

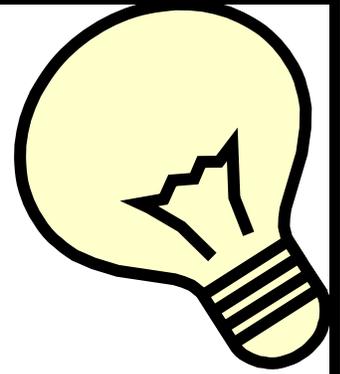
The

Illuminator

Shedding Light on the HR World

4-2010

Article Directory



Page

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

Demographic Destiny? How Your TSP May Fare in 2010 and Beyond	3
Health Tax Increases, Not Only on Wealthy	6
Are You Prepared for Estate Tax Changes?	8

Employment-Related News

Panel Approves Telework Bill	9
The Private-Federal Pay Imbalance	10
Veterans Preference for Federal Jobs	11

Management-Employee Relations

Federal Disability Retirement under FERS and CSRS: Revisiting Accommodation	15
---	----

Training, Self-Development, and Personal Improvement

A Review of GS-101: The NSPS Transition Out Course	19
Human Resources (HR) for Supervisors Course	20
RPA and ART Workshop	20
Job Aids Available on the Web	21

The NAF Corner

The Service Employees International Union Local 679 and NAF Employees	21
Travel and Transportation Entitlements	23

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 fate of NSPS, the Maneuver Center of Excellence (MCOE) civilian transition, etc.).

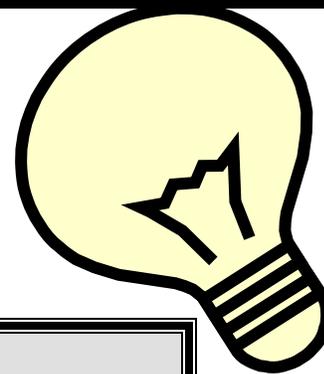
This newsletter is an apercu of articles written by CPAC staff [members] as well as information excerpted from various sources which include, but is not limited to, the Government Executive Newsletter, FedWEEK, the Federal Manager's Daily Report, FEDSmith, and the ABC-C Newsletter.

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

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

The Illuminator

4-2010



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

Demographic Destiny? How Your TSP May Fare in 2010 and Beyond. Investors, including those who invest their money in the Thrift Savings Plan (TSP), want to see their money grow as it works for them to invest for future needs, including retirement. Unfortunately, there are years when you actually lose money—perhaps a lot of money.

Ignoring the loss may make you feel better if you don't think about how much you lost. But, to be honest with yourself, you need to know how much you need to make just to break even after your investments have gone down.

For example, in 2008, most TSP investors lost money. Unless your entire investment was in the G or the F fund, your investment dollars decreased (not including any new funds you may have added). The C fund went down about 37% and the S fund declined more than 38%.

How much do you need to make in order to get your money back. According to *Investors Business Daily*, here are some figures that may put your losses into perspective.

- 25% loss requires a return of 33% to break even
- 35% loss requires a return 54% to break even
- 45% loss requires a return of 82% to break even

What do professional investment advisers say about stock investments in 2010?

The "New Normal"

Richard Band is a well-known investment professional. He is the editor of *Profitable Investing*, which has grown to be one of the nation's largest financial newsletters by stressing value and safety. He was a speaker at the "money show" in Orlando, Florida recently and he described several trends that will comprise a "new normal" for investors that he describes as the "new normal" for stock investors.

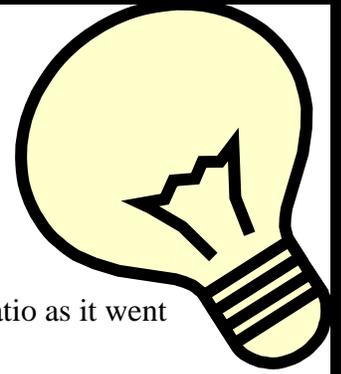
- Lower long-term returns unlike what we have experienced from 1982-2000
- Less tolerance for high valuations of individual stocks
- A two-year uptrend like the 1970's with shorter, cyclical bull markets

Several factors will weigh down potential stock market returns.

A primary factor is America's debt which is growing fast. Our total debt ratio as a percentage of our Gross Domestic Product (GDP) is higher than it has ever been before.

The Illuminator

4-2010



In 1933, this ratio shot up to 2.6. In 1992, many were concerned about this ratio as it went up to about 2.3. It is now about 3.6 and on a fast, upward trajectory.

A second factor is the massive change in demographics. People from 40-60 are the prime savers for retirement. They buy stocks and bonds in these peak earning years. People who are 65 and older are typically retirees. They sell stocks to meet their living expenses. They are not big savers as their incomes have usually declined in retirement.

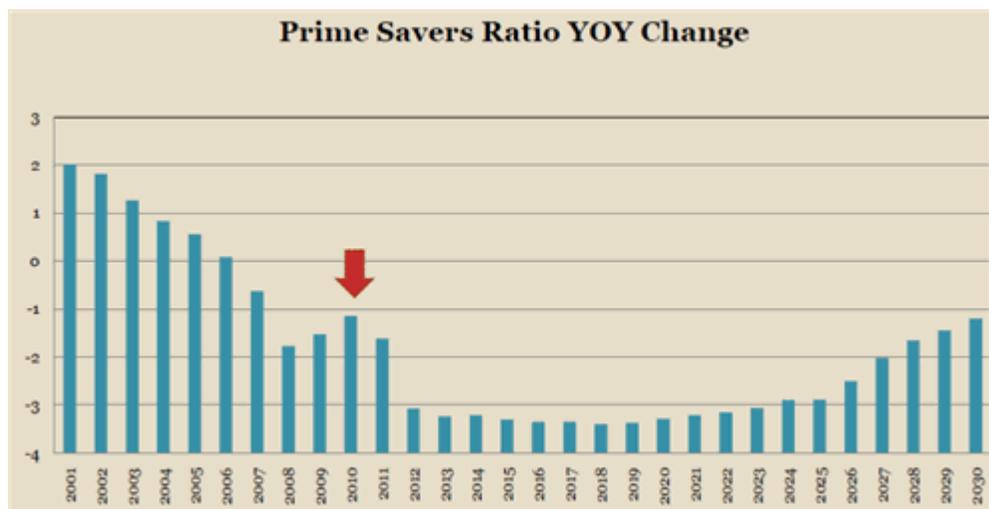
In most years, the number of people 65 or over is smaller than those from 40-60. In years where the number of older people increases faster, the stock market often declines.

Baby boomers are defined by the federal government as those born between 1946 and 1964. It is a huge demographic group in the United States but they are no longer babies and are quickly becoming the elders in society. This group has impacted every aspect of American life from overwhelming elementary schools in their early years, dominating the job market as they matured and, now, having a massive influence as America's population ages.

Richard Band described this trend outlined in the chart below as "uncannily accurate" in its impact on stock prices.

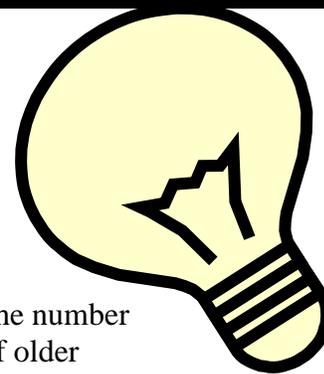
In recent years, there were more people in the 40-60 age range. The first year in which the number of people turning 65 exceeded the younger folks was in 2007. And, as the "baby boomers" get older, this ratio will increase dramatically.

This chart displays the trend:



The Illuminator

4-2010



In 2008, the number of people in the 40-60 age range dropped compared to the number 65 and older. This trend was reversed in 2009 and 2010. In 2012, this ratio of older Americans will be more dramatic than it was in 2008—when the stock market also fell dramatically. In effect, our financial and economic system may be overwhelmed by new retirees starting in 2012 with expenses and services that are used by the elderly ranging from Medicare to Social Security.

Band does not see the stock prices getting back to the highs of 2007 this year. He thinks the current market will be more like the 1970's when stock prices were impacted by high inflation and controversy surrounding the ultimate resignation of President Nixon. Stocks bounced around with temporary upswings followed by dramatic drops.

To illustrate his example of the stock market during this era, early in 1970, the Dow Jones Industrial Average was at 811. Early in 1972, it stood at 904. Early in 1974, it was back down to 880. President Nixon resigned in August 1974 and, early in January 1975, the average was down to 632. Six years later, in early 1981 in the waning days of the Carter administration, the stock market average was at 972.

The market rebounded in the 1980's and, in the waning days of the Reagan administration, the stock market stood at 2810.

Stock Prices: 1966 - 1982

It was possible to make money and increase investments in the 1970's as the market bubbled up and down as it wavered within a small range. But the stock market did not go up much between 1966 and 1982.

The average annual return on stocks from 1966 - 1982 was -1.5%. By comparison, stocks went up an average of 14.8% between 1982 - 2000.

A "buy and hold" strategy worked well during the bull market years. Investors who were able to buy and sell stocks within the range were able to profit during the 1966-1982 period but a "buy and hold" strategy was unlikely to produce a substantial profit for most investors.

In effect, Richard Band sees opportunities for stock investors in 2010 but advises investors to be more proactive with their stock investments. Most Thrift Savings Plan investors do not care to become heavily involved with stock charts and stock market experts.

For these folks, your best bet is diversification of your investments between stocks and bonds or investing in the appropriate lifecycle fund. We cannot control demographics,

The Illuminator

4-2010



economic or political events that may influence the value of current or future retirement investments. But you can try to protect your investments with rational diversification efforts.

Health Tax Increases, Not Only on Wealthy. When it comes to the taxes associated with the new health care bill, Vice President Joseph R. Biden Jr.'s assessment stands: It's a big — very big — deal.

The historic overhaul of the nation's health care system that President Obama signed, when combined with the fixes making their way through Congress, will raise taxes over the next 10 years by more than a half-trillion dollars.

The tax increases range from hundreds of billions of dollars in new Medicare levies, including one that taxes investment income such as capital gains and dividends for the first time, to a 10 percent excise tax on indoor tanning services that will raise less than \$3 billion over the next decade.

Imposing a Medicare tax on investment income "would reduce demand for investment, which is the last thing that the economy needs right now. It would slow [economic] recovery, reduce employment opportunities and hinder wage growth," said Karen Campbell of the conservative Heritage Foundation. "Less investment, lower investment values and lower wages hinder the ability of households to build wealth."

Under a procedure that doesn't require a 60-vote majority for approval, the Senate is considering a package of changes to the new health care law to placate House members' concerns about the Senate bill, which the lower chamber approved Sunday with no Republican support. Among other things, the Senate must approve the numerous tax-law changes that the House passed in a second bill Sunday to fix the upper chamber's December proposal.

By far the biggest tax increase — more than \$210 billion from 2012 through 2019 — involves Medicare, the \$500 billion federal health care program for the elderly and disabled. Medicare taxes would be raised in two ways.

First, the new law increases the Medicare payroll tax on employee wages and salaries from 1.45 percent to 2.35 percent on earnings above a certain amount — \$200,000 for individuals and \$250,000 for couples who file jointly. The employer's share would remain at 1.45 percent for all wages and salaries — creating an effective 3.8 percent tax rate for income in those higher brackets.

Second, for the first time ever, the bill would apply Medicare taxes to several forms of "unearned income" — capital gains, dividends, interest, royalties and other sources

The Illuminator

4-2010



besides wages and salaries — above the \$200,000 and \$250,000 thresholds. The individual or couple must pay the whole 3.8 percent Medicare tax because there is no employer with whom to split the bill on "unearned income."

Consider a married couple who earn \$300,000, divided evenly between salaries and capital gains. Their total salary income of \$150,000 would be subject to the combined 2.9 percent Medicare tax — split evenly between employee and employer. The first \$100,000 in capital gains would not be subject to any Medicare tax, but the couple would have to pay a 3.8 percent Medicare tax on the last \$50,000 in capital gains.

The two Medicare provisions "would improve both tax equity and economic efficiency," said Chuck Marr of the liberal Center on Budget and Policy Priorities, who notes that the two taxes would affect "only the 2.6 percent of U.S. households with the highest incomes." Mr. Marr reports that 91 percent of the increase in Medicare taxes would be paid by people earning more than \$500,000.

Broadening the base of the Medicare tax for high-income households by extending it to capital gains, dividends and other unearned income would be "sound economically," Mr. Marr said, because it would "modestly reduce incentives for economically unproductive tax sheltering."

Today's top income-tax rate for wage-and-salary income (35 percent) is more than twice as high as the top rate for capital gains and dividends (15 percent). This big difference encourages high-income earners to pursue unproductive tax sheltering by converting salary income to capital gains, Mr. Marr said.

Although only high-income households will pay the new Medicare levies, Republicans say, billions of dollars in other new taxes will be paid by individuals earning less than \$200,000 per year and married couples earning less than \$250,000. That would violate a 2008 campaign pledge by President Obama, Republicans say.

Portions of a multitude of new taxes totaling nearly \$250 billion over 10 years would be paid, either directly or indirectly, by workers with incomes below those levels, Republicans on the House Ways and Means Committee said.

For example, both the law signed by Mr. Obama and the reconciliation bill raise money by taxing generous health-insurance policies, though the numbers differ.

But even the proposal sitting before the Senate, which taxes these "Cadillac plans" less than the bill signed into law, expects to raise \$32 billion during the 2018-19 period. The "fix" heavily penalizes health-insurance plans costing more than \$10,200 for individuals

The Illuminator

4-2010



and \$27,500 for families — imposing a 40 percent excise tax on the value above those amounts.

Many of these "Cadillac plans" are held by union workers in the private sector and by state and local government workers. Most families of both groups earn well below \$250,000.

While the excise tax will be directly paid by the insurance company, economists of all persuasions expect the costs to be passed along to policyholders.

Middle- and working-class Americans, Republicans say, also can expect to pay a big portion of the numerous fees that the health care bill will impose on the pharmaceutical industry (\$27 billion from 2011 through 2019), on medical-device manufacturers (\$20 billion from 2013 through 2019) and on health insurance providers (\$60.1 billion from 2014 through 2019), and on indoor tanning services (a 10 percent excise tax).

The new law also limits deductions for medical care, requiring people, including middle-income households and seniors, to have spent more of their own money on health care expenses before they become tax-deductible. Currently, expenses above 7.5 percent of adjusted gross income can be deducted for tax purposes; the bill Mr. Obama signed raises that threshold to 10 percent of income.

The legislation imposes mandates on employers with more than 50 workers to provide health insurance to their workers and on individuals and families to carry health insurance. The bill would impose penalties on those employers (\$52 billion from 2014 through 2019) and households (\$17 billion from 2014 through 2019) who do not comply with the mandates.

In part because these penalties would be administered and enforced by the Internal Revenue Service, Republicans consider them taxes and violations of Mr. Obama's campaign pledge.

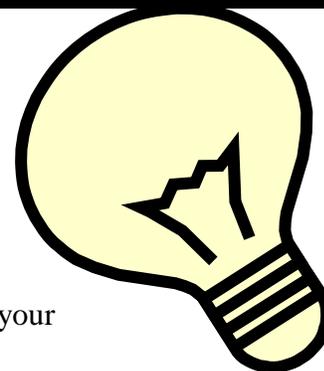
The White House declined to respond to a request for comment on the charge that the president broke his promise not to raise taxes on middle-income households.

Are You Prepared for Estate Tax Changes? What's the story with the federal estate tax?

Back in 2001 with the passage of the Economic Growth and Tax Relief Reconciliation Act (EGGTRA), the threshold for the federal estate tax was gradually raised to \$3.5 million dollars by 2009 and then eliminated for 2010. The 2009 levy claimed 45% of the estate over the \$3.5M threshold.

The Illuminator

4-2010



This year, being 2010, there is no federal estate tax, regardless of the size of your estate. But what happens in 2011?

In 2011, the estate tax returns, the threshold reduces to \$1M and estates can be taxed at a rate of up to 60% of the amount over the threshold. How did we get such a strange situation? The one word answer is "Congress".

So what is Congress doing about the federal estate tax? If we were to judge by results, the one-word answer is "nothing".

Last year the House of Representatives passed an extension of the estate tax at 2009 levels, but the Senate did nothing. That resulted in the current situation of no estate tax.

What is likely to happen? Many experts expect Congress to enact a retroactive estate tax, with a threshold at or above the 2009 level, before the end of the year. In the past, the U. S. Supreme Court has allowed retroactive tax changes.

Stay tuned for further developments.

Employment-Related News

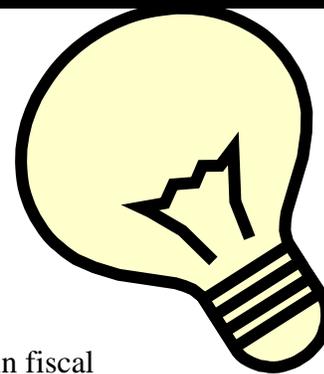
Panel Approves Telework Bill. A House subcommittee approved legislation that would make telework a statutory requirement for every federal agency.

The bill--the 2009 Telework Improvements Act ([H.R. 1722](#))--passed the House Oversight and Government Reform Federal Workforce Subcommittee by unanimous vote. The bill would require federal agencies to expand their telework programs, set benchmarks to monitor their progress and establish a target of 20 percent of the eligible federal workforce teleworking an average of one day per week.

The panel approved an amendment sponsored by Rep. Gerry Connolly, D-Va., that also would make telework a central element of federal agency's continuity of operations plans in the event of a natural or manmade emergency. Connolly pointed to the recent Office of Personnel Management estimate that the cost of lost productivity during the nearly one-week closure of the federal government due to February's snowstorms was actually \$70 million, rather than \$120 million, per day, because more workers teleworked from home than was anticipated. "The back-to-back blizzards were a great reminder for everybody how telework can work and should work," Connolly said.

The Illuminator

4-2010



OPM has said that about 102,900 federal employees nationwide teleworked in fiscal 2009. The agency has set a goal to increase that figure by at least 50 percent by fiscal 2011.

The subcommittee also approved a bill that would allow federal employees to deposit the value of their unused annual leave into their Thrift Savings Plan accounts and legislation that would provide OPM with more oversight of companies that negotiate prescription drug prices for the Federal Employee Health Benefits Program.

The Private-Federal Pay Imbalance. Office of Personnel Management Director John Berry has appointed a task force to come up with data that shows that federal employees do not earn higher average salaries than their private sector counterparts.

At a hearing before the Senate Appropriations Committee, Berry responded to [recent claims](#) by organizations like the libertarian Cato Institute and media outlets like USA Today that workers in a range of jobs get paid more on average in the federal government than in the private sector.

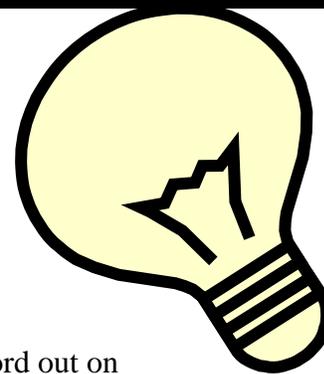
For example, an [article](#) by USA Today published early March said that federal workers earned an average salary of \$67,691 in 2008 for occupations that exist in both government and the private sector, while average pay for the same jobs in the private sector in 2008 was \$60,046. More specifically, IT jobs like computer information systems managers working for the federal government earned an average of \$122,020, compared to average earnings of \$115,706 in the private sector.

But Berry testified that such claims are based on misinformation, adding that the federal workforce has become more educated and specialized over the past 50 years, specifically in areas like [cybersecurity](#), medical research, financial regulation and law enforcement. The recent claims are "not comparing like jobs with like jobs," he said. "Whenever you compare like jobs with like jobs and put the level of responsibility and the level of education that come with it, federal jobs are behind the private sector."

The task force will be examining whether an old formula that used Bureau of Labor Statistics data to compare federal and private sector pay should be reinstated to help the government make more careful analysis and comparisons. "There may be requirements to change this formula," Berry said. "I have appointed a task force to wrestle with this formula so that they can come forward and actually defend with iron-clad validity for you and the American public exactly what the facts are based on the data."

The Illuminator

4-2010



Sen. Susan Collins, R-Maine, urged Berry to do a better job at getting the word out on what lawmakers and the American public perceive to be an imbalance of federal and private sector pay. "If there is an imbalance, that is a problem at this time of great budget strain," she said. "If there isn't, we need to make that case and explain why"

Veterans Preference for Federal Jobs. . Veterans' preference in its present form comes from the Veterans' Preference Act of 1944, as amended, and is codified in various provisions of title 5, United States Code. By law, veterans who are disabled or who served on active duty in the United States Armed Forces during certain specified periods or in military campaigns are entitled to preference over non veterans both in Federal civil service hiring and in retention during reductions in force. This article will only address preference as it pertains to hiring.

In addition to receiving preference in competitive appointments, veterans may be considered for special noncompetitive appointments for which only they are eligible.

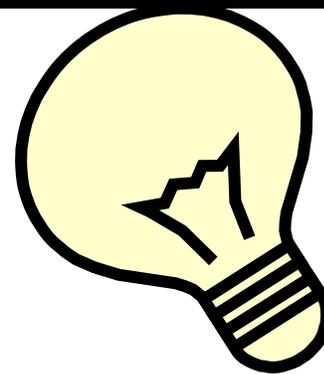
Preference in hiring applies to permanent and temporary positions in the competitive and excepted services of the executive branch. Preference does not apply to positions in the Senior Executive Service or to executive branch positions for which Senate confirmation is required. The legislative and judicial branches of the Federal Government are also exempt from the Veterans' Preference Act **unless** the positions are in the competitive service (Government Printing Office, for example) or have been made subject to the Act by another law.

Preference applies in hiring from civil service examinations conducted by the Office of Personnel Management (OPM) and agencies under delegated examining authority, for most excepted service jobs including Veteran's Readjustment Appointments (VRA), and when agencies make temporary, term, and overseas limited appointments. Veterans' preference does not apply to promotion, reassignment, change to lower grade, transfer or reinstatement.

Veterans' preference does not require an agency to use any particular appointment process. Agencies have broad authority under law to hire from any appropriate source of eligibles including special appointing authorities. An agency may consider candidates already in the civil service from an agency-developed merit promotion list or it may reassign a current employee, transfer an employee from another agency, or reinstate a former Federal employee. In addition, agencies are required to give priority to displaced employees before using civil service examinations and similar hiring methods.

The Illuminator

4-2010



Types of Preference

To receive preference, a veteran must have been separated from active duty in the Armed Forces with an honorable discharge or general discharge. As defined in 5 U.S.C. 2101(2), “Armed Forces” means the Army, Navy, Air Force, Marine Corps and Coast Guard. The veteran must also be eligible under one of the preference categories below (also shown on the Standard Form (SF) 50, Notification of Personnel Action).

Military retirees at the rank of major, lieutenant commander, or higher are not eligible for preference in appointment unless they are disabled veterans. (This does not apply to Reservists who will not begin drawing military retired pay until age 60.)

Active duty for training or inactive duty by National Guard or Reserve soldiers does not qualify as “active duty” for preference.

For purposes of preference and 5 U.S.C. 2108, “war” means only those armed conflicts declared by Congress as war and includes World War II, which covers the period from December 7, 1941, to April 28, 1952.

When applying for Federal jobs, eligible veterans should claim preference on their application or resume. Applicants claiming 10-point preference must complete Standard Form (SF) 15, Application for 10-Point Veteran Preference, and submit the requested documentation.

The following preference categories and points are based on 5 U.S.C. 2108 and 3309 as modified by a length of service requirement in 38 U.S.C. 5303A(d). (The letters following each category, e.g., “TP”, are a shorthand reference used by OPM in competitive examinations.)

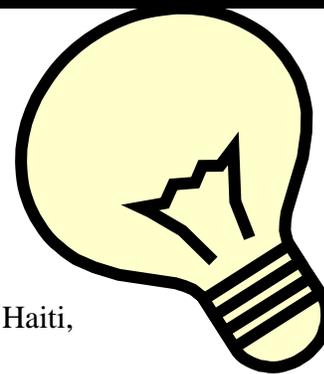
5-Point Preference (TP)

Five points are added to the **passing** examination score or rating of a veteran who served:

- During a war; **or**
- During the period April 28, 1952 through July 1, 1955; **or**
- For more than 180 consecutive days, other than for training, any part of which occurred after January 31, 1955, and before October 15, 1976; **or**
- During the Gulf War from August 2, 1990, through January 2, 1992; **or**
- In a campaign or expedition for which a campaign medal has been authorized. Any Armed Forces Expeditionary medal or campaign badge, including El
-

The Illuminator

4-2010



- Salvador, Lebanon, Grenada, Panama, Southwest Asia, Somalia, and Haiti, qualifies for preference

A campaign medal holder or Gulf War veteran who originally enlisted after September 7, 1980, (or began active duty on or after October 14, 1982, and has not previously completed 24 months of continuous active duty) must have served continuously for 24 months or the full period called or ordered to active duty. The 24-month service requirement does not apply to 10-point preference eligibles separated for disability incurred or aggravated in the line of duty, or to veterans separated for hardship or other reasons under 10 U.S.C. 1171 or 1173.

10-Point Preference (CP)

Ten points are added to the **passing** examination score or rating of a veteran who served at any time **and** who has a compensable service-connected disability rating of at least 10 percent but less than 30 percent.

10-Point 30 Percent Compensable Disability Preference (CPS)

Ten points are added to the **passing** examination score or rating of a veteran who served at any time and who has a compensable service-connected disability rating of 30 percent or more.

10-Point Disability Preference (XP)

Ten points are added to the **passing** examination score or rating of:

- A veteran who served at any time and has a present service-connected disability or is receiving compensation, disability retirement benefits, or pension from the military or the Department of Veterans' Affairs but does not qualify as a CP or CPS; **or**
- A veteran who received a Purple Heart.

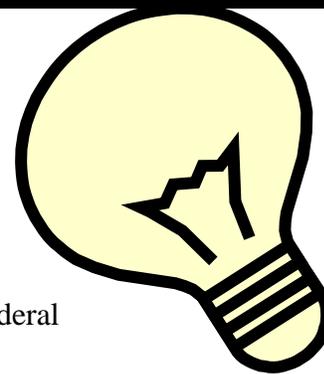
10-Point Derived Preference (XP)

Ten points are added to the **passing** examination score or rating of spouses, widows, widowers, or mothers of veterans as described below. This type of preference is usually referred to as "derived preference" because it is based on service of a veteran who is not able to use the preference.

Both a mother and a spouse (including widow or widower) may be entitled to preference on the basis of the same veterans' service if they both meet the requirements. However,

The Illuminator

4-2010



neither may receive preference if the veteran is living **and** is qualified for Federal employment.

Preference in Competitive Examinations

Preference eligibles who are qualified for a position and achieved a passing score have 5 or 10 extra points added to their numerical ratings depending on which of the previously described categories of preference they meet. This means the highest possible rating is 110 (a disabled veteran who earns a score of 100 has 10 extra points added).

Names of eligible applicants are placed on lists, or registers of eligibles, in the order of their ratings. Competitor inventories are established from which selections will be made over a period of time and for case examining in which a register is used to fill a single position or a group of positions and is closed after the needed selection(s) is made.

For scientific and professional positions in grade General Schedule (GS) – 9 or higher, names of all qualified applicants are listed on competitor inventories in order of their ratings, augmented by veteran preference, if any.

For all other positions, the names of 10-point preference eligibles who have a compensable, service-connected disability of 10 percent or more (CP and PCS) are listed at the top of the register in the order of their ratings ahead of the names of all other eligibles. The names of other 10-point preference eligibles, 5-point preference eligibles, and other applicants are listed in order of their numerical ratings.

The “Rule of Three” and Veteran Passovers

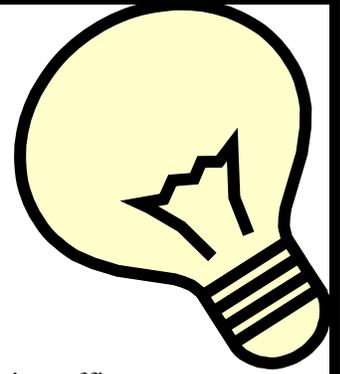
Selection must be made from the highest three eligibles on the certificate who are available for the job – the “rule of three”. However, an agency may not pass over a preference eligible to select a lower ranking non-preference eligible or non-preference eligible with the same or lower score.

Example: If the top person on a certificate is a 10-point disabled veteran (CP or PCS) and the second and third person are 5-point preference eligibles, the appointing authority may choose any of the three

Example: If the top person on a certificate is a 10-point disabled veteran (CP or CPS), the second person is not a preference eligible, and the third person is a 5-point preference eligible, the appointing authority may choose either of the preference eligibles. The appointing authority may not pass over the 10-point disabled veteran to select the non-preference eligible unless an objection has been sustained.

The Illuminator

4-2010



Disqualification of Preference Eligibles

A preference eligible can be eliminated from consideration only if the examining office sustains the agency's objection to the preference eligible for adequate reason. These reasons, which must be recorded, include medical disqualification under 5 CFR part 339, suitability disqualification under 5 CFR Part 731, or other reasons considered by the Office of Personnel Management or an agency under delegated examining authority to be **disqualifying**.

OPM must approve the sufficiency of an agency reason to medically disqualify or pass over a preference eligible on a certificate based on medical reasons to select a non-preference eligible. Special provisions apply to the proposed disqualifications or pass over for any reason of a preference eligible with a 30 percent or more compensable disability.

Agencies have delegated authority for determining suitability in accordance with 5 CFR Part 731.

The preference eligible (or his or her representative) is entitled on request to a copy of the agency's reasons for the proposed pass over and the examining office's response.

An appointing official is not required to consider a person who has three times been passed over with appropriate approval or who has already been considered for three separate appointments from the same or different certificates for the same position. But in each of these considerations, the person must have been within reach under the rule of three and a selection must have been made from that group of three. Further, the preference eligible is entitled to advance notice of discontinuance of certification.

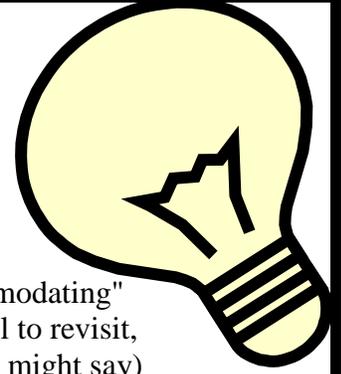
Please contact your servicing HR Specialist with questions.

Management-Employee Relations

Federal Disability Retirement under FERS and CSRS: Revisiting Accommodation". To qualify for Federal Disability Retirement benefits under FERS or CSRS, one is required to prove, by a preponderance of the evidence, that one meets or exceeds all of the eligibility requirements under the law. As with all legal issues, administrative or otherwise, the hurdles which one must overcome – or, as an alternate metaphor one might offer, the multiple "pitfalls" which must be avoided -- are pre-determined by the statutory requirements governing Federal Disability Retirement. One

The Illuminator

4-2010



such requirement to overcome is the issue of an Agency's attempt at "accommodating" the medical conditions of a Federal or Postal employee, and it is often helpful to revisit, reevaluate, and review the issue, both for didactic purposes (as Woody Allen might say) and for reasons of clarification.

I have previously written on the important issue of "accommodations" which can directly impact Federal Disability Retirement applications under FERS & CSRS. While there is a governing body of cases discussing the issue of accommodation, the prevailing case still remains Bracey v. Office of Personnel Management, 236 F.3d 1356, 1358 (Fed. Cir. 2001). There, the Federal Circuit Court delineated and outlined the applicable provisions governing disability retirement, stating that "the pertinent OPM regulation elaborates on the statutory definition by providing that an employee is eligible for disability retirement only if:

1. the disabling medical condition is expected to continue for at least one year;
2. the condition results in a deficiency in performance, conduct, or attendance, or is incompatible with useful and efficient service or retention in the employee's position; and
3. the agency is unable to accommodate the disabling condition in the employee's position or in an existing vacant position."

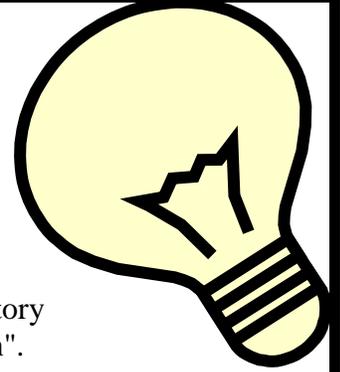
In a Federal Disability Retirement case, the first two provisions as outlined by the Court in *Bracey* are reserved for other articles -- that the Applicant's medical condition must be such that it is expected to continue for a minimum of twelve (12) months, and further, that there is a "connection" between the medical condition and one's Federal or Postal job, such that one negatively impacts upon the other. It is the third "issue" -- concerning "accommodation" -- which is often misunderstood, misinterpreted, and as a result, often creates hazards and pitfalls for Federal and Postal Disability Retirement applicants.

In order to be successful at filing for, and obtaining, Federal Disability Retirement benefits, one must understand (and tread carefully around) the issue of an Agency's effort at "accommodating" an individual. Most efforts employed by a Federal Agency never constitute what is legally considered an "accommodation". However, because Federal and Postal employees often possess a misconception as to what the conceptual underpinnings are of the term "accommodation", they often harm themselves in the early stages of the process. As such, it is important to go back to the basics.

First, the statutory basis: 5 U.S.C. 8337(a) states that a disabled employee is eligible for disability retirement unless the employee is able to render "useful and efficient service in the employee's position", or is qualified for reassignment to an existing vacant position in the agency at the same grade or level. Again, the "useful and efficient service" part of the

The Illuminator

4-2010



statute is not the issue for the present article. It is the second part of the statutory language which is important to understand -- the concept of "accommodation".

Can your Agency do something so that you can continue to work in your job, or alternatively, reassign you to an existing vacant position at the same pay or grade? Often, Agencies will do things to try and "help" the employee, such as: Temporarily perform some lesser duties than what the position calls for; allow the employee liberal leave policies; allow the employee to take LWOP; minimize travel requirements; and many other "accommodating" measures (as that term is often loosely used) to keep the employee as productive as possible. But do these measures rise to the level of meeting the legal definition of "accommodation" in the context of Federal Disability Retirement laws? The answer is, quite simply, No.

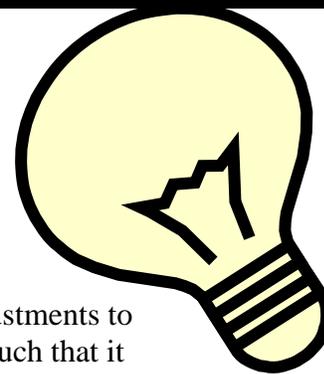
And this makes sense. First, let me state unequivocally that there is absolutely nothing wrong, wicked, or nefarious in Agency supervisors who attempt to alleviate some of the more onerous and demanding physical or cognitive aspects contained as requirements in a position description. Good supervisors do whatever it takes to keep good employees on board. But for purposes of filing a Federal Disability Retirement application, do such measures to allow the Federal or Postal employee to "stay on board" preclude one from qualifying for disability retirement? Do the measures which the Agency allows for constitute an "accommodation" under Federal Disability Retirement rules and regulations?

Ask yourself this question: Assume that for 10 years, a supervisor has been allowing a "good employee" to work at lighter duties and assignments. Then, one day, a new supervisor comes into the office and declares that from that day henceforth, everyone must perform all of the essential elements as required by his or her position description. Does the fact that the employee was able to do the job before, but not now, make a difference? The answer to this question goes to the heart of the concept of "accommodation", where the Court in *Bracey* stated unequivocally that an agency cannot stop a disability retirement application "by assigning an injured employee to an ad hoc set of light duties as long as it continues to pay the employee at the same level as before". (*Bracey*, 236 F.3d 1356, at p. 1362)

In the hypothetical provided above, could you argue that, because the person has been able to perform in his position, that he is precluded from filing for Disability Retirement benefits? The answer is, actually, quite simple: None of the measures employed by the supervisor constituted an "accommodation" under Federal Disability Retirement laws, and the person in the example could have, at any time, filed for Federal Disability Retirement benefits. Let me explain. The *Bracey* decision had a follow-up companion case, which targeted the very issue of the hypothetical as described in the preceding paragraph. In *Marino v. OPM*, 243 F.3d 1375 (Fed. Cir. 2001), the Agency assigned the

The Illuminator

4-2010



Appellant an unofficial set of office duties, and did nothing to make any adjustments to his official position or altered the work environment of his official position such that it would "enable him to perform the duties of his official position" with the Agency.

What the Administrative Judge at the Merit Systems Protection Board did (which prompted the appeal to the U.S. Court of Appeals to the Federal Circuit), was to focus upon the Federal employee's "ability to perform useful and efficient service in his unofficial light duty position, and not his official position of Materials Handler."

While it is commendable for a supervisor to try and keep a good employee "on board" by providing for light duty assignments, such unofficial duties do not go to the heart of what the concept of "accommodation" means.

"Accommodation", if it means anything, must encompass measures which allow for the Federal or Postal employee to continue to perform the essential elements of the job. If the measures initiated by the supervisor do not result in the performance of the essential elements of the job, then the employee has not been "accommodated". Accommodation, in essence, means that, with the help of the Agency, the Federal or Postal employee can continue to perform the essential elements of the position as described in his or her position description. Anything less, and all that a person is doing is performing an "ad hoc set of light duties as long as it continues to pay the employee at the same level as before."

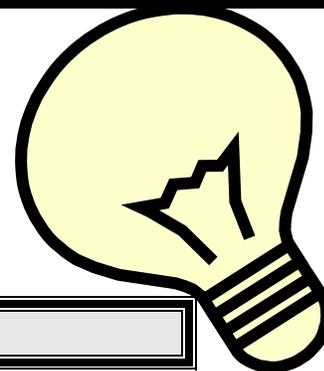
Where does all of this leave us – especially in the context of filing an application for Federal Disability Retirement benefits under FERS or CSRS? It comes down to the foundational essence of what it means to be "eligible" for Federal Disability Retirement benefits.

To be eligible: One must have a medical condition which lasts for a minimum of 12 months, such that the medical condition prevents one from performing one or more of the essential elements of one's job, and the Agency is unable to initiate any measures such that the person can overcome the medical conditions to continue to perform the essential elements of the Federal or Postal position. This, in a single sentence, is the essence of what it takes to be eligible for Federal Disability Retirement benefits under FERS or CSRS.

Oh, but that life, the Shakespearian Fool, and the universe of laws which daily govern us, could be so simple.

The Illuminator

4-2010



Training, Self-Development, and Personal Improvement

A Review of GS-101: The NSPS Transition Out Course. Of late civilian employees have engaged in a lot of discussion concerning transition out of the National Security Personnel System (NSPS) to the General Schedule (GS) pay system. The Department of Defense (DOD) has recognized this and has launched a new online web course entitled [GS-101](#) which covers four broad topic areas. This course provides an excellent overview of the General Schedule pay system and addresses the differences between the two personnel systems.

When NSPS first rolled out, non-bargaining employees had to learn a new vocabulary and processes for basic terms and events experienced in their careers. This course addresses those terms under the General Schedule system and delves into the basics of Classification and Pay, Changing Positions, Performance Management and Career Development. The course also includes a self assessment, a self answering quiz, and a certificate of completion.

Although there are a variety of civilian personnel systems in place today, the Classification Act of 1949 standardized classification and pay for white collar work and still covers the majority of the DOD workforce. This course clarifies, that although classification standards will be used during transition out from NSPS to GS, no one will face a loss of or decrease in pay upon conversion out of NSPS. The grade of the position will be determined using the same procedures and criteria currently in use for GS employees.

The module on performance management covers the importance of aligning employee work with organizational goals and priorities. Like NSPS, the GS Performance Management system requires supervisors to communicate organizational goals with employees, set job objectives, monitor individual accomplishments, discuss individual development plans (IDPs), and properly rate performance. IDP's which can be designed and used to facilitate career progression, as well as, a listing of monetary and non-monetary awards which can be used to reward exceptional performance is discussed. Suggestions are made for employees' consideration in discussing performance ratings with supervisors, and options are shown for supervisors' consideration, concerning maximizing employee performance and meeting responsibilities. As part of the NSPS website, two additional communications/learning products are posted:

- [Managing My performance – A Guide for Employees](#) – discusses the basics of performance management regardless of which system the employee is covered by.

The Illuminator

4-2010



- [Managing Employee Performance – A Guide for Supervisors](#) - that discusses the basics of performance management regardless of which system the supervisor manages performance under.

A post test is offered to solidify learning, but it provides the answers immediately after a choice is made. The course serves as a comprehensive learning aid for those who are unfamiliar with GS and as a refresher for those who are already familiar with the General Schedule system.

All who desire to clarify the basic regulatory requirements of the GS system is encouraged to review this course. Please contact your servicing Civilian Personnel Advisory Center HR Specialist with questions.

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 several iterations of this course are below. Registration information will be disseminated electronically three weeks before each class start date.

14-17 Jun 10

13-17 Sep 10

6-10 Dec 10

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,

The Illuminator

4-2010



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 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).

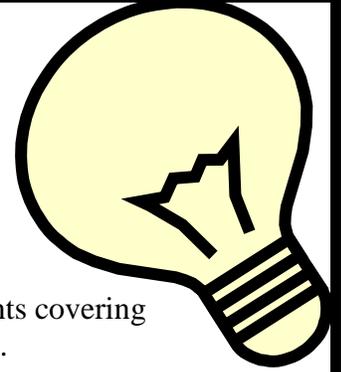
In addition, to the ART Users Guide, there is a Defense Civilian Personnel Data System (DCPDS) Desk Guide which provides how-to information about tasks and functions that end users might need to perform in DCPDS, such as initiating a Request for Personnel Action (RPA) and creating a Gatekeeper Checklist. 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.

The NAF Corner

The Service Employees International Union Local 679 and NAF Employees. The Service Employees International Union (SEIU) Local 679 is the official “employee organization” that represents NAF bargaining unit employees on Fort Benning, Georgia. The SEIU Local 679 exists for the purpose of working with activities or agencies concerning grievances, personnel policies and practices, or other matters that may affect the working conditions of represented employees. The “Union” has exclusive

The Illuminator

4-2010



recognition and is responsible for negotiating collective bargaining agreements covering all employees in the unit without regard to an employee's union membership.

SEIU's right to bargain collectively with the Employer (generally represented by management officials) enhances the dignity, rights, and respect of employers by giving them the opportunity to influence the establishment of workplace rules. The *collective bargaining process* for NAF employees consist of the negotiations between representatives of SEIU Local 679 and management officials of the Directorate of Family and Morale, Welfare and Recreation in respect of the terms and conditions of employment. The Employer and SEIU Local 679, through appropriate representatives meet and confer. Conferring in good faith is one of the many roles local union officials play regarding the negotiation of work place policies and practices. This agreement or binding contract, when reached normally remains in effect for a period of three years from the date of approval by proper authority or until renegotiated.

Employees included in the bargaining unit consist of all non-supervisory full-time, part-time, and flexible employees, including off-duty military employees. Employees excluded from participation in the bargaining unit include professional employees, management officials, supervisors, security guards, and employees engaged in Federal personnel work in other than a pure clerical capacity.

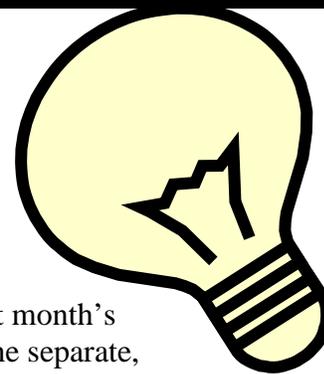
Any bargaining employee has the right to join or not to join the union and may join at anytime; however, if an employee opts not to join, that employee is not prohibited from union representation and is entitled to fair representation regardless of union affiliation.

If an employee chooses to join SEIU Local 679, the Chief Steward or any Shop Steward is required to complete a Request and Authorization for Voluntary Allotment Compensation for Payment or Employee Organization Dues, Standard Form 1187 for the employee for signature. The Steward certifies the amount of dues and informs/educates the new union member on the Program. Included in the instruction is information reference the deduction allotment for dues; the member is informed of the requirement for the allotment to remain in effect for a minimum period of one year. Upon meeting the one-year period, the employee may revoke/cancel his or her union deductions effective the first full pay period following September 1, of any calendar year. An employee who wishes to cancel his or her union deductions may do so by visiting their local NAF Human Resources Office to complete a Cancellation of Payroll Deductions for Labor Organization Dues, Standard Form 1188.

For additional information regarding the bargaining agreement, union membership or payroll deductions, please contact your servicing NAF Human Resources Office.

The Illuminator

4-2010



Travel and Transportation Entitlements. This article is a follow on to last month's article, Overseas Allowances and Entitlements. Explained in this issue are the separate, accompanying travel and transportation entitlements to which NAF employees are eligible.

Employees recruited in the United States are eligible for travel and transportation entitlements under the provisions of the DoD Joint Travel Regulations, Volume II (JTR), and AR 215-3, Non-appropriated Fund and Related Activities Personnel Policies and Procedures. In addition, employees may be eligible for Educational Travel Allowance under the provisions of the DSSR and space available travel to designated destinations specified in various instructions. The following entitlements may be granted to employees who meet the prescribed eligibility criteria outlined in the prescribed directives.

Transportation Agreement. Employees meeting the criteria outlined in JTR, C-4002 are eligible for travel and transportation entitlements between the U.S. and overseas locations at non-appropriated fund expense.

Renewal Agreement Travel. Employees completing their prescribed tour of duty at an overseas location are eligible for renewal agreement travel under the provisions of the JTR, C-4151. Such travel is contingent upon their agreement to serve another tour of duty at their prescribed overseas duty location.

Household Goods. Employees eligible to negotiate a transportation agreement may be authorized to ship a maximum of 18,000 pounds of household goods in connection with a permanent of change of station or upon their separation from employment. Household goods not shipped to an overseas station may be placed in non-temporary storage provided the total weight of the household goods shipped and in non-temporary storage does not exceed 18,000 pounds.

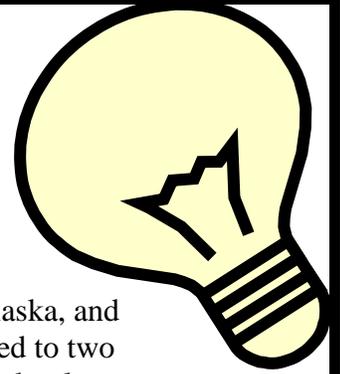
Shipment of Privately Owned Vehicle (POV). Eligible employees may ship a vehicle from their designated residence in the U.S. to an overseas duty location. Employees, who do not ship a vehicle when they travelled to the overseas duty location on PCS orders are not eligible to ship a POV back to the United States at Government expense.

Educational Travel. Employees, who are eligible for LQA under the provisions of the DSSR may be reimbursed for the education travel of their children under twenty three years of age to attend a post secondary school or college in the U.S. Such reimbursement is limited to one round trip during a 12 month period.

Environmental and Morale Leave (EML). Employees who are eligible for return transportation to the U.S. upon completion of their overseas tours are eligible for space

The Illuminator

4-2010



available travel on government aircraft to CONUS, Hawaii, Japan, Guam, Alaska, and destinations within the overseas tour area. EML travel entitlements are limited to two trips per year and are not cumulative. All absences on EML travel are charged to leave. Local hire employees are not entitled to EML travel.

BLANCHE D. ROBINSON

Human Resources Officer

Fort Benning CPAC

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

E-Mail:

blanche.d.robinson@us.army.mil