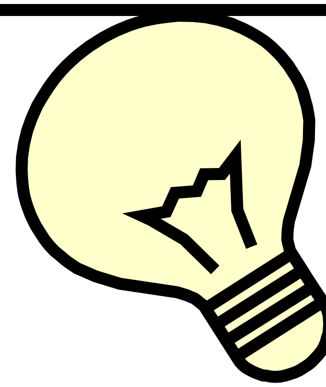
The

Illuminator



Shedding Light on the HR World

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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.).

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

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The Illuminator
10-2011

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

Defined Benefit Plans Prove Valuable for Reducing Retirement Income Risk .
According to a new report from the Employee Benefit Research Institute (EBRI), Baby Boomer and Generation X households that have a defined benefit pension plan accrual at retirement age are nearly 12% less likely to run short of money for basic needs and healthcare costs. Households that have a 401k-style plan in addition to a defined benefit plan were even more unlikely to experience retirement income shortages.

In the federal sector, the Civil Service Retirement System (CSRS) is a defined benefit plan whereas the Federal Employees Retirement System (FERS) is similar to a 401k-style retirement plan that would be found in the private sector.

The EBRI report found that the plans prove particularly valuable for the lowest income level groups for supplementing retirement income, but they also have a significant impact on reducing risk for the middle class as well.

"The data show that defined benefit plans are tremendously important in achieving retirement income adequacy for Baby Boomers and Gen Xers," said Jack VanDerhei, EBRI research director and author of the report.

He noted that his research does not compare the relative effectiveness of defined benefit pension plans versus 401k-style plans in providing adequate retirement income; however VanDerhei said it does demonstrate the value of a defined benefit plan for those without future eligibility in a defined contribution plan. According to VanDerhei, "For those households without future years of defined contribution plan eligibility, the presence of a defined benefit accrual at age 65 is sufficient to save nearly 1 out of 4 of these households in the Baby Boom and Gen X cohorts from becoming 'at risk' of running short of money in retirement for basic expenses and uninsured medical expenses."

The analysis model made the assumption that all households retire when the oldest wage earner reaches age 65, and each household was split in terms of whether it retained a defined benefit pension accrual at age 65 to asses the impact of these benefits on retirement income. After running it for all Baby Boomer and Generation X households, it found that overall, the presence of a define benefit accrual at age 65 reduces the risk of inadequate retirement income by 11.6%.

The table below shows how having some defined benefit (DB) accruals reduce the percentage of risk of inadequate retirement income across age groups and income levels:

Age	No DB	Some DB Accruals
Early Baby Boomers	67%	41%
Late Baby Boomers	59%	38%
Gen X	55%	38%
Income		
Lowest Income Quartile	86%	68%

The Five Worst Places to Retire in the U.S. It's easy to find lists of the best places to retire in the United States. The AARP has one, so does Forbes, U.S. News and a host of retiree-oriented websites. The same cities and states tend to appear on each list – Tucson, Ariz.! Austin, Texas! — in part because the things that matter most as people pick a place to retire – proximity to good medical care, tax advantages for seniors, nice climate and safe streets – never really go out of style.

But the states, cities and communities in which retirees enjoy those tax breaks, tee times, affordable homes and other trappings of a comfortable retirement have not proven to be nearly as stable. With states and municipalities still reeling from the Great Recession, the security that retirees prize has become more and more elusive.

And so, instead of another list of the best places to retire, we offer something a little bit different and – in keeping with the tenor of the times – perhaps a little bit more realistic. Here is *The Fiscal Times* list of The Worst Places to Retire. Consider it a field guide of what to avoid … and consider yourself warned.

1. A Golf Community Goes Off Course
Lake Las Vegas, Nevada

Even when judged by the dizzying, everyone-gets-a-jetpack promises made standard by boom-era planned communities, Lake Las Vegas was a doozy. Conceived in 1972, the development – including an artificial lake carved out of the desert that cost $2 million a year to keep filled – became a reality, and a hit, in the 1990s. Now, to the chagrin of the retirees (and others) who bought thousands of homes in the community, Lake Las Vegas has become a well-heeled version of limbo. Golf courses nationwide have suffered since the recession, and for the fifth straight year, more closed than opened in 2010. But all three of the Lake Las Vegas golf courses went into foreclosure, and only the Golf Club at

South Shore is back in operation – no longer as a private club, but as one open to anyone willing to pay a $600 annual fee. Initiation fees dropped from $175,000 to, um, zero dollars. The development's casino, Casino MonteLago, closed in March of 2010, and the Ritz-Carlton Lake Las Vegas shut down two months later. The lake isn't going anywhere, but the waterfront and the triple-digit temperatures are there to stay.

2) The Nation's Biggest Housing Mess
Greater Phoenix, Arizona

There's no shortage of places in the U.S. with rotten housing markets. But Arizona deserves a special place on this list. It was dramatically overbuilt during the real-estate boom, and the massive inventory glut that followed cut the bottom out of home values across the state. In 2006, Arizona's median home value was $270,000; in 2010, it was $143,000. About 40 percent of mortgages in Phoenix, the state's biggest city, are underwater. Arizona State University real estate professor Jay Butler told Fox Business he doesn't see the market turning around "for many years down the line." Even if you're not buying a retirement home, that's cause for pause.

3) A Retirement Ghost Town
La Cresta Community, Davenport, FL

It looked like the 90 homeowners in Davenport, Fla.'s, La Cresta, a planned 55-and-over community from mega-developer Del Webb, were making a solid investment. After all, Webb's active-retirement empire has 50 years of success behind it, and includes more than 50 developments in 20 states. But Cresta ended up becoming that spookiest of bad retirement destinations – a retirement ghost town. After a dispute with the company that owned the land, Webb in 2009 effectively abandoned the place, peeling its name off La Cresta's sales office, locking the doors, and boarding up the windows. The community was half-finished and half-occupied — complete with an activity center, abandoned pools and blocks of empty lots and half-built homes.

There's more bad news for those who bought in. Even though it has long been a haven for retirees, Florida is on the list of states cutting aid to seniors: 69,000 seniors had their home aid delayed last year.

4) High on Retirement
Laguna Woods Village Retirement Community, Orange County, CA

Admittedly, this is a one-of-a-kind case, but it shows how changing state laws can transform a retirement experience. The Laguna Woods Village retirement community in Orange County, is home to a marijuana-growing collective, with varietals of cannabis with names like Super Silver Haze. They're also experimenting with different hybrids of marijuana said to have anti-inflammatory properties that could help arthritis sufferers.

The seniors who grow (and smoke) the stuff do so legally under California state law, but marijuana is still illegal under federal law, and the government has made life difficult for marijuana growers. Some residents oppose the collective, since the last thing most retirees wants is a DEA agent kicking in the door.

Retirees in the Golden State already have enough to worry about. Thirty six states don't tax Social Security benefits at all, and California is one of them. The state is also a "retiree's tax nightmare," according to Kiplinger. All other retirement income is taxed at one of the nation's highest rates, and California's sales tax is also among the highest in the nation. Property taxes are not especially friendly, either. On the other hand, it's California: the weather is beautiful, there's no shortage of cultural events and...well, maybe the residents of Laguna Woods Village are onto something.

5) High Costs, High Crime
Clark County, Nevada

An astonishing 71.1 percent of homes in Clark County, Nevada – a retirement Mecca that's home to both Las Vegas and large sprawl-burb Henderson – are underwater on their mortgages, and Moody's Analytics economist Celia Chen estimated that housing values there won't approach their 2006 levels until 2030. Given the state's relatively high cost of living (105 percent of the national average), a 14.3 percent unemployment rate, the nation's worst home-foreclosure figures and a serious violent crime issue (third in the nation), its no wonder Money-Rates.com named Nevada the worst state for retirement. "A large percentage of people who relocate [to Nevada], from what I've seen, actually wind up moving back with a year or two," says Bill Losey, a retirement advisor and author. "A nice place to visit isn't necessarily going to be a place you want to live."

Planning to Retire – Your Role. In an ideal world, you should begin planning for retirement at least a year ahead of the day you expect to retire. However, we aren't living in ideal times. An early retirement offer, a "buyout," a RIF or potential changes in the law can trigger a quick retirement decision. If so, you need to use whatever time you do have to plan ahead. If you don't, you may have a rude awakening.

So, how do you use what time you have wisely?

First, take a pre-retirement counseling seminar offered by you agency. If your agency doesn't offer a pre-retirement seminar, consider taking one offered by a private sector firm. In some cases, your agency will pay for it.

Second, meet with an agency benefits counselor so you can go through your Official Personnel Folder (OPF) to make sure that it documents all your federal employment (including any military service), the effective dates of each pay adjustment, your insurance coverage, and any designations of beneficiaries you filed. If there is something missing or inaccurate in your OPF, the two of you will need to straighten it out.

Assuming that your OPF is up-to-date and accurate, verify when you'll be eligible to retire and that if you have health benefits and/or life insurance coverage, you'll be able to carry it into retirement. That's not a consideration for long term care insurance and dental/vision insurance.

Third, ask for an estimate of your retirement annuity. If you are a FERS employee, you'll also need an estimate of your Special Retirement Supplement or, if you are 62 or older, your Social Security benefit.

What that annuity estimate looks like may depend on what I call the four "ifs".

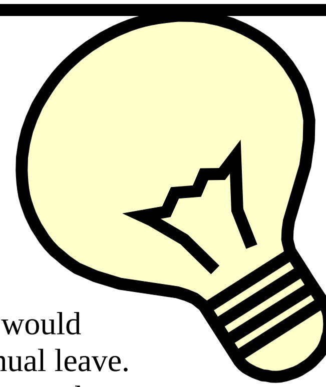
If you owe any deposits for prior service (including military service) where retirement deductions weren't taken or redeposits if you took a refund of your retirement deductions, you'll need to find out what effect that will have on your annuity. If you decide to make a deposit or redeposit, you can get the necessary forms from your benefits counselor or download them at www.opm.gov, click on Find Form(s), then click on Standard Forms and scroll down to SF 2803 (CSRS) or SF 3108 (FERS).

If you are currently receiving military retired pay, you'll want to assess the impact of that on your retirement annuity. Under certain, limited circumstances, you may be able to receive both. However, in most cases, you'll have to waive your military retired pay and make a deposit for that time before you retire in order for that time to be included in your civilian annuity calculation.

If you owe any money to your agency, you'll want to arrange a repayment schedule in order to avoid having your annuity offset to recover the debt.

If a court order assigns a portion of your annuity to a former spouse, you need to know by how much that will affect you.

Four, fill out you retirement application. You can get copies from your personnel office or download them at www.opm.gov, click on Find Form(s), then click on Standard Forms and scroll down to SF 2801 (CSRS) or SF 3107 (FERS). After you've filled out the form, give the original to your benefits counselor for review and keep a copy for yourself. If there are any problems with your application, you'll learn soon enough. If there aren't, congratulations!



<u>Leave Sharing Bill Proposed</u>. Legislation (HR-3028) offered in the House would expand the federal leave transfer program to include sick leave as well as annual leave. Under leave sharing and leave banks, employees can donate annual leave to coworkers who have used up their leave due to serious health conditions or other personal emergencies; government-wide solicitations sometimes are made after disasters. Unlike annual leave, which has a year-to-year carryover limit of 30 days for most employees, there is no limit on accumulation of sick leave, and some employees build up many months' worth or even a year's worth or more.

Employment-Related News

<u>Veterans Employment Opportunity Act Plays Key Role in Feds' Vet Hiring Uptick</u>. With a new report showing that more than 72,000 veterans were added to the federal executive branch's payroll in the 2010 fiscal year, federal managers are patting themselves on the back for ramping up hiring of such workers as President Barack Obama directed them to do in 2009. It is promising to see in this report that executive branch agencies hired 2,000 more veterans in the 2010 fiscal year than the previous fiscal year, but it is far too early to be breaking out the champagne.

The Office of Personnel Management (OPM) recently announced the executive branch's increase in veteran hiring, which is detailed in a report titled Employment of Veterans in the Federal Executive Branch for Fiscal Year (FY) 2010. This report also showed that 542,600, or 26.3 percent, of the executive branch's 2.06 million employees were veterans. Veterans accounted for 25.6 percent of all new hires in fiscal year 2010.

The OPM report shows that veterans' rights in the federal hiring process provided under the Veterans Employment Opportunity Act of 1998 (VEOA) contributed substantially to this growth. Almost 20,800 veterans were hired through VEOA appointing authority in the 2010 fiscal year. Perhaps the employment statistics could have been higher if veterans did not have to clash so much with agency hiring authorities over their VEOA rights – a trend seen in the latest annual report issued by the U.S. Merit Systems Protection Board (MSPB).

The uptick in hiring follows the November 2009 launch of President Obama's Veteran Employment Initiative for the Executive Branch. Through an executive order, Obama created Veterans Employment Programs at agencies that were tasked with helping veterans identify and secure federal employment. Executive Order 13518 also created a Council of Veterans Employment which was formed to advise the president and OPM director on the employment initiative.

The OPM press release announcing the hiring results declared "President Obama's Veterans Employment Initiative Succeeding". One very important factor behind that success was the VEOA. This law makes certain veterans eligible for federal agency job openings that are otherwise offered to "status applicants," who are current or former competitive federal service employees. These positions are announced under merit promotion procedures involving outside recruiting, and agencies must accept applications from preference eligible veterans.

Another important preference afforded to eligible veterans in the federal employment hiring process is the addition of five points to their competitive examination, which is based on a maximum score of 100 points. Disabled veterans can receive a higher 10-point preference, as can certain members of veteran's family, such as a spouse or mother, depending on the veteran's disability or death. These extra points boost the chances of preference eligible veterans and certain members of their families of securing employment with federal agencies, which consider the top three candidates from an examination list when filling a position.

Employee Satisfaction Dips in Key Areas. Recent cuts to agency budgets, federal pay freezes and threats of a government shutdown are taking a toll on the morale of government workers.

Among the trouble spots highlighted by a new federal employee satisfaction survey, released Sept. 22 by the Office of Personnel Management:

• The percentage of employees satisfied with their pay dropped from 65.8 percent in 2010 to 62.5 percent. This 3.3 percentage point drop likely reflects dissatisfaction with the two-year pay scale freeze enacted in December.

• Fewer employees are satisfied with their opportunities to get a better job in their organization: That percentage dropped from 41.7 percent to 39.7 percent at a time when many agencies have stopped hiring and are offering buyouts.

• Far fewer employees say they have enough people, materials, funding and other resources to get their jobs done — from 50.1 percent in 2010 to 47.8 percent in 2011.

The survey was conducted in April and May, shortly after a sharply partisan budget fight barely averted a government shutdown and resulted in sharp budget cuts. With even steeper budget cuts coming in 2012, it is likely that figure will fall further in the next survey.

John Foley, OPM's director of planning and policy analysis, told reporters that the agency was pleased that even with the recent turmoil, job satisfaction remains high. Employees remain enthusiastic and committed to their jobs, he said, pointing to several key figures, such as: 92 percent of feds said they feel their work is important; 85 percent like their jobs; and 82 percent feel the quality of work done in their unit is high.

"What was gratifying to us was that we didn't see a dropoff in people's dedication and their commitment to work, and their willingness to put in the extra effort," Foley said. "Commitment remains very strong — in fact, as strong as in previous years."

Nevertheless, many signs suggest that a growing number of federal employees are preparing to leave. Federal Times reported earlier this month that federal employees are attending retirement seminars around the country in far larger numbers than in previous years.

John Palguta, vice president for policy at the Partnership for Public Service, said he's surprised more satisfaction scores didn't fall this year.

The areas that did fall were budget-related, he said, and could grow worse next year.

"So far, we're not seeing major damage," Palguta said. "But that could change in 2012, if we start seeing real cuts with real impacts on people, either in terms of folks getting shown the door, or agencies not being able to keep up with their workloads, or sustained pay and benefit cuts. There's more to come."

Robert Tobias, director of American University's Institute for the Study of Public Policy Implementation, said the results show federal employees are feeling increased pressure to do more with less. And he is concerned that's eventually going to hurt the government's effectiveness.

"If I'm afraid that I'm going to be assigned so much work that I can't do it, and I'm afraid that I'm going to get laid off because there's not enough money, if I'm afraid I can't get the training I need to be successful in the position I have, then that fear is translated to the answers to those questions" showing declines in the survey, Tobias said. "But more importantly, it translates to less productivity."

Palguta agreed that the survey suggests productivity is at risk.

"When people start feeling that no matter how hard they work they can't get the job done, they disengage, and start insulating by not caring," Palguta said.

But for the time being, Palguta said, federal employees' continuing satisfaction suggests they have not let the political battles affect them and instead are concentrating on their work.

"After a period of time, folks are saying, ‘I can't be bothered by all that,'" Palguta said. "It's too draining and frustrating, so they tune that out and focus on getting the job done."

Foley said performance management — a perennial problem in the federal government — continues to receive low marks from feds, and that is concerning. For example, the percentage of employees who said they felt pay raises depend on how well people do their jobs dropped from an already-low 26.3 percent to 24 percent.

OPM Director John Berry has repeatedly said the federal government must do a better job evaluating employees' performance and holding poor performers accountable.

The day before the survey results were made public, an OPM-appointed task force called for more training for supervisors and more frequent feedback and reviews for employees as a way to improve performance management.

The mood of federal workers improved in several areas, according to the survey. The percentage of employees who said they felt their performance appraisals fairly reflected the job they did increased from 68.4 percent to 69.7 percent. The percentage of employees who said they felt comfortable reporting broken laws, rules or regulations without fear of reprisal increased from 61.6 percent to 62.5 percent.

And the percentage of employees who said they were satisfied with telework opportunities — another of Berry's top priorities — went up 2.8 percentage points, to 38.2 percent.

However, government employees' satisfaction lags behind that of private-sector employees. The survey found 59 percent of federal employees said they felt encouraged to come up with new and better ways of doing things, 12 percentage points less than private-sector workers.

Fewer federal employees said they have opportunities to get a better job in their organizations, are satisfied with their training, and get enough information from management on what's going on in their organizations

SES Diversity Predicted to Fall Short in 2030 and Beyond. The Senior Executive Service will continue to lag in employment of women and minorities over the next two decades and beyond, according to a progressive advocacy group.

A new report, released on Thursday by the Center for American Progress, found that diversity in the SES will not reflect the makeup of the American workforce as a whole in 2030. In the group's projections, whites, who made up 82.7 percent of the SES in 2010, will remain overrepresented at 71 percent in 2030 -- compared to 57 percent of the overall labor force -- while Hispanics will continue to fall below the national average.

The Bureau of Labor Statistics predicts that Latinos will make up 23 percent of civilian workers nationally in 2030, but CAP projections put them at just 6.8 percent of the government's senior executives. The gap is expected to extend through 2050, when 30 percent of the workforce will be Hispanic compared to 12.5 percent or less of the SES. Women will hold 41 percent of federal executive posts in 2030 compared to 47 percent of the overall labor force, the report found.

CAP reached its conclusions by looking at the age, gender and race of the current SES as well as what the group calls "feeders" -- employees in the upper levels of the General Schedule -- and built a predictive model using that data. The study excludes political appointees.

Carol A. Bonosaro, president of the Senior Executives Association, said it would be more accurate to compare diversity in the SES to that of the college educated workforce. Part of the difference could be attributed to the different rate of earning college degrees, as well as age, she noted.

Asian-American and African-American members of the SES are likely to represent their share of the total workforce, according to CAP. Pacific Islanders and Native Americans are likely to hold less than half of comparable positions, however.

President Obama in August issued an executive order directing agencies to develop strategic plans to boost diversity. Administration officials later this fall will release a framework with roadmaps for hiring, training and promoting more minorities, women, and disabled employees in an effort to diversify the federal government, particularly at the senior levels. Agencies then will have 120 days to develop their own plans.

The government-wide plan should specifically address ethnic, racial and gender diversity of the SES, according to CAP. The group recommended that the administration set an objective to close the diversity gap by 2030 with milestones every four years; create a database to recruit talented Hispanics into government; establish a diversity subcommittee within the President's Management Council; and study the causes of the diversity gap. Agencies should focus on identifying and attracting talent both outside government and within GS-13 through GS-15 levels and pilot a centralized SES recruitment system, the report said.

Fixing the pipeline for preparing candidates for SES careers is an important step, especially because there's a ready and willing minority population aiming for executive jobs, according to Bonosaro.

"We need to see where along the climb up the ladder that the fall off is occurring in terms of minority representation," she said. "It's equally important to figure out why. Only when we do that are we going to be able to really solve this problem. It's not enough just to say let's look solely at the selection process for the SES and what's happening there."

The report also cautioned against hiring solely based on diversity.

"When hiring into the Senior Executive Service, [the federal government] should always look for the best people it can find regardless of ethnicity, race or gender," CAP wrote. "Not only would this lead to a poorer quality government but it would also undermine the confidence of all applicants, not just minority groups and women."

According to Jorge Ponce, co-president of the Council of Federal EEO and Civil Rights Executives, increasing the percentage of Hispanics in the SES does not mean lowering hiring standards. Building diversity in the government's top positions "is not just a moral necessity," he said. "It's an economic necessity to survive in a global marketplace. Until the diversity of the SES ranks in the federal government reflects the tapestry of its population, it will waste the homegrown talent that can offer solutions to its greatest challenges."

Janet Kopenhaver, Washington representative for Federally Employed Women, said the report's results are disappointing, but she expressed hope that the recent executive order will alter the predictions. The percentage of women in the SES should be equal to that in the overall federal workforce, she added.

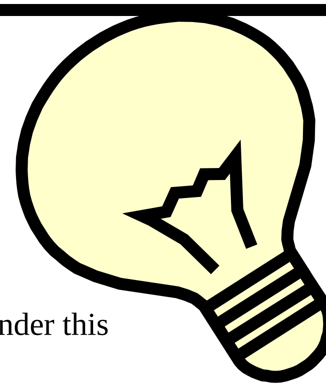
Agencies will have Easier Time Hiring Military Spouses. Spouses of deceased and disabled veterans will have an easier time applying for federal jobs under a new rule that takes effect Sept. 30.

Currently, agencies can hire someone outside the normal competitive hiring process within two years of the death or disability of their military spouse.

The new rule will eliminate the two-year limit, giving spouses an unlimited amount of time to apply for jobs under the authority.

The Office of Personnel Management published the rule in the Federal Register on Wednesday.

The time limit was eliminated because many spouses were not prepared to enter the workforce because they were grieving, enrolled in school or caring for the disabled spouse, according to OPM.



Between October 2009 and October 2010, 887 military spouses were hired under this special authority.

<u>OPM Announces Details of New Intern Hiring Programs</u>. The Office of Personnel Management will take a major step to establishing a new internship and student hiring program when it releases proposed regulations for its new Pathways Programs.

Pathways, which is intended to replace the now-defunct Federal Career Intern Program (FCIP) and current intern programs, will be a three-tiered method for hiring students and recent graduates noncompetitively. Pathways consists of: an Internship Program for current high school, college, and certain home-schooled students; a Recent Graduates Program for people who have received a degree in the last two years, and the existing Presidential Management Fellows Program.

Veterans who have to complete a period of military service after graduating from college will have six years to apply for the Recent Graduates program.

Agencies will be able to convert a Pathways participant to a permanent federal job if he meets their qualifications, though the program does not guarantee permanent jobs.

"These regulations commit the federal government to two key goals," OPM Director John Berry said. "First, they require pathways to federal service to be clear and accessible for students and recent graduates. Second, they press us to create a federal culture where agency leadership is actively engaged in recruiting, training and managing top talent."

OPM will accept public comments on the proposed program until Oct. 4.

The Pathways Programs stem from unions' successful fight to shut down FCIP, which they said was being misused to sidestep veterans' preference and other workplace protections. The program was widely used by agencies to hire more than 100,000 new employees, and some managers felt it helped them cut through the government's sluggish hiring process.

The Merit Systems Protection Board last November ruled FCIP blocked veterans from pursuing federal jobs and ordered it overhauled. President Obama signed an executive order in December shutting down FCIP and creating Pathways to replace it.

MSPB said agencies improperly used FCIP to avoid the legal requirement to notify the public of competitive service jobs, which kept veterans from learning those jobs were open. The new regulations emphasize the importance of transparency, and said positions must be advertised on USAJOBS.gov.

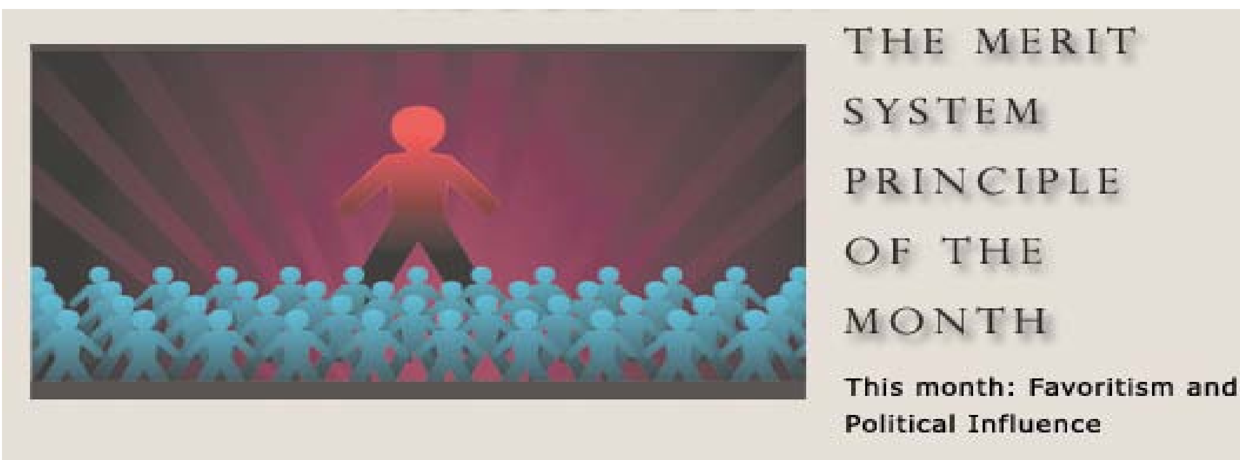
Recent Graduates participants will usually be appointed into GS-9 or lower positions and placed in a two-year career development program.

Recent graduates from science, technology, engineering or mathematics programs can be appointed to GS-11 jobs if they have a Ph.D. or equivalent doctoral degree, and other scientific and professional research positions at the GS-12 level.

The National Treasury Employees Union said it is concerned that, like FCIP, Pathways hires will still be exempted from the competitive service.

The programs "must be very narrowly drawn," NTEU President Colleen Kelley said. "Whether these proposed OPM regulations meet that key requirement has yet to be determined."

Merit System Principle of the Month



MERIT SYSTEM PRINCIPLE OF THE MONTH

NUMBER 8

"Employees should be—
(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election."

What is the intent behind this Merit System Principle?

This principle has two parts, each with its own intent and meaning. Subsection (A) first embodies the long-standing legal tenet that Federal agencies cannot treat Federal employees arbitrarily. See Bush v. Lucas, 462 U.S. 367, 385 (1983); Buggie v. Department of Health & Human Services, 27 M.S.P.R. 109, 115 (1985) (Johnson, V.C., concurring). Subsection (A) then incorporates the precept, first established in the Pendleton Act of 1883, that Federal civil servants should not be subject to the impulses of the patronage or "spoils" system, under which political appointees would sometimes coerce the political support of rank-and-file employees in exchange for continued employment or would allow their personal affinity to govern employment decisions. See Lucas, 462 U.S. at 381-82 & n.18; S. Rep. No. 95-969, at 2 (1978), reprinted in 1978 U.S.C.C.A.N. 2723, 2724-26, 2740.

Subsection (B) bars Federal employees from using their authority or office to influence nominations and elections.

What is the Merit Systems Protection Board's (MSPB) role with regard to this Merit System Principle?

As with all the Merit System Principles, Merit System Principle 8 is not self-executing, Pollard v. Office of Personnel Management, 52 M.S.P.R. 566, 569-570 (1992). This means that MSPB protects and implements this principle by applying other laws and regulations that put the Merit System Principles into operation as it adjudicates cases within its jurisdiction.

The protections provided Federal employees in Subsection (A) are found in several statutes and regulations. For example, a Federal employee's right to be free from political coercion is important enough that it is extended even to probationary employees who do not have the same appeal rights that tenured employees have. Under 5 C.F.R. § 315.806(b), probationary employees may appeal the termination of their employment to MSPB if they contend it was "based on partisan political reasons." See Sweeting v. Department of Justice, 6 M.S.P.R. 715 (1981).

Additionally, in an adverse action appeal, MSPB may determine whether the action should be reversed because it constitutes a prohibited personnel practice (PPP) listed under 5 U.S.C. § 2302(b). Section 2302(b) provides that "[a]ny employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority" engage in certain actions including the following: (1)(E) discriminate for or against any employee or applicant for employment on the basis of political affiliation; (3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity; or (12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the Merit System Principles including Merit System Principle 8. Examples of cases where the Board addressed Merit System Principle 8 include Kauffman v. Office of Personnel Management, 93 M.S.P.R. 334, ¶¶ 3-4 (2003) and Roane v. Department of Health & Human Services, 8 M.S.P.R. 339, 342 (1981). Furthermore, the Office of Special Counsel (OSC) may file a complaint with the Board seeking to impose a disciplinary action on an employee who is alleged to have committed a PPP. 5 U.S.C. § 1215.

The prohibition of Subsection (B) is enforced primarily through the 1939 Act to Prevent Pernicious Political Activity, as amended, which is more commonly known as the "Hatch Act." Named after Senator Carl Hatch of New Mexico, the Hatch Act, in general, prohibits Federal employees from engaging in certain partisan political activities. 5 U.S.C. §§ 7323, 7324. For example, employees may not engage in political activity while on duty or in government buildings, while wearing a uniform or official insignia identifying the office or position, or while using a government vehicle. 5 U.S.C. § 7324(a). The Hatch Act, like Merit System Principle 8, expressly prohibits Federal employees from using their "official authority or influence for the purpose of interfering with or affecting the result of an election." 5 U.S.C. § 7323(a)(1). Furthermore, Federal employees are prohibited from seeking nomination or running as a candidate for partisan political office. 5 U.S.C. § 7323(a)(3). The Hatch Act also has certain "enhanced" provisions that place additional restrictions on employees of certain agencies, including MSPB. 5 U.S.C. § 7323(b); 5 C.F.R. § 734.401.

The OSC has primary responsibility for enforcing the Hatch Act. It may exercise this responsibility by filing a complaint with the Board that charges a Federal civil service employee with violating the Act. The OSC acts as a prosecutor in this context. The Board then decides whether OSC has proven that the employee violated the Hatch Act or its implementing regulations, and if so, what penalty to impose for the violation. The Board must impose removal for an employee's violation of the Hatch Act unless the Board members find "by unanimous vote" that a lesser penalty, but no less than a 30-day suspension, is warranted. 5 U.S.C. § 7326. Some examples of Hatch Act prosecutions before the Board are found in Special Counsel v. Mark, 114 M.S.P.R. 516, ¶2 (2010), and Special Counsel v. Briggs, 110 M.S.P.R. 1, ¶6 (2008). More detailed information on the Hatch Act's provisions and OSC's role in enforcing it may be found at OSC's website.

Does the MSPB have any other role in protecting this Merit System Principle?

Yes. Congress has tasked the Board with reviewing regulations issued by the Office of Personnel Management (OPM). 5 U.S.C. § 1204(f). The Board will invalidate an OPM regulation where the provision requires any employee to commit a PPP. As mentioned earlier, certain actions concerning the Merit System Principles can constitute PPPs. The Board has heard challenges to OPM regulations where individuals have alleged that the regulation would result in a violation of Merit System Principle 8. Examples include Vergara v. Office of Personnel Management, 104 M.S.P.R. 616, ¶4 (2007) (the appellant contended that an OPM regulation was invalid because it would result in an arbitrary action) and Senior Executives Association v. Office of Personnel Management, 67 M.S.P.R. 643, 651-52 (1995) (assertion that OPM regulations affecting an organization's members violated the protections against arbitrary action, personal favoritism, or coercion for partisan political purposes found in section 2301(b)(8)).

In addition to adjudicating cases, MSPB also conducts studies of the Federal workforce and merit systems through its Office of Policy and Evaluation. As published in the December 2009 report, Fair and Equitable Treatment: Progress Made and Challenges Remaining, a substantial percentage of Federal employees harbor concerns about the impact on favoritism on management decisions. To further examine when favoritism is perceived to occur and how to improve the likelihood that managers will make (and be viewed as making) merit-based decisions, MSPB is currently conducting a survey of Federal Government employees and will publish results in an upcoming report. Similarly, in its June 2010 Study Retrospective: Prohibited Personnel Practices, the Board reviewed its prior research on the prevalence of employees' perceptions that they had been subject to discrimination based on their political affiliation. Results showed that, government wide, 1.4% of employees felt they had been subject to such discrimination.

As set forth in its 2011-2013 Research Agenda, the Board plans to soon examine the intersection of politics and the Federal civil service by examining issues such as: How can new political leaders most effectively transition into agency leadership roles; what do political leaders and careerists need to know about working together; and, how can leaders achieve an effective balance between a new administration's goals and the need for continuity in programs and services to their stakeholders? The MSPB will also initiate programs to educate managers, human resources professionals, and employees on the Merit System Principles.

Management-Employee Relations

Supervising in the Virtual Age. If you are currently a supervisor in the Federal government, and there was any lingering doubt in your mind as to whether Federal agencies have entered the "Virtual Age," the Telework Enhancement Act (TEA), signed into law on December 9, 2010, should have put those doubts to rest.

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The catalyst for the TEA was undoubtedly the exceptionally snowy 2009/2010 winter in the Washington, D.C., area. Federal agencies were shut down for a record 4 ½ days in a row by the February 2010 storm variously referred to as “Snomaggedon,” “Snowzilla,” and the “Blizzard of 2010,” according to the Washington Post.

A February 8, 2010, article by Christian Science Monitor staff writer Peter Grier was titled “Federal government closes: Why can't they all work from home?” It noted that “Shutting down the federal government costs $100 million a day in lost productivity.” It pointed out that, according to an August 2009 report from the Office of Personnel Management (OPM), about 9 percent of eligible federal employees, a little over 102,000 people, had approved telework agreements that allowed them to work from home.

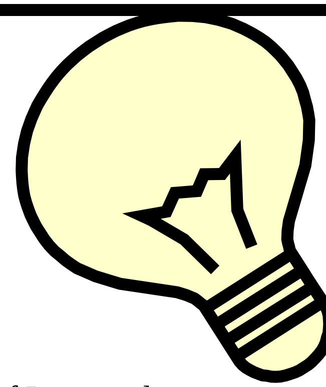
The article went on to opine that “the Feds are coming a little late to the whole working-in-your-pajamas party, so they have yet to catch up to the private sector in this area. OPM is fully aware of this, and they’re trying to change as fast as they can.” According to OPM Director John Berry, speaking at a conference in September 2010, telework clearly aids productivity. The article quoted Berry as saying “It needs to be part of the ethos of an office. No meeting or conference call should be canceled because someone is working from home.” OPM’s handbook on emergency closure procedures states that “Agencies may require teleworkers to work when the agency is closed.”

OPM Director Berry, in a Memorandum for Heads of Executive Departments and Agencies, summarized the benefits of the TEA, observing that it provided agencies with greater flexibility in managing their workforce. “The Act provides a framework for agencies to better leverage technology and to maximize the use of flexible work arrangements, which will aid in recruiting new Federal workers, retain valuable talent and allow the Federal government to maintain productivity in various situations -- including those involving national security and other emergency situations.”

The memo further stated that “To maximize the impact of this new law, OPM will be coordinating agency efforts to build effective telework programs with three key objectives in mind:

Improve Continuity of Operations (COOP) - using telework as a strategy to keep government operational during inclement weather or other emergencies.

Promote Management Effectiveness – using telework to target reductions in management costs related to employee turnover and absenteeism, and to reduce real estate costs and environmental impact and transit costs.
Enhance Work-life Balance– using telework to allow employees to better manage their work and family obligations, retaining a more resilient Federal workforce able to better meet agency goals.”



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The Telework Enhancement Act

Requires the head of each executive agency, in consultation with the Office of Personnel Management (OPM), to establish a teleworking policy within 180 days of enactment; determine the eligibility of all employees of the agency to participate in telework; and notify employees of their eligibility to telework.

Requires that the telework policy ensure that telework does not diminish employee performance or agency operations; requires a mandatory written agreement outlining the specific work arrangement that is agreed to between management and employee; and, provides that an employee may not be authorized to telework if performance of that employee does not comply with the terms of the written agreement between management and employee.

Allows agencies to temporarily deny permission to telework if, in the judgment of the agency head, the employee is needed to respond to an emergency.

Prohibits an employee from teleworking if the employee has:

Been officially disciplined for being absent without permission for more than five days in a calendar year; or Been officially disciplined for viewing, downloading, or exchanging pornography including child pornography, on a Federal Government computer or while performing official Federal Government duties.

The clear implication of the Act and the implementing guidelines is that many more Federal employees should have the opportunity to telework on either a regularly scheduled or situational basis.

While the Act is new, and the subsequent emphasis on telework is probably the strongest we have seen, the Federal Government's involvement in telework and virtual work environments actually goes back many years, as documented by Wendell Joice, Ph.D., in a comprehensive February 2000 article titled "The Evolution of Telework in the Federal Government."

I am not sure there is a clear consensus among agencies/organizations on the definitions of key terms associated with this program. Ruth Mayhew, writing in Demand Media, opined that "Virtual offices, telecommuting and telework all mean essentially the same thing: employees work from another location outside of the traditional office."

OPM's April 2011 Guide to Telework in the Federal Government, quoting from the TEA, defines telework as "a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee's position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work."

The Guide goes on to say that, “For consistency, OPM recommends that all agencies use the term ‘telework’ for reporting purposes and for all other activities related to policy and legislation, as defined in the Act.”

Interestingly, there is no reference in the current Guide to virtual work or virtual offices. However, an earlier version of the Guide stated that “The terms ‘telework,’ ‘telecommuting,’ ‘flexible workplace,’ ‘remote work,’ ‘virtual work,’ and ‘mobile work’ are all used to refer to work done outside of the traditional on-site work environment.”

Michael Keating used that definition in his article titled “Federal agencies are expanding telework opportunities, which appeared in GovPro on August 22, 2011. And “virtual work” continues to appear in the definition of telework under “Frequently Asked Questions” on the OPM.gov website.

Whether your agency/organization also considers those terms to be interchangeable, or finds some differences between them – i.e., telework consists of employees working from home or a telework center in the relatively immediate area of the office, while virtual workers are considered those who work from agency offices in another part of the country – I think supervisors can expect a significant increase in the number of employee requests to spend part or all of each week or pay period working from outside the office.

While most employees are likely to have been designated as eligible for telework by now, in accordance with the Act, actual participation is by no means guaranteed. As noted above, the TEA requires a written agreement between management and the employee “outlining the specific work arrangements” and very significantly states that an agency’s telework policy must “ensure that telework does not diminish employee performance or agency operations.”

My first experience supervising in a virtual environment was not particularly dramatic or burdensome. The National Park Service office where I worked was located in two different, but adjacent, buildings. Most of the Human Resources (HR) employees I supervised were located with me in the regional office building, but several were located in the building occupied by the Denver Service Center. I planned to get over to the other building on a frequent basis but even though it was only steps away I didn’t get there nearly as often as I had planned. Fortunately, I had excellent employees who were self-starters and I never had to worry about what they were getting done.

But throughout my supervisory career, the “standard” work situation was that supervisors could either see all of their employees directly from their offices, or, depending on the number of employees and the space configuration, could be at a subordinate's office without walking very far.

That isn't the case now and will be much less the case in the future. Supervisors are likely to have employees teleworking 1-5 days per week or per pay period, and may have people reporting to them who are physically located in other parts of the state, other states, or even other countries.

Obesity is a Disability, Says EEOC. EEOC now claims obesity is a disability under ADAAA**.** The U.S. Equal Employment Opportunity Commission (EEOC) now claims obesity is a disability under the Americans with Disabilities Act Amendments Act (ADAAA). Until now, the courts have routinely rejected general obesity as a "disability" under the ADA and Rehabilitation Act. Cases have required one to show some different underlying medical condition that is a disability and that causes obesity as a "symptom." Now the EEOC has filed suit, claiming that a company discriminatorily fired an employee because of obesity. The EEOC claims that ever since President George W. Bush authorized the ADA Amendments Act in 2008, the law has a much lower threshold for what constitutes a disability. The EEOC claims that basic obesity, without any other underlying condition, sufficiently impacts the life activities of bending, walking, digestion, cell growth, etc., to qualify as a disability or perceived disability. *EEOC v. Resources for Human Development (E.D. LA.2010).*

Task Force to Align Feds' Performance with Agency Goals. A task force sponsored by the National Council on Federal Labor-Management Relations is pitching recommendations for the age-old problem of supervision in the federal workforce. It's hoping to reassure employees that they're being treated fairly, while showing the public that the federal government is working efficiently.

"It gives government employees a way to understand their day-to-day requirements and how they relate to the agency's mission," said Mike Kane, the Energy Department's chief human capital officer. "Almost every single federal employee is here because of the mission, but they don't always see their performance rating, their performance appraisal, their performance elements, their performance agreement as being directly aligned with the key points of the mission. So one of the things that the framework does is say 'hey, performance of employees has to be aligned with the organizational performance, it has to be tied back to that key mission point.'"

Kane helped lead the task force of agency human resources officials, union representatives and employee association leaders working under the presidentially appointed council.

"This proposal says we're going to place this inside the West Wing of the White House, through the President's Management Council, down to secretarial officers, that the health and well-being of federal employee performance is a key accountability factor for the key cabinet appointee, and that's what is going to make the difference," he said.

The framework consists of five key recommendations.

The first would require agencies to define their priorities and expectations for employees. The Employee Viewpoint Survey released by the Office of Personnel Management last week showed about half of federal workers doubted pay raises and promotions are linked to good performance. Four out of 10 survey respondents thought supervisors did not even deal with bad performance.

"We believed systems failed in the past because they dealt with the system and not with the true problem, which is a human problem," said Federal Managers Association government affairs director Jessica Klement, who was on the taskforce. "You can write the best performance management system in the world but if you don't have an agency culture where managers are held accountable for their employees' performance, that system is going to fail."

The plan also would require managers to review workers' performance four times a year.

OPM Deputy Chief of Staff Justin Johnson said that would "essentially stimulate more frequent formal feedback and encourage almost constant informal feedback between and among supervisors and employees, to get to a point where everyone knows what's expected of them and that there are no surprises when it does come time for the formal appraisals."

OPM is implementing the quarterly reviews beginning next week. In the long term, Johnson said, agencies would promote, train and evaluate supervisors based on their leadership and managerial skills, rather than on technical expertise.

"We would send a message through the way we structure duties, even taking some things off your plate, so that leading your team, leading people is a primary duty and not something you do if you have time," he added.

The taskforce also recommended agencies align each employee's work goals with the agency's performance and make all levels of managers from the line supervisor to the secretary accountable for employee performance.

The Labor-Management Council is reviewing the plan. Meanwhile, Energy already has implemented some of the ideas and will talk to its employee unions about others.

Except for supervisor training, the recommendations do not require funding.

"I think you can separate the money out from performance management. You should have well trained managers regardless of money for compensation for how well they do their job," Klement said, adding that with tight budget constraints and many calls for smaller government, "It is more important to make sure your employees stay engaged and to keep their morale up."

Training, Self-Development, and Personal Improvement

Civilian Education System (CES) Courses Available. The Civilian Education System (CES), launched in November 2006, is a progressive, sequential, leader development program that provides enhanced leader development and education opportunities for Army civilians throughout their careers. Enrollment in the CES is mandatory for all supervisors/managers who have not completed the appropriate courses at each stage of their civilian career or have not received appropriate course/experience substitution. The CES includes five courses - the Foundation Course (FC), Basic Course (BC), Intermediate Course (IC), Advanced Course (AC), and the Continuing Education for Senior Leaders Course (CESL), all of which culminate with attendance at a Senior Service College (SSC) and the Defense Leader Development Program (DLAMP).

With the exception of the Foundation Course which is completed in its entirety via distributed learning, the remaining courses are accomplished via a combination of distributed learning and classroom training at Fort Belvoir, VA or Fort Leavenworth, KS.

Also available under the auspices of CES are the Action Officer Development Course (AODC), Supervisory Development Course (SDC), and Management Development Course (MDC), all available on-line as correspondence courses.

For an up-to-date course schedule, please click the link immediately below:

http://www.amsc.belvoir.army.mil/registrar/schedule/ces.jsp

For additional information on the CES, please click on the link below, or contact your servicing HR Specialist.

http://www.amsc.belvoir.army.mil/ces/

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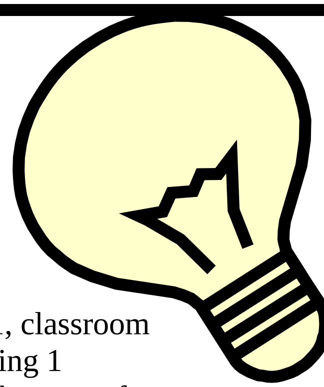

Cessation of the HR for Supervisors On-Site Course. September 30, 2011, classroom delivery of the HR for Supervisors Course officially came to an end. Beginning 1 October all in need of this training must accomplish this requirement on line by way of the Supervisory Development Course (SDC), a component of the CES. This course, not unlike the on-site version, provides an overview of basic supervisory and human resources skills. To access courses available CES courses log on to http://www.train.army.mil. Click on the [Login] button upper right and key in your AKO userid and password.

After a successful login, your name will appear at the top left of the page. ENROLL to view the list of available courses and sub courses, *Click on the tab titled, "My Courses;" then click on the tab titled, "My Courses Home." Choose a course or sub course from the list, and hit the "e" button to the right of your selection to initiate your enrollment. (You can view a course description and a list of sub courses within the course by clicking on the plus sign by the course title.)

Though not yet posted, the course nomenclature is: 131 F21 SUPERVISOR DEVELOPMENT COURSE (SDC)

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).

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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; and, generating reports and printing a Notification of Personnel Action (i.e. 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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