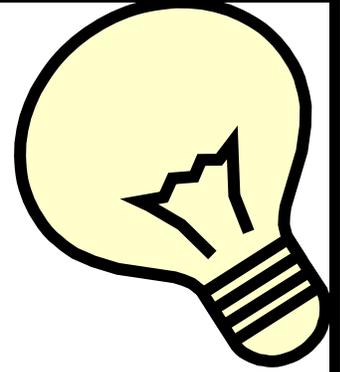


*The*

*Illuminator*

*Shedding Light on the HR World*

*1-2009*



In this Issue:	Page
The Benefits of a 4-Day Workweek	3
The IRS Reminds Workers About Savers' Credit	4
Preventing Workplace Violence	5
Retirement Planning Doesn't End at Retirement	8
Help Wanted: Massive Bureaucracy Promises Exciting New Opportunity	11
EEOC Finds Retaliation	14
Stronger Unions are Coming	15
Privacy Advocates Seek Limits on Government use of Personal Data	18
TSA Screeners Get Better Raises Than Most	20
Falling Fuel Prices Do Not Mean Lower Airfare	21
Bonuses Flow Despite Low Morale	22
Preferential Treatment of Contractors Based on Race Rejected by Appeals Court	24
Litigation as a Form of Costless Entertainment	25
Questions and Answers	26
OPM Proposes Another COLA Decrease for Alaskan Cities	29
Work Now, Grieve Later – Or Pay the Consequences	30

New Life Insurance Choice Explained	31
Gloom, Doom, Bear Market and Your Future Retirement	31
Handling Insubordination	33
The NAF Corner	
NAF Employment for Off-Duty Military Service Members	35
Voluntary Leave Transfer Program for NAF Employees	35
Human Resources (HR) for Supervisors Course	36
RPA and ART Workshop	37
Job Aids Available on the Web	37
Fort Benning CPAC Homepage	38

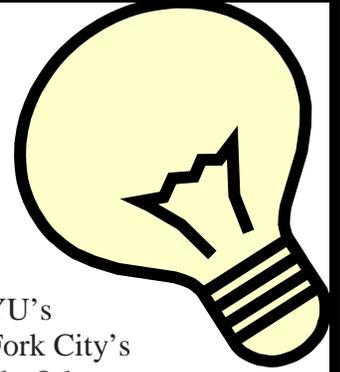
This publication is issued to ensure the Fort Benning commanders, managers, supervisors, and employees are kept informed of employment and staffing issues. Monthly issuances will contain updated information on specific employment topics (i.e., compensation, recruiting procedures, travel entitlements, classification issues, NSPS implementation information, 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, and the ABC-C Newsletter.

Articles taken from FEDSmith are copyrighted. Permission was sought and granted to use them in their entirety. Further use of these articles requires permission from the author(s).

# *The Illuminator*

1-2009



**The Benefits of a 4-Day Workweek.** Rex Facer and Lori Wadsworth of BYU's Romney Institute of Public Management examined the outcome of Spanish Fork City's transition to a schedule in which most employees work 4 10-hour days a week. Other Utah cities offering similar programs include Salt Lake, West Valley, Provo, West Jordan and Draper.

According to Facer, Utah cities embraced the new schedule to both save money on utilities and to give citizens a wider range of times to access city hall. Now they also are reaping the morale and retention benefits among employees who save on fuel costs by commuting 1 fewer day each week.

## **Workplace Satisfaction**

BYU researchers found that even though 4-day workweek employees work the same number of hours as their traditional counterparts, they reported being more satisfied with their jobs, compensation and benefits, and were less likely to look for employment elsewhere in the next year.

"I am hopeful that the state's move to a 4-day workweek will be a positive one," said Wadsworth. "There are going to be very real benefits for employees, specifically decreased gas cost, decreased commute time (both because they only have to commute 4 days, but also because they'll be commuting during off-peak times, so the commute could potentially be shorter each day) and hopefully, improved work-life balance."

Among the most significant findings was the 4-day workweek's connection to conflicts between work and home. These employees were less likely to report that they come home too tired, that work takes away from personal interest and that work takes time they would like to spend with family. Other studies have linked work-home conflict with low job performance and lessened productivity.

"The challenges of balancing work and home lives have become much more complex," Facer said. "Finding ways to better manage work-family conflict is important in building stronger organizations and satisfied employee bases."

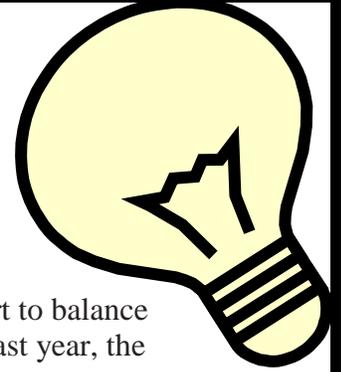
The study also showed that 60 percent of 4-day workweek employees reported higher productivity as a result of the new schedule.

## **Alternative Schedules**

In 2004, Spanish Fork joined the ranks of other Utah cities that offer alternative scheduling to their employees. Unpublished findings from the researchers indicate that citizens are split evenly among support, neutrality and opposition to the 4-day workweek

# *The Illuminator*

1-2009



schedule. The program has continued to evolve since its inception in an effort to balance the complex and sometimes competing expectations of citizens. Within the last year, the city has reinstated Friday hours for some services.

Nine of Utah's 15 largest cities offer some form of alternative work schedules to their employees, a trend that increasingly is prevalent across the county. Of these cities, the 4-day workweek schedule is the most common program, followed by a schedule that offers every other Friday off with employees making up hours in between.

Facer adds that while the research shows some of the positive effects of alternative schedules, each city needs to evaluate its citizens, workforce and services carefully before and after adoption.

"Policies may need to be adapted to meet local needs," he said. "Each city has to adapt to balance the very positive feelings the employees have about alternative schedules with the needs of the members of the community."

The study appears in the June issue of Review of Public Personnel Administration.

**The IRS Reminds Workers About Savers' Credit.** The latest bulletin from the Internal Revenue Service, IR-2008-134, reminds low- and moderate-income workers they still have time to take steps to get the full benefit of the saver's credit.

Also known as the retirement savings contributions credit, the saver's credit helps offset part of the first \$2,000 workers voluntarily contribute to Individual Retirement Arrangements (IRAs), 401(k) plans, and similar workplace retirement programs. Eligible workers have until April 15 to set up a new IRA or add money to an existing IRA and still get credit for 2008, the IRS said.

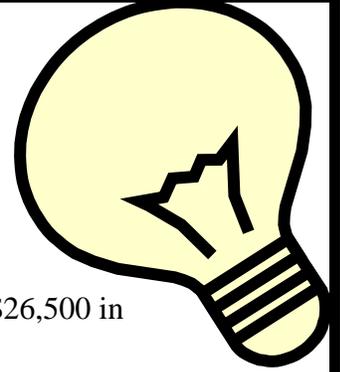
According to the bulletin, elective deferrals to a 401(k) plan, a 403(b) plan for employees of public schools and certain tax-exempt organizations, a governmental 457 plan for state or local government employees, and the Thrift Savings Plan for federal employees must be made by the end of the year.

The saver's credit can be claimed by:

- \* married couples filing jointly with incomes up to \$53,000 in 2008 or \$55,500 in 2009;
- \* heads of household with incomes up to \$39,750 in 2008 or \$41,625 in 2009;

# *The Illuminator*

## *1-2009*



\* married individuals filing separately and singles with incomes up to \$26,500 in 2008 or \$27,750 in 2009.

Other rules that apply to the saver's credit include:

- \* Eligible taxpayers must be at least 18 years of age.
- \* Anyone claimed as a dependent on someone else's return cannot take the credit. A student cannot take the credit. A person enrolled as a full-time student during any part of 5 calendar months during the year is considered a student.
- \* Certain retirement plan distributions reduce the contribution amount used to figure the credit. For 2008, this rule applies to distributions received after 2005 and before the due date (including extensions) of the 2008 return. Form 8880 and its instructions have details on making this computation. In tax-year 2006, the most recent year for which complete figures are available, saver's credits totaling almost \$900 million were claimed on nearly 5.2 million individual income tax returns, according to the bulletin. Saver's credits claimed on these returns averaged \$213 for joint filers, \$149 for heads of household, and \$128 for single filers.

The bulletin can be found on the IRS' Web site at [www.irs.gov](http://www.irs.gov) <<http://www.irs.gov>> .

**Preventing Workplace Violence.** *Unhappy employees can result in more than decreased productivity – in extreme cases, their perceptions and actions can lead to violence in the workplace. OccupationalHazards.com spoke to an expert who shed light on how and why employees become capable of workplace violence, and what management can do to prevent potentially dangerous situations from escalating.*

Dave Logan, Ph.D., a professor at the University of Southern California's Marshall School of Business and the co-founder and senior partner of the workplace culture consulting firm CultureSync, is a co-author of *Tribal Leadership: Leveraging Natural Groups to Build Thriving Organizations*, a book examining organizational culture within companies.

Logan told *OccupationalHazards.com* that he and his co-authors studied intact social networks, or "tribes," in the workplace. Tribes are not necessarily departments or teams, but are natural groups of people who talk to each other at work. Each tribe, he said, falls into one of five categories.

**Stage 1.** This is the "danger zone," the stage where workplace violence occurs. Just under 2 percent of American employees may fall into this category and maintain a prevailing

# *The Illuminator*

1-2009



negative attitude on life, Logan explained. People in this category may behave in a hostile manner, alienate themselves from others and commit theft or acts of violence.

**Stage 2.** Logan said about 25 percent of tribes fall into this stage, only one step away from Stage 1. People in this stage are apathetic and feel they are victims, their voices don't count and that there's no point in trying. While Stage 1 employees may have the mindset that "life sucks," Logan explained Stage 2 individuals instead think, "my life sucks."

**Stage 3.** Employees in this stage tend to have an "I'm great and you're not" attitude, which can result in workplace bullying and drive other employees down into Stage 2. A bully may boss everyone around, shut employees down and think only his or her own ideas are worthwhile. Think of Steve Carell's character on *The Office*, Logan said, to get an idea of the typical person in this stage. "Ironically, it's managers who try to solve everybody's problem and take control who actually tend to foster that kind of environment," he pointed out.

**Stage 4.** In this stage, everyone comes together with a sense of shared values, and ego problems tend to fall away. The prevailing mindset is "We're great and they're not," with "they" being either an outsider or the competition. While there is an "us against them" mentality, it is generally a friendly, not hostile, rivalry.

**Stage 5.** Only about 2 percent of workplaces fall into this category, where people feel that life is great. These workers are in competition not with a rival, but with what's possible. "Those are the companies that make unprecedented leaps of innovation," Logan said.

## **Preventing a Downward Slide**

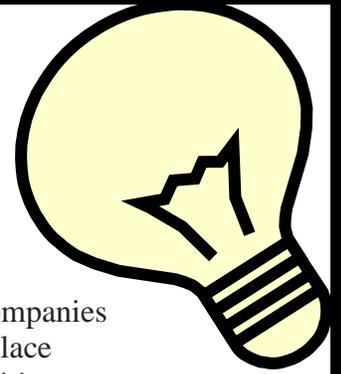
When writing *Tribal Leadership*, Logan said he and his co-authors set out to determine how managers could move their employees to a higher stage. In the process, however, they discovered how important it is to be on the lookout for employees sinking into lower stages.

Tribes only move up or down one stage at a time, but this progression can be rapid. Logan cites the decline of the once-thriving dot-com era, when employees quickly dropped from Stages 4 or 5 all the way to Stage 1.

"It can happen very quickly," Logan said. "The good news is that this also means that ascent can happen quickly."

# *The Illuminator*

1-2009



Logan pointed out that government offices, banks, the judicial system and companies going through rapid layoffs or restructuring may face a higher risk for workplace violence. Considering that 25 percent of employees fall into Stage 2, he said it's imperative to ensure that these workers don't descend into Stage 1.

## **Warning Signs**

"Across the country, we're seeing a collapse of community, and that's a problem," Logan said.

He pointed out that today's struggling economy makes workers especially vulnerable to moving down a stage. Currently, he said, many workers seem to feel that banks, financial institutions and other groups are causing their problems. Logan compares this situation to the Great Depression, when a similar mentality prevailed. Managers, therefore, need to watch for warning signs to ensure their workers don't reach the point where they think nothing matters and that anything – including violence – is justified.

Petty theft or any kind of criminal behavior, no matter how minor, indicates that an employee is in Stage 1, Logan said. These workers don't feel a situation is fair, so they rationalize that anything they do is permissible.

A less obvious sign that a worker is in danger of Stage 1 is alienation.

"When you see people at work systematically cutting every single tie they have so that they're very much alienated and alone, that's the warning sign the individual is dipping into Stage 1," Logan explained. "It's amazing how manager don't see the alienation until it's too late."

## **Solutions**

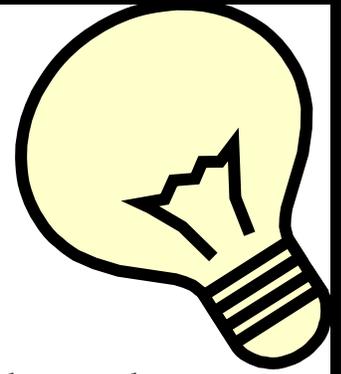
Paying attention to how coworkers interact is a simple but important way to recognize and prevent potentially dangerous situations.

"The first thing a manager needs to do is to notice these naturally occurring groups, these tribes," Logan said. "Just notice who talks to whom."

The second step is to notice the general theme employees use when they interact to determine what stage they may be in. For workers in Stage 1 who have alienated themselves from others, managers must work to draw them out. Having even one person to talk to or confide in can make all the difference for an employee in Stage 1.

# *The Illuminator*

1-2009



“It doesn’t take a lot of people,” Logan said. “It just takes one.”

For Stage 2 employees, managers should seek out the employees who crave change and mentor them – individually, and away from the rest of the tribe – to help them transition into Stage 3. For Stage 3 tribes, build initiatives around the values and principles workers hold dear. To encourage a shift into Stage 4, introduce employees who share the same values. Finally, to make a push for Stage 5, start asking questions about what would make history.

“If leaders focus on upgrading tribes, then they really don’t need to worry about workplace violence,” Logan said. “But we can demonstrate that workplace injuries go down, sick days go down and worker engagement goes up” when tribes ascend through the stages.

“Everybody wins when you build these higher performing stages,” he added.

**Retirement Planning Doesn’t End at Retirement.** As millions of Americans transition from full-time work to retirement, they move from the life stage of asset accumulation to a new stage – distribution planning. Instead of trying to acquire and build up savings for retirement, they are now repositioning their assets to provide an income they can rely on for the rest of their lives.

The impact of this shift, which is beginning right now for the initial waves of millions of baby boomers, cannot be overestimated. Born between 1946 and 1964, these boomers will need to plan for a retirement that could last for more than 30 years. So, it's not only those close to retirement, but an entire generation that may need professional help to ensure that their portfolios will provide an income throughout their lifetimes.

There are several key risks that can undermine the success of a retirement plan – longevity, inflation, asset allocation, fund withdrawal rate and last, but certainly not least, health care expenses.

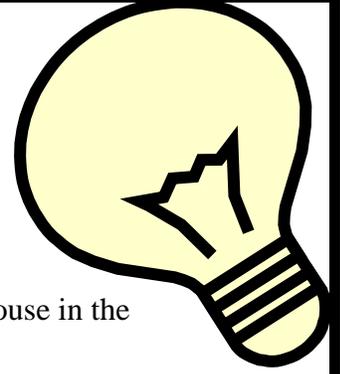
## **Underestimating the Risk**

Many people underestimate what their life expectancy is and therefore risk outliving their assets. The facts indicate that at least half of the population may outlive the average life expectancy. A successful lifetime income plan can help retirees prepare for living well into their 90s as there is a very real possibility that people will live 20, 30 or even 40 years in retirement.

The anticipated longer retirements and the impact of inflation make it more important than ever that portfolios include investments with the potential to outpace inflation. It's

# *The Illuminator*

1-2009



also of paramount concern to provide income protection for the surviving spouse in the event of long-term care needs for an unhealthy partner.

Many retirees think they need a conservative portfolio. But, given the anticipated length of their retirement, this could create a heightened risk of outliving their assets. A key to long-term success may lie in balancing portfolio income with portfolio growth.

Obviously, a conservative withdrawal rate would dramatically increase the likelihood of retirees not outliving their assets. A good financial advisor can help people understand how much they need to save to meet their lifestyle goals, and what is a realistic withdrawal rate.

Rising health care costs coupled with inadequate medical insurance coverage can have a devastating impact on a lifetime income plan. Addressing this risk may mean targeting savings specifically for health care and purchasing long-term care insurance.

## **Sporty Forties**

Looking at the differing needs for various segments within the baby boomer generation may make more sense if we divide them into age groups. Let's consider the first group as those who are currently ages 40-49. These are the youngest baby boomers. They are too busy to think too much about retirement planning right now. They have multiple financial goals, including college savings, retirement, children's needs and housing costs.

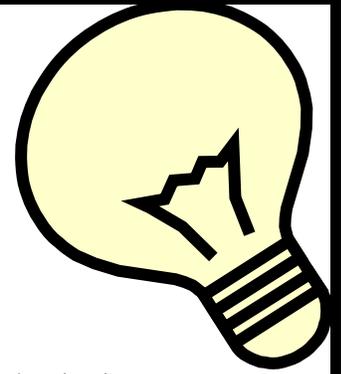
The important risks for this group to consider are longevity and asset allocation. These people really need to understand the value of extra years of compounding on their savings. They also should look into a growth-oriented portfolio so they can take advantage of long-term equity performance. Some questions to consider:

- What events could capsized your current retirement savings plan?
- Has market volatility impacted your savings?
- Will you be paying college tuition for your children?
- How would you prioritize all of your different financial goals?

Possible solutions to these issues are: risk tolerance and subsequent proper asset allocation, college savings planning, health insurance, life insurance, disability insurance and deferred variable annuities.

# *The Illuminator*

1-2009



## **Nifty Fifties**

The next segment includes those who are currently ages 50-59. They are now beginning to think about retirement and are uncertain whether they have saved enough. They probably don't know how to put together a retirement income estimate themselves, and they are concerned about life's changes: kids leaving home, aging, new goals and directions.

These individuals should be thinking about longevity, an appropriate strategy to provide for growth until retirement age and how they will meet their needs during a long retirement. They should be looking at transitioning their asset allocation plan to take advantage of the next 5-15 years before retirement.

Now is the time to discuss life and health coverage in retirement, including obtaining long-term care insurance, discontinuing disability insurance and looking at the options for supplemental health insurance coverage at retirement. Questions to consider:

- Your retirement could last 25-30 years or more. Are you prepared financially?
- Do you know how much you will be spending in retirement?
- How is your long-term portfolio holding up?
- Do you feel comfortable about your retirement savings plan?

Possible solutions for people in this age group include reviewing their asset allocation plan, taking advantage of catch-up provisions in their IRAs and employer-sponsored plans, consolidation of assets for more efficient management, and fixed or variable annuity products. Now might be a good time to also consider living benefit riders on variable annuities.

## **Super Sixties**

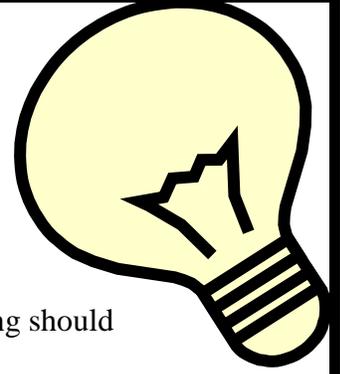
Finally, those individuals who are 60-69 years of age. Their key concerns might be wondering whether they have saved enough for retirement, wondering about their health prospects and concern about taking care of children and grandchildren financially.

Issues to consider include planning for the possibility that they will live longer than they think, asset allocation review, health coverage and the risk of inflation eroding their spending power. Questions to consider:

- How much can you expect to receive from Social Security or your pension?
- Would you like to help fund your grandchildren's education?

# *The Illuminator*

1-2009



- Have you thought about protecting your spouse or partner if something should happen to you?
- Can we discuss the retirement income potential of your portfolio?

Possible solutions to these issues: asset allocation and diversification, catch-up provisions for IRAs and employer-sponsored plans, consolidation of assets for more efficient management, assessing your life insurance coverage, long-term care insurance needs or annuity laddering. Conversion to a Roth IRA might be considered. Additional considerations:

- Checking your beneficiary designations for all accounts
- Discussing required minimum distribution options
- A health care power of attorney, or living will
- Systematic withdrawal plans
- Estate planning considerations

The transition from full-time work and asset accumulation to retirement and asset draw-down brings a new set of financial decisions. The main challenge – achieving potential lifetime income solutions – is a serious one.

Education is of paramount importance. No matter which age group you currently are in, understanding how to, and adequately planning for, your retirement takes effort. It's important that you understand the issues you currently are facing and the issues you will face as you get closer to retirement.

It's education that will last a lifetime.

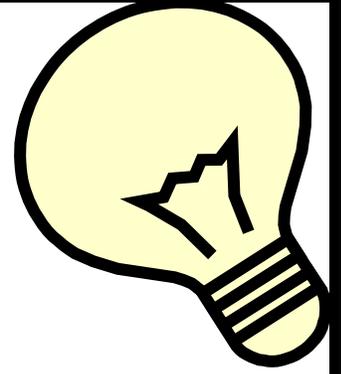
**Help Wanted: Massive Bureaucracy Promises Exciting New Opportunity.** President-elect Barack Obama has promised to make it cool to work for the federal government again. Is that possible?

Dan Glickman, head of the Motion Picture Association of America and a Clinton administration agriculture secretary, thinks it is. The country's problems are so big, he says, that government will be central to their solution. That is going to attract talent and energy to Washington, he adds.

Richard Nathan, co-director of the Rockefeller Institute of Government at the State University of New York in Albany, thinks so too. "People are going to want to come into government to make things happen," he says. He compares what he calls today's "heady excitement" to 1961, when John Kennedy took office, and even to 1969, when Richard Nixon took over a presidency tattered by the Vietnam War.

# *The Illuminator*

## *1-2009*



Can working for this boss be cool?

That excitement is about to run into the hard wall of reality, though.

Working for the government is "an exercise in patience," says Deborah Kerson Bilek, 27 years old, who joined the government in 2005 after winning a fellowship sponsored by the government's Office of Personnel Management, its human-resources arm. "I work inside a machine that doesn't move as fast as I would like to move."

Still, Mr. Obama's transition office says that 300,000 people have used its Web site, Change.gov, to apply for jobs. The Office of Personnel Management says about 2.8 million people a week visited its USAjobs.com Web site in the five weeks before and after the election, up 500,000 a week compared with August.

A weak job market could be one reason. People who study the federal bureaucracy also say that the Sept. 11, 2001, attacks tapped a well of idealism among young people

The Central Intelligence Agency says applications -- which have been rising steadily since 9/11 -- hit a record 130,000 this year. The State Department says 11,000 people took the test to become foreign service officers this year.

There is a sense that Mr. Obama's popularity among young people at the polls has deepened that idealism. Herbert Kaufman, an emeritus professor of government at Yale University, compares the current climate with the 1930s, when talented young people were drawn to Washington by New Deal policies that changed the role of government. "People were driven in part by an ideological fervor -- to help people who were having a hard time," he says.

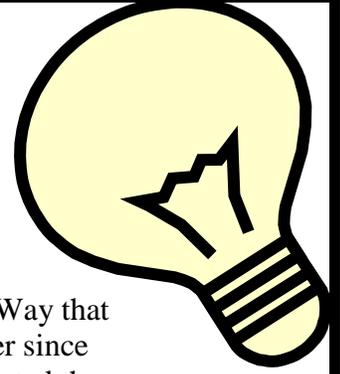
The problem for the Obama administration won't be to get young workers into government. The problem will be to keep them, says Elaine Kamarck, who worked on former President Bill Clinton's Reinventing Government project: "They get their feet wet and they're out."

According to the government's latest statistics, it hired 264,000 workers and "separated" 251,000 in the fiscal year ending Sept. 30, 2007. Many of those separations were retirements: The government work force is substantially older than that of the private industry.

But too many others are young eager beavers "who throw up their hands in despair" after two or three years, says New York University's Paul Light, an expert on the federal bureaucracy.

# *The Illuminator*

1-2009



Ms. Kamarck recently co-wrote a study for the progressive think tank Third Way that found that 17% of Americans trust the federal government, the lowest number since pollsters first asked the question in 1958. Twice as many people said they trusted the government during the Reagan administration than now, even though the former president famously declared government "the problem" rather than "the solution to our problem" in his 1981 inaugural address.

The perception of government ineptitude is a turnoff to young people considering working for the government -- and the response to Hurricane Katrina and Pentagon-contracting scandals didn't help.

But a greater turnoff is the sluggishness of an employer with 2.7 million civilian workers world-wide, says Prof. Light. "It's not the mission, it's the job," he says.

Many agencies won't hire outsiders for top jobs. It takes years to remove ineffective coworkers, and political appointees may get the best postings. Hiring one employee can involve 110 steps, and pay and promotion are set by time on the job, not performance. And almost everyone needs to take a test to get in.

Those turnoffs could be a problem for Mr. Obama, who will need more regulators, analysts and policy wonks to carry out his massive economic rescue and recovery plans. After all, troubled industries are looking to Washington for help, not to Wall Street, which usually snags the top new graduates.

Mr. Obama hasn't said how he would make government appealing again -- a tall order for anyone. But his transition team points to what it calls his "transparent" campaign and transition as its model. "We're figuring out the nuts and bolts," says transition spokesperson Jen Psaki.

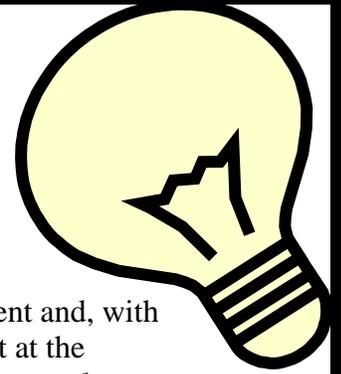
Among other things, she said, the new administration plans Web-based chats between agency heads and people who would like to work for them.

There is no congressional constituency for an overhaul. Typically, conservatives want to cut government and liberals want to expand it, and changing how it operates gets lost in the ideological struggle.

Mr. Obama may be able to use some of his political capital, and the impending need for workers, to change things. Even without any new jobs related to the recovery program, the government will need to replace 36% of its senior executive civil servants and 27% of its supervisors in Mr. Obama's first term because of retirements.

# *The Illuminator*

1-2009



A policy success or two also could help. That would revive trust in government and, with it, respect toward its workers, says William Galston, who studies government at the Brookings Institution. People want to be part of "a winning venture, and it's been a long time since government's been a winning team," he says.

**EEOC Finds Retaliation.** EEOC Appeal No. 0120071480 (September 30, 2008) reversed the Department of Homeland Security's (DHS) Final Agency Decision (FAD) finding that DHS did not retaliate against the complainant.

In *Medrano v. Department of Homeland Security*, EEOC Appeal No. 0120071480 (September 30, 2008), the Equal Employment Opportunity Commission (EEOC) reversed the Department of Homeland Security's (DHS) Final Agency Decision (FAD) finding that DHS did not retaliate against the complainant.

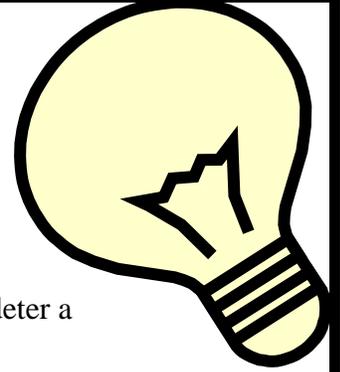
The complainant, an administrative clerk, GS-01, under the Stay-in-School Program, filed an informal EEO complaint alleging that the Officer In Charge (OIC) "scolded" her; berated and verbally assaulted her in front of other employees; did not issue her a job description, performance evaluation, or identification card; orally assigned tasks; constantly changed work assignments; and never provided her with formal career counseling. The OIC then told personnel in the office that the complainant had filed an EEO complaint and solicited testimony from other employees. Additionally, the OIC terminated the complainant shortly thereafter.

The complainant filed a formal EEO complaint including a claim of retaliation, and requested a FAD following the investigation. The FAD, not surprisingly, maintained that the OIC did not discriminate or retaliate against the complainant. On appeal, the complainant contended that she has two credible witnesses to a conversation between the District Director and the OIC indicating that they were going to fire her the following Monday because she filed an EEO complaint against them. The EEOC agreed to take this evidence into consideration.

After a de novo review, the EEOC held, regarding the complainant's allegation "that the OIC openly discussed complainant's filing of an EEO complaint with at least two coworkers," that "there is evidence in the file to support a finding of [reprisal] discrimination." The EEOC explained that "adverse actions need not qualify as 'ultimate employment actions' or materially affect the terms and conditions of employment to constitute retaliation," citing the EEOC Compliance Manual, Section 8: Retaliation (May 20, 1998), and *Burlington Northern and Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006). Instead, the statutory retaliation clauses "prohibit any adverse treatment that is based upon a retaliatory motive and is reasonably likely to deter the charging party or others from engaging in protected activity." The EEOC found that a supervisor openly

# *The Illuminator*

1-2009



discussing an employee's EEO case "is behavior that is reasonably likely to deter a potential complainant from engaging in the EEO process."

Accordingly, the EEOC found that the OIC's action of discussing complainant's EEO activity with other employees and soliciting their testimony constitutes reprisal. The EEOC did not find that complainant established, by a preponderance of the evidence, that DHS terminated her based on discriminatory animus. As relief, the EEOC ordered DHS to determine whether the complainant is entitled to compensatory damages, provide training to the management official who retaliated, and consider taking disciplinary action against this management official.

This information is provided by the attorneys at Passman & Kaplan, P.C.

**Stronger Unions are Coming.** For eight years, federal unions have felt left out in the cold with an administration clearly at odds with organized labor. Now that Barack Obama is on his way, unions expect a warmer relationship — and more clout.

"We have an opportunity for the conversation to change about federal employees, and how they are valued and respected," said Colleen Kelley, president of the National Treasury Employees Union.

For federal managers, the change will mean the likely return of the Clinton-era formalized labor-management partnerships between senior government officials and union leaders. Those were dissolved within weeks of the Bush administration taking power.

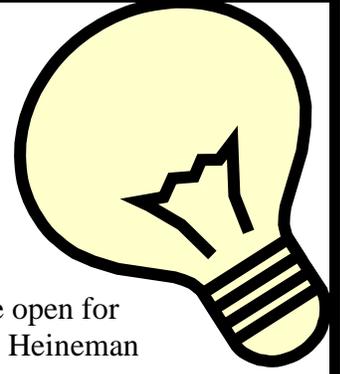
Many managers supported the partnerships, arguing they provide a good framework for unions and agencies to work out their differences, solve problems and find ways to make agencies more efficient.

"It's an OK thing with me because we got a lot of stuff done," said Federal Managers Association President Darryl Perkinson, who is also a Navy shipyard manager in Norfolk, Va. "It brought us all to the table, and we got a lot of disputes settled at the lowest level possible."

But Greg Heineman, a district manager for the Social Security Administration in Norfolk, Neb., who is also president of the National Council of Social Security Management Associations, worries that managers could lose some important authorities if partnerships aren't implemented correctly.

# *The Illuminator*

1-2009



“If we go back to the partnerships, it should be clearly defined what areas are open for partnership discussions and which areas are still management’s prerogative,” Heineman said. “Under [President Bill] Clinton, at least from the feedback we got from our members, a lot of the problem was that it wasn’t clear what the rules were.”

Heineman said unions sometimes had too much say in management decisions, such as choosing exceptional SSA employees for financial awards. SSA’s partnership allowed the American Federation of Government Employees to help decide who received awards, and Heineman said the union pushed to hand out smaller awards to more people. Managers wanted to hand out bigger awards to only the best employees, he said.

“It took the ability away from managers to reward employees doing an outstanding job, and the awards were more flat,” Heineman said.

If partnerships return, Heineman said managers will welcome the opportunity to exchange ideas with employees and unions. But he wants to make sure managers retain important authorities, such as the ability to assign work to employees as they see fit. Obama is reportedly considering a former top union official to run the Federal Aviation Administration: Duane Woerth, former president of the Air Line Pilots Association.

If chosen, Woerth would be the first union official to run FAA, said Tom Brantley, national president of the Professional Aviation Safety Specialists union. Labor-management relations at FAA have been dismal in recent years, often erupting into bitter fights over pay freezes for air traffic controllers, contract disputes, and hiring standards for new controllers.

Having Woerth at FAA “would be a thawing,” Brantley said. “They’d have leadership that not just understands, but appreciates, what unions do and the perspective they would bring. They’d seek out unions as a way to help the agency, rather than trying to find every way possible to avoid dealing with unions.”

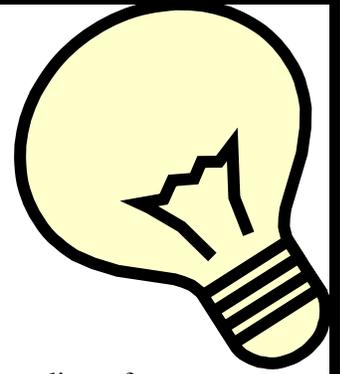
But Brantley believes whoever the president-elect chooses will change the agency for the better.

Obama started earning good will from the FAA unions in 2006, after FAA imposed a contract on air traffic controllers during a bitter contract disagreement. Obama introduced legislation that would have changed the way failed contract negotiations are decided and forced the two sides to arbitration, but the bill did not pass.

“The election was a tremendous morale booster for the controller work force,” said Doug Church, spokesman for the National Air Traffic Controllers Association. “This was the candidate they knew would mean hope for their future.”

# *The Illuminator*

1-2009



## **Battles under Bush**

The Bush administration's relationship with unions started off rocky with the ending of the partnerships, and only got worse. Over the next several years, the White House frequently ignored unions and tried to impose curbs on collective bargaining rights as it developed pay-for-performance systems at the Defense and Homeland Security departments. Unions took to the courts and Congress to challenge those systems, with much success.

But Kelley and other union officials said Obama is already striking a different tone. In his public statements and communications with unions, Obama has strongly supported collective bargaining and pledged to appoint officials who will work with unions.

The major federal unions all endorsed Obama during the presidential campaign.

Already, Obama has promised to move on two issues important to unions: reviewing and perhaps repealing controversial pay-for-performance systems at Defense Department and Transportation Security Administration, and unionizing TSA's airport security screeners. Obama has made no public statements about reviving the partnerships, but unions and other observers believe a similar system will quickly be enacted.

"They were not magic wands, but in most cases, they did more good than harm," said Richard Brown, president of the National Federation of Federal Employees.

Obama has pledged to review work that is now contracted out and possibly bring some work back in house, and he said he wants to hire more staff at the Social Security Administration. Those changes could mean more federal employees, many who will likely be new union members, said Paul Light, a professor of public administration at New York University.

## **Whither performance pay?**

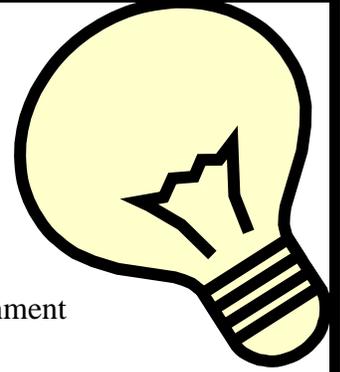
Light said that Bush's hostility toward unions was a mistake that probably doomed his efforts to reform the government's pay systems.

"They didn't believe in the possibility that unions could be a positive force," Light said. "But they exist. Even if you don't like them, you have to work with them. They could have had these partners that could have helped, if they gave them a stronger voice in the decisions."

If Obama decides to reform the government's pay system and brings unions to the table to help craft his plans, Light said he might have more success than his predecessor.

# *The Illuminator*

1-2009



“Clinton proved that you can work with unions and make progress on government performance,” Light said.

Obama so far has not revealed his plans, if any, for altering federal employees’ pay systems, though he has endorsed the notion that employees should be rewarded for high-performance work.

John Gage, president of the American Federation of Government Employees, said that while he doesn’t think pay for performance should be high on the Obama administration’s agenda, he will keep an open mind.

“Whatever the president proposes, we’ll try to work with him,” Gage said. “We understand he won’t always be in lockstep with our positions, but we believe he’ll give us a fair hearing. He’s already worked with us more than the Bush administration.”

Kelley said any new pay-for-performance system should be funded well enough to properly reward all employees who meet or exceed expectations, and should be transparent, supported by employees, and have its goals tied tightly to each agency’s mission.

“It can’t just be some random way for some supervisor to distribute pay,” Kelley said. “But I absolutely would welcome the opportunity to work with the Obama administration on federal pay.”

## **Union vs. union**

But an Obama presidency could spark new battles between unions — particularly AFGE and NTEU, the two largest federal unions — who are certain to spar over the right to represent tens of thousands of new and existing federal employees. The big prize: TSA’s 39,000-person work force, which has been barred by the Bush administration from seeking union representation. Both unions have set up local chapters to advocate for airport security screeners.

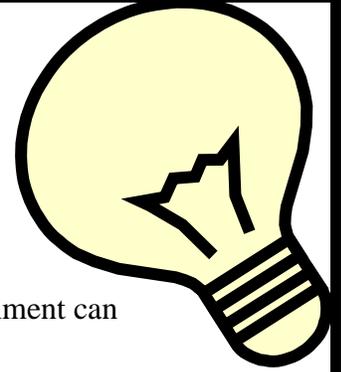
Two years ago, the two unions fought a bitter battle for the right to represent Customs and Border Protection employees at DHS. The workers joined NTEU.

“That could happen,” Kelley said. “But our first priority is getting [TSA employees] collective bargaining rights that they should have had for years.”

**Privacy Advocates Seek Limits on Government Use of Personal Data.** Privacy advocates this week spoke out against the government’s warehousing of citizens’ personal data under the guise of homeland security.

# *The Illuminator*

1-2009



New legislation is needed to protect privacy and restrict how long the government can keep data, they recommended during congressional roundtables.

“We can’t simply warehouse data to run future exercises again and hope that in 50 or 100 years it might have some relationship to terror,” said Tim Sparapani, senior legislative counsel for the American Civil Liberties Union.

Current laws “impose no limits on the reuse and retention of data,” said Indiana University law professor Fred Cate. “No matter how it’s collected, it can be used for other reasons.”

The experts singled out practices at the Homeland Security Department. DHS is collecting millions of pieces of data in the name of security but has no criteria to determine how long data will be kept and how it will be used, said Nuala O’Connor Kelly, who served as the department’s first chief privacy officer from 2003 to 2005.

Such criteria would both protect privacy and make DHS more efficient, she said. “I want to see well-articulated rules for data collected by the department so it’s not used for other purposes by other agencies. I don’t want to see people disappointed that the government didn’t act on something it already had because it couldn’t find the information,” said O’Connor Kelly, who is now senior counsel of information governance and privacy for General Electric.

O’Connor Kelly and other privacy experts aired their concerns during a daylong session of roundtable discussions sponsored by the House Homeland Security Committee. The privacy experts called on the committee to impose strict oversight of DHS’ operations, many of which are classified. The committee should hold closed briefings regarding classified data uses and encourage Congress to pass legislation banning data mining, Sparapani said.

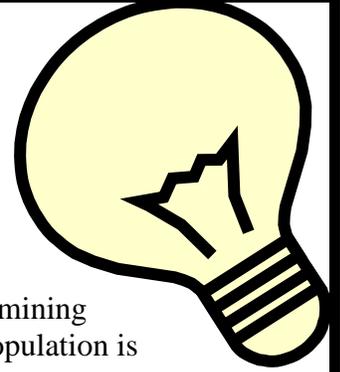
Groups such as the ACLU decry predictive data mining, where vast quantities of random data are stored for later searching for linkages that could suggest terrorism activity. The practice sacrifices privacy, violates Fourth Amendment prohibitions against unreasonable searches, and wastes taxpayer resources, Sparapani said.

“If you have good quality leads, if you’re starting with a Fourth Amendment-based crime, and you work out from that individual suspect, you’re doing what law enforcement has always done. When you do not have a crime, you’re starting with the premise that there’s criminality in the ether and somehow you can find it,” he said.

Cate said predictive data mining takes resources away from proven, traditional investigation methods.

# *The Illuminator*

1-2009



“You need a large volume of incidents to get a pattern, and [predictive] data mining works only if the person isn’t trying to conceal his identity. And the target population is actively trying not to be identified,” said Cate, who is also director of Indiana University’s Center for Applied Cybersecurity Research.

Agencies’ chief privacy officers, who are responsible for ensuring their agencies’ activities comply with federal privacy laws, often are the only ones looking at privacy concerns and whether data collection programs are worthwhile.

“We found in the privacy office at DHS we were often the only people asking that question: Does the thing do what it’s supposed to do? Have processes been tailored to make sure it [produces] the answer desired and nothing more?” she said, adding that she’d encourage all privacy officers to press their colleagues to answer similar questions.

Chief privacy officers are fighting a battle to get their agencies to recognize the importance of protecting people’s privacy, as almost anything can be justified under the guise of homeland security, Cate said.

“The national security exception has become the norm for how everything is done,” he said. Strengthening the 1974 Privacy Act would help privacy officers fight invasive data searches, he said.

**TSA Screeners Get Better Raises Than Most** . More than three-quarters of the nation’s airport security screeners will receive larger pay raises than the government’s General Schedule employees under the Transportation Security Administration’s pay-for-performance system.

Almost 27 percent of TSA’s roughly 39,000 screeners who were rated at Level 3 on the five-level system will get 1 percent more than the average 3.9 percent pay raise GS employees will receive in January, according to a summary of the results of the agency’s Performance Accountability and Standards System.

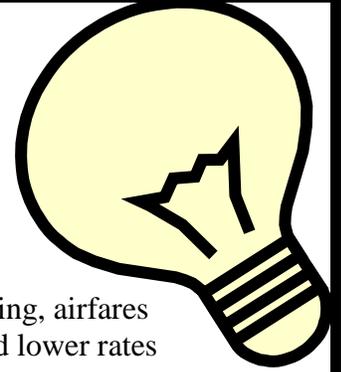
Those screeners will also get a lump-sum bonus of \$1,000. Nearly 32 percent were rated at Level 4 and will get 2 percent more than the GS pay raise and a bonus of \$1,500, and the more than 17 percent who were rated Level 5 will get 4 percent more than the GS raise and a bonus of \$2,500.

Almost 24 percent of screeners who were rated Level 2 will get no additional raise beyond the GS raise, though they will receive a \$500 bonus.

The 0.5 percent of screeners who were rated Level 1 will get only the standard GS raise and no bonus

# *The Illuminator*

1-2009



**Falling Fuel Prices do not Mean Lower Airfares.** Oil prices are plummeting, airfares are decreasing, and the slowing economy means more empty hotel rooms and lower rates — but federal travelers might not see these benefits for a while.

A report from American Express Business Travel released last week said airfares likely will decrease in 2009, largely because of falling oil prices, which have dropped from \$140 per barrel this summer to less than \$70 per barrel today. But airlines are reluctant to trim the fuel surcharges that often add hundreds of dollars to the price of a ticket. That's because airlines are still on track to lose \$5 billion this year; the surcharges offer one way to recoup some of those losses.

“Fuel surcharges aren't coming down in proportion to jet fuel prices because airlines don't have to do it yet,” said Rick Seaney, CEO of FareCompare.com, a Web site that tracks airfares.

Nearly 60 percent of domestic airfares have fuel surcharges. Federal travelers are often stuck paying them, even under the General Services Administration's City Pairs program, which offers fixed-price fares on thousands of routes. GSA allows airlines to add surcharges to their City Pairs fares once they've been implemented in the commercial sector.

United and American, for example, add an \$85 surcharge on most domestic flights; on Delta, the fees can be as high as \$140. International charges are even higher, sometimes \$400 or \$500 per flight.

Industry experts say that even with oil below \$70 per barrel, airfares are still underpriced, and the surcharges will stay in place.

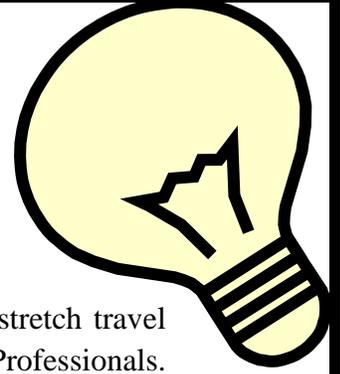
“Since airlines purchase their fuel well in advance and hedge their purchases based on the cost of fuel at that time, a reduction in price may not be realized for months,” said Michael Collins, a spokesman for GSA.

Fuel surcharges have increased the price of a City Pairs ticket by an average of 13 percent this year, Collins said.

Airlines also aren't expected to remove many of the additional fees they've added on everything from checked bags to aisle seats.

# *The Illuminator*

1-2009



“The fuel surcharges, they might eventually eliminate, so that might help stretch travel dollars,” said Marc Stec, president of the Society of Government Travel Professionals. “But [the other surcharges] won’t be changed.”

## **Hotel rates**

Hotel rates, meanwhile, are expected to decline in many cities. American Express estimates as much as a 5 percent drop in rates at midrange hotels frequently used by business travelers; companies are cutting back on their travel budgets, and that means more open rooms at those properties.

But for government travelers — who generally book hotel rooms through FedRooms, a contract program administered by Carlson Wagonlit Travel — prices will probably stay the same. That’s because many of them are fixed to the government’s per diem rate.

“We’ll see the government rates stay the same, so hoteliers will do whatever they need to attract government business,” Stec said.

Federal travelers can expect to see extra amenities, like free parking and Internet access, at hotels in competitive markets, Stec said. A few hotels may even lower their prices to below the per diem rate, he said.

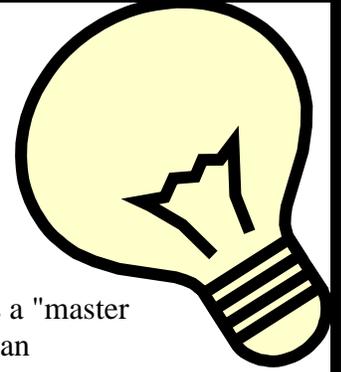
**Bonuses Flow Despite Low Morale.** Three top executives in the office of the Pentagon inspector general received cash awards of about \$30,000 for outstanding leadership even though their agency has a history of weak management and strained relations between employees and supervisors.

The three were recognized in October with Meritorious Executive Presidential Rank Awards, a prestigious honor for long-term achievement in government service. The recipients get the hefty bonus — 20 percent of their annual basic pay — and a framed certificate signed by President George W. Bush.

Award candidates are rated in several categories, including their ability to lead people and get results. The nominating forms for Patricia Brannin, Charles Beardall, and Donald Horstman, obtained by The Associated Press through the Freedom of Information Act, glowingly describe the performance of each manager.

# *The Illuminator*

1-2009



For example, Horstman, deputy inspector general for policy and oversight, is a "master communicator" who personally mentors his employees. He has "engendered an unsurpassed sense of purpose and dedication," his nominating form says.

But a confidential survey of employees in the inspector general's office found a disillusioned work force in Horstman's department and others. Employees are not committed to their jobs, their teams or their supervisors, according to the survey conducted in June by the Corporate Leadership Council, a business research company in Arlington, Va.

Brannin is deputy inspector general for intelligence. She has been with the inspector general's office since 1983. Beardall is deputy inspector general for investigations and has been with the office since 1996. Horstman joined the organization in 1994.

There are about 1,500 employees in the inspector general's office, which is located near the Pentagon in Arlington, Va. More than half of those employees responded to the Corporate Leadership Council survey. The departments run by Brannin, Beardall, and Horstman have about 600 workers. It's not clear how many of those were among the respondents.

Overall, the survey, which was requested by the inspector general's office and obtained by the AP, shows about a third of the work force is "disaffected," describing employees who are weak performers and who do as little work as possible. The bulk, nearly 66 percent, are classified as "agnostics." They don't shirk their work, but they don't go to great lengths, either. The rest, less than 5 percent, are "true believers" — the high performers completely dedicated to their jobs, according to the survey.

The office is rated as "high risk" when compared to dozens of other public and private organizations surveyed last year by the Corporate Leadership Council.

The June survey of the inspector general's office indicates not much has changed since 2002, when an independent review team examined the organization and found serious problems in leadership and management. Employees felt their supervisors did not trust them, help them to be successful, or give them enough responsibility, the review found.

"No member of the team has seen an organization, civil or military, manned by so many talented people, so ill served by its senior leadership," said the review done by Military Professional Resources, Inc., a defense contractor in Alexandria, Va. "This level of management displays all of the malignant attributes attributed to entrenched bureaucracy."

# *The Illuminator*

1-2009



The awards for Beardall and Brannin were recommended by former Pentagon inspector general Claude Kicklighter, who resigned suddenly in July after only 14 months as the office's top official.

Horstman's award was recommended by Kicklighter and Richard T. Race, a senior investigator and Kicklighter's acting chief of staff. Race quit in February after pleading guilty in federal court to violating banking laws. He had made several deposits to a credit union account in amounts intended to evade a federal reporting requirement on transactions over \$10,000.

Federal agencies submit nominations for presidential rank awards in January to the Office of Personnel Management. A lengthy review process follows and winners are announced in October. Money for the awards comes from the nominating agency's budget.

Kicklighter, who now works at George Mason University in Fairfax, Va., did not return telephone calls. Race could not be reached for comment.

Gordon Heddell, who was named acting Pentagon inspector general when Kicklighter left, declined through a spokesman to comment on the awards or the performance of the managers he inherited.

"Those award nominations were endorsed by a previous inspector general for each person's performance going back over a period of years," spokesman Gary Comerford said.

Heddell was disturbed by the Corporate Leadership Council's findings, which were being tabulated as he took over the office. He had been inspector general at the Labor Department since 2001.

In an Oct. 14 to office staff, Heddell said he and other top managers "must, and will, do better."

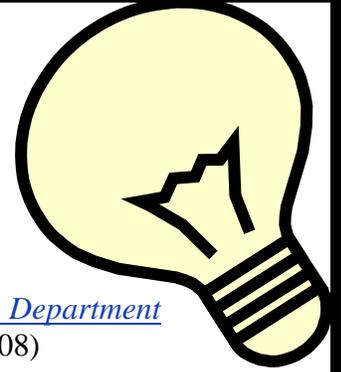
Citing privacy restrictions, the inspector general's office refused to provide exact salaries for Brannin, Beardall and Horstman. However, Comerford said they are in the Tier 3 level of senior executive service, which has a salary ceiling of \$172,200 per year. They all could make less than that, so the size of the cash award each received could vary.

## **Preferential Treatment of Contractors Based on Race Rejected by Appeals Court.**

The Federal Circuit Court of Appeals has ruled unconstitutional a federal law that establishes a five-percent goal for defense contract dollars to be set aside for small businesses owned by certain socially and economically disadvantaged individuals (Black,

# The Illuminator

1-2009



Asian, Hispanic and Native Americans). ([Rothe Development Corporation v. Department of Defense and Department of the Air Force](#), C.A.F.C. No. 2008-1017, 11/4/08)

When the Department of the Air Force awarded a contract to an Asian-American owned business even though Rothe Development Corporation was the lowest bidder, Rothe challenged the set-aside law under the constitutional guarantee of equal protection. The district court rejected the constitutional argument and granted the government's motion for summary judgment. However, the appeals court has now held that when it enacted 10 U.S.C. §2323 Congress did not have a "strong basis in evidence" to conclude that "race-conscious remedial measures were necessary..." and that the law is therefore "unconstitutional on its face." (Opinion pp. 2-3)

The law instructed that when "practicable and when necessary to facilitate achievement of the 5 percent goal...the Secretary of Defense may enter into contracts using less than full and open competitive procedures...*but shall pay a price not exceeding fair market cost by more than 10 percent...*" to the disadvantaged contractors. (Opinion p. 3; emphasis added by the court) The Defense Department implemented the requirement by adding a "PEA" (price evaluation adjustment) of 10 percent to bids submitted by companies that did not meet the test of being disadvantaged before comparing their bids to those companies that do meet the test. (p. 3)

When it most recently reauthorized the law, Congress made a change to require the PEA to be smaller than 10 percent if non-SDBs (small disadvantaged businesses) are "being denied a reasonable opportunity to compete." (p. 6)

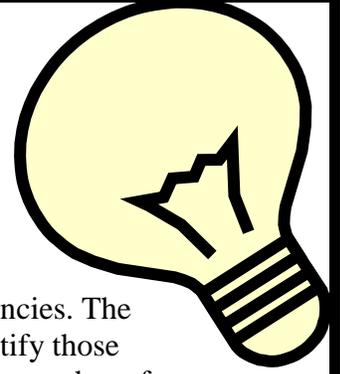
When the agency applied the PEA to Rothe's lowest submitted bid, the effect was that Rothe's bid was evaluated as higher than the winning bid that had been submitted by a Korean-American owned company. (p. 7)

The appeals court now reverses and remands the case to the district court. (p. 18) The court goes to pains to point out in its decision that should Congress reenact this law "we cannot now predict, nor do we intend to prejudge whether any such new enactment will be supported by a 'strong basis in evidence.'" (p. 45) In other words, Congress can fix the problem if it comes up with a better factual justification for permitting preferential treatment of contractors on the basis of race.

**Litigation as a form of Costless Entertainment.** The U.S. Court of Appeals for the D.C. Circuit has run out of patience with a frequent litigant. In a [Social Security Administration](#) case, C.A.D.C. No. 06-5339 (10/3/08), the court has revoked this plaintiff's privilege of filing *in forma pauperis* (IFP), dismissed his 44 pending cases, and barred him from filing future appeals without paying the required filing fees. (Opinion p. 2)

# *The Illuminator*

1-2009



Some of the plaintiff's dismissed appeals were directed at various federal agencies. The court's opinion does not provide much factual background, other than to identify those who have apparently aggrieved the plaintiff over the years: "An extraordinary number of people, institutions, and inanimate objects have wronged Tyrone Hurt. In just the last couple of years, Hurt has sued the Declaration of Independence, Black's Law Dictionary, the United Nations, agencies of the District of Columbia and the Federal Government, and various courts and their officers." (p. 2)

According to the court, among other things in his more than seventy appeals with the court since 2006, he has sought to have the President's Cabinet declared unconstitutional, and tried to get a Spanish-speaking government employee deported from the United States. (pp. 2-3)

The court goes on to elaborate: "Nor are the slights Hurt suffered mere glancing blows; he routinely demands trillions of dollars in damages." (p. 3) Hurt typically filed application for IFP status, so he has avoided paying any filing fees in connection with all this litigation. (p. 3)

But the appeals court apparently has reached the end of its patience. It threw out more than 25 earlier appeals and found itself sued by him for doing so. Once a special judicial considered and threw out his suit against the D.C. Circuit, that court now has summarily tossed the 44 remaining appeals filed by Hurt, pointing to the discretion granted by the IFP law to revoke the privilege for "abusive litigants," that the court finds clearly applies in this case. (pp. 3-4)

Citing his "penchant for litigation as a form of costless entertainment," the court now goes "one step further" and concludes that it may bar him from proceeding IFP in all future appeals. (p. 4) In revoking the privilege, the court states, "If Hurt wishes to continue wasting this Court's time by appealing dismissals of his absurd and frivolous claims, he should have to do it on his own dime." (p. 6)

The court directs its clerk to refuse to accept any future filings that are not accompanied by the appropriate filing fees. (p. 6)

## **Questions and Answers**

### **IRA Funding**

Question: I am a rehired annuitant under the Civil Service Retirement System working for the same agency from which I retired. Am I eligible to fund a traditional IRA since, in my present position, I am not contributing to any retirement system?

# *The Illuminator*

1-2009



Answer: You may be eligible if you're not eligible to participate in the Thrift Savings Plan and/or your Adjusted Gross Income is low enough.

## **Variable Annuities**

Question: First of all, I'm eligible to retirement in federal law enforcement, under the Federal Employees Retirement System. In your column dated Oct. 13 ["Beware IRA promotions"], you warned about the cost of IRAs, and appeared to discourage their use. However, I am looking at possible variable annuities, as I don't see any overall disadvantages. Whatever I do, it appears that I will have to make withdrawals from the Thrift Savings Plan (currently 100 percent in G Fund) or IRA of around \$1,000 per month in accordance with code section 72(t) since I'll be less than 55 years old. (The \$1,000 per month is the approximate income I'm considering to supplement the FERS pension and FERS Social Security-type supplement.) As a result, I'm looking at part of the principal being invested in an IRA with 72(t) withdrawals or leaving it in the G Fund with 72(t) withdrawals — AND the other portion being invested in a variable annuity with a lifetime payment at the contract date (59 1/2). This may not maximize potential profits, but I believe this conservative plan provides a degree of security and minimizes market risk, while at the same time, covering inflation risk. A life annuity (fixed) appears not to be a desirable option because I believe you lose legal rights to your money; you rely only on the strength (contract) of the company; it has undesirable survivor options; and, it doesn't appear to cover inflation risk. However, I'm still trying to determine what to do, as this is an important decision. Could you provide your expert opinion on variable annuities and what I have discussed as options?

Answer: Most variable annuities offer insufficient guarantees for the costs they confiscate. In general, I would try to avoid them, especially for TSP or IRA money. If you want to avoid the early withdrawal penalty before reaching age 59 1/2, you'll have to either purchase an immediate life annuity or take a series of Substantially Equal Periodic Payments computed using one of the three methods allowed under the IRC. How you handle all of this will depend upon your goals, resources and circumstances. I can't provide that kind of advice through this forum.

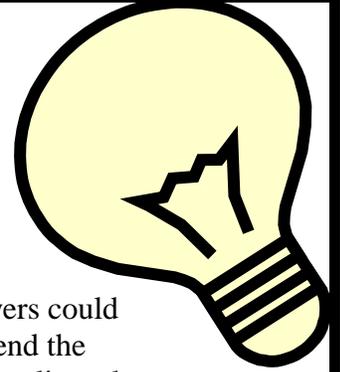
## **Annuity Providers**

Question: The current Thrift Savings Plan annuity provider is MetLife. If MetLife goes into bankruptcy, what happens to those annuities purchased through MetLife? For those of us who haven't retired yet, what would you suggest we do with our TSP balance?

Answer: That depends upon what happens! MetLife could declare bankruptcy and continue making its annuity payments. If it defaults on your payments, a state insurance fund could step in and pay some or all of what you are owed. Your annuity contract could

# *The Illuminator*

1-2009



wind up in the hands of another insurer who may or may not pay. The taxpayers could bail you out. The possibilities are virtually endless. In some cases, I recommend the purchase of an annuity — although you should only consider a fully inflation-adjusted version. Remember, you can use your TSP balance to buy an annuity contract from any insurer you choose and you should shop around carefully. In other cases I recommend maintaining the account. It depends upon the specific circumstances.

## **Tax-free Contributions**

Question: I just recently separated from the Army. While in service, I contributed to the Thrift Savings Plan. Right now, I have about \$18,000 in there, of which nearly \$14,000 I contributed in the combat zone. The money I contributed in the combat zone is credited as tax exempt balance in my TSP account. Can I roll the tax-exempt money into my Roth without any taxes? I've been asking around and no one seems to be able to give me the straight answer. If possible, are there any special forms I need to fill out? The reason why I want to roll this money over into a Roth is to be able to keep the money made on my tax exempt contributions tax sheltered. In the TSP the money made on the tax exempt money will be taxed when I retire. Is this a good idea or should I leave the money in TSP? TSP has low fees, but the tax benefit of Roth, I think, will more than make up for it.

Answer: Unfortunately, you can't just roll over the tax-free contributions. Any distribution is considered a mix of the tax-free and taxable dollars, so a conversion and income tax will be involved.

## **TSP vs. IRA**

Question: In an Oct. 13 column, "Beware IRA promotions," Mike Miles gave reasons not to roll funds from the Thrift Savings Plan account into an IRA. However, one unstated reason for doing this rollover concerns inheritance options upon the retiree's death. One's children can adopt the retiree's IRA account and withdraw from it over a longer time period, so as to reduce taxes. My understanding is that this cannot be done for TSP, which must be withdrawn all at once upon the retiree's death. Is this correct?

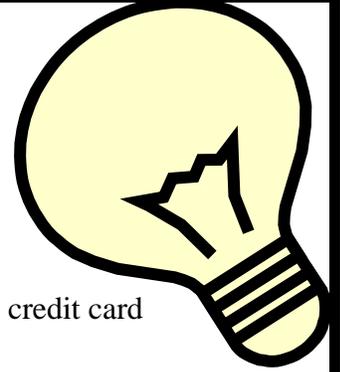
Answer: No. Non-spouse beneficiaries maybe able to transfer inherited TSP balances into an IRA and continue deferring taxation.

## **TSP Loan**

Question: I am a Civil Service Retirement System employee and eligible to retire in 2011. I currently have an \$11,000 debt on a credit card; it is currently at 12 percent annual percentage rate. Would it be prudent to apply for a Thrift Savings Plan loan and pay off this debt? I would be able to pay off loan before retiring.

# *The Illuminator*

1-2009



Answer: It's probably a good idea if you're disciplined enough not to run the credit card debt back up while you're paying off the TSP loan.

## **Annuity Guarantees**

Question: I will be retiring next July at age 50 with a federal law enforcement retirement. If I chose to take my Thrift Savings Plan in a lifetime annuity purchased by MetLife, what guarantees do I have if MetLife runs into financial trouble like AIG and other insurance companies have. Can I lose all of my annuity and account balance?

Answer: The only guarantee comes from MetLife. But, there are programs and recourse that make it unlikely that you would be left empty handed.

## **TSP Investing**

Question: For someone who is 15 years from retiring and who has his Thrift Savings Plan split equally between the C, S, and I funds would you move them to the G fund? Funds have dropped more than \$20,000 since this whole financial situation has started. I am seriously thinking about pulling most everything out and putting it in the G Fund.

Answer: How you invest your money depends upon your circumstances, resources and objectives. All I know is that you're 15 years from retiring. If you never plan to use your TSP account — as some have decided — then you can do with it what you want. If you want to maximize the amount of income you can expect it to provide during your lifetime, then you'll have to take some risk. In general, moving your money out of the C Fund and into the G Fund after the C Fund has lost so much money and with many years until you retire doesn't sound like a rational move.

## **TSP Withdrawal Penalty Free**

Question: Is it true that you can use your Thrift Savings Plan savings for a business investment without getting penalized or taxed?

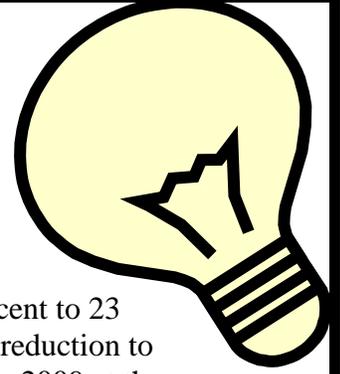
Answer: Only if you use a TSP loan which you fully repay according to the rules.

**OPM Proposes Another COLA Decrease for Alaskan Cities.** For the third time this year, the Office of Personnel Management is proposing to reduce the cost-of-living allowance for Anchorage, Fairbanks and Juneau, Alaska.

COLAs in parts of Hawaii, Guam and the Northern Mariana Islands would be reduced by one percentage point each under the proposal OPM published Tuesday in a [Federal Register notice](#).

# *The Illuminator*

1-2009



OPM first proposed a COLA reduction for the Alaskan cities — from 24 percent to 23 percent — in January. That change took effect Dec. 3. OPM also proposed a reduction to 22 percent in August, though that change could not take place until December 2009 at the earliest because the law only allows one COLA reduction per 12 months.

The latest proposed reduction for the three cities, to 21 percent, would not take effect earlier than December 2010. The COLA for the rest of Alaska would stay at 25 percent.

The COLA for the Hawaiian counties of Honolulu, Kauai, Maui and Kalawao would drop to 24 percent, as would the COLA for Guam and the Northern Mariana Islands. The COLA for Hawaii County would drop to 17 percent.

The notice does not say when the changes will be implemented. OPM will accept comments until Feb. 9.

OPM based its reductions on changes in the relative cost of living for the areas when compared with Washington, D.C.

**Work Now, Grieve Later or Pay the Consequences.** A Postal Service employee who refused to obey an order from a superior who was not his immediate supervisor has learned the hard way that the rule is "comply, then grieve." ([\*Parbs v. United States Postal Service\*](#), C.A.F.C. No. 2008-3153 (nonprecedential), 12/3/08)

Parbs was a PS-8 Mail Processing Equipment Manager who was instructed by a Distributions Operations Supervisor to return to service the machine he was performing maintenance on. Parbs responded to the effect that she was "not his direct supervisor and therefore was in no position to tell him what to do....[and] told her to 'talk to the hand.'" (Opinion, p. 2)

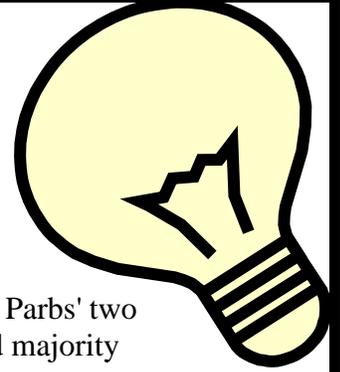
Apparently not pleased with this incident on top of a few other disciplinary actions for insubordination and/or failure to follow orders, the immediate supervisor proposed Parbs' removal. (p. 3)

When Parbs met with the Plant Manager to talk about the proposed removal, he admitted that he knew he was required to obey a supervisor's order and file a grievance later if he disagreed with the order. He made the same admission later in his hearing before the Merit Systems Protection Board Administrative Judge after the agency fired him. (p. 3)

The Board was divided on Parbs' appeal. The AJ concluded that the agency had failed to make its case and order the agency to reinstate him. Instead, the agency appealed to the full Board. By a 2-to-1 decision, the Board overturned the AJ's decision and sustained Parbs' removal. The majority found that Parbs was well aware of the obey-and-grieve

# *The Illuminator*

1-2009



rule as long as the supervisory order is not immoral or unsafe. Further, given Parbs' two previous suspensions and written warnings for similar misconduct, the Board majority concluded removal was sustainable. (p. 3)

The dissenting Board member apparently believed that two things worked in favor of Parbs' case—the fact that the order did not come from his direct supervisor, and the fact that Parbs finally did comply once his direct supervisor got involved and gave the order. (p. 3)

Unfortunately for Mr. Parbs, it only takes two Board members to sustain his removal. So he took his case to the federal appeals court.

The court was not impressed, citing Parbs' inconsistent testimony before the agency and the Board. (p. 4) The court points to the "entirety of the record provided" in concluding there was substantial evidence to find that Parbs had "intentionally violated" the order and "knew of his obligation to obey the order" and grieve later. (p. 5)

Further, given Parbs' history of discipline for similar offenses, the court refused to disturb the removal penalty. (p. 6)

**New Life Insurance Choice Explained.** OPM has sent guidance to agencies on a new FEGLI life insurance benefit available to employees who are assigned in their civilian capacities—not as mobilized active duty military personnel—in support of military contingency operations, which generally means combat-type operations. Under the policy, set by the 2009 DoD authorization bill, employees who had previously waived FEGLI basic or option A or B coverage can elect or increase coverage within 60 days of the assignment, without providing proof of insurability. The same option applies to DoD employees who are designated as "emergency essential." The changes were effective October 14 and are not retroactive, OPM said. The new policy does not provide rights to choose or increase option C (family) coverage. Other special FEGLI policies apply to those going on active duty.

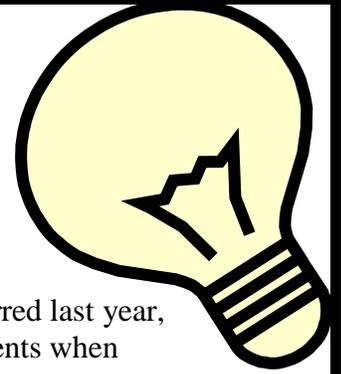
**Gloom, Doom, Bear Market and Your Future Retirement.** With the stock market in turmoil and investors still wondering when the next show will drop on government bailouts, ponzi schemes or just continuing negative economic news, it is not surprising that TSP investors are still moving money into the G fund.

For the month of November, another \$937 million went into the government's G fund. TSP investors are not the only ones looking for safety and security.

Here is a quote from the *Wall Street Journal* published on December 10th: "The Treasury sold four-week notes at a 0% yield for the first time, with investors in effect giving their

# *The Illuminator*

1-2009



cash to the government for safe-keeping until 2009. This rush to safety occurred last year, too, when investors wanted only to own the very safest, most liquid investments when they closed their books at the end of the year."

In fact, some investors turned their money over to the federal government knowing they would get a negative return. As the *Journal* noted: "[I]nvestors were willing to pay \$100, knowing they would get \$99.99 in return, in the belief that a small but guaranteed loss was preferable to investing in stocks, corporate bonds or other securities. Treasuries have been flirting with 0% yields since the Lehman Brothers bankruptcy nearly three months ago."

In other words, some investors are willing to pay the government to take their money knowing they will get back less than they invested.

That seems extreme but, if the markets have taught us anything in the past few months, it seems as though one cannot be too cautious.

Federal employees, by comparison, are getting a great deal. The G fund has securities only available to the TSP. The rate of return for the past month wasn't negative and it wasn't the 0.02% that the 3-month Treasury bill has been paying. So far in 2008, the G fund has returned 3.50%.

The number of interfund transfers declined sharply in November, perhaps because some investors are now of the mind that the market is at or close to a bottom and may provide good returns in 2009.

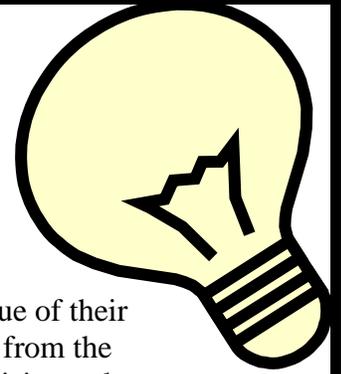
On the other hand, the monthly TSP contributions dropped substantially in November. The total monthly contributions to the TSP in November was under 1.6 billion, down from 2.1 billion in November.

The current bear market has been grinding down all investors. Between its peak on October 9, 2007, and its low on November 20, 2008, the Standard & Poor's 500-stock index (which is the index on which the TSP's C fund is based) has dropped 52%. That makes this bear market the worst since the Great Depression (through December 15, the S&P was 44% below its high).

Many investors see continuing economic problems throughout 2009. There is little doubt there will be plenty of bad news to come and some of the news is likely to be as bad as any news that has already come out with increasing unemployment figures, increasing jobless rate, and more company failures.

# *The Illuminator*

1-2009



TSP investors are reacting rationally to a continuing dramatic drop in the value of their TSP funds. If you have withdrawn all or a substantial portion of your money from the stock funds, when will you reinvest it? Most of us have trouble making a decision to buy stocks when the financial news all around is gloomy.

But keep in mind that there is risk in not making a decision as well. If the stock market does go up 30% or so in the next year, you will have missed a significant gain in the value of your portfolio. While you are guaranteed not to lose money in the G fund, some readers have been shifting money out of their stock funds and into the G fund and taking a substantial loss in the process. While that has proven to be a good move in the past 13 months, anyone planning on using the TSP as a substantial source of retirement funds needs to objectively consider the risk of staying out of the market for an extended time--as well as the risk of absorbing future losses.

One other item to consider: You may live longer than you think. The number of people living to be 100 is going up. If you are a 60-year old man, your average life expectancy is another 20.36 and many people will live much longer. If you are a 60-year old female, you can anticipate living an average of 23.53 years--and perhaps another decade or so longer.

If you are a long-term investor, it may pay to keep in mind that bear markets do end and the stock market tends to go up ahead of positive economic news. Mutual fund company T. Rowe Price calculated returns of the S&P 500 following each decline in the market of at least 20%. In those six instances (not including the current bear market), the S&P has been up an average of 31% in the subsequent year.

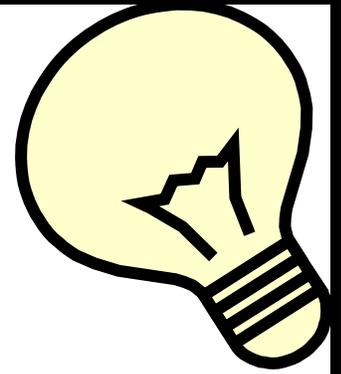
While 31% seems wildly optimistic from our current perspective, stocks do go up a few months before the economy turns up. We have already seen some signs of this occurring as the stock market has gone up when the economic news has been bad, including days when new jobless figures were announced and the news broke about a huge fraud involving as much as \$50 billion by a well-known Wall Street investor.

Your retirement money will have to last as long as you do. While Social Security and a federal annuity is about as safe a future income as you may be able to get, the money from your TSP can go quickly and many federal retirees will need the extra income that stocks are likely to provide over the safe and secure G fund.

**Handling Insubordination.** Insubordination is defined as a serious offense that involves the deliberate failure or refusal to comply with the directions or orders of a superior; however, every instance in which the failure to follow instructions is apparent, is not necessarily considered insubordination. The use of the correct label may determine whether an adverse action is sustained by the Merit Systems Protection Board (MSPB).

# *The Illuminator*

1-2009



Implicit in any charge of insubordination are certain assumptions:

- An understandably clear order or direction was given.
- It was issued by an individual with the authority to do so.
- It was not obeyed.
- It was within the ability of the recipient of the order to obey it.

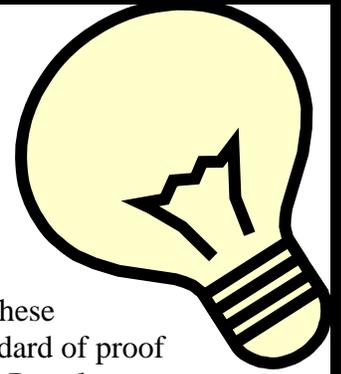
Insubordination is classically defined as the willful disregard of a superior's direct orders, and in some cases, use of inappropriate language. In a military environment, understanding the idea of insubordination is more difficult. Military training may not permit the questioning of an order or the necessity to respond to an employee's concern over his/her order/instruction. For civilians, merely [protesting](#) or questioning an assignment does not necessarily rise to the level of insubordination. Civilian employees may not decide for themselves which instructions they will or will not follow; they must first follow the order and then turn to the grievance procedure if it is felt that the order was improper. In other words, the rule is "work now, grieve later". However, there are circumstances when an exception can be made, such as, if obeying the order would clearly place him/her in a dangerous situation or cause irreparable harm. To prevent insubordination management should first assess the appropriateness of the order and communicate in a clearly written memo or verbal order that explains what task should be done, completion time/date, where and how to be performed. If orders are being communicated orally, make sure the employee understands what is wanted and clarify that the employee's understands the order.

When disciplining an employee for failure to obey an order, Management must consider the surrounding circumstances, including the employee's reservations about the legality of an instruction, particularly where the employee has no prior misconduct. There are times when an incident of insubordination can be nipped with a brief word of corrective coaching, but when faced with repeated instances of inappropriate behavior, managers should follow with formal discipline. Neglecting an immediate response to such infractions can lead to larger issues within the organization that may spiral in the disciplinary activities with other employees who may think they may not be disciplined.

Informal and/or formal counseling or [progressive discipline](#) is usually the most appropriate method of discipline. Management should consider which penalty to impose in a particular situation, and action taken is based on the conclusion that there is sufficient evidence available to support the reason(s) for action and that the action is warranted and reasonable in terms of the circumstances which prompted it. The critical factors in determining the appropriate penalty are often referred to as the Douglas Factors\*. Once the analysis is complete, the Civilian Personnel Advisory Center (CPAC) staff will provide in-depth advice regarding the procedures to follow in taking these actions.

# *The Illuminator*

1-2009



Employees serving a trial/probationary period are not necessarily subject to these considerations. If an agency is uncertain of its ability to meet the MSPB standard of proof in establishing the elements of a charge of insubordination (Hamilton v. U.S. Postal Service, 96 FMSR 5357 , 71 MSPR 547 (MSPB 1996)), -- particularly willful intent to disobey – management may choose to use the easier-to-prove charge of failure to follow instructions.

\* For additional information, see article *Deciding on Appropriate Employee Discipline: The Douglas Factors* in the 12-2008 edition of *The Illuminator*.

**NAF Employment for Off-Duty Military Service Members.** Active duty enlisted members of the Armed Forces may compete for part time or flexible Non-appropriated Fund (NAF) positions as vacancies occur; however, upon selection, the service member must seek approval from his Commanding Officer to work after duty hours. Once the approval is granted, the employee's status is designated as Off Duty Military (ODM).

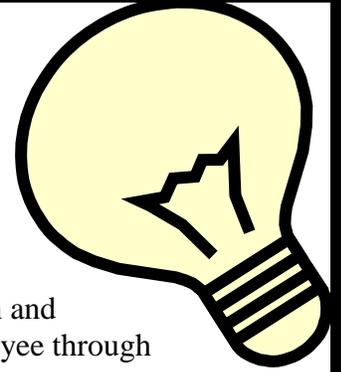
In the event the ODM service member completes his/her active obligated service while employed with NAF, the former service member is required to provide the NAF Human Resources Office staff with the Member 4 copy of their DD Form 214 [which identifies the character of their discharge from active duty service]. A Notification of Personnel Action (NPA) identifying a change in military status will then be initiated. The noted change will permit the employee the opportunity to continue in the NAF position or compete for other NAF positions without restrictions.

To receive specific information regarding NAF employment in an off-duty capacity please contact your servicing Human Resources Specialist.

**The Voluntary Leave Transfer Program for NAF Employees.** The Voluntary Leave Transfer Program affords regular Army NAF employees the opportunity to donate annual leave. Leave may be donated to other NAF employees who are expected to suffer a substantial loss of income because of the unavailability of paid leave to cover an absence due to a personal medical condition or that of a family member\* as a result of a medical emergency. To be eligible for leave transfer, an employee must expect to be absent without the availability of both sick leave and annual leave. As such, the employee or their personal representative must request and complete the Leave Recipient Application, and provide a copy of his/her last Earnings and Leave Statement to support the absence of leave and certification of the medical situation/emergency from a physician or other appropriate medical professional to their supervisor. The certification should specify the anticipated duration of the medical situation and indicate whether or not the condition will be recurring. If it is determined that the medical situation will be ongoing, the employee should request that the physician identify the approximate frequency of occurrence. Upon receipt of the aforementioned documents, the supervisor should

# *The Illuminator*

1-2009



review the Leave Recipient Application to ensure appropriate documentation and certification are attached and submit a written request on behalf of the employee through their supervisory chain for approval and forwarding to the CPAC, NAF Human Resources Office (HRO).

Once the NAF HRO has received the leave transfer documents, the workforce will be queried for possible leave donors. Potential leave donors, limited only to NAF employees, who wish to donate leave will then complete and submit a Leave Donor Application to the NAF HRO. The leave donor must specify the number of hours of accrued annual leave to be transferred from the annual leave account of the donor to that of the annual leave account of the approved leave recipient. The leave donor may *not* donate more than a total of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year.

Thereafter, the NAF HRO will provide NAF Financial Services with the sum of annual leave donations to be credited to the recipient's annual leave account. Generally, the leave donations are credited to the recipient by the end of the current pay period. The leave, once transferred, becomes available to the recipient and it may remain in the recipient's leave account for use against the medical condition for which the donation was requested as if the leave had actually been accrued by the requestor/recipient. .

To receive specific information regarding NAF Voluntary Leave Transfer Program, please contact your servicing Human Resources Specialist.

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

Remaining course dates for the FY are highlighted below. Registration information will be disseminated not less than 3 weeks from the course start date.

2 - 6 March 2009

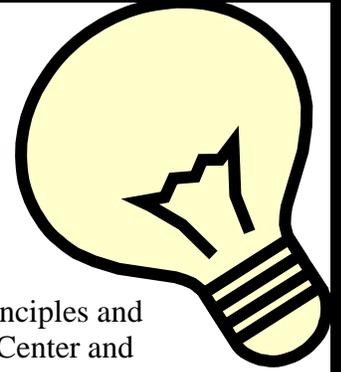
1 - 5 June 2009

14 - 18 September 2009

The instruction includes the following modules:

# *The Illuminator*

1-2009



- 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

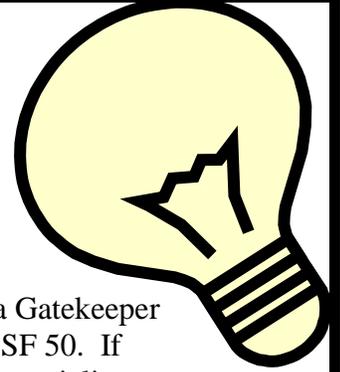
**RPA and ART Workshop.** The Fort Benning CPAC HR specialists are available to conduct RPA and ART desk-side walkthroughs and/or workshops to assist managers/supervisors and new DCPDS account holders with accessing and using DCPDS, ART, initiating RPAs, creating Gatekeeper Checklists, forwarding and 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

# *The Illuminator*

*1-2009*



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.

**Fort Benning CPAC Homepage.** Please log on to our website at <https://www.benning.army.mil/Cpac/Index.htm>. If you have suggestions on ways to improve this publication or recommendations for information to add, please contact the undersigned.

*BLANCHE D. ROBINSON*  
*Human Resources Officer*  
*Fort Benning CPAC*  
*Phone: 545-1203 (Coml.); 835-1203 (DSN)*  
*E-Mail:*  
[\*blanche.d.robinson@us.army.mil\*](mailto:blanche.d.robinson@us.army.mil)