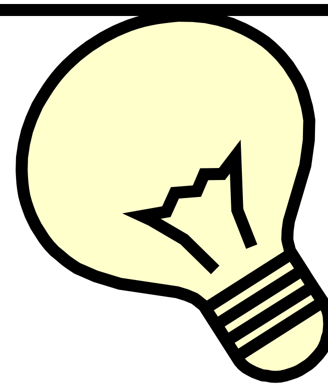
The

Illuminator

Shedding Light on the HR World

5-2010 **Article Directory**



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The NAF Corner

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

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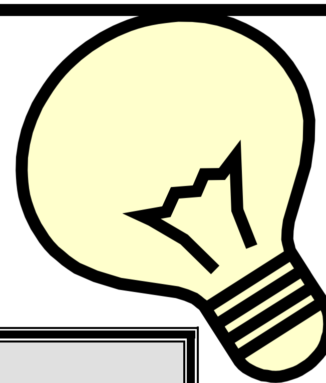


Retirement, Life/Health Insurance, TSP, Social Security and Such

IRS Could Tap Refunds for Health Insurance Penalties. The Internal Revenue Service could tap individual tax returns to collect fines against people who fail to buy health insurance as required under recently enacted healthcare legislation, the U.S. tax commissioner recently said.

Most individuals are required to get health insurance under the new law, or face penalties that would be phased in over time. By 2016, people without coverage could see fines of 2 percent of their income.

Subsidies would help poorer people buy coverage, and states would set up exchanges to allow individuals and small groups shop for insurance.

People who do not comply would be levied penalties, and if they don't pay them the penalties could be taken out of their tax refunds.

"There has been some insinuation about how we are going to approach our job," IRS Commissioner Douglas Shulman said after speaking at the National Press Club.

Under the new law, the IRS cannot seize assets or levy fines, so Shulman said refunds were the most obvious option to collect penalties.

The new law aims to expand coverage to about 32 million uninsured Americans.

Last month, President Barack Obama signed the legislation, which passed both houses of Congress with backing only from his fellow Democrats. Republicans have been attacking the bill ever since, calling it an overreach of government power.

Representative Dave Camp, a senior Republican on the tax-writing Ways and Means committee in the U.S. House of Representatives, issued a report shortly after its passage arguing that law "dangerously expands IRS authority."

"The individual mandate would create millions of captive customers for health insurance companies, with the IRS acting as the enforcement agency for those companies," Camp's report asserted.

Shulman also dismissed claims by Republicans that the government would need to hire 16,500 agents to enforce the new rules.

"That is a made up number. The only official numbers come from the IRS, which I have to sign off on. We don't have a number yet," Shulman said.

A staffer for Republicans, which circulated the 16,500 estimate, defended it on Monday.

The staffer said the number was based on an estimate by the Congressional Budget Office that $10 billion would be needed to implement the law over a decade, subtracting $1 billion for administration costs.

"If it's not 16,500, how many thousands of people will the IRS have to hire to enforce their portion of the bill?," the aide, who was not authorized to be quoted by name, said. "How is the IRS going to spend billions of dollars in taxpayer money to enforce its portion of the bill?"

Shulman, appointed by former President George W. Bush and retained by Obama, said the U.S. health department and insurance companies would determine if individuals have purchased acceptable levels of coverage.

"There are not going to be IRS agents having discussions with the American people about the intimate details of their health insurance," Shulman said.

None of the provisions related to individual taxpayers come into force this year, with most phased in in 2013 and 2014, he said.

Medicare and Federal Employee Health Insurance. Discussion of "risk pools" and "call letters" from the Office of Personnel Management (OPM) doesn't sound very exciting. And, in most years, the issuing of an OPM call letter doesn't generate much press publicity in the federal community.

This year may be different though.

With controversy surrounding health care, there are clearly changes on the way for Americans and how they receive and pay for health care. Some of these changes will ultimately impact federal workers and civil service retirees. As everyone knows, our health care system is complex and probably going to get even more complex. As federal employees and retirees, we are not going to be exempt from this complexity.

A "call letter" from the Office of Personnel Management is a letter from OPM to insurance companies asking for benefit and rate proposals for the Federal Employees Health Benefits (FEHB) Program. The letter from OPM was recently sent out.

Federal Employees and Medicare, Part B

One provision in the letter should interest those who are under the FEHB in retirement or those who plan on carrying their federal health insurance into retirement. The ability to use your federal employee health insurance is a significant benefit. Many companies do not provide this option. But, as a retired federal employee, you can keep your federal employee insurance after you retire and about 70% of the premium is still paid for by the federal government.

This year's call letter states: "We are encouraging the development of pilot programs that improve the value of coverage for annuitants through improved benefits coordination between FEHB and Medicare Part B. At present, plans effectively waive their cost sharing requirements for enrollees with Medicare Part B, which means Medicare/FEHB members typically receive first dollar (100%) coverage for many services."

The proposed project would test a voluntary "sub-option" within the FEHBP that would pay all or part of a Medicare Part B (as appropriate) for Medicare-eligible federal annuitants.

The National Active and Retired Federal Employees Association (NARFE) says that this is a good move. In a press release, the organization wrote that "If proven feasible, the Medicare sub-option could save some federal annuitants money and help to contain costs in FEHBP for workers, retirees and survivors."

OPM says that "The health plan would pay for the Medicare Part B premiums and provide Medicare gap benefits. The Medicare/FEHB enrollee would not bear the cost of the Medicare Part B premiums but would continue to pay the health plan's normal out-of-pocket cost sharing. That means benefits would be essentially the same as those for non-Medicare enrollees."

Risk Pools and the FEHB

The underlying concern of the OPM proposal is that people who are older often get sick and use health care services more than younger people do.

There is a lot more risk for an insurance company by having older people who are insured. Under the FEHB, an older, retired federal employee does not pay any more than a young, healthy, newly-hired federal employee who may have an active federal career of 25 years or more. With baby boomers getting older, and large numbers of federal employees projected to retire in the next few years, medical expenses are certain to go up and the corresponding risk for insurance companies is also going to go up dramatically.

If people who were insured under the FEHB paid insurance premiums based on the relative risk for the insurance company, older employees would pay higher premiums. In effect, older employees would be put into a separate "risk pool" because of their age and the statistical probability they are a greater risk for having to use medical services. But, under the FEHB, this is not done and, says OPM, "We do not support splitting risk pools for annuitants and active employees and believe that these pilots can demonstrate ways of stemming cost growth through strengthened benefits coordination."

The Bottom Line

We will not know the details of the sub-option discussed in the OPM call letter until closer to the open season for health benefits plans opens up. It could prove to be a good option for many federal retirees.

Federal retirees and those who are close to retirement will want to pay close attention. Having a separate insurance policy, such as that offered by the FEHB, can be a big benefit over using Medicare if doctors should decide not to participate in the Medicare program. Medicare payments for doctors are a yearly source of discussion and there are always predictions that many doctors will drop out of the program. As one expert noted, "It's inherently an unstable situation even though every year Congress steps in and keeps it from collapsing. It can't be good for the system to have this kind of last-minute staving-off of disaster.

There is no indication in the OPM call letter or in the NARFE defense of the new proposal that federal retirees would be required to go into the Medicare program, as many companies as many companies do for their retirees, instead of having a private insurance plan available. In fact, NARFE stresses the voluntary nature of the new OPM proposal.

It would be naive to assume the sub-option now being discussed by OPM could never lead in the direction of withdrawing a private insurance option for federal retirees although the political pressure from NARFE and federal employee unions would almost certainly highlight such an issue if it surfaces in future years.

While many of us routinely renew our existing health benefits plans each year without much thought or concern, federal employees and retirees would be well advised to closely study your health insurance options when they become available for 2011. It appears that the options available may change and deciding which option is best for you may be more complex than in previous years.

OPM Emphasizes Preventive Care. OPM is emphasizing preventive care and healthy lifestyle benefits for the 2011 FEHB plan year, telling health plans to eliminate out of pocket enrollee costs for preventive care, immunizations, and screenings. OPM said that cost sharing requirements are a major reason that such benefits have low utilization rates; carriers in recent years have increasingly shifted more of the total cost of health care to out of pocket costs such as copayments, partly to hold down basic premium rates and partly to discourage enrollees from using medical care unnecessarily. Similarly, carriers are to expand their smoking cessation benefits, including counseling, medications, multiple quit attempts, no annual or lifetime limitations and no enrollee cost sharing. OPM also said carriers should enhance their efforts in promoting awareness about healthy lifestyles and avoidance of the onset of chronic conditions. Carriers would not be required to find savings elsewhere to offset those costs, meaning that the mandates could put upward pressure on premiums. OPM's instructions came in its annual call letter to insurance carriers, a letter that starts a negotiation process that produces new premiums and plan offerings announced in the fall for the next calendar year.

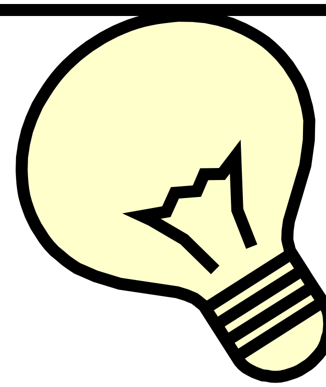
The call letter also told carriers to enhance benefits related to donor testing services for bone marrow and stem cell transplants; encouraged proposals that include testing for up to four transplant donors; told carriers to review their policies on assistive technologies such as hearing aids and encouraged them to increase their coverage levels; continued an emphasis on greater use of health information technology; and told carriers that they are to comply with recently issued HHS regulations on mental health and substance abuse benefits in health insurance plans generally. OPM also reiterated that FEHB family coverage should be extended to children under age 26 starting in the 2011 plan year as required by the recently enacted national health insurance reform law, but did not address specific eligibility requirements nor the potential impact on premiums.

Coming Soon! The New Thrift Savings Plan Website. For the last several months the TSP has been running a beta test of its new website. Many of you who have accessed your TSP accounts have been given an opportunity to test the site and to make comments. The TSP claims the new site is "Better. Faster. Easier." and that it is "improved" and "user friendly".

All of the Thrift Board's claims are true. Of course, the fact that the old website dated from circa 1997 and had gotten very few updates since its creation means that the bar was set quite low for "Better. Faster. Easier."

Among the improvements TSP participants will see are:

- Multiple access points on different pages. For example, there are links to interfund transfers on more than one page.
- The main menu appears on all pages. There is no longer the need to backtrack to find what you are looking for.
- Easier navigation. The pages are more intuitive and you can find items more quickly than on the old site.



The main menu has the following areas:

- My Account. This takes you to a page where you login to your account. You can see your account at a glance and can perform account actions. You can also login to your account directly from the home page.
- Plan Participation. This section has information on eligibility, managing your account, interfund transfers and TSP loans.
- Investment Funds. This gives basic information on each fund and has a link to the current Fund Information Sheet for more in depth information
- Planning and Tools. There are basic calculators here. However, there was no access to either a monthly payment or an annuity calculator, as there is on the current website. Hopefully, this is due to the fact that this is a beta version and does not contain everything that the final version will.
- Life Events. Information about the role of the TSP at different stages of your career. Most of the links to information were inoperative in the beta version, but it should be quite helpful once they are all operating
- Participant Support.

o One link was to contact the TSP, and there was no visible link for frequently asked questions. The fact that there was no FAQ link on the 1997 website could be explained away by the fact that the website was so old. There is no excuse for not having a FAQ link on a brand new site. I hope that the FAQ link was simply left off the beta version and will appear when the new website is introduced.

o One link was to forms and publications. Not everything was loaded on the beta versions, but I expect this is where we will have to research some of the more arcane TSP questions until a FAQ section appears.

TSP participants will welcome the new and updated website. If you want a chance to be asked to test drive the beta version, log on to your TSP account; when you log out, you might be asked to test the beta version. While you're logged on to your account you might want to look at your account allocation and decide if it is time to re-allocate your investments by means of an interfund transfer.

When can we expect to see the new site? The beta site says the new site will be up in 2010. The Thrift Board has stated that they expect the rollout in May. When we get access to the new account, we will be entering the 21st century.

Annual Leave and your Thrift Savings Plan. There is potential good news on the horizon for federal employees who plan to retire with a large annual leave balance. The news relates to the ability to contribute their annual leave balance to the Thrift Savings Plan.

Currently, federal employees, unlike their private sector counterparts, cannot contribute the cash value of their A/L to the TSP. If HR 4865 is passed and signed into law, federal employees will be able to take that A/L balance and contribute it to the TSP, as long as their annual contributions do not exceed the annual elective deferral limit. That limit is $16,500 for 2010.

The bill is sponsored by Representatives Stephen Lynch (D-MA) and Jason Chaffetz (R-UT). In addition to the fact that the sponsors are from different parties (how unusual), President Obama indicated a few months ago that he would sign such legislation if it crosses his desk.

HR 4865 is called *The Federal Employees and Uniformed Services Retirement Equity Act of 2010*.

Employment-Related News

OPM will Test New Work Flexibility Program. Office of Personnel Management Director John Berry announced at a White House forum that he is moving 400 agency employees into a pilot program that will go beyond existing workplace flexibility and telework programs and could serve as a model for the rest of government.

"If flexibility can succeed in the federal government with the unrivaled complexity of our missions ... as well as our red tape, quite frankly, it can succeed anywhere," Berry told participants at the White House Forum on Workplace Flexibility, where President and Mrs. Obama also spoke.

The pilot program will move 400 employees at OPM's headquarters, including Berry's staff, into a human resources model known as Results-Only Work Environment. That strategy, developed by two HR experts, Jody Thompson and Cali Ressler, and first implemented at electronics retail chain BestBuy, eliminates mandatory work hours and even the requirement that employees come into the office. Instead, it evaluates employees only on their performance. In addition to private sector companies, Thompson and Ressler have worked with state and local governments, most recently the Human Services and Public Health Department of Hennepin County in Minnesota.

Ressler and Thompson will work directly with Berry to roll out the program during the next eight months, and the accounting and consulting firm Deloitte will measure the results, Berry said.

"If it's not working, we'll go back to the drawing board," he told forum attendees. "But if it is, which I believe it will, it will become the cornerstone" of efforts to expand telework and workplace flexibility throughout the federal government.

Obama backed Berry's efforts, saying, "it's about providing better, more efficient service for the American people -- even in the face of snowstorms and other crises that keep folks from getting to the office."

He said his administration will hold similar forums with business leaders across the country to continue to gather best practices on workplace flexibility. And he said Berry and Aneesh Chopra, the administration's chief technology officer, will have his support in overcoming troublesome regulations, investing in secure technology to make telework easier, and training for managers to address their concerns about flexible scheduling.

The administration's Council on Economic Advisers also released a report at the forum on the economic value of workplace flexibility. While the report said more data was needed to truly understand the spread of workplace flexibility programs like telework and their economic effects, employers must understand how valuable flexibility is to workers, said Christina Romer, who chairs the council.

"Everything from control over what hours you work, where you work, how you organize your work, is part of your compensation," she said. "What you're getting at is firms often think about it as a cost, but what we found in the report is there are a lot of benefits."

The Government is Hiring. With unemployment hitting some scary levels as of late there seems to be one entity that is almost unaffected by the trend; the government.

The government is not only continuing its strong hiring that it conducts each year, but bucking the employment trend. The government is also getting ready to add more jobs. Yes, the government is boning up to do some massive hiring and if you are in the job market for a government job then this may be a great opportunity for you.

It makes sense when you think about it. After all the Federal Government is the nation's leading employer and no matter what the economic environment may be there are always going to be government jobs that are considered 'mission critical' and therefore must always be filled. But along with the tons of mission critical jobs the government is also seeking to add to its employee field about 193,000 new jobs over the next couple of years according to Partnership for Public Service.

These new jobs that will be made available will be in many different areas of expertise and even if you have zero experience as a government employee, if you have the right set of skills and live in the right place, you may be eligible to start an exciting new career with the Federal Government. Using information from Partnership for Public Service, here are the five fields that are expected to explode over the next couple of years:

1. 62,863 New Jobs: Protection, Security, Compliance, and Enforcement.
2. 35,350 New Jobs: Public and Medical Health.
3. 21,248 New Jobs: Budget, Business, and Accounting.
4. 17,477 New Jobs: Science and Engineering.
5. 14,305 New Jobs: Analysis, Administration, and Program Management.

These fields will represent a wealth of new job openings at the Government level and they only scratch the surface. The Government will need to further continue to fill its other various jobs and it is being suggested that as the next couple of years shape up there may even be more new job growth than is currently expected.

The next logical question then is where are all these Federal Government job openings going to be?

Yes, the Government will be hiring nationwide but there are obviously going to be certain areas of the country that will fill more of the positions than the others. The larger metro areas of the United States will of course offer more in the way of a need for Government jobs to be filled, but some of the top ten places for Government hiring may in fact surprise you. Using data from 2008, here is a list of the top ten cities to be in or around if you are hoping to cash in on the Government job hiring spree:

1. Washington D.C.: No shock here really as D.C. is the home of the Government and much of the important Government work that gets done in the United States. In 2008 Washington D.C. saw almost 1.5 million job postings. While the number may be different this year, it is still sure to be up there.
2. San Antonio, Texas: In 2008 San Antonio saw about 350,000 job postings. Obviously this pales in comparison to D.C. but the number of openings still represents a lot of opportunity.
3. Atlanta, Georgia: Here is a name you would expect to see near the top. In 2008 Atlanta only lagged behind San Antonio by about 30,000 job postings and is

bound to be the home of a good number of the new positions that the government is looking to fill in the next couple of years.

4. Philadelphia, Pennsylvania: In 2008 Philly offered up 190,000 Government job postings. The city that is known for its Cheese Steaks is also a great place to be if you are trying to gain Government employment.
5. New York, New York: 2008 saw 181,000 job postings for the big city and there are sure to be a number of new security jobs that are going to be flooding in over the next couple of years.
6. Dallas/Ft. Worth, Texas: As you can see Texas is certainly a good area to be in of you are in the hunt for a Government job. This particular area saw 180,000 job postings in 2008 and will more than likely continue to thrive.
7. Baltimore, Maryland: Along with some really good crab cakes, Baltimore is also the place to be if you are seeking Government work. In 2008 the Baltimore area saw 175,000 job postings.
8. Tampa, Florida: In 2008 Tampa offered up 170,000 job postings. It just goes to show you can have a good opportunity for Government employment and still enjoy some fun in the sun.
9. Chicago, Illinois: In 2008 the city of Chicago saw 169,000 Government job postings. Chicago is another city that should be getting an increase of the new security jobs that will be made available in the next couple of years.
10. Los Angeles, California: Rounding out the top ten is LA. Home to the starts and 150,000 job postings in 2008, LA offers plenty of opportunity for those looking to work for the Federal Government.

Keep in mind that these cities only represent the top ten in the country. With all the additional openings coming available over the next couple of years there really never has been a better time to be seeking a Government job. While you don't have to live in one of the cities mentioned or be a pro at one of the fields mentioned to land Government work, if you have one or both factors going for you it certainly will not hurt your chances any.

Sometimes it pays to be informed. Take some time to check out what your area has to offer by way of Government job postings. You may be surprised with what you find. Remember, just because the rest of the job market is not so great right now, doesn't mean that the Government is planning on slowing down so you may as well take advantage of this fact and try your luck with a Government job.

Women and Money. This article is written by Sherri Goss, CFP® and Senior VP at Rosenberg Financial Group, Inc. Any references to “I” or “my” pertain to her as an author.

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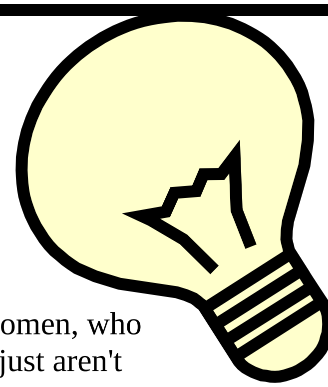


In my practice I meet a lot of women. It amazes me how many times these women, who come from a variety of educational and economic backgrounds, tell me they just aren't smart when it comes to money.

A lot of married women leave financial matters to their husbands to handle. Some single women leave their retirement up to fate. If you don't know how to manage money now, that doesn't mean you can't learn. Here are some mistakes I'd like you to avoid:

1. Not Knowing Where Your Money Goes: The availability of credit has enabled all of us to spend money we don't have, which can become a bad habit. Track every dime you spend for 30 days. Add up the categories (gas, meals out, etc) and look at where your money is going. What do you need to change so you can save more, and pay off debt faster?

2. Not Saving for Retirement: Women today earn about 77 cents for every dollar a man earns, and much of this is due to women spending time out of the workforce to raise children and care for aging parents. The result is that most women have not saved enough in their retirement plans. You will want to have money when you retire. What can you give up today so you can have what you want tomorrow?

3. Letting Your Husband Handle Everything: I've met many widows who did this, and when their husbands died unexpectedly they were completely unaware of their financial position. Would they have enough money to pay their bills and maintain their lifestyle? Were they going to run out of money? Know and understand your household finances: income, expenses, assets, debts, insurance policies (and who the beneficiaries are!). Next, go on all the appointments with your husband when he visits with your Financial Advisor, CPA, and Attorney. Read everything and ask questions.

4. Opting Out of Survivor Benefits: If you are married, and your spouse will have a pension, they will have options upon retirement as to how to take this money. One option is income for their lifetime only, and another option is income for your lifetime as well (if they die first). The second option provides less monthly income, but provides income for both of your lives. For some reason, people don't think they're going to die any time soon, and choose the first option. Then they die, and their spouse doesn't have this income stream. I see this too frequently and it is heartbreaking.

5. Ignoring Longevity: Women are living about seven years longer than men, and a woman who is 65 today can expect to live to age 85. Living longer means needing income that will keep up with inflation, and possibly pay Long Term Care expenses.

This article is just the beginning. I encourage you to find professionals who will work with you, help you take a look at where you are, then help you build a secure financial future.

Federal Government Jobs Far Outpace Private Sector Counterparts in Pay, Benefits. Recent statistics suggest the federal government is becoming an increasingly more attractive place to work than the private sector. According to information from the Bureau of Labor Statistics, federal jobs outpay their private sector counterparts 83 percent of the time.

With unemployment still hovering at 9.7 percent, job seekers are pulling out all the stops to land work -- but the federal government might just be one of the best gigs out there.

Recent statistics suggest the federal government is becoming an increasingly more attractive place to work than the private sector. Federal jobs outpay their private sector counterparts 83 percent of the time, according to information from the Bureau of Labor Statistics.

And this imbalance has drawn some complaints on Capitol Hill, at a time when lawmakers are talking a lot about reining in federal spending.

"Private sector has a profit motive -- they have to be able to justify these expenditures," Rep. Jason Chaffetz, R-Utah, said. "We are the federal government -- we are, they are just oblivious to the idea that we've got to pay (a) responsible wage."

According to federal data, a cook on the federal payroll will make roughly $15,000 more than one in the private sector. A public relations manager working for the U.S. government will out-earn his or her private sector counterpart by an average of more than $44,000.

But some say simply lining up federal and private jobs side-by-side is like comparing apples and oranges.

"You can't just break down a rather complex process on how pay is set and how jobs match up with each other in the private sector and the federal sector," said John Gage, national president of the American Federation of Government Employees, AFL-CIO.

The disparities don't only show up in salaries, though. According to the Bureau of Economic Analysis, average health, pension and other benefits tally up to $40,785 per federal worker -- compared with just $9,882 per private worker.

"Many private sector workers don't receive pension benefits or health care benefits at all," said Chris Edwards, director of tax policy studies with the Cato Institute.

Officials say that fact shouldn't be held against U.S. government employees.

"I don't think anybody should be upset that federal employees have a pension or that they have health insurance," Gage said. "I'm kind of upset that so many in the private sector don't."

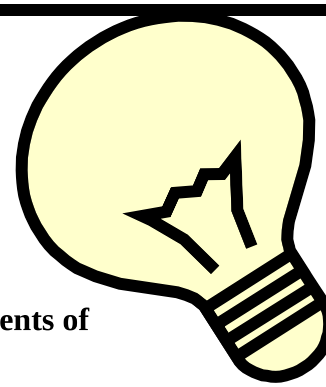
The Office of Personnel Management says one of the key factors to those pricey federal packages is that there is very little turnover in government jobs -- meaning many employees have reached top seniority levels -- and that it's much harder to land one of those federal positions

Federal Managers Association President Sets Sights on Pay Issues. Patricia Niehaus, the Federal Managers Association's newly elected national president, says one of her top priorities is ensuring that thousands of Defense Department civilian employees transitioning out of the defunct National Security Personnel System (NSPS) are not cheated out of future raises.

Performance raises earned by an estimated 4,000 to 40,000 employees under NSPS mean those employees will exceed their pay scales after being returned to the General Schedule later this year. Those who exceed their GS pay scales will see their future raises cut in half until the GS pay scales catch up over time with their pay — a concept known as retained pay.

Niehaus, a labor relations officer at Travis Air Force Base near San Francisco, said the Pentagon is bound by GS rules to impose retained pay on those affected employees. But she and FMA have a strategy to help minimize the number of employees affected: Push the Pentagon to reclassify their job positions to higher-grade positions, thus allowing them to be in higher GS pay scales. The move is warranted, she said, because many NSPS employees have seen their job descriptions expand since being enrolled under NSPS.

Niehaus and FMA government affairs director Jessica Klement discussed this and other issues important to FMA during an April 8 meeting with Federal Times reporters and editors:



Q: You've just had your Washington conference. What are the key elements of FMA's agenda?

Niehaus: Mostly the NSPS conversion out. We're focusing mainly on encouraging managers to ensure their position descriptions and those of their subordinates are appropriately classified because a lot of people under NSPS went into it with a particular position description, but their positions and their duties and responsibilities have grown dramatically over the past three or four years. So a lot of those positions may not have appropriate classifications under the [General Schedule] system.

Q: The classifications have become outdated, you're saying.

Niehaus: Well not so much outdated as [an employee's job] may be a higher graded position now. So we're encouraging [the Pentagon] to look at the actual classification of the position to ensure that it's accurately reflecting the current duties and responsibilities of the position.

Q: What's the latest you are hearing on the retained pay issue?

Niehaus: I think probably people will be under retained pay, and that's why we're encouraging our members to look at the classification of their positions to ensure that that is accurate. Because if it's not accurate — if we have a GS-13 member whose position would now be classified as a GS-14 — that may eliminate the retained pay issue for them.

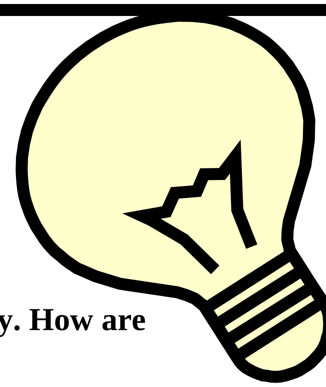
Q: So you're looking at that as essentially the work-around solution to the retained pay problem. Forget about trying to curtail retained pay ...

Niehaus: Yeah, short of a congressional action on retained pay, I don't see a change in that because that is how the GS system is written.

Q: And do you see DoD being receptive to that?

Niehaus: I think they would be, yes. They're working within the constraints of the GS system as far as the conversion back.

Klement: I'm not getting any indication from Capitol Hill that this is a fight they are willing to take on. ... But our biggest concern is that — what is it, 168,000 are supposed to go back to the General Schedule by September? — our biggest concern is that that's going to happen without those reclassifications taking place.



Q: Federal pay has become quite the political lightning rod issue recently. How are you viewing this issue?

Niehaus: I know in the San Francisco area, for example — I work at Travis Air Force Base — the engineers can go 40 miles down the road from Travis to San Francisco and easily double their salaries. The same with any highly educated or highly technical fields. We have a lot more of those positions [in the federal government], especially in DoD, than a lot of nongovernment agencies.

Forty years ago when the GS system was put in effect, the civilian sector didn't have a lot of the highly technical things, those were done by the military back then. But now we have people deploying to Afghanistan, we have engineers, we have rocket scientists, we have pilots. And our pilots don't make anywhere near what the commercial pilots make — and they fly into war zones.

So, you know, I think [critics are] not looking at like positions in the private sector compared to our sector, because I think if you were to compare like positions, you would find that they're not grossly overpaid.

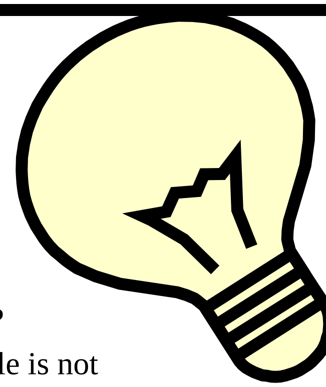
Klement: It's not an apples-to-apples comparison. You can't say the average federal worker makes $71,000 a year and the average private sector worker makes $40,000 because the federal government, one, rewards employees based on longevity; two, the federal workforce as a whole is more highly educated than the nonfederal workforce; and

Niehaus: And the federal workforce doesn't include a lot of the very low-paid positions. We don't have janitors on the federal payroll, we contracted those out for the most part.

Klement: It's very, very easy to throw people with job security under the bus when thousands of Americans are out of a job. They want someone to blame. ... So they throw federal employees under the bus because they don't have a job and they want somebody to be mad at. And their next-door neighbor who may work at the Social Security office has job security, and if they're a GS-13, or 14 or 15, they're making over $100,000 a year, so let's get mad at them again. Once the economy starts to rebound, I don't think you'll see these kinds of articles popping up anymore.

Q: Let's turn to the new labor-management partnerships. What do you see occurring any differently now because of these, and what if any concerns might you have coming at it from the middle managers' perspective?

Niehaus: I think if you're going to have the labor-management councils, if it doesn't get down to the first-level supervisors and workers, I don't think it'll work. I think it has to be driven down to the lowest level in order for it to be effective.



Q: Should permissive subjects be included among topics for bargaining?

Niehaus: I think some areas could be included. I think mandating it as a whole is not necessarily productive. That could be my labor relations background speaking. I think that it should be something that should be looked at as opposed to just mandated as a broad [matter].

Q: What areas of permissive subjects do you think lend themselves better to bargaining and which areas don't?

Niehaus: I don't think that the budget and the mission and necessarily the numbers of people — because that also impacts the budget — I really don't think those areas lend themselves to bargaining at all. I think the agency should have the ability to determine its own mission without consulting the union to do so.

Q: How about types of technology? Do you think that's appropriate for bargaining?

Niehaus: I think probably appropriate arrangements for using the technology would be a better area to bargain as opposed to the actual technology because I think that partially falls under the budget — you know, purchasing technology is not cheap.

Q: When you say appropriate arrangements for using technology, what are you referring to?

Niehaus: Right now, under the current labor relations, we would bargain on things like training for the technology, how long a person would have for a break-in period to get used to new technology, that kind of thing. So I think that would be a more appropriate avenue of bargaining on technology issues as opposed to, ‘We want you to buy a Microsoft product instead of a brand X product,' or whatever.

Klement: Which type of BlackBerry to purchase.

Niehaus: Exactly.

Q: But overall, what are you looking for from the partnerships?

Niehaus: The partnerships were originally intended — when we did them before under the Clinton era — to improve labor relations and I would like to see this council improve labor relations. The relationship between the unions and management, it does tend to get very confrontational, and it would be nice to be able to level that out a little bit so we don't have such a divisive relationship in a lot of areas.

Q: And how would you characterize that relationship now in the context of recent years? Is it better now than perhaps it was during the Bush period, or the same?

Niehaus: I think it's improving. I think the unions felt very left out during a lot of the Bush years, and they were. So I'm hoping that it's improving. We're fortunate at Travis that we have a good labor relationship with our local. I know a lot of other places aren't that lucky.

Q: What is the breakdown of FMA's membership?

Niehaus: We have about 60 percent DoD members, so that's why [NSPS] is a big part of our issues. [FMA does not publicly disclose the number of members it has.] FMA started as a DoD supervisors association, so that's why most of our members are from DoD. Our next two biggest conferences are the Social Security and the Internal Revenue Service. We have members in 35 different agencies.

Q: What is FMA's direction in the future?

Niehaus: The way ahead for us is to focus on membership and growing members from the younger generation and finding ways to better serve the newer managers, because I think if we don't do that we won't continue to be an organization. ... We're looking to have our national office be a little more active and possibly add a sixth person to enable us to do more lobbying

Management-Employee Relations

Discrimination due to Age-Based Comments. The EEOC recently upheld a finding of unlawful employment discrimination where an agency removed an employee’s supervisory duties, and the employee’s own supervisor made age-based comments. Cook v. Department of Labor, EEOC Appeal No. 0720080045 (February 22, 2010).

Florida Cook, an employee of the Department of Labor (agency), brought a complaint alleging that she had been the victim of unlawful discrimination on the bases of her race, and age when the agency removed her supervisory duties. Ms. Cook also alleged unlawful discrimination on the bases of her age and reprisal for her participation in protected EEO activity when she received a rating of “minimally effective” on a performance evaluation.

Cook prevailed on her claims following a hearing before an administrative judge (AJ). The AJ found that Cook had successfully made out a case of unlawful discrimination on the basis of age with respect to the removal of her supervisory duties, and that she had also established unlawful discrimination on the basis of age and reprisal regarding her "minimally effective" performance appraisal. The agency, however, issued a final order rejecting the AJ's findings of discrimination and filed an appeal with the EEOC's Office of Federal Operations.

On appeal, the agency argued that the AJ had not properly taken into account its legitimate, non-discriminatory reasons for its actions. It said it removed Cook's supervisory duties, for example, because it needed to train payroll technicians under Cook's supervision in other areas, and so it moved them to another branch, outside her supervision. The agency also argued that any age-based comments made by Cook's supervisor were merely inquiries related to her expected retirement for purposes of succession planning. Regarding Cook's performance evaluation, the agency asserted Cook had failed to complete several assignments or meet certain standards necessary for a higher evaluation.

The Commission found that Cook had presented sufficient evidence to support her claim that the agency's removal of her supervisory duties was the result of unlawful age-based discrimination, but not raced-based discrimination. At the time that the agency changed Cook's title from supervisory human resources specialist to human resources specialist, she was approximately 59 years old. Cook testified that her supervisor made various comments about younger employees, including that "younger employees are coming in and that they are better with computers," and "younger people are taking over and they're the best." Ms. Cook also testified that her supervisor asked her several times when she planned to retire.

The Commission found that despite the agency's proffered reasons for removing Cook's supervisory duties, the evidence was sufficient to support a finding of age discrimination. It noted that testimony from other witnesses did not always corroborate the agency's explanation of the reasons for its actions, and one witness testified that Cook's supervisor repeatedly talked about replacing Cook with a much younger employee. The Commission also found that although Cook had not presented sufficient evidence to show that her poor performance evaluation was the result of age discrimination, the evidence was sufficient to show discrimination based on retaliation. Cook showed that a number of the factual allegations on which the agency based her rating were not accurate, and that the agency's reasons for the poor evaluation were therefore merely a pretext for discrimination.

This case helps to define the kinds of comments that can support a finding of age-based discrimination. Repeated questioning about an employee's plans for retirement, combined with comments about the superior skills of younger employees, can be sufficient to show that some adverse employment action (like the removal of supervisory duties in this case) is discriminatory.

* This information is provided by the attorneys at Passman & Kaplan, P.C., a law firm dedicated to the representation of federal employees worldwide. For more information on Passman & Kaplan, P.C., go to http://www.passmanandkaplan.com.

The Federal Coach Takes a Look at the Deadwood Myth. This article is written by Tom Fox of the Washington Post. Any references to "I" pertain to him as an author.

Even if you're not a fan, you're probably familiar with the Discovery Channel's "MythBusters," a series that uses science and special effects to separate fact from fiction.

The government needs its own version of MythBusters around human resource rules, particularly when dealing with poor performers.

Let's examine the myths. No one in government gets fired because it is too difficult, and any supervisor crazy enough to remove someone will be sued. On the other hand, the private and nonprofit sectors are filled with only high performers because poor performers are easily fired.

Sound familiar?

I've worked in all three sectors, and there's "deadwood" everywhere. Firing someone is never easy; no one wants to be the bad guy.

There is a difference in government -- most managers don't know the rules. Just like the MythBusters, I consulted an expert to find the truth. My colleague, John Palguta, spent 34 years working on federal human resource management issues. He can separate the truth from the urban legends.

In fact, supervisors fire between 8,000 and 10,000 federal employees every year because of poor performance or misconduct, according to government data. John noted that this is less than 4 percent of the total workforce and that proactive management can help many improve performance.

But what about the small percentage who cannot, or will not, improve? If you're a federal government manager in charge of a chronically poor performer, here are some practical steps to take.

Step 1

Admit there's a problem. Too often, supervisors assume that an employee knows when performance is unacceptable. More likely, this poor performer has been rated highly in the past and has no clue. As a starting point, you need to have that difficult conversation with your employee and let it be known that performance is a real problem.

Step 2

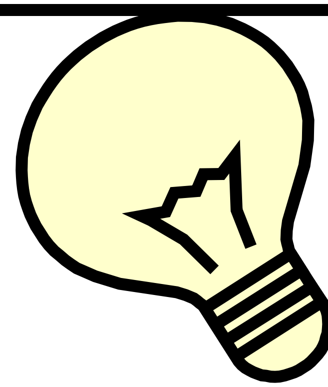
Call human resources. If the conversation doesn't resolve the problem, consult your agency's HR professionals to outline the performance issue and solicit advice around your next steps. You will need HR to process any termination, so engage them at the beginning to ensure that you're dotting the i's and crossing the t's.

Step 3

Diagnose the problem and establish clear expectations. Next, talk with your employee and identify the cause of the problem: Is it a lack of training? A bad attitude? Something that can be fixed? If the problem is personal, refer the person to an Employee Assistance Program for professional help. If the issue is work-related, establish a set of SMART goals -- specific, measurable, attainable, relevant and time-bound -- for improving performance.

Step 4

Document. After you have established and documented a set of goals, record whether or not they were achieved. Create a file for the employee's work products. Provide coaching to help foster improvement, and track conversations through e-mails to the employee. This is the most time-consuming part of dealing with a poor performer but the most necessary: You cannot fire someone without the right documentation.



Step 5

Take action. If you have spent a reasonable amount of time trying to help an employee improve, and you see little or no progress, contact HR again and take action.

One move I don't recommend is transferring the poorly performing employee elsewhere. This is an all-too-frequent tactic that solves nothing and eventually comes home to roost when others realize you've passed along your deadwood. Firing someone should be the last resort, but when an employee is a consistently poor performer, rest assured, you can fire them.

The good news is that when managers take action -- even just counseling an employee -- about half the time, employee performance improves to an acceptable, or even better, level.

Advocacy Group says Women not Moving up the Federal Ranks. A new report from the advocacy group Federally Employed Women says the hiring rate of women for top federal jobs has stagnated in recent years.

From 1992 to 2003, the percentage of women in the Senior Executive Service rose from 12.3 percent of the cadre to 26.2 percent. The number of women in the higher grades of the General Schedule and at senior pay levels also increased.

But since 2006, this upward trend has been slowing significantly, according to FEW. From 2006 to 2007, women's representation in the SES increased by less than half a point to 29.14 percent, despite the fact that women made up 44 percent of the federal ranks. By 2009, the percentage of women in the SES had increased only marginally to 29.95 percent.

"Women in the federal workforce still are experiencing discrimination, as well as a lack of adequate mentoring and training opportunities to successfully move up through the ranks of the federal government," the report said.

FEW said the presence of women in the SES and at the senior grade levels should be the same percentage as women's representation in the federal workplace overall. The group also called the current growth rate of women in the SES "absolutely unacceptable."

Members of the group cite a lack of training as a major impediment to promotions for women. One of the challenges is that the government often does not permit workers in the lower ranks to participate in upper-level training because they are not in management jobs, the report said. FEW has administered several programs that allow women at all GS levels to take any job-related classes and workshops.

FEW also cited mentoring as crucial to helping female federal employees advance. But there are no formal mentoring programs specifically for women in the federal government, and the relatively small pool of senior female leaders also means fewer potential mentors.

"Women need to have leaders to whom they can ask questions, obtain advice about their careers, receive suggestions on career moves, training needs and special project assignments, and obtain general information about the process of moving up the career ladder," the report said.

FEW recommended agencies provide incentives for senior managers to establish, endorse and participate in mentoring programs.

Addressing Medical Issues and Reasonable Accommodations in the Workplace.
Occasionally, managers have to address difficult issues concerning medical conditions for employees that affect job performance. These situations may range from bizarre employee behavior, to significant restrictions in the duties employees can perform, and even excessive or constant absenteeism. Every employee's situation is unique and must be addressed on a case by case basis. When determining an appropriate course of action, supervisors must balance meeting mission requirements with determining the ability and/or feasibility of reasonably accommodating the employee.

In accordance with Title 29 Code of Federal Regulations 1630.9, it is unlawful for a supervisor not to make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified employee with a disability unless the supervisor can demonstrate that the accommodation would impose an undue hardship on the operation of the business. Essentially, a reasonable, good faith effort to modify legitimate mission needs must be made, if possible, to accommodate a qualified individual with a disability. Notwithstanding this effort, there is no mandate for preferential treatment of employees with a medical condition nor is there a requirement for management to create a position for those employees.

For this purpose, a "disability" is defined as the following:

1) A physical or mental impairment that substantially limits major life activities central to normal everyday life
2) On a permanent or semi-permanent basis

3) And where the major life activity is working, substantially limits the employee from performing in a broad range or class of jobs

The first step a manager must take is determining whether or not the employee has a medical problem and if so, the nature of the problem. A disability is not "known" and is not required to be addressed by a supervisor until the employee tells a member of management of the medical condition. However, if the issues are obvious, the supervisor may inform the employee of the option to request reasonable accommodation, but the supervisor cannot mandate that the employee request accommodation or request it in the employee's behalf. Reasonable accommodations are formally requested and coordinated through the Equal Employment Opportunity Office in accordance with Fort Benning and Department of Army Policy.

The second step is for a manager to determine whether the employee is a "qualified disabled" which is defined as:

1) One who with or without reasonable accommodation, can perform the essential functions of the position or a vacant position without endangering the health and safety of the individual or others.
2) "Otherwise qualified" for existing vacancy at same grade or a lower grade level (education, experience, physical and mental ability) that can be used for accommodation purposes and/or
3) Does not pose a direct threat to the health or safety of self or others.

If the employee is a "qualified disabled", management will make a determination on whether accommodation is possible as well as the type of accommodation that can be offered. During this time, managers are also responsible for determining if there is logical connection or nexus between the medical condition and any employee performance issues. In the absence of a nexus, supervisors must address conduct issues and performance issues separately and appropriately.

In limited instances, based on a reasonable belief on objective evidence, a supervisor may request a fitness for duty examination. This should only be utilized if the employee is unable to perform the essential functions of the position due to a medical condition and there is a reasonable belief the employee will pose a direct threat to themselves or others due to the medical condition. A fitness for duty examination may also be appropriate if a determination needs to be made by the supervisor on appropriate duties for an employee to perform in order to prevent the potential for further on-the-job injuries [for Worker's Compensation claims]. Further, it is appropriate to determine if an employee can be medically accommodated in an available, vacant position. However, a fitness for duty is not appropriate and should not be requested when an employee's behavior or conduct is cause for disciplinary action or removal.

For additional information, refer to the Equal Employment Opportunity Commissions website at http://www.eeoc.gov/policy/docs/accommodation.html and contact your servicing MER Specialist.

Training, Self-Development, and Personal Improvement

NSPS to GS Town Hall Meetings. Two town hall meetings have been scheduled to update NSPS employees who will transition to the General Schedule (GS) system. These meetings will consist of an informational briefing followed by a Q&A session and will focus primarily on "workforce" specifics (i.e. classification of positions, pay, performance management, etc) as opposed to the transition plan itself.

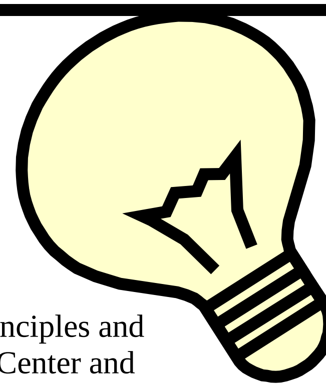
The briefings will take place in classroom 6, building 4 at 1330 on Thursday, 6 May and Thursday, 13 May. The same information will be presented during both sessions so there is no requirement to attend both. Briefing slides will be disseminated prior to the meetings under separate cover and will also be posted to the website for future reference.

ALL affected employees and supervisors/managers/Commanders of these employees are invited to attend regardless of the actual conversion date/spiral; however, these sessions are targeted primarily for those with conversion dates in May and June. Additional town hall sessions will be coordinated and conducted prior to the next major NSPS to GS conversion in August.

Please be reminded that it is highly recommended that all employees who have never worked under the GS system log on to the DoD NSPS website, http://www.cpms.osd.mil/nsps and complete the GS 101 course. This training provides the basics of the GS system and its completion may also serve as a refresher for those who have worked under the GS system.

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:



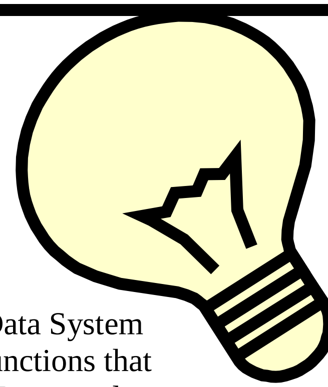
- Introduction of Army CHR which includes coverage of Merit System Principles and Prohibited Personnel Practices, CHRM Life Cycle Functions, Operation Center and CPAC Responsibilities
- Planning
- Structuring – Position Classification
- Acquiring – Staffing and Pay Administration
- Developing – Human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

What is NAF Portability? "Portability" is a term used by benefits professionals to describe the ability to move between employment systems without "losing" certain retirement benefits. Within the Federal government, portability refers to the opportunity for Department of Defense (DoD) employees to move between a civil service position to a Nonappropriated Fund (NAF) position without changing retirement systems.

The law that established portability of retirement benefits also provides for credit toward leave accrual, and other non-retirement benefits under some limited circumstances. Under the current public law, an employee is eligible if he/she moves between any regular Federal civil service position (regardless of Agency) and a regular NAF position with a break in service no greater than one year.

The portability rules allow any regular civil service employee who takes a regular NAF position within a year after leaving civil service to continue their civil service retirement plan. Under the same law, any regular DoD or Coast Guard NAF employee who takes a regular civil service position within one year of leaving NAF employment to continue participation in their NAF retirement plan.

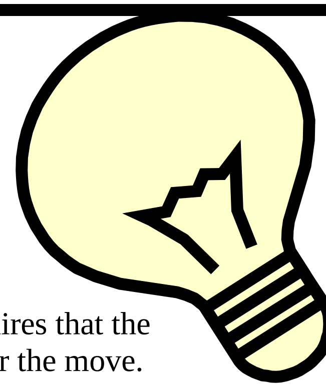
If an employee moves between a regular civil service position and a regular NAF position, they are required to make a choice concerning which retirement system in which they wish to participate. They may choose to remain in their existing retirement plan or choose to change to the gaining Agency's retirement plan.

Non-retirement benefits such as the transfer of annual leave and sick leave, and credit towards service computation dates are automatically given to these employees as a result of a qualifying move.

Portability elections are time-limited, one time, irrevocable choices.

The Illuminator

5-2010



In authorizing employees to choose between retirement plans, Congress requires that the choice be a one-time only opportunity that must be made within 31 days after the move. The choice an employee makes will be a permanent, irrevocable one.

Is an employee eligible for this portability only after having served one year in either system? Does the move have to be made within a certain timeframe? Can the move only be accomplished within DoD? Much of the confusion about portability generates from the changes that have occurred in the portability laws. Employees who moved between 1987 and 1996 have different rules than those who moved between 1996 and 2001, and yet another set of rules applied after 2001.

“The” portability statue was the Portability of Benefits for NAF Employees Act of 1990, Public Law (PL) 101-508, Section 7202. This act provided pay and benefits protection for moves between NAF and civil service on or after January 1, 1987, without a break in service of greater than three days. At that time, PL 101-508 also permitted employees to remain in their civil service or NAF retirement plan; however, the employee must have been vested in their retirement plan. Vesting required five years participation in the existing retirement plan.

PL 104-106, Section 1043, expanded the 1990 Portability Act retirement election provisions to cover moves to civil service positions outside of DoD and to cover moves between civil service and NAF on or after August 10, 1996 with a break of no more than one year.

On or after December 28, 2001, PL 107-107, Section 1131, permitted employees moving between regular civil service and regular NAF positions to continue coverage in the retirement plan that covered them immediately before the move, regardless of vesting. Leave accrual and accumulation is portable. Employees who move between regular NAF and civil service positions without a break in service greater than three days receive service credit for annual leave purposes. Annual, sick, and home leave balances transfer to the gaining employment system; however an employee may not receive a lump sum payment for accumulated/accrued annual leave.

Medical and life insurance coverage is not portable. Employees have the option to elect or decline participation in the health and life insurance programs covered by the gaining employer.

If you have questions regarding portability, please contact your servicing Human Resources Specialist for assistance.

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