and Congress entitled Fair and Equitable Treatment: Progress Made and Challenges Remaining.

Management-Employee Relations

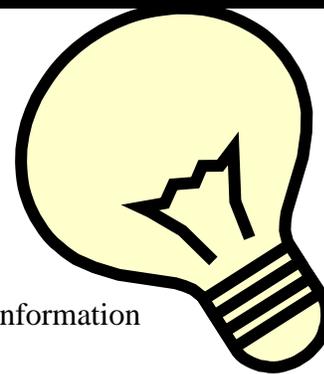
Passing Along Problem from One Agency to Another. The Farm Service Agency of the Department of Agriculture does not have to reinstate a fired Human Resources Assistant thanks to a recent appeals court decision. (Harrison v. Department of Agriculture, C.A.F.C. No. 2010-3150 (nonprecedential), 12/15/10. The facts are taken from the court's opinion.

Diana Harrison apparently went too far when she made disturbing statements to co-workers about her supervisor. She told one fellow employee that she knew where her supervisor lived and "could have her jumped." (Opinion p. 2) To another she said that her supervisor had gone into Harrison's office and "touched her paperwork..." adding that she "wished [her supervisor] was dead." (pp. 2-3)

When FSA uncovered that Harrison had failed to reveal on her employment application and security forms that she had prior tax delinquencies, and that she had worked out a settlement with a previous agency employer (Federal Emergency Management Agency) to undo her removal by that agency, it compounded Harrison's problems. (p. 3) FSA had previously reprimanded Harrison for improper disclosure to co-workers of performance review and bonus information for seven agency employees. (p. 4) This time, the agency

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removed Harrison for “conduct unbecoming” and for “providing inaccurate information on federal documents.” (p. 2)

Harrison unsuccessfully argued on appeal to the Merit Systems Protection Board that the previous reprimand violated her rights as a whistle-blower. The Administrative Judge (AJ) concluded that she had failed to show a protected disclosure or that those who fired her were even aware of the facts surrounding the reprimand. (p. 5)

As to the statements about her supervisor, Harrison claimed she had never made them and her co-workers were lying. The AJ did not buy Harrison’s argument, finding the co-workers’ testimony more credible than Harrison’s. (p. 3)

Finally, the AJ reviewed the evidence and found that Harrison had not answered truthfully on her employment documents about her previous employment with FEMA. The question that tripped Harrison up read in pertinent part: “During the last 5 years, ...did you quit after being told that you would be fired, did you leave any job by mutual agreement because of specific problems...?” (p. 3)

Harrison had answered “no” to the question and the AJ concluded that this answer was false given that she had resigned from FEMA by mutual agreement. (p. 4)

After the MSPB refused to overturn her firing, Harrison turned to the appeals court where she rehashed her arguments. She did not fare any better in court. The court affirmed the MSPB. It backed FSA’s determination that Harrison’s “threats directed against her supervisor were unprofessional and inappropriate....and ... adversely affected the work atmosphere.” (p. 8) As for her misrepresentations on employment documents, the court agreed that they “raised doubts about her trustworthiness.” (p. 8)

This case reflects a scenario that many argue happens all too often in the federal sector. An employee is fired by one agency, reaches a settlement agreement that wipes out the removal action in favor of a mutually agreed to separation, and goes on to another agency. Problems get passed along, especially if the “gaining” agency does not or cannot get information on the employee’s history. FEMA’s gain was FSA’s loss?

Lying to a Government Investigator Can Create More Problems Than Possible

Misconduct. A recent decision by the federal appeals court underscores the perils of lying to government investigators when they are investigating possible misconduct—if the offense doesn’t trip an employee up, the lie most likely will. (Delapenia v. Merit Systems Protection Board, C.A.F.C. No. 2010-3116 (nonprecedential), 11/9/10)

The unfortunate employee in this case was a police officer at Naval Station Pearl Harbor in Hawaii. When interviewed about driving with other officers in government vehicles to

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a Denny's restaurant while supposedly on duty, officer Delapenia signed a sworn statement denying he had gone to the restaurant and denying knowledge of any other officers who had gone to it while on duty on the night in question. (Opinion, pp. 2-3)

Several weeks later, Delapenia reaffirmed his denials when interviewed by someone from the Office of the Inspector General. (p. 3)

Unfortunately for officer Delapenia, the investigators had video surveillance tapes showing the group of officers—including Delapenia—going to the Denny's. (p. 2)

The agency charged Delapenia with misuse of a government vehicle and false statements, proposing his removal. A deal was cut and Delapenia resigned voluntarily and waived his appeal rights. In turn, the agency agreed that his Standard Form 50 would show he resigned for "personal reasons" and his Official Personnel Folder would make no mention that he had received a notice of proposed removal. (p.3)

In spite of this resolution of the removal action, Delapenia appealed to the Merit Systems Protection Board, arguing that his resignation had been coerced and was therefore involuntary. The Board threw his appeal out for lack of jurisdiction since Delapenia "failed to make a non-frivolous allegation of involuntariness." (p. 3)

On appeal to the Federal Circuit, Delapenia contended that the agency lacked evidence that he had made false statements "knowingly or intentionally," and therefore the threat of adverse action had been coercive. (p. 4)

Not so, says the court, pointing out that when confronted by agency investigators, Delapenia had a choice. He could have declined to answer (and could have faced adverse action for not cooperating in an official investigation). But, having decided to answer, he had the choice of being truthful or not. By answering untruthfully, he now has to face the consequences.

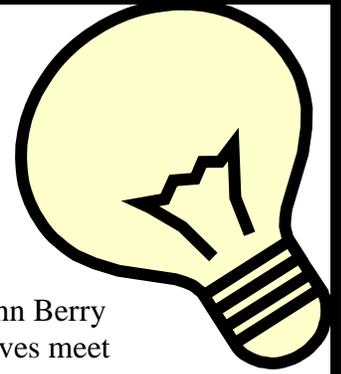
Not too surprisingly, the appeals court agrees with the MSPB that there was it had no jurisdiction over the appeal since Delapenia's resignation was voluntarily.

Training, Self-Development, and Personal Improvement

Administration to Improve SES Training, Hiring. The Office of Management and Budget and Office of Personnel Management has pledged to improve the training, development and performance management of the government's nearly 8,000 Senior Executive Service members.

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OMB Deputy Director for Management Jeffrey Zients and OPM Director John Berry recently said in a memo that the changes are necessary to help senior executives meet ever-growing challenges and responsibilities in austere budget environments.

"At the very time we need ever greater output and performance, the SES is under tremendous pressure," they wrote. "You are consistently asked to do more with less against a backdrop of heightened accountability for performance and too few professional development opportunities."

OPM plans to create a one-year onboarding program to help recently promoted executives transition into their new roles, and promised to expand networking and professional development opportunities for current SES members.

Agencies also must to improve performance planning and assessment so well-performing executives can be recognized, the memo said. OPM and OMB will work with agencies to streamline the process for certifying performance appraisal systems, so they can be better linked to agencies' performance goals and missions.

OPM will create a pilot project to broaden the use of a resume-based hiring model for new SES members. And OPM and OMB will organize a few agencies to test a new way to search for new talent and create a pool of SES candidates with strong leadership and management skills.

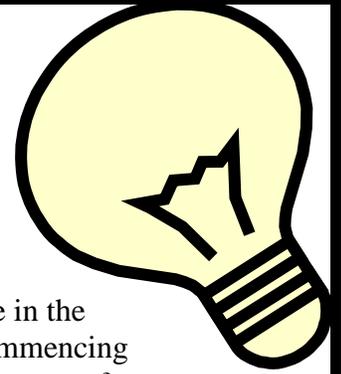
Berry and Zients said they will reach out to SES members for ideas over the next few months, and asked executives to send ideas for improving the service to [e-mail them](#).

Continued Service Agreements (CSA) and Employee Obligations. In quest of self development or as a requirement to hone needed, technical skills, employees routinely apply to attend training. Frequently, however, training carries with it, an obligation for the employee to remain in service to the Agency for a specified amount of time via a written continued service agreement. These agreements may be required by the Agency or be strictly dictated by statute. Employees failing/refusing to sign the required CSA can be denied training.

Title 5, U. S Code (USC), Section 4108 requires employees to sign an agreement with the Government before attendance at training that exceeds the agency's prescribed minimum period. Department of the Army policy requires civilian employees selected for non-Government training in excess of 80 hours, and, Government or non-Government long-term training and education programs in excess of 120 calendar days, complete The Continued Service Agreement (page) of Standard Form 182, Authorization, Agreement

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and Certification of Training. In doing so, the employee agrees to: continue in the service of the agency at least three times the length of the training period, commencing upon completion of the training; and, pay back expenses if they voluntarily separate from the agency prior to completion of the service obligation period.

Although not typical, employees *could* be required to sign a CSA for any course funded by the Government ; however, examples of training programs/courses most often subject to a CSA are internal and external Leadership Development programs, SES Candidate Development programs, Academic degree programs training lasting longer than one week, conferences and other training the agency deems appropriate.

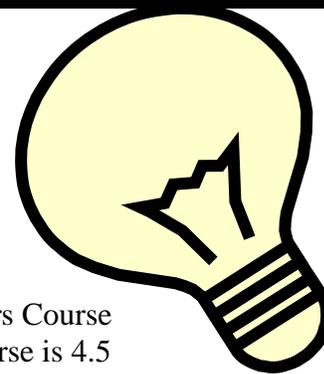
Supervisors should exercise diligence in monitoring execution of the obligation period of these CSA as it equates to protecting the Government's interests. Accordingly, when reviewing the status and circumstances of unexpired agreements, Management should decide whether to transfer, waive, or require repayment of expenses. Determinations should consider employee destination (i.e. transfer to another Army installation? Employee relocating to another position within DoD? Is the employee leaving Federal service?) as well as intangible criteria such as equity, good conscience, and the public interests. If the employee is transferring within Army or DoD, the remainder of the service obligation transfers to the gaining DA activity or DoD Component. In this circumstance, the CSA is transferred and the gaining Commander becomes responsible for monitoring the remainder of the agreement. On the other hand, if an employee leaves DoD, the Commander/Director may decide whether to waive or require reimbursement of the training expenses when the employee transfers to another Federal agency, resigns, retires or is terminated from Federal service. An affirmative decision to waive the CSA could also be granted if the employee resigned due to personal illness, illness of a family member, or inability to make the required payment [due severe financial hardship].

When a manager requires reimbursement from an employee for failure to complete a continued service agreement, the repayment amount will be based on the additional expenses or direct costs of the training (e.g., registration fees, tuition and matriculation fees, library and laboratory fees, purchase or rental of books, materials, supplies, travel, per diem, and miscellaneous other related training program costs). Repayment calculations do **not** include salary costs and normally prorate the percentage of the remaining service obligation period.

Managers should contact the Civilian Personnel Advisory Center (CPAC) for additional information.

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Human Resources (HR) for Supervisors Course. The HR for Supervisors Course encompasses instruction applicable to the Legacy (i.e. GS) System. The course is 4.5 days long, includes lecture, class discussion, exercises; and, is designed to teach new civilian and military supervisors of appropriated fund civilian employees about their responsibilities for Civilian Human Resource Management. This instruction does *not* cover supervision of non-appropriated fund (NAF) or contract employees.

Instruction includes the following modules:

- Introduction of Army CHR which includes coverage of Merit System Principles and Prohibited Personnel Practices, CHRM Life Cycle Functions, Operation Center and CPAC Responsibilities
- Planning
- Structuring – Position Classification
- Acquiring – Staffing and Pay Administration
- Developing – Human Resources Development
- Sustaining – Performance Management, Management Employee Relations, Labor Relations

Training dates for the next iterations of this course are below. Registration information will be disseminated electronically three weeks before each class start date.

Next course offerings:

14-18 Mar 11

13-17 Jun 11

19-22 Sep 11

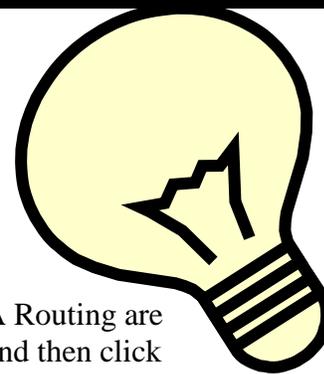
5-9 Dec 11

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.

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

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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, generating reports and printing an SF 50. If you have any questions or need assistance, please contact your servicing HR specialist to arrange a time so we can come to your office to help you.

BLANCHE D. ROBINSON

Human Resources Officer

Fort Benning CPAC

Phone: 545-1203 (Coml.); 835-1203 (DSN)

E-Mail:

blanche.d.robinson@us.army.mil