

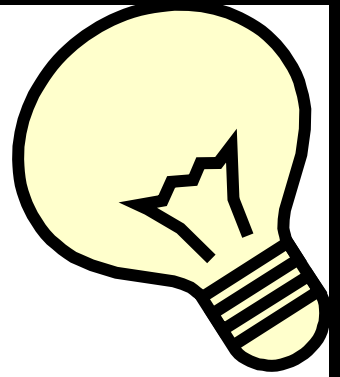
The

Illuminator

Shedding Light on the HR World

11-2010

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

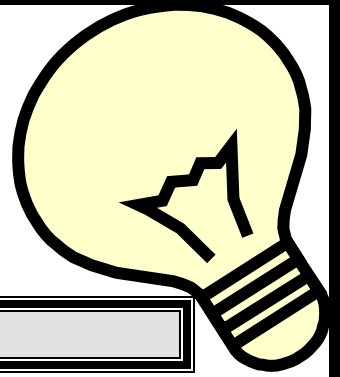
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Retirement, Life/Health Insurance, TSP, Social Security and Such

Retirement Credit for Military Service. Military service is generally creditable for civilian retirement, but it must be paid for by the employee. This is referred to as "buying back" the military time, or making the "military deposit." The amount to be paid is 3% of military earnings, plus compounded interest added each year on the anniversary date of the start of civilian employment. The interest begins accumulating two years after the entry-on-duty date. If the employee pays in full any time prior to the 3-year anniversary date, no interest is charged.

Annually, the Treasury Department sets the interest rate. For an individual employee, the interest for each 12 months is calculated by a "composite" interest rate, which is pro-rated on his anniversary date from the rates of the current year and the next year. For an anniversary date of August 23, the composite rate would be 127 days at the first year's rate plus 233 days at the next year's rate (by law, a 360-day year is used).

Example: employee started work on November 5, 2001. Previously, he earned \$60,000 while serving in the military. Three percent of \$60,000 is \$1,800. If he had paid the \$1,800 in full by November 5, 2004, there would have been no interest charged. However, he waited until August of 2010 to pay. This would mean six years of interest, accumulated as follows:

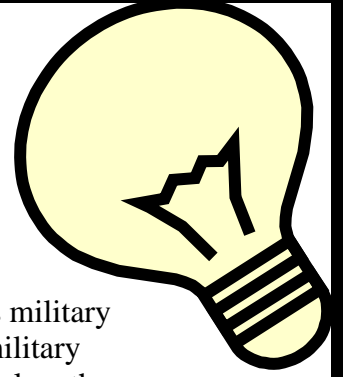
Composite

Time Period	Interest Rate	Interest	Total
2003 - 2004	4.0469%	\$72.84	\$1872.84
2004-2005	4.2986%	\$80.51	\$1953.35
2005-2006	4.1632%	\$81.32	\$2034.67
2006-2007	4.7604%	\$96.86	\$2131.53
2007-2008	4.7691%	\$101.66	\$2233.19
2008-2009	4.0087%	\$89.52	\$2322.71

In the example above, if the employee pays on/after Nov 5, 2010, he will be charged one additional year's interest, to total \$2,397.95. Once he has paid in full, he is assured he will receive full credit for retirement purposes for his military time.

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Can a **retired** military employee pay the applicable principal + interest on his military earnings, and receive a larger civilian pension? Yes, but he must waive the military pension. There are risks in this. The larger civilian pension that results can be less than the combined military and civilian pensions.

There may be occasions when the employee believes the benefit of making the deposit is not worth the cost. For example, in the above case, the employee was in the military four years. His annuity would be an additional 4.0% of his high-three. If his high-three was \$72,000, then he would get an increase of (0.04×72000) , or \$2,880 annually. Probably he would want to pay \$2,322 one time to receive \$2,880 more each year for the balance of his life. But what if his military service was just two years? Then he would still have to pay \$2,322, but his annual "gain" would be only \$1,440.

What if the high-three was \$57,000 rather than \$72,000? Then four years military would increase the annuity \$2,280, while two years would be just \$1,140, yet the payment in either case would still be \$2,322.

But more than just money is involved. For retirement eligibility, the military time does not count at all, unless the employee makes the deposit. In our above example, the employee would become eligible to retire at age 57 with 30 years Federal service (26 civilian + 4 military). If he did not pay for the military time, he would not qualify for retirement until he became 60! (At age 60 he needs only 20 years service.)

Note: the above applies to FERS employees. For CSRS, there are slight, but significant, differences. A helpful tool for the arithmetic is at www.fedretire.us, menu option #1. This software will calculate the exact amount due to pay the military deposit. Also, the employee's payroll/personnel office can provide information on repayment by payroll deduction, etc.

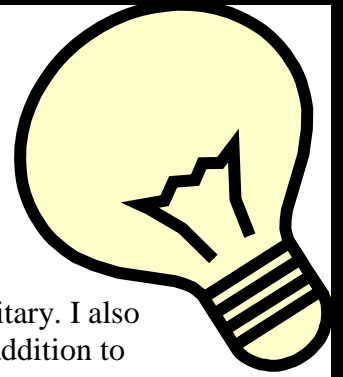
Ref: Chapter 23, CSRS and FERS Handbook,
www.opm.gov/retire/pubs/handbook/hod.htm

Diversify your Portfolio, Not Each Investment Account. Many people look at retirement accounts individually instead of as a part of one overall investment portfolio. This can cause big problems with asset allocation and building a well-diversified investment portfolio. Here is why your overall portfolio needs to be diversified, but each individual investment account does not.

Many accounts, one investment portfolio. It's not uncommon to have more than one retirement account. I have two 401(k)s, a Rollover IRA from an old 401(k), a Roth IRA,

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a traditional IRA, and a Thrift Savings Plan account from my time in the military. I also have several mutual funds and individual stocks held in taxable accounts in addition to those six retirement accounts. All told, I have close to 10 accounts that hold my investments. It is important to treat all of your accounts as parts of one investment portfolio, not as individual investment portfolios.

You don't need to diversify each individual account. It would be extremely difficult, and potentially very costly, to diversify the holdings in each individual account. Fees and commissions would quickly wipe out any gains I made, even if I used a discount brokerage to reduce commissions. Instead of attempting to diversify each account, diversify your entire portfolio. You could, for example, have 100 percent of the assets in your 401(k) in large cap stocks, provided that your other accounts had a range of other investments to balance that out. This is the strategy I use to balance my portfolio. I prefer to put 100 percent of the funds of a smaller account in one asset class and fine tune my asset allocation in my larger accounts. This makes my asset allocation less hands on and saves me a lot of money in transactions and fees. I typically do most of my adjustments in my 401(k) plan, which is in mutual funds and doesn't rack up any commissions when I change my asset allocation.

Target-date funds can be sneaky for asset allocation. Target-date funds, or lifecycle funds, can be a wonderful investment tool for beginning investors and people who don't want to tinker with their investments. But they can also quickly skew your asset allocation. Target-date funds are designed to automatically adjust their holdings based on your target retirement date, not based on the rest of your investment portfolio. Try to find an alternative if you plan on having additional investments in your portfolio or be prepared to adjust your investments often to compensate for the ever-changing makeup of the target-date fund in your account.

Integrate individual stocks carefully. If you choose to invest in individual stocks, then take a look at any mutual funds or ETFs you may have in your portfolio to ensure you are not overexposing yourself to too much risk in any one sector. You should take this a step further and think twice about owning too much company stock, which can be hazardous to your financial health. Your career is already financially intertwined with your future. The last thing you want to happen is to lose your job and half your investment portfolio in the same day, as many former employees of Enron and WorldCom did.

Many accounts and investments make up one portfolio. Begin thinking about your investment portfolio as one bucket of money. Take some time to consider your

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investment goals and risk tolerance, design the asset allocation to reach your goals, and then work toward getting all of your accounts aligned with your financial plan.

What is the Voluntary Contribution Program and how can you Get the Most out of It? Not to burst the bubble too early, but this program is only available to Civil Service Retirement System (CSRS) and CSRS Offset employees. FERS employees, feel free to read on, but do so at your own risk of jealousy.

Now that we know who this article applies to, let's move to exactly what this article is all about. The Voluntary Contributions Program, or VCP as referred to from here on, is one of the most underutilized benefits within the benefits system.

The VCP allows you to make after-tax optional payments to a Voluntary Contributions Account in addition to the retirement contributions you already make. The benefit of doing so is the interest that you will receive from these deductions will grow tax-deferred. The interest that is earned has ranged from 11.125% in 1986 to 3.125% in 2010.

While those interest rates may or may not seem enticing, the best part of this program is yet to come. But before we get to the best part, let's look at how much you are allowed to contribute under the rules of the program. The total that you can contribute to this program is 10 percent of your total basic civilian salary over the life of your time as a CSRS employee. Let's look at an example of the total amount that you can contribute.

Imagine that you made \$75,000 in basic pay every year for 20 years. While we know that you would receive your annual raises, this just helps to keep the math easy. You would be able to contribute 10% of that total pay. This would turn out to be \$150,000 $[(\$75,000 \times 10\%) \times 20 \text{ years}]$. You can make the contributions in regular intervals or in one lump sum, however the deposits must be in multiples of \$25.

Reasons to Consider the Voluntary Contributions Program

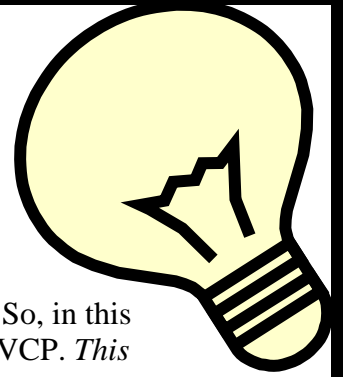
So, let's move on to a couple of reasons why you may want to consider this investment option.

The Voluntary Contributions Annuity

Let's say that you have \$150,000 in this account. One thing you can do is take the annuity option that can be added to your CSRS. If you retire at age 55 or younger and do not elect an additional survivor annuity, each \$100 will buy you \$7 a year of a *Voluntary Contributions annuity*. This amount increases by 20 cents for each full year you are over the age of 55 at the time you retire. The Voluntary Contributions annuity is payable as

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long as you stay retired, but it is not increased by cost-of-living adjustments. So, in this example, if you retired at age 60, you will receive \$8 per \$100 dollars in the VCP. *This would amount to an annuity of \$12,000 per year or \$1,000 per month.*

VCP and Your IRA

A second option enables you to *roll over your VCP monies into an IRA when you retire*. You will want to wait until retirement to do this because once you remove funds from the VCP, you can never re-enroll unless you have been separated from the government for more than three days and are re-employed in a CSRS-covered pension.

So what is the benefit in rolling your VCP into an IRA? First, you will have to roll it into a Traditional IRA since your interest on your VCP has been growing tax deferred. Once your money is in the Traditional IRA, in 2010 you have the ability to convert your Traditional IRA into a Roth IRA and just pay taxes on the earnings. This is because you will have already paid taxes on the underlying amounts by funding your VCP with after-tax dollars. Therefore, you only owe taxes on the amounts above and beyond what you have funded.

For example, say you are in the 25 percent tax bracket and you have funded your VCP with \$150,000. The account itself has grown to \$225,000 and you decide to roll it into a Traditional IRA and then to convert it to a Roth IRA. When you make the conversion to the Roth IRA, there will be \$18,750 [$75,000 \times 25\%$] due in taxes that would be best paid from outside the account so the dollars can continue to grow tax free.

To take this example one step further to help you fully understand the benefit of doing this, imagine that you don't need to take distributions from this account for 15 years because you are living off your pension and Thrift Savings Plan. If that \$225,000 grows at 8 percent per year during that period, your account will be worth approximately \$710,000.

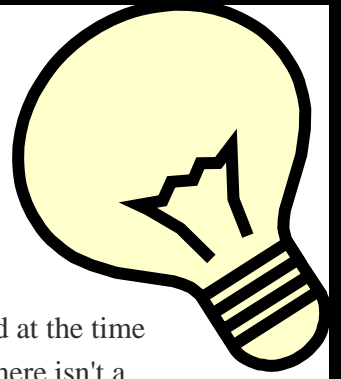
If this sounds like an opportunity you might be interested in, be sure you speak to a trusted advisor who can help run the numbers with you to see if it is a viable option in your personal financial plan.

Here is the [OPM brochure](#) outlining the VCP.

Getting Married After Retirement. A frequently asked question from retirees is this: "What happens to my annuity if I marry or remarry after I retire?" Good question. And one that's worth answering.

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Let's start by finding out what happens to the annuity of those who aren't married at the time they retire, either because they never married or because they are divorced and there isn't a court order requiring a former spouse survivor benefit.

If a retiree does elect a survivor annuity, two things happen. First, the retiree's annuity will be reduced by the same amount it would have been had that election been made at retirement. The actual dollar amount of the reduction would depend on whether the retiree elected a full or partial survivor annuity benefit. Second, the retiree's annuity will be permanently reduced to pay for the deposit owed. That deposit equals the difference between the retiree's new annuity rate and the annuity paid for every single month since retirement, plus 6 percent interest, divided by an actuarial factor based on the retiree's age on the day the annuity is reduced.

Now let's see what happens to the annuity of a retiree who decides to marry a former spouse. If the divorce occurred before retirement and there wasn't any court order requiring the retiree to provide a survivor annuity, the rules would be the same as those described in the preceding paragraph.

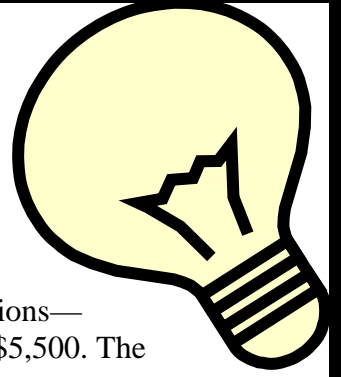
On the other hand, if the retiree was married at retirement, later divorced, and subsequently remarried that person, what the retiree can do is limited. If that spouse had agreed to receive no survivor annuity, then the retiree can't elect one at remarriage. If a partial annuity was elected, then the retiree can elect one that is no greater than the original amount. However, if a full survivor annuity was originally elected, a full survivor annuity can be elected now. The reduction in the retiree's annuity would be calculated as described above and would be proportional to the amount elected for the survivor annuity.

Note: A retiree who marries or remarries has two years to decide whether to provide a survivor annuity to the newly acquired spouse. After that, no election is possible.

TSP Limits Likely Unchanging. The investment limits on tax-favored retirement savings plans such as the TSP likely will be unchanged next year, since those limits are adjusted by the same inflation index that resulted in a determination that no January 2011 retirement COLAs are to be paid. The cap on regular contributions by employees, called

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the "elective deferral limit," is \$16,500, and the limit on "catch-up" contributions—additional contributions allowed for those 50 or older in a calendar year—is \$5,500. The rates remained the same from 2009 to 2010 in a similar situation. A formal announcement from the IRS still is needed to finalize the 2011 figures.

Employment-Related News

How Far is Too Far with Government Background Checks? The Supreme Court will decide by June just how far government agencies can go in background checks designed for contract workers.

The case pits 28 engineers and scientists involved in unclassified work at NASA's Jet Propulsion Laboratory in Pasadena, Calif., against a 2007 NASA policy decision to require in-depth background checks on contract employees.

Such background checks are not unusual for federal staff working on secret or classified programs, but had not been routine for contractors not involved with secret work.

The Court will decide by June whether NASA went too far, as the contractors contend, or was within reason to require the backgrounds to ensure their trustworthiness.

Recently, the high court heard arguments in a case that stems from NASA's decision to conduct in-depth background checks on contractors in 2007.

Twenty-eight workers at the Jet Propulsion Lab in California — scientists and engineers who don't handle secret information — fought back with a lawsuit and won a ruling from an appeals court blocking the investigations.

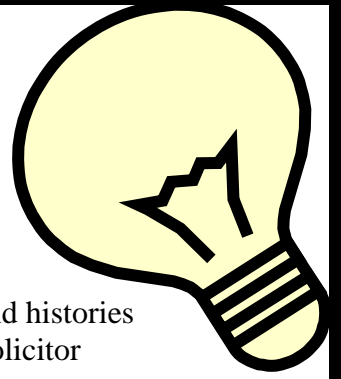
"We think these are illegal and unjustified violations of our privacy," said Robert Nelson, the lead plaintiff in the case. "The prospect of the government creating dossiers packed with details about the private lives of employees is frightful."

Nelson has worked at the lab for 32 years on projects that include the Voyager program to explore the solar system and the Cassini spacecraft hurtling toward Saturn.

The government says national security requires detailed background checks, even on workers who don't have clearances.

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"These routine investigations allow the government to verify the identities and histories of the individuals it employs and ensure that they are trustworthy," Acting Solicitor General Neal Katyal said in court papers.

Groups that conduct background checks, including the National Association of Professional Background Screeners and the National Association of Screening Agencies, support the government's case, saying open-ended questions are key to investigations.

Contractors at agencies such as the Forest Service, the National Institutes of Health, the Health and Human Services Department and the Education Department have contacted litigants to support them during the case.

Depending on how the Supreme Court rules, the results could apply at Kennedy Space Center, where civil servants undergo background checks and contractors face them.

"It affects every employee at NASA," said plaintiff Dennis Byrnes, a chief engineer at the Jet Propulsion Lab. "This is an insult to our personal and professional integrity."

Lab workers said in court papers that NASA refused to say, in previous proceedings, if officials asked contractors about sodomy, voyeurism and adultery. The workers said those factors were included on a "suitability matrix" that related to NASA's requirements for holding a job.

Nelson said that NASA officials conducting background checks asked what movies he watches and what books he's read.

"[They] even want to ask about who we've slept with," Nelson said.

Groups such as the Union of Concerned Scientists and the American Civil Liberties Union have filed court briefs supporting the workers.

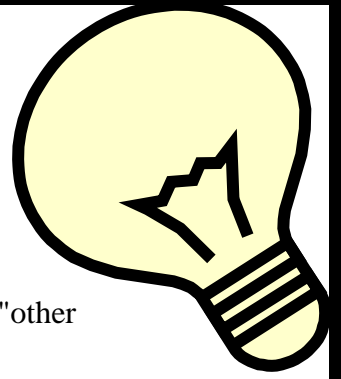
The process that led to the checks began in 2005, with Homeland Security Presidential Directive 12. Workers in the Supreme Court case say the directive was designed only to require identification badges for workers, and the Commerce Department developed the checks as a requirement for the badges.

The court dispute focuses on two questionnaires in the background checks.

One, SF-85, asks workers about any illegal drug use during the past year. The other, Form 42, asks people listed as references by NASA workers about the workers' honesty,

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financial integrity, alcohol and drug use, mental and emotional stability, and "other matters."

Engineers and scientists at the Jet Propulsion Lab, which is operated by the California Institute of Technology under contract to NASA, bristled at the questions.

"My personal life is my own business and it's irrelevant to my job performance," Nelson said.

The 9th U.S. Circuit Court of Appeals blocked the investigations in 2008, calling the questions too "open-ended" and saying questions about drugs violate medical privacy.

During oral arguments Oct. 5, Supreme Court justices and the lawyers arguing the case — which balances national security against privacy rights — said the court's decision, expected by June, may apply to all federal contractors and ultimately could affect privacy-rights precedents involving abortion, contraception and other issues.

A ruling blocking the background checks could spur "all sorts of other inquiries into other questions," Solicitor General Neal Katyal told the justices.

NASA civil servants have been subject to background checks since 1953. In 2005, a presidential order extended the checks to contractors, but the ruling by the 9th U.S. Circuit Court of Appeals blocking the checks was issued before those inquiries were scheduled to begin in 2007.

The checks were required for the contractors to obtain ID badges. Of the 74,000 contractors who applied for badges over the last five years, 128 were rejected based on their replies to the disputed questionnaires, Katyal said.

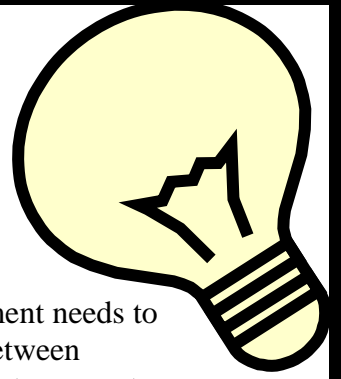
Katyal denied that NASA asked applicants about their sexual activities. The contractors' lawsuit claimed such questions were part of a chart NASA used to assess workers. "NASA does not and will not use that chart for credentialing decisions," Katyal said.

The 9th Circuit ruling barred NASA from asking "open-ended" questions as part of the background checks, but several Supreme Court justices said that such questions are the best way to get information.

If a NASA worker has a yard sign saying "I hope the space shuttle blows up," how would NASA learn that other than by asking one of the worker's neighbors open-ended questions, Justice Samuel Alito asked.

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A lawyer representing the workers, Dan Stormer, acknowledged the government needs to know such information, but he suggested tailoring questions to distinguish between NASA workers employed in the gift shop or snack bar from those working in top-secret positions. The workers who brought the lawsuit said they don't deal with secret information.

Chief Justice John Roberts suggested that wouldn't be feasible because the questionnaires at the center of the case — Standard Form 85 and Form 42 — need to apply to millions of workers.

Katyal said the Jet Propulsion Lab credentials at stake in the case allow workers access to secure areas, including within 10 feet of a space shuttle being readied for launch.

Stormer countered that the lab's open campus allows people to call ahead to get through the gate, visit with scientists and even summon a tow truck if their car breaks down.

Case Could Determine if Cash Awards Can be Given to Feds. Was a \$383,600 award to former Interior Department employee Robert Berman legal? A recent federal appeals court ruling didn't answer that question, but it did reject a jury's earlier decision that it was not legal.

The story of the award began in 1994, when Berman, a senior economist at Interior who has since retired, began helping the Project on Government Oversight draft Freedom of Information Act requests to obtain information on oil and gas companies that were underpaying royalties to the Minerals Management Service for drilling on federal and Indian lands.

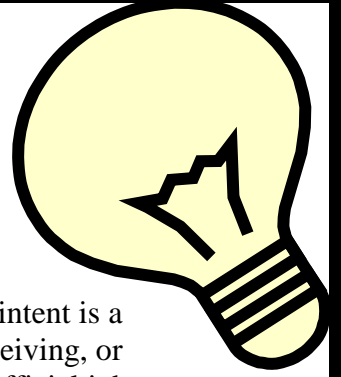
POGO in 1997 sued the 15 largest oil and gas companies under the False Claims Act for defrauding the government; the settlement netted the government \$440 million. For its part, POGO received \$1.2 million.

POGO and Berman had agreed that he would get one-third of whatever money POGO received for its part in the lawsuit, and in 1998 POGO gave Berman a \$383,600 check for his "decade-long public-spirited work to expose and stop the oil companies' underpayment of royalties."

Five years later, the government sued Berman and POGO, saying he had received compensation for doing his official job duties. The Justice Department persuaded a district court in 2003 that it didn't matter whether POGO or Berman intended for the award to be compensation for doing his official job duties, and the jury found them civilly liable.

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But the U.S. Court of Appeals for the District of Columbia ruled Aug. 3 that intent is a required element of violating the law that forbids federal employees from receiving, or other parties from giving, money as compensation for doing the employees' official job duties.

The court said the jury should have been told to consider intent as a requirement when deciding whether Berman and POGO had violated the law. The case will be sent back to the district court — with instructions to consider intent — and a new trial could be held.

POGO said that the district court's decision to ignore intent severely limited the organization's and Berman's defense, and prevented them from even using the word "whistle-blower."

"This unanimous court decision, on the heels of reforms at MMS, is such welcome news," POGO Executive Director Danielle Brian said in a statement. "We hope this is the final chapter of this ordeal."

POGO General Counsel Scott Amey said he believes the government's suit was in retaliation for Berman's whistle-blowing, since many other federal employees receive awards with cash prizes — such as the Service to America Medals — every year for their work and are not sued or prosecuted.

Amey said the appeals court's decision in this case would make it tougher for the government to pursue similar lawsuits or prosecutions in the future.

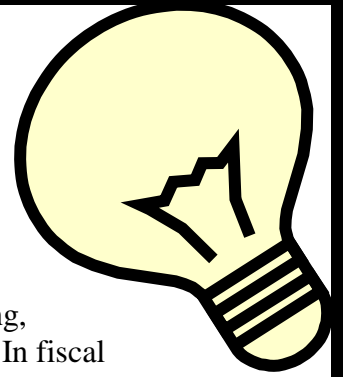
Senior Executives' Raises Drop to Five Year Low, Report Shows. Senior Executive Service members' average pay raises in 2009 were the lowest in at least five years, according to a report from the Office of Personnel Management.

The 7,436 SES members whose ratings, raises and bonuses OPM studied received an average salary increase of 2.7 percent — or \$4,485 — for their performance in fiscal 2009, according to the report, released last month. That's a full percentage point lower, and almost \$1,350 less, than the average SES performance-based raise for fiscal 2008. The average raise in fiscal 2004 — the year with the earliest available data — was 3.7 percent. Average raises dropped to 3.1 percent — or \$4,738 — in fiscal 2006, and increased to 3.5 percent in fiscal 2007.

More senior executives received bonuses that were slightly smaller than the previous year. The average bonus dropped from \$14,815 to \$14,802 in 2009, but the percentage of career SES members receiving them increased from 76.5 percent to 78.5 percent.

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The ranks of career senior executives receiving the highest performance rating, outstanding or equivalent, continued to climb in fiscal 2009, to 48.7 percent. In fiscal 2008, 48.1 percent of career executives got that rating.

The Office of Management and Budget, U.S. Agency for International Development and Education Department saw the biggest increases in the percentage of career executives receiving the highest performance rating.

NSPS Transition Ahead of Schedule. The National Security Personnel System program office is ahead of schedule for transferring about 226,000 employees from NSPS to the general schedule system, already having moved about 75 percent, or 164,282.

The remaining employees are schedule to transition by January 2012. The program office is trying to allay concerns about the impact transition would have on pay, just as it had to do while moving personnel into NSPS. So far, it says the basic pay of 118,800 employees moving into the general schedule has gone up.

Meanwhile, the program office has been tasked with developing a new enterprise-wide performance management system, as called for under the 2010 defense spending bill, which repealed NSPS.

Management-Employee Relations

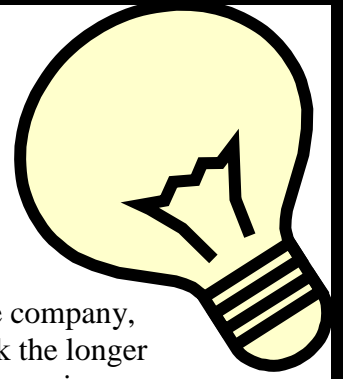
Cancer as a Disability under ADA. A federal district court recently held that cancer, even when in remission, can constitute a disability under the 2009 amendments to the Americans with Disabilities Act (ADA). *Hoffman v. Carefirst of Fort Wayne Inc.*, No. 1:09-CV-251 (N.D. Ind. August 31, 2010). Stephen Hoffman worked as a service technician for a health care supply company. Hoffman suffered from renal cancer which, following treatment went into remission in 2008. He worked without any health complaints, and without any requests for reasonable accommodation through all of 2008.

In January of 2009, Hoffman's supervisor told him that he would have to increase his work hours. Hoffman agreed. A few days later, Hoffman's supervisor told him that he would have to further increase his work hours from 40 hours per week (his usual amount of work prior to January 2009) to 65-70 hours per week, as well as work one night shift per week, and be on call on weekends. Hoffman admitted that his employer also asked other technicians to work the new expanded schedule.

Hoffman told his supervisor that his medical condition would not allow him to work the new schedule, and the next day provided a note from his doctor limiting his work hours

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to 8 hours per day, five days per week. After speaking with the owners of the company, Hoffman's supervisor told him he could either submit his resignation, or work the longer hours. Hoffman explained that he could not work the new hours, nor would he resign. Hoffman eventually left his job and filed suit alleging a violation of the ADA.

Carefirst filed a motion for summary judgment on Hoffman's claims, alleging that Hoffman did not qualify as a disabled individual for purposes of the ADA, and that even if he did, Carefirst offered him a reasonable accommodation. Carefirst argued that Congress could not have intended individuals whose cancer is in remission and who can present "no medical evidence of active disease" to qualify as disabled forever. The district court disagreed. It found that the "clear language" of the amendments to the ADA included within the definition of a qualified individual with a disability those whose conditions, when active, would substantially limit a major life activity.

Because Hoffman's cancer would be substantially limiting to at least one major life activity when active, he did not need to show that he was in fact limited in any major life activities at the time Carefirst took the adverse employment action against him. The court also examined the EEOC's proposed regulations which cite cancer as a condition that falls within the remission provisions of the amendments to the ADA. The court therefore found that Hoffman could qualify as disabled under the ADA and that summary judgment was therefore inappropriate.

The court also found that summary judgment was not warranted on Hoffman's claim that Carefirst failed to provide reasonable accommodation in the form of a 40-hour work week. The court reasoned that Carefirst had presented no evidence that allowing Hoffman to continue working his usual hours in his usual location would give rise to an undue hardship for Carefirst. Hoffman's claim of denial of reasonable accommodation therefore also survived summary judgment.

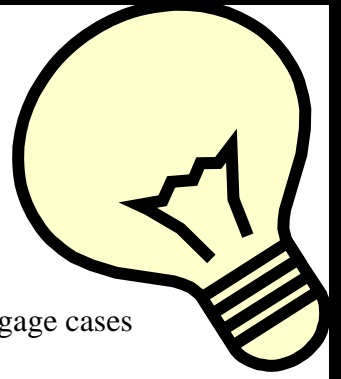
This information is provided by the attorneys at Passman & Kaplan, P.C

Personal Finances and Your Federal Security Clearance. The sudden moratorium on many foreclosures across the country is unexpectedly putting some federal workers and contractors at jeopardy of losing their security clearance because of the heightened uncertainty clouding their finances, according to lawyers who handle these cases.

Employees with security clearances are monitored by the government to see whether they have financial problems that would make them vulnerable to bribery or blackmail. And with many financial companies adopting some form of foreclosure freeze in recent

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weeks, it's taking longer for some delinquent borrowers to resolve their mortgage cases and put their troubles behind them, lawyers said.

This problem is especially acute in the national capital region, home to nearly one-third of the nation's 854,000 employees with top-secret clearances.

"Getting to the bottom of resolving debt is more complicated when the lenders are in paralysis," said Dennis Sysko, a lawyer in Glen Burnie, Md.

Lawyers in the Washington area said they are starting to field inquiries about foreclosure delays from workers who have security clearances or are trying to get them. Many don't know whether they should be elated or concerned about the turn of events.

"I'm just really confused because nobody has made clear to me what this foreclosure delay means," said Brian Young, a federal employee from Capitol Heights, Md. Young bought his first home in October 2007 with a first and second mortgage from Bank of America. At the time, he had the interim secret clearance he needed to perform his electrical engineering job at a Defense Department agency, he said. He applied for permanent clearance soon thereafter.

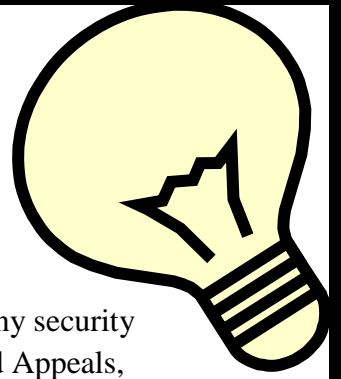
When the permanent clearance did not come through as quickly as he'd hoped, Young said his pay was cut and he fell behind on his mortgage in August. He was talking with his lender about modifying his loan when his security clearance was revoked. His supervisors suspended him from his job, citing him as a financial risk.

Young is appealing the decision. But as he waits, he's fallen further behind on his mortgage and other bills. Bank of America informed him that it would expedite foreclosure and seize his home, but then the lender suddenly said it would halt all its foreclosure sales nationwide. The bank said earlier this week it would restart foreclosures in some states but not yet in the Washington region.

Under government guidelines, the failure of security-cleared workers to live within their means and pay off debt suggests poor self-control, lack of judgment, and an unwillingness to abide by rules, raising concerns about their ability to protect classified information.

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Only a few government agencies make public their decisions to revoke or deny security clearances. Among them is the Defense Department's Office of Hearings and Appeals, which reviews cases of government contractors for the Pentagon and about two dozen agencies, according to lawyers.■

Federal Contractors Must Navigate Workplace Mediation Without Roadmap. As the U.S. government's use of contract workers rises, agencies ranging from the Defense Department to the Department of Homeland Security and the Department of Energy are finding they have to deal with more complex questions of defining a person's work status as a contractor versus a federal employee.

The issue is becoming increasingly important as to whether a federal agency or a contractor is responsible when disputes emerge over pay, workers compensation, harassment complaints, discrimination claims and other workplace issues. Contractors aren't entitled to the same grievance processes as federal employees and typically have to go through outside agencies such as the U.S. Equal Employment Opportunity Commission or get private lawyers and file lawsuits, whereas federal employees have a range of mediation services and appeals available to them.

In the last decade, the EEOC has ruled in 90 cases that a federal agency and a private contractor are "joint employers" of a person, meaning their case has to be processed as if they were a civil servant.

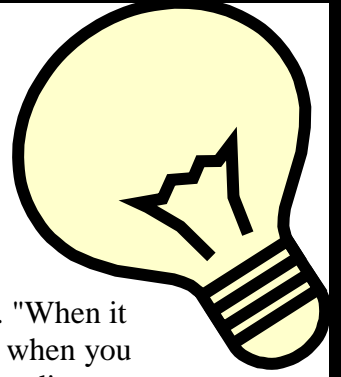
"You're absolutely seeing more of these types of cases," said Mindy Farber, a lawyer in Bethesda who has specialized in federal employment law for 30 years. "People work for the federal Government, they sit in a government cubicle all day and get their orders from government supervisors. But it is a private contractor that signs their paycheck, so when it comes to who to sue if something goes wrong, it becomes unclear who is liable

"It leaves a person in a no-man's land," she said. "You're ricocheted back and forth between the contractor and the agency."

In one case, Alanna Taylor of Baltimore worked as a project manager under a contract with the U.S. Army at a biomedical research facility in Maryland and was supervised daily by Army officials. When she filed a gender discrimination complaint, the Army's equal employment office ruled that she was a contractor and not entitled to the same grievance process as a federal employee, according to Taylor. Taylor said she has appealed her case to the EEOC.

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"[The Department of the Army] played both sides of the fence," Taylor said. "When it was convenient for them or when they want to have a tight rein over you like when you want to take time off, then you're a federal employee. But when they needed to distance themselves from you, then all of a sudden you're a contractor."

Just defining who is a contractor isn't easy. The federal government has at least four definitions of who is a contractor, all established to cover various legal aspects of the federal bureaucracy and its work. With blurred lines between contractors and federal employees, it leaves workers in a murky zone. Lawyers for contractors and procurement experts say the policies and rules of how to deal with these situations where someone is paid by a contractor but works daily side-by-side with federal employees and takes orders from federal supervisors haven't caught up to the widespread use of contractors across the federal government.

"It muddies the waters," said Alan Chvotkin, executive vice president and counsel at the Professional Services Council, a national trade association of government contractors. The difference between contractors and federal employees "gives rise to questions of inconsistent - or in some cases contradictory - guidance about which policies and procedures apply to federal workers but not to contractors."

One case that involves the EEOC's ruling of a "joint employer" goes beyond the typical office cubicle in Washington's suburbs to a war zone. It involves a 35-year-old Northern Virginia man who worked as an intelligence analyst for CACI International of Arlington under a contract it had with the Central Intelligence Agency to do work in Afghanistan.

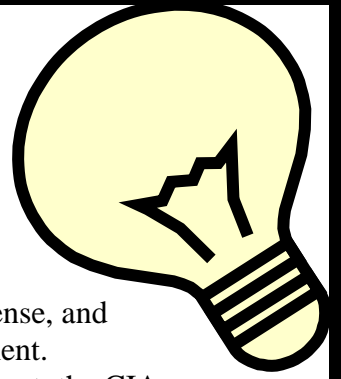
When contacted, the man, who was given an alias of Nicolas R. Brewster by the CIA because of his secretive work, didn't want to comment, citing an agreement he signed with the government to not talk about his work. The CIA also wouldn't comment on his case, saying it "doesn't as a rule comment on personnel matters." CACI did not respond to repeated requests for a comment. The following account is based on documents and filings with the CIA and the EEOC obtained by The Washington Post.

Brewster alleges that while in Afghanistan in the fall of 2009 he was sexually harassed by a female CIA supervisor. After he filed a complaint with the agency, it dismissed his complaint on the grounds that he was not a CIA employee but a contractor. That meant he didn't come under the same complaint process as a federal employee of the agency.

Brewster took his case to the EEOC, arguing that while he may technically have been a contractor on paper, he was, for all intents and purposes, working not only for CACI but also for the CIA. Before he went to Afghanistan, the CIA trained Brewster on how to

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avoid getting killed, what to do if he got kidnapped, how to shoot in self-defense, and how to use its classified databases and some of its most sophisticated equipment. "Because the CIA controlled the manner and means of [Brewster's] employment, the CIA must be deemed [as his] joint employer," according to Brewster's filing to the EEOC.

The EEOC agreed and ruled recently in his favor, reversing the CIA's decision. It said the CIA "exercised sufficient control" over Brewster's position to qualify him as a joint employer.

The CIA, which has "a zero-tolerance policy on harassment," according to spokesperson Marie E. Harf, has until mid-January to conduct its investigation of his harassment claim.

Training, Self-Development, and Personal Improvement

Tips for Getting into the SES. This article was taken from the Washington Post, author unidentified. There is one question that federal managers consistently ask me: "How do I become an SES?"

Created by Congress in 1978, the Senior Executive Service is a 7,000-member cadre of federal leaders who are performing cutting-edge work and delivering vital services, from protecting the homeland to revitalizing our economy.

If you are striving to become a member of this elite corps, start by examining the Office of Personnel Management's Executive Core Qualifications. The five ECQs - leading change, leading people, results driven, business acumen and building coalitions - are designed to assess your executive experience and potential.

The ECQs are a great road map for your leadership development; however, to enhance your qualifications, it's important that you also gain broad experience and training. The SES federal employees that I interact with have had diverse leadership experiences and training, which have enabled them to develop into the leaders that they are today.

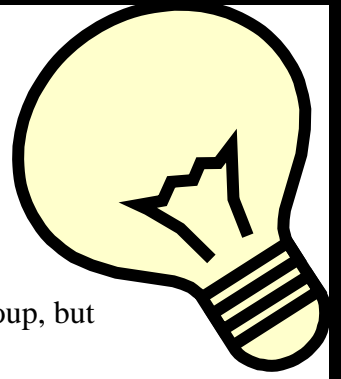
To help you on your path to the SES, I consulted with agency colleagues who have served in the SES for some insider advice.

Here are their tips on how federal leaders can become senior government executives:

1. Do your homework. Take time to understand the ECQs and to honestly evaluate yourself relative to them. You will also want to familiarize yourself with the agencies' Executive Resources Boards (ERBs) and Qualifications Review Boards (QRBs), which

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are keys to the SES recruitment and selection process. Yes, it's an alphabet soup, but they're the rules of the game.

2. Let your agency know you're interested. Don't assume that your senior executives can read your mind. Express your interest in the SES and have a conversation about what it will take for you to become an executive.

3. Get moving. Leaders chart their own course. To demonstrate the ECQs, you'll need a broad base of experience and a strong network. Leadership development programs can help you, too. If your supervisor wants to reward you for a job well done, instead of a small bonus, consider asking for an opportunity to attend a management development program. Become active in a professional association, volunteer for an interagency task force and read leadership books and articles to help develop your strengths and identify your weaknesses.

4. Set personal-growth goals, and meet them. For example, write and submit an article or an op-ed for a professional journal, volunteer to speak at a conference, or suggest a new agency project and volunteer to lead or implement the effort.

5. Find mentors. Seek successful agency leaders whom you respect to find out what has helped them become successful and, especially, how they overcame adversity.

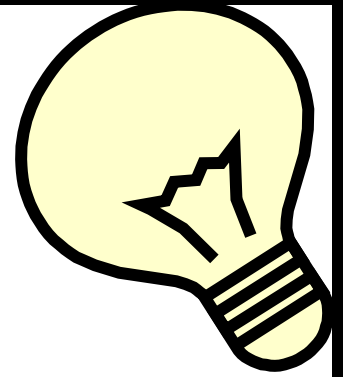
6. Know when it's time to move on. Although you might be able to stay in one organization for most of your career and rise to the top, senior leaders are increasingly seeking people with experience in multiple organizations and work environments when filling their senior positions. To advance, you might need to move out of your comfort zone.

7. Finally, this last piece of advice is perhaps the best: Become the best at what you do, but don't stop there.

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

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Instruction includes the following modules:

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

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

Next course offerings:

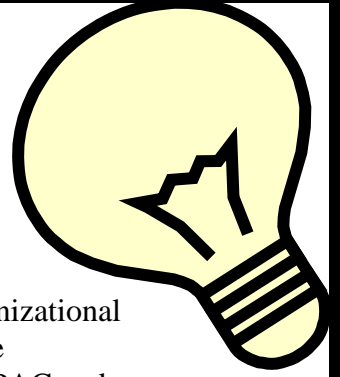
6-10 Dec 10
14-18 Mar 11
13-17 Jun 11
19-22 Sep 11
5-9 Dec 11

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

Job Aids Available on the Web. Lotus ScreenCams (how-to-movies) are available to assist DCPDS users with DCPDS, Army Regional Tools (ART), Oracle 11i and other automation tools. ScreenCam movies ART Logon, Ghostview, Gatekeeper, Inbox 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

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actions), Organization Structure (information about positions in various organizational elements), and many more tools. It is intended for use by managers, resource management officials, administrative officers, and commanders as well as CPAC and CPOC staff members. There is both an on-line and downloadable Word version (suitable for printing).

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

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