

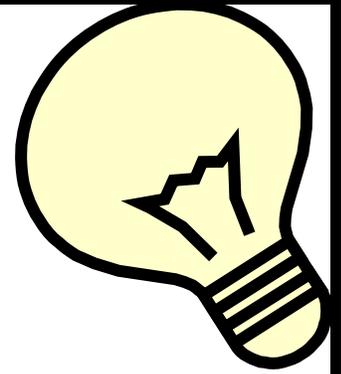
*The*

# *Illuminator*

*Shedding Light on the HR World*

*11 -2009*

*Article Directory*



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This publication is issued to ensure the Fort Benning commanders, managers, supervisors, and employees are kept informed of employment and staffing issues. Monthly issuances will contain updated information on specific employment topics (i.e., compensation, recruiting procedures, travel entitlements, classification issues, the fate of NSPS, the Maneuver Center of Excellence (MCOE) civilian transition, etc.).

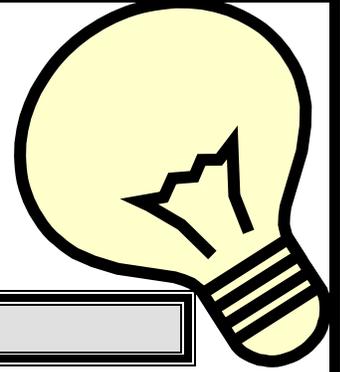
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**Retirement, Life/Health Insurance, TSP, Social Security and Such**

**Disability Retirement Reemployment in the Federal Service.** Over the past five weeks, I've described the criteria you must meet to be eligible for disability retirement, how to apply for that benefit, how your annuity would be calculated under CSRS and FERS, and what happens once you are on the disability retirement roll. Now I want to close by reviewing what happens if you decide to return to work for the federal government.

Although you can be reemployed by the government in any position for which you are qualified, the law doesn't require either your former agency or any other federal agency to automatically offer you a job. You're on your own when it comes to finding one.

Now, if you are reemployed by the federal government, what happens to your disability annuity depends on your age and the circumstances of your reemployment.

When your disability annuity ends

If you are under age 60 and are reemployed in a job that is equivalent in tenure and pay to the one you left, you'll be found to have recovered from your disability and your annuity will stop. On the other hand, if you have already been found to have recovered or restored to earning capacity, the temporary annuity payments you have been receiving during the year following that determination will stop on the date you are reemployed, regardless of the type of appointment you receive.

When your disability annuity continues

If you are under age 60 and haven't been found restored to earning capacity or to have recovered from your disability, your disability annuity will continue if you are reemployed:

- in a position of different tenure, for example, temporary vs. permanent,
- at a lower grade level than the one you occupied when you retired, or
- at a lesser tour of duty than the one you had when you retired.

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While your disability annuity will continue under any of these circumstances, the salary of your new job will be offset by the amount of your annuity while you are reemployed.

Note: If you are 60 or older when you are reemployed, the same offset rule applies. However, it's worth noting that if you are employed in a permanent position that has a salary equal or greater than the one from which you retired, OPM won't find that you've recovered from your disability unless you ask them to do so.

### Future annuity rights

So, what happens if you go back to work for the government and want to retire again? Well, it all depends. If you weren't found recovered from your disability or restored to earning capacity and you work full time for one full year (or its part-time equivalent), you'd be eligible for a supplemental annuity when you retire. If you work for five or more years (or its part-time equivalent), you'd be eligible for a redetermined annuity.

On the other hand, if you were found recovered or restored to earnings capacity, you might be entitled to the restoration of your disability annuity if you haven't earned a new annuity right, either immediate or deferred, by virtue of your additional period of actual service. However, restoration of your disability annuity will only happen if you can prove that your disability has recurred and that you are no longer restored to earnings capacity.

**Long-Term Care Considerations.** By now you might have heard that version 2.0 of the Federal Long-Term Care Insurance Program <<http://www.ltcfeds.com/>> is being rolled out. Or maybe you didn't even know there was a version 1.0. Below is a review of the reasons why it is smart to consider a long-term care policy as part of your overall retirement and financial planning.

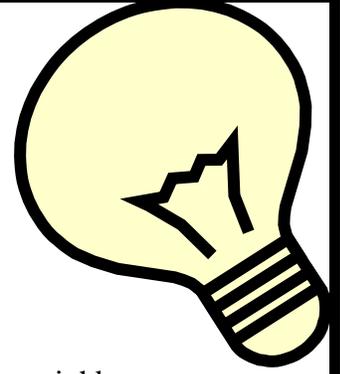
### What Is Long-Term Care?

Long-term care generally is described as custodial or personal care, such as:

- \* Full-time care needed because of a devastating illness or disease.
- \* The help someone who is paralyzed needs with dressing and bathing.
- \* Supervision for someone who is confused by progressive dementia.

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Long-term care is often:

- \* Provided by unskilled people such as a spouse, son, daughter or even a neighbor.
- \* Stressful and strenuous on the people who provide it, especially if they don't have any respite from 24-7 caregiving.
- \* Received at home, but could eventually require moving into a nursing home or assisted living facility.
- \* Needed at any age, depending on life's circumstances.

What Is Long-Term Care Insurance?

Long-term care insurance provides a resource to pay for extended care. Depending on the policy, the benefit might provide payment for care received at home and from a nonskilled provider such as a family member. The policy could provide for further care received in a facility as well. Depending on the policy, it might provide enough money to pay for the full cost of care for an unlimited period of time, or might provide enough to cover a portion of the cost for a defined time period.

Just like any other type of insurance, long-term care insurance varies in price. The cost goes up with age at purchase, value of daily benefit and length of coverage. If someone already is receiving care or will clearly need care in the near future, this type of insurance might not be available.

Why do many people view long-term care insurance as necessary? Here are a few reasons:

- \* The cost of long-term care can be catastrophic, especially if it's in a nursing home.
- \* It can mean they don't have to deplete their savings and spend their retirement benefits on long-term care.
- \* They don't want to burden family members with the responsibility of 24-7 care.
- \* They don't want to have to move into the basement of a son's or daughter's home - no matter how nicely it's been remodeled.
- \* They want to be able to receive care at home instead of being forced to sell their home and move to an assisted living facility.

Myths and Misunderstandings

Here are some common misperceptions about long-term care insurance:

I have Medicare and the Federal Employees Health Benefits Program. That's enough insurance. Go back and review the definition of long-term care. It's personal and

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custodial -- not medical. Medicare and FEHBP will pay only for very limited nursing home and home health care while you are recovering from an illness or accident. Long-term care insurance generally picks up where health insurance and Medicare leave off.

I will give away my assets and income so I can qualify for Medicaid. Medicaid <<http://www.cms.hhs.gov/home/medicaid.asp>> is health insurance for the poor, and does pay for a nursing home care. Some people figure all you need to do is make yourself appear poor, apply for Medicaid and your stay in a nursing home will be covered. But the federal government allows the states that administer Medicaid to look back five years to see if you've given away assets and money. If so, you will be disqualified for benefits for a period of time equal to the value of the assets you've given away.

And remember, Medicaid mainly provides for nursing home care. That's care of last resort. For most people who need personal care, the ideal setting is at home, and the second choice is assisted living.

My chances of needing long-term care are slim. We all hope we'll never need such care. I certainly pray I never get my money's worth out of my long-term care policy. But according to the National Family Caregiver's Alliance <<http://www.thefamilycaregiver.org>>, more than 10 million people received long-term care in 2002. By 2050, this number is likely to double. And according to a 2004 study <<http://www.metlife.com/assets/cao/mmi/publications/since-you-care-guides/MMI-SYC-Hiring-Independen-tCare-07.pdf?SCOPE=Metlife&MSHiC=65001&L=10&W=caregivers%20home%20&Pre=%3CFONT%20STYLE%3D%22background%3A%23ffff00%22%3E&Post=%3C/FONT%3E>> by the National Alliance for Caregiving and AARP, funded by the MetLife Foundation, more than 44 million Americans spend time caring for someone who needs assistance at home.

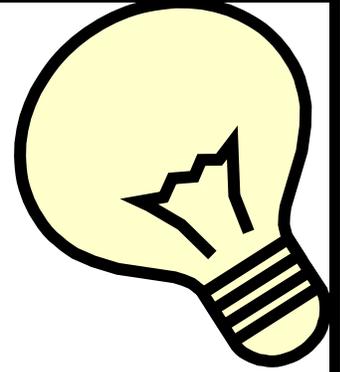
My spouse, child, sister, brother or neighbor will take care of me. This may well be true. The typical caregiver is a family member and provides care for the individual at home. But don't you want them to receive some compensation for the loss of wages and benefits that could result from having to take care of you?

I can save the money to pay for my care if I need it. Here are some national average costs from a 2008 survey by the John Hancock Life Insurance Co. on long-term care:

- \* \$19 per hour for a home health aide
- \* \$62 per day for care in an adult day care center
- \* \$2,962 per month for an assisted living facility
- \* \$183 per day for a semi-private room in a nursing home

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- \* \$204 per day for a private room in a nursing home

### Key Questions

If I've convinced you that you should consider a long-term care insurance policy, the next question is, what policy is best for you? Here are some key questions you should consider:

- \* How much can you afford to pay?
- \* How important is it to receive care in your home?
- \* Do you have family members who might be available to provide some of your care?
- \* Where will you live? The cost of care varies from state to state.
- \* Do you know what a partnership plan [http://www.govexec.com/story\\_page.cfm?filepath=/dailyfed/0509/051509rp.htm](http://www.govexec.com/story_page.cfm?filepath=/dailyfed/0509/051509rp.htm) is?
- \* Are you willing to spend your own assets on long-term care if needed? How much can you afford?

Several groups of people are eligible <http://www.ltcfeds.com/eligibility/index.html> to apply for coverage under the Federal Long-Term Care Insurance Program. This includes federal employees and annuitants, along with members and retired members of the uniformed services and qualified relatives.

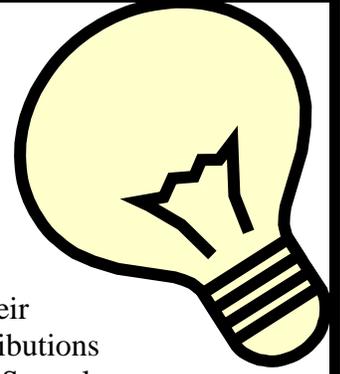
If you're eligible for the federal plan, begin your search by looking at what is available and the key differences between the federal plan and one you might be able to purchase privately.

**Guard Against Hitting TSP Dollar Limit.** This time of year is a good point for FERS employees to check to make sure they won't lose government contributions due to hitting the annual investment dollar limit too early.

The cap this year is \$16,500. Since the lifting of the old percentage limits on investing, some employees have chosen to invest at high rates early in the year in order to get their money in the TSP sooner and take advantage of potential tax- advantaged growth for longer periods, that is, "front-loading" their investments. FERS employees who have been doing so might need to examine their situation around now. FERS investors should take care to structure their investments so that they can continue investing at least 5 percent of salary, the amount that produces the maximum government contribution, through every pay period of this year. There is no similar consideration for CSRS investors, who get no government contributions.

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If FERS investors hit the dollar cap before the last pay period of the year, their contributions will shut off until 2010 and so will government matching contributions (although the automatic 1 percent of salary government contribution for FERS employees would continue). Once lost, matching contributions can't be recouped. To prevent that from happening, investors might need to make a new investment allocation. Employees might wish to discuss the situation with their payroll offices, to determine how many pay dates will remain in the year by the time they make a change, in order to set up their deductions to their best benefit.

**Lack of Social Security COLA could Adversely Affect Some Federal Workers.** As expected, the Social Security Administration announced that there would be no cost-of-living adjustment for Social Security payments in 2010, a development that could hamstring some federal employees as they try to pay for increased medical costs next year.

President Obama on Wednesday announced a proposal to give 57 million retirees, including 1 million local, state and federal government employees who do not receive Social Security benefits, an additional \$250 in individual payments in 2010 as part of the economic recovery package. This plan, which must be approved by Congress, was proposed in September by Sen. Bernie Sanders, I-Vt.

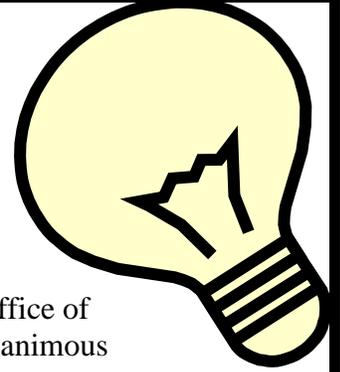
SSA's announcement was based on a report from the Bureau of Labor Statistics, also released on Thursday, that showed no increase in the Consumer Price Index for urban wage earners and clerical workers from the third quarter of 2008 to the third quarter of 2009. In particular, food and energy prices fell during the past year. This is the first time since the cost-of-living adjustment was implemented in 1975 that there has been no adjusted increase for Social Security benefits.

Most Medicare recipients are protected from premium hikes through a hold-harmless provision in the current law that states that such increases for Medicare Part B cannot be more than Social Security cost-of-living adjustments, but those protections don't apply to state, local and federal government employees who do not receive Social Security payments. In particular, employees in the Civil Service Retirement System, who do not receive such benefits, could be affected, according to the National Active and Retired Federal Employees Association.

The House in September overwhelmingly passed H.R. 3631, the Medicare Premium Fairness Act, which would use money from the Medicare Improvement Fund to cover premium increases for those outside the hold-harmless provision.

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But the bill is still before the Senate Finance Committee. According to the office of Chairman Max Baucus, D-Mont., the senator tried to pass the bill through unanimous consent last week, but Republican objections blocked it.

Daniel Adcock, legislative director for NARFE, said he was hopeful the bill would pass the Senate in time to take effect in 2010.

Adcock said the additional \$250 payments from the federal government were necessary because although inflation is down, mostly due to reduced energy prices, the costs that typically hit seniors, such as health care, continue to rise.

If Congress approves the proposal to provide the additional money to seniors, those outside the Social Security system most likely would receive the payment as a tax credit, while everyone else would obtain it through their Social Security payments, Adcock said.

## *Employment-Related News*

**Telework Rules.** Finding ways to allow employees to work outside the office is a hot trend in federal government. Whether it's to ensure that employees can perform their jobs during an emergency, foster a healthier balance between their personal and professional lives, or acknowledge the changing work styles as a result of technology, for the most part, agencies are embracing telework. But as some are learning, even programs designed to enhance workplace flexibility need rules to make them successful.

The Environmental Protection Agency learned this lesson <<http://www.epa.gov/oig/reports/2010/20091007-10-P-0002.pdf>> when an employee called an anonymous hot line to complain that a colleague in the agency's National Enforcement Training Institute, part of the Office of Enforcement and Compliance Assurance, had been working from home in Ohio for nine years. While that might sound like the future of the decentralized, flexible workplace and show consideration for employees' complicated lives, this exception wasn't part of an organized EPA policy or program.

"EPA has no established or consistent policy, procedure, or criteria for granting full-time work-at-home privilege," wrote Wade Najjum, an assistant inspector general in the Office of Program Evaluation, in a report. "Full-time work-at-home opportunity appears to be preferentially available to only a few employees. Neither [the Office of Administration and Resources Management] nor [the National Enforcement Training Institute] has any written documentation showing the government interest in or appropriateness of making this arrangement, or that senior OARM officials approved this action."

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After the employee's spouse accepted a job transfer to Ohio, EPA allowed the employee, who was working for the agency in Washington, to work remotely from Ohio. The deputy director of NETI told Najjum that because a hiring freeze was in place, losing that particular employee would have diminished the office's capabilities, and the employee was considered valuable, so the office decided to find a way to keep the worker employed at EPA.

It sounds like a reasonable decision. But Najjum said the hot-line caller who complained about the arrangement had a point. Without a formal process for employees to apply for the opportunity to telework on a permanent, full-time basis, such a move risks becoming arbitrary, available only to employees who already have a good relationship with management, or to employees who are aware such an arrangement is possible. When employees find out that some of their colleagues have received opportunities and flexibilities that are not widely -- or equally -- available, a decision intended to help one employee can end up hurting morale for others, as, Najjum wrote, was the case for the hot-line caller.

A formal process for telework communicates the opportunity to all employees, offers a clear path to apply for the benefit and allows employees to appeal if they are denied the chance to telework, ensuring the program does not become a reward for favored workers. Having a set of official and publicized standards for such programs also creates benchmarks for managers to use when evaluating employees who work remotely and allows them to suggest improvements, or recommend that an employee be removed from a telework program.

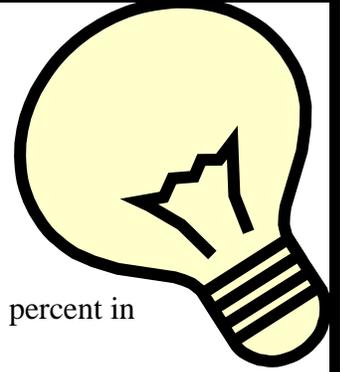
According to Najjum, official policies also require managers and office leaders to make tough decisions about whether an employee is worth keeping on remotely, even if doing so is more expensive. Retaining the employee whose remote work arrangement was the subject of the report cost EPA \$17,458 in travel costs alone between September 2000 and September 2008. And because the employee was part time when the arrangement was made but agreed to work full time after the switch, that person's salary rose 13.46 percent.

Perhaps the employee was worth it. But even if that were the case, EPA had no record of such an analysis, Najjum said. In trying to meet the needs of one, valuable employee, the environmental agency failed to see the forest for the trees.

**Public-Private Pay Gap Rises in 2009.** The gap between average pay for federal and private sector workers rose 1.25 percent during the past year, the Federal Salary Council recently reported. The council did not recommend a specific pay raise for federal employees in 2010.

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The pay gap between public and private sector workers increased from 25.17 percent in 2008 to 26.42 percent in 2009.

The salary council is down five of its nine members, but the decision not to issue a recommendation on a pay raise was based not on those vacancies (the group does not require a quorum to operate or make decisions), but rather on the political environment. Randy Erwin, legislative director for the National Federation of Federal Employees, said the council did not make a recommendation for how to allocate the pay raise between salary hikes and locality pay because Congress hasn't approved a raise yet.

"The union members of the council wouldn't want to make a recommendation that could be perceived as supporting anything less than [the 2.4 raise mandated by the formula in the Federal Employees Pay Comparability Act], so we just said nothing on the matter," Erwin said. "We are hoping that federal employees will receive the 2.9 percent adjustment that they deserve."

The biggest hikes in pay gaps occurred in Cincinnati (4.52 percent); Sacramento, Calif., (2.82 percent); Washington (2.8 percent); Hartford, Conn., (2.63 percent); and New York City (2.61 percent).

For the second consecutive year, the salary council discussed the effect of large incentive payments to some private sector workers who are the equivalent of General Schedule Level 12 administrative employees. The size of those bonuses distorted the overall pay gap, the council said. If that data were excluded, the 2009 pay gap would be 22.13 percent instead of 26.42 percent.

But Colleen Kelley, president of the National Treasury Employees Union, pointed out that the Bureau of Labor Statistics cycles 20 percent of private sector pay data out of its sample every year, so the effect of those bonuses on the pay gap equation are short-lived. She also cautioned against the temptation to adjust the data randomly.

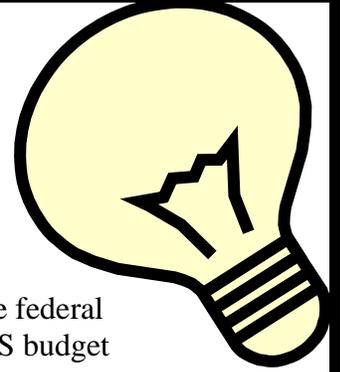
"We have never, as far as I know, reached into BLS data and said, 'Use this and don't use this,'" Kelley said. "I worry about doing that because BLS data is the data upon which we rely. I understand the impact it can have on some of the localities this year, but we've never made decisions based on [the effect of anomalies]."

Phil Doyle, assistant commissioner for Compensation Levels and Trends at BLS, acknowledged that the agency faces some challenges in obtaining the appropriate data for the Federal Salary Council to use in its analyses.

He said some gaps in data were due to cuts in the agency's budget. BLS is eliminating its three salary surveys in Alaska and one of its two surveys in Hawaii, according to Doyle.

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A measure included in the fiscal 2010 Defense authorization bill would move federal employees in those states into the locality pay system. And he said 2009 BLS budget cuts have forced the agency to shrink its sample size for the overall salary survey.

Doyle said the council members should not be concerned about another upcoming change to the compensation surveys. The Office of Management and Budget plans to introduce a new set of occupational classifications for the economy as a whole in 2010 that BLS will use to sort workers into categories.

But for federal agencies and workers, Doyle said, "most classifications in the new standard occupational classification are unchanged from the old version."

**Military Spouse Hiring Authority - Executive Order 13473.** Executive Order 13473 became effective September 11, 2009 and is intended to provide certain military spouses an opportunity to enter into the Federal government service. This Executive Order is part of an effort to recognize and honor the military service members that are required to change duty stations or have been injured, disabled, or killed while on active duty.

In order to be eligible for this Executive Order, spouses must meet one of the following criteria:

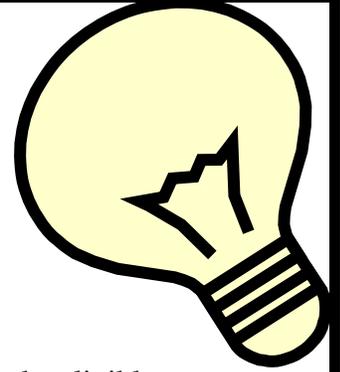
- Spouses of military service members serving on active duty for more than 180 days that relocate to the member's new permanent duty station via Permanent Change of Station (PCS) Orders;
- Spouses of military service members retired with a disability rating of 100% at the time of retirement who retired or were released and have a disability rating of 100% from the Department of Veteran's Affairs; or
- Un-remarried widows or widowers of military service members killed while on active duty.

**Permanent Change of Station Orders:** The spouse must be married to the military service member on, or prior to, the date of the orders, relocate with the military service member to the new duty location and the orders must indicate that dependent travel is authorized. A spouse may only use Executive Order 13473 once for each PCS move. The spouse is not eligible under this authority if the military service member is traveling to a different installation for training or attendance at a service school.

**Disability Rating of 100%:** For the spouse to meet eligibility the military service member must have retired under Title 10, Chapter 61, Retirement or Separation for Physical Disability or is retired or released from active duty and has a disability

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documented by the Department of Veteran Affairs of 100%.

**Military Service Members Killed While on Active Duty:** For the spouse to be eligible under this criterion, she/he must be the un-remarried widow or widower of a military service member, and the military service member must have been killed while performing active duty. The military member need not have been killed in combat in order for a spouse to be eligible under this Executive Order.

**Geographic Area:** Spouses must be located within the geographic area indicated in the Permanent Change of Station orders. The geographic area is the surrounding area from which one can reasonably be expected to travel daily to and from work. Spouses of retired or separated active duty members who have a 100 percent disability are not restricted to a geographical location.

**Conditions:** Spouses are eligible for noncompetitive appointment for a maximum of 2 years from the date of:

- The service member's PCS orders;
- Documentation verifying the member of the Armed Forces is 100 percent disabled; or
- Documentation verifying the member of the Armed Forces was killed while on active duty.

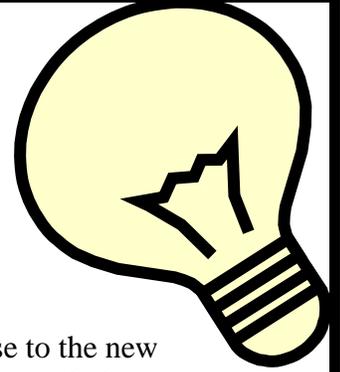
The 2 year time limit cannot be extended for individuals appointed to temporary or term position under this authority. If a spouse has been occupying a Term position for two (2) years, which was made under the Executive Order, he/she may not use this authority to be appointed to another position. If the spouse is within the 2 year time frame, he/she can be appointed under this Executive Order for another position. Appointments can be made to temporary, Term or permanent positions.

**Qualifications:** The Department of the Army uses the Office of Personnel Management (OPM) Qualification Standards when filling positions in the competitive service. Spouses should review the announcement under Who May Apply to determine if they are eligible to apply. Qualification standards will have to be met in order for spouses to be referred for possible selection. Qualification requirements will vary depending on the specifics of the position being filled. This authority can be used to fill any position, at any grade level, in the competitive service.

**Proof of Eligibility:** The following documentation is required, if selected for a position, to support eligibility under this authority:

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(1) A copy of the service member's active duty orders which include a statement authorizing accompaniment of the military service member's spouse to the new permanent duty station, the specific location to which the member is to be assigned, the effective date of the PCS, and documentation verifying marriage to the member; **or**

(2) Documentation showing the military service member was released or discharged from active duty due to a service-connected disability of 100% and documentation verifying marriage to the military service member; **or,**

(3) Documentation showing the individual was released or discharged from active duty due to his or her death while on active duty, documentation verifying the member of the armed forces was killed while serving on active duty, documentation verifying marriage to the military service member and a statement certifying that he or she is the un-remarried widow or widower of the service member.

**Eligibility for Priority Placement Program:** To be eligible to register in the Priority Placement Program, spouses must meet all other requirements in Chapter 14 of the Priority Placement Program Operations Manual, DoD Military Spouse Preference Program. Under the Priority Placement Program, spouses must be well qualified for the position. Providing the above is met, spouses will be placed in the Priority Placement Program under the Program S. Program S eligibility does not apply retroactively to the spouse and sponsor's most recent Permanent Change of Station move. The Permanent Change of Station move must have been on or after September 11, 2009.

This authority does not contain a grandfather clause for spouses who may have met the eligibility prior to the issuance of this authority.

For additional information on Executive Order 13473, please contact you servicing HR Specialist.

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

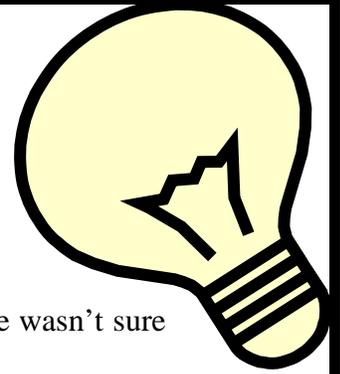
**Bias Cases Increase in 2008.** A decade of declining federal discrimination complaints has come to an end.

A new report by the Equal Employment Opportunity Commission shows that bias complaints rose slightly — 2.4 percent — in 2008.

“It does seem to have leveled off,” said Dexter Brooks, director of federal sector programs in EEOC’s Office of Federal Operations. He called the increases “statistically

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insignificant” when compared to declines throughout the decade, and said he wasn’t sure what caused the increase.

The average time it took agencies to investigate discrimination claims also increased last year for the first time in four years.

Linda Bradford-Washington, the EEO director at the Housing and Urban Development Department, suspects training more employees about their rights could have something to do with the increases. At HUD, the number of bias cases filed increased from 91 in 2007 to 98 in 2008. And the number of days on average to investigate those cases increased from 171 to 275 in the same period. Many of those complaints had multiple amendments and supplemental investigations, requiring longer investigation times.

“When we conduct EEO training, we do get a spike in cases,” Bradford-Washington said. “We attribute that to the fact that people are more aware of their rights and more educated in the process.”

Brooks could not say if HUD’s experience was true for the entire government. But he said EEOC wants federal employees to be educated about their rights and doesn’t want the government doing quick, shallow investigations for the sole purpose of clearing complaints.

“That doesn’t answer the question of, is there discrimination?” Brooks said. “That’s why we have training requirements.”

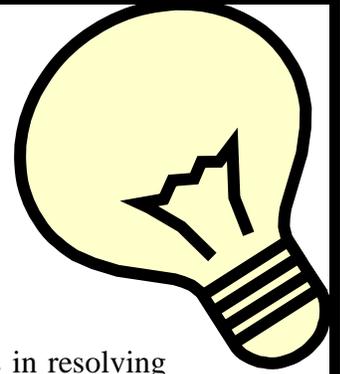
Brooks said now that investigation times are down and agencies regularly use counseling and other methods to resolve disputes before they become full-blown complaints, EEOC wants agencies to improve how they investigate and rule on discrimination complaints.

After an agency investigates and decides a discrimination case, the complaining employee can appeal that ruling to EEOC. Brooks said EEOC has been overturning an increasing percentage of agency decisions brought on appeal. In 2004, EEOC overturned 1 out of every 5 agency decisions that were appealed to the commission. Last year, the figure was 1 out of 3.

“It’s going to take a lot of work on our part to grab this quality issue. We can’t do it with one stroke of the brush, and we must look at each agency,” he said.

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The problem may be poor investigations or poor decisions, Brooks said. But overall, the EEOC report shows that the government is having success in resolving EEO complaints faster and quicker than it has in years, he said.

Brooks pointed to two developments in particular that contributed to that. One was the introduction of alternative dispute resolution (ADR) methods in 1999 to resolve conflicts before an employee files a formal complaint. The other was a 2003 EEOC rule, called Management Directive 715, that requires agencies to report each year on steps they are taking to prevent discrimination and efficiently process complaints.

“Now that we’re four or five years into it, we may have seen the effects of ADR level off complaints,” Brooks said.

At least one agency is still rebuilding a sorely neglected EEO office. John Swain, a spokesman for the Small Business Administration, said the agency’s EEO office had no administrator for two years until Margareth Bennett was appointed in July 2007.

“When she came on board, no one was doing investigations,” Swain said. SBA’s EEO office had no investigators, and all of its investigative contracts had lapsed. Bennett re-established the office’s investigative contracts, cleared out a case backlog, and has since hired three in-house investigators.

SBA’s average investigation time of 302 days in 2008 is above the governmentwide average, but improved from the 2007 rate of 359 days.

Other agencies are lagging. The Education Department took 296 days to finish an average investigation. The State Department took an average of 307 days to finish investigations. And the Interior Department took 331 days. Officials at those agencies were not available for comment.

Agencies are also increasingly relying on contract investigators to handle discrimination complaints. In fiscal 2007, 33 percent of cases were investigated in house, but in fiscal 2008, that had dropped to 31 percent.

Contract investigators are also faster and cheaper than in-house investigators, according to EEOC statistics.

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But Brooks said one reason contract investigators may be cheaper is that agencies can stop paying them when they don't have work.

And in some cases, agencies may give contract investigators the simpler cases and save the more complex cases for in-house, he said.

**Damages for Sexual Harassment.** A recent EEOC decision helps to better define the amount of compensatory damages appropriate when an employee who has been victimized by discrimination or harassment suffers certain kinds of harm as a result. *Gray v. Department of the Interior*, EEOC Appeal No. 0120072136 (July 24, 2009).

Celeste Gray brought an EEO complaint against the Department of the Interior, alleging that her supervisor had subjected her to sexual harassment in her workplace. The agency found that Gray had indeed experienced sexual harassment when her supervisor rubbed her shoulder, put a bottle of oil on her desk for her hair, had her pick up trash in front of his desk, and made several inappropriate comments to her and to other female employees.

The agency's initial decision awarded Gray \$10,000 in compensatory damages.

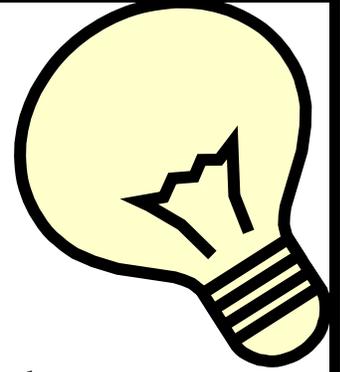
The agency also awarded a small amount of pecuniary damages, finding that because Gray had prevailed on only one of the four claims she brought against the agency, her award for pecuniary damages should be reduced to one-quarter of what she requested.

Gray appealed the agency decision to the EEOC on the grounds that the agency's award of \$10,000 did not accurately reflect the level of harm she suffered as a result of the harassment. Gray produced documentation and affidavits in support of her claims for compensatory damages. The EEOC reviewed the agency's decision and found that Gray had experienced more than three years of severe physical pain and suffering. The effects of the harassment included headaches, an inability to trust supervisors, frequent nightmares and excessive drinking, introversion, alienation from family members, depression, and loss of friendship, among other conditions.

The Commission found that the agency's award of \$10,000 in compensatory damages was inadequate, but that the \$185,000 Gray requested would overcompensate for her suffering. The Commission set an award of \$100,000 and did not reduce her award because of failure to prevail on the original claims she had raised against the agency. Rather, it found that her pecuniary losses related directly to her supervisor's sexual harassment (the claim on which she did prevail), and therefore awarded \$49,459.75 in pecuniary damages to cover Ms. Gray's expenditures on psychiatric and medical expenses, etc.

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

**Reassignment of Problem Employees.** Supervising a problem employee can be a difficult task; consequently, many supervisors have a tendency to disregard issues until they can no longer be ignored. As opposed to turning a blind eye to developing problems in the workplace, supervisors should address the bad behavior/poor performance in a timely manner which provides an opportunity for improvement that could benefit both the manager and the employee. If an employee is not able to be rehabilitated on his current position, the supervisor may consider reassignment as an option prior to removal of the employee.

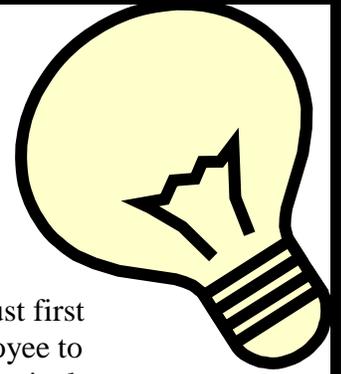
Prior to reassigning the employee, the supervisor must take the time to assess the root of the issue(s). A determination must be made as to whether the issues are of a behavioral/conduct nature or are performance based. For behavioral issues, the supervisor needs to consider whether there is a communication issue, lack of understanding expectations, or mitigating factors that may justify or excuse the behavior. In this case, the problem may be rectified by simply reopening the lines of communication, by speaking with the employee to gain insight on the reason(s) for the behavior (i.e., stress, illness, personality conflict, lack of guidance). Based on this information, the supervisor can then take steps to address concerns within their control, reemphasize the workplace expectations, and provide the employee the opportunity to make steps toward rectifying the situation. For performance issues, the supervisor should conduct a performance counseling session with the employee to clarify expectations and discuss performance issues. During this discussion, the supervisor should provide the employee with clear examples of how they are failing based on the written performance standards. In turn, the supervisor should permit the employee the opportunity to discuss their performance and ways they think the problems can be rectified.

After reiterating expectations and notifying the employee that there is a problem that needs to be addressed, the supervisor will provide a period of time for improvement. This purpose of this time is to give the employee a chance to alter conduct or increase performance level. The employee is notified in writing of the issues, the assistance that will be provided to improve, the timeframe within which to improve, and the consequences of not improving. The supervisor should also consider providing the employee with duty checklists, pairing the employee with a co-worker for on-the-job training, or providing closer supervision and guidance through coaching. Throughout the period of time for improvement, the supervisor must document successes as well as any continued problems or failures.

If conduct and/or performance remain unacceptable, the supervisor is faced with the question of whether to remove the employee from Federal service or reassigning the employee. Can the employee be reassigned to a different position or work location where

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they can become productive? To make this determination, the supervisor must first understand that the definition of a reassignment is the movement of an employee to another position for which they are qualified at the same grade and with an equivalent target grade or equivalent band level. Second, the supervisor determines if there are any positions available for reassignment. Finally, the supervisor must consider if the employee expressed a willingness to learn during the improvement period, but was unable to reach the performance expectations. If so, the current position may not be suited for the employee and their skill set may be a better match in another position. At this point, the supervisor may decide to initiate a “management directed” reassignment, which would be a lateral move of the employee to another position within the organization or between organizations, with appropriate managerial approval. However, the supervisor should be aware that reassignments may also be initiated by an employee as a “voluntary request” pending management approval. In either case, all reassignments require a qualification review and approval by an HR Specialist.

For additional information on reassignments, please contact your servicing HR Specialist at the Civilian Personnel Advisory Center.

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

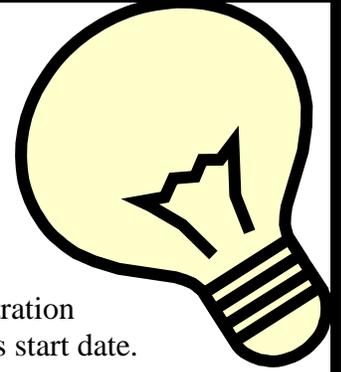
**Human Resources (HR) for Supervisors Course.** The HR for Supervisors Course encompasses instruction applicable to the National Security Personnel System (NSPS) and the Legacy (i.e. GS) System. The course is 4.5 days long, includes lecture, class discussion, exercises; and, is designed to teach new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

Instruction includes the following modules:

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

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

7-11 Dec 09  
1- 5 Mar 10  
14-17 Jun 10  
13-17 Sep 10  
6-10 Dec 10

**RPA and ART Workshop.** The Fort Benning CPAC HR specialists are available to conduct RPA and ART desk-side walkthroughs and/or workshops to assist HR liaisons, managers/supervisors, and new DCPDS account holders with accessing and using DCPDS, ART, initiating RPAs, forwarding and tracking RPAs, generating reports and printing SF 50s. Training can be accomplished via individualized sessions or activity specific workshops upon request. If you desire training of this nature, please contact your servicing HR specialist to arrange for scheduling.

**Job Aids Available on the Web.** Lotus ScreenCams (how-to-movies) are available to assist DCPDS users with DCPDS, Army Regional Tools (ART), Oracle 11i and other automation tools. ScreenCam movies ART Logon, Ghostview, Gatekeeper, Inbox Default, Initiating an RPA, Logging On, Navigator, RPA Overview and RPA Routing are available on the web at: <http://www.chra.army.mil/>. Click on HR Toolkit and then click on the name of the movie to download or play it. Managers/supervisors and administrative personnel responsible for initiating RPAs are encouraged to review this site and check out these new tools. ART Users Guide has been updated and provides descriptions of and instructions for using tools available in ART, including such tools as Employee Data, Inbox Statistics (timeliness and status information about personnel actions), Organization Structure (information about positions in various organizational elements), and many more tools. It is intended for use by managers, resource management officials, administrative officers, and commanders as well as CPAC and CPOC staff members. There is both an on-line and downloadable Word version (suitable for printing).

In addition, to the ART Users Guide, there is a Defense Civilian Personnel Data System (DCPDS) Desk Guide which provides how-to information about tasks and functions that end users might need to perform in DCPDS, such as initiating a Request for Personnel Action (RPA) and creating a Gatekeeper Checklist. The ART Users Guide and the Desk Guide can be accessed from the CHRA web page at: <http://www.chra.army.mil/>, by clicking on HR Toolkit. In addition to these tools the Fort Benning CPAC staff is available to assist you in accessing DCPDS, ART, initiating RPAs, creating a Gatekeeper Checklist, forwarding and tracking RPAs, generating reports and printing an SF 50. If

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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.

**National Security Personnel System (NSPS) Sustainment Training.** A 1 ½ -day Performance Management Course will be offered to military and civilian first and second line supervisors of NSPS employees. This training is designed to familiarize supervisors of their HR responsibilities under NSPS and includes lecture, class discussion and exercises. Prerequisites for attendance include completion of the on-line NSPS 101 tutorial and iSuccess.

The course is recommended for (1) supervisors who attended the HR for Supervisors Course prior to Jul 08 and have subsequently joined an NSPS organization/assumed NSPS employees; (2) supervisors who have not yet attended the HR for Supervisors course; (3) employees new to NSPS; and, (4) anyone desiring a refresher in the intricacies of NSPS. Class size is limited to 30.

The training will be conducted in Jan, May and Sep 10 with specific registration requirements provided electronically three weeks prior to each class start date.

Instruction modules include:

- Overview - Introduction of NSPS
- Classification - Structuring your organization, FLSA, Delegated Classification Authority
- Staffing - Acquiring Your Workforce, Compensation Options & Changes
- Performance Management - Planning, Monitoring, Rating, Pay Pool Processes

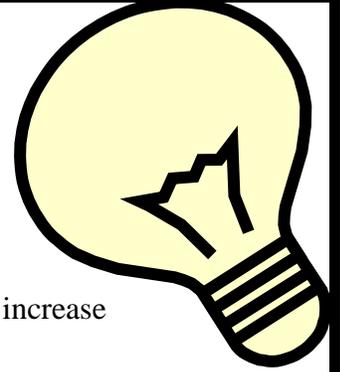
## ***The NAF Corner***

**Taking Advantage of NAF Open Season Enrollment.** The NAF Human Resources Office will conduct a full Open Season from 2-30 November 2009, with benefits elections effective 1 January 2010. During this timeframe, eligible NAF employees may take advantage of benefit programs they normally could not elect any other time of the year. The Programs that will participate in Open Season include the Health and Dental Insurance, Group Life Insurance, Long Term Care Plan, Flexible Spending Account Program as well as the election to opt out of pre-tax premium deductions. An election synopsis for each program is listed as follows:

The Health and Dental Insurance Program as well as the Life Insurance Program will be of particular value for most employees. Employees will have the opportunity to enroll, cancel, increase, decrease and/or make changes to their health, dental, and basic life insurance without evidence of insurability (EOI) or a qualifying event. Employees may

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also increase their optional life insurance coverage. Employees who wish to increase their optional coverage in excess of \$100K *will be* required to provide EOI.

The Long Term Care Plan will also be available and employees will be able to enroll without EOI. This year the Long Term Care Plan will offer increased coverage amount options for new enrollees as well as affording current participants the option to upgrade their existing coverage.

Flexible Spending Accounts will be introduced this year as a new Benefit Program. This program will permit employees to set aside money from their pay on a pre-tax basis and later withdraw funds in those accounts to pay for health care expenses not covered by their medical plan or dependent day care. The pre-tax nature of this program may reduce the cost of these expenses from 27% to 40%, depending on the employee individual tax circumstances.

The enrollment or declination of pre-tax health premium deductions will also be included. Participation in this Program allows employees to pay their share of the health benefit plan premium with pre-tax dollars, thus reducing their taxable income and increasing their take-home pay. This benefit will automatically continue in effect in 2010 unless the employee elects to opt out the program during the open season period. Because the Internal Revenue Code does not allow employees to cancel their health plan participation during the plan year, employees may elect to decline participation in the program and pay their health premiums with after-tax dollars.

Although the Retirement Plan and the 401K Savings Plan are not limited to Open Season, employees will also have the opportunity to enroll in or make changes to their Retirement Plan and 401(k) Savings at this time. Benefits elections for retirement and 401K will be made effective consistent with the current pay period start date.

For questions or inquires regarding Open Season, please contact your local servicing NAF Human Resources Office.

**Using Positive Reinforcement Techniques.** Supervisors or managers who exercise positive reinforcement techniques usually inspire their employees to meet or exceed expectations or demonstrate improvement in areas that were previously identified as problematic. Simple reinforcement techniques may include informal “pat-on-the-back” recognition or informal acknowledgement during staff meetings.

Listed below are a few simple techniques effective supervisors commonly use to encourage continuation of good performance and behavior by giving positive feedback.

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- Use of positive reinforcement for “satisfactory” work - not just for “superior” work being performed. For most supervisors, the normal practice is to provide little or no feedback for work routinely being performed. This practice is commonly applied because the supervisor or manager believes that is what the employee is supposed to do; therefore, the majority of the employee’s work is ignored. A supervisor’s willingness to positively reinforce good performance or behavior is probably the most significant reason behind their ability to effectively apply positive change in their employees.
- Reinforcement of an employee’s small successes is the best way to ensure improvement will continue. For example: Sending an e-mail to an employee informing them of how impressed you are that the number of errors has reduced to zero, or preparing a personal note commenting that it is a tremendous improvement.
- Upon observing an employee performing work that is notable, make sure to mention it to the employee. Supervisors may find themselves amazed to see just how much their employees appreciate recognition for noteworthy accomplishments.
- Bolster the recognized employee or activity as quickly as possible. By quickly recognizing the employee/activity immediately, the employee(s) will know precisely what performance or behavior has been achieved thus prompting the employee to repeat the exceptional performance or behavior. Supervisors should also be consistent and always recognize good performance or behavior. By being consistent, the message will get around that “when you do good work, you will be recognized”. A pat-on-the-back is an effective way to commend an employee for a job well done.
- Steer clear of comparisons with other employees. Comparing employees work performance or behavior with another can possibly produce destructive rivalry. Effective supervisors find that it is better to articulate or express positive reinforcement by simply stating, “I am impressed with how quickly you completed the assignments” rather than stating “you beat Susie’s speed record in handling your assignments”. Comments such as the latter tend to be discouraging rather than encouraging and may prompt employees to become excessively competitive at the expense of the quality of work being performed.

If you observe your employee doing a good job, do not hesitate to provide positive feedback. Remember **Success + Reinforcement = Continued Success**.

*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)