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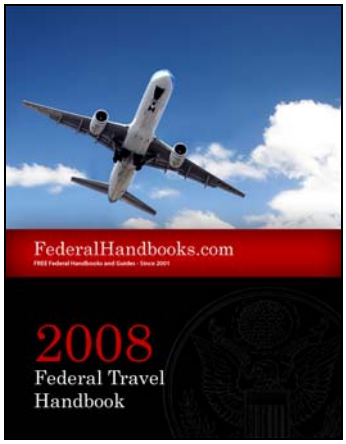

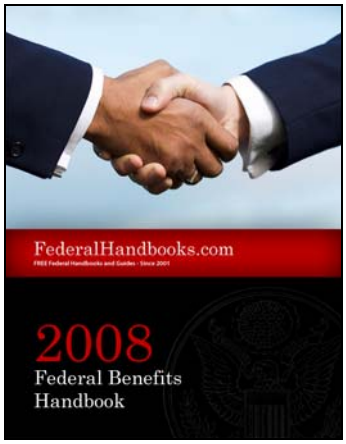

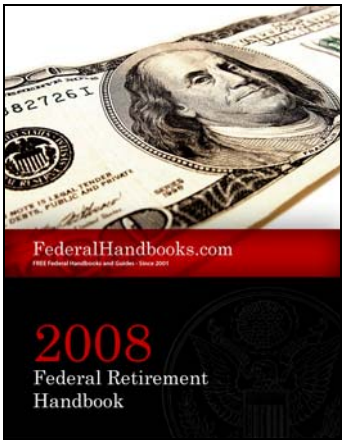

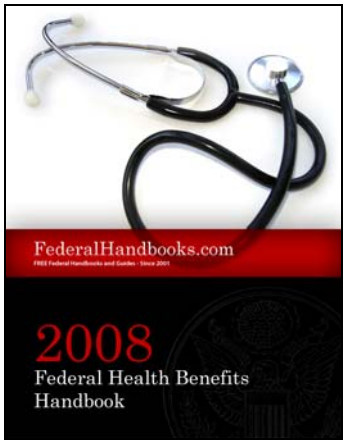

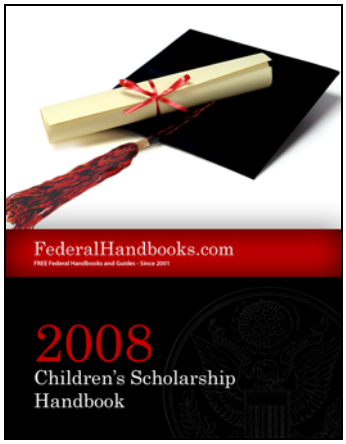

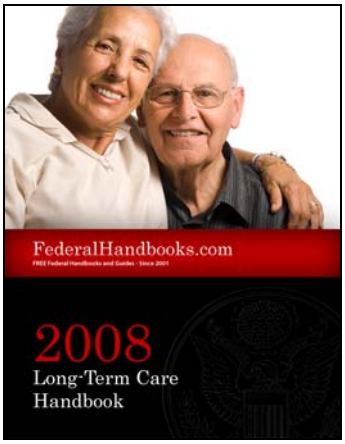

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1

Federal Appointments

As an employer, the Federal government is unique. In the private sector, there are generally two types of "appointments" – the "at will" appointment and the "contract" appointment. The vast majority of private sector employees hired by a company or firm are hired as "at will" employees. While they may not realize it, this typically means that the private-sector employee can be fired for any reason, or no reason, but not for an illegal reason. As a practical matter, then, most "at will" workers can be fired at any time, for almost any reason. There are some limits, of course - an "at will" employee cannot be fired because of his or her race, color, religion, sex, national origin, age (if over the age of 40), or disability. In addition, "at will" employees generally cannot be fired for "blowing the whistle" on illegal practices within a company. Private sector employers may provide their employees with further rights through employment manuals and other means, but on average, at will employees have few legal rights when it comes to their employment.

Private sector "contract" employees generally are fewer in number than at will employees, but they usually have more job protections. An example of a "contract" employee may be a doctor or nurse who is hired for a specific term and cannot be removed before the term expires unless it is for "good cause." "Good cause" is often spelled out in the contract as misconduct or poor performance. The company usually has specific procedures in place to investigate and adjudicate a claim of misconduct or poor performance against such employees.

Of course, many private sector employees belong to unions, and the labor agreement between the union and their employer usually gives the employee additional rights beyond what they would have as "at will" or contract employees, such as the right to arbitration.

Appointments within the Federal sector, however, are a little more complex. When hiring a new employee, a Federal department or agency must classify the employee's appointment as "career," "career conditional," "temporary," or "term." Moreover, there are "excepted service appointments" – appointments made under Schedules A, B, and C. Each of these appointments is explained in detail below. As a Federal employee, it is important to know which type of appointment you have, since your appointment affects your job rights.

At the end of this chapter, some additional topics, such as appointments of non-citizens and dual employment (holding more than one federal job), will also be discussed.

Career and Career-Conditional Appointments

Permanent employees are generally hired into the Federal government under a career-conditional appointment. A career-conditional employee must complete three years of substantially continuous service before becoming a full career employee. This 3-year period is used to determine whether or not the Government is able to offer the employee a career.

Service Requirement for Career Tenure

An employee must have 3 years of substantially continuous creditable service to become a career employee, i.e. obtain career tenure. The 3-year period must begin and end with nontemporary employment in the competitive service. Generally, substantially continuous creditable service must not include any break in service of more than 30 calendar days. If an employee does not complete the 3-year period, a single break in service of more than 30 calendar days will require the employee to serve a new 3-year period. (Periods of time in a nonpay status are not breaks in service and do not require the employee to begin a new 3-year period. However, they may extend the service time needed for career tenure.) Career-conditional employees automatically become career employees upon completion of this service requirement. Employees with career tenure have a higher retention standing during layoffs.

Required Probationary Period
The first year of service of an employee who is given a career-conditional appointment is considered a probationary period. The probationary period is really the final and most important step in the examining process. It affords the supervisor an opportunity to evaluate the employee's performance and conduct on the job, and to remove the person without undue formality, if necessary. A person who is transferred, promoted, demoted, or reassigned before completing probation is required to complete the probationary period in the new position. Prior Federal civilian service counts toward completion of probation if it is in the same agency, same line of work, and without a break in service.

Care should be taken to distinguish the 1-year probationary period from the 3-year career-conditional period. The probationary period is used to determine the employee's ability and fitness required for permanent Government service. The 3-year career-conditional period is established only to measure the employee's interest in, and the Government's ability to provide, a career in the Federal service. (For more information on the probationary period, see Chapter 2, "The Probationary Period.")

Acquiring Competitive Status
Competitive status is a person's basic eligibility for assignment (e.g., by transfer, promotion, reassignment, demotion, or reinstatement) to a position in the competitive service without having to compete with members of the general public in an open competitive examination. When a vacancy announcement indicates that status candidates are eligible to apply, career employees and career-conditional employees who have served at least 90 days after competitive appointment may apply. Once acquired, status belongs to the individual, not to a position.

Temporary and Term Appointments

Temporary and term appointments are used to fill positions when there is not a continuing need for the job to be filled. Neither type of appointment is a permanent one, so they do not give the employee competitive status or reinstatement eligibility. Because temporary and term employees do not have status, they may not apply for permanent appointments through agency internal merit promotion procedures, which are used for filling positions from the ranks of current and former permanent Federal employees. However, qualifying experience gained while employed in a temporary or term position is considered when applying later for a permanent position.

Defining "Temporary Appointment"
A temporary appointment is an appointment lasting one year or less, with a specific expiration date. It is appropriate when an agency expects there will be no permanent need for the employee. An agency may make a temporary appointment to:

- fill a short-term position that is not expected to last more than one year; or
- meet an employment need that is scheduled to be terminated within one year (or at most, two years) for reasons such as reorganization, abolishment, or contracting out of the function, anticipated reduction in funding, or the completion of a specific project or peak workload; or
- fill positions on a temporary basis when the positions are expected to be needed for placement of permanent employees who would otherwise be displaced from other parts of the organization.

A temporary employee does not serve a probationary period and is not eligible for promotion, reassignment, or transfer to other jobs.

Time Limits
Generally, an agency may make a temporary appointment for a specified period not to exceed one year. The appointment may be extended up to a maximum of one additional year. Appointments involved with intermittent or seasonal work may be extended indefinitely if extensions are made in increments of one year or less and the employment totals less than six months (1,040 hours), excluding overtime, in a service year.

How Temporary Employees Are Selected
Most vacancies are filled through open competitive examination procedures. However, an agency may give a temporary appointment noncompetitively to certain individuals (such as a reinstatement eligible, a 30% disabled veteran, and veterans eligible for a veterans' readjustment appointment).

Term Appointments
Under term employment, the employing agency hires the term appointee to work on a project that is non-permanent in nature. The employment is for a limited period of time, lasting for more than one year but for no longer than four years. Some reasons for making a term appointment may include:

- project work;
- extraordinary workload;
- scheduled abolishment, reorganization, or contracting out of the function;
- uncertainty of future funding;
- the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization.

How Term Employees Are Selected
Most vacancies are filled through open competitive examination procedures. However, an agency may give a term appointment noncompetitively to certain individuals (such as reinstatement eligibles, veterans eligible for a veterans readjustment appointment, and 30% disabled veterans). The employment of a term employee ends automatically on the expiration of their term appointment. The first year of service is considered a trial period and the agency may terminate a term employee at any time during the trial period.

Excepted Service: Schedules A, B and C Appointments

The "excepted service" consists of all positions in the Executive Branch that statute, the President, or OPM has specifically excepted from the competitive service or the Senior Executive Service. This section covers excepted service positions in Schedules A, B, and C.

Schedule C Positions and Appointments
Employees in the excepted service who are subject to change at the discretion of a new Administration are commonly referred to as "Schedule C" employees. Schedule C positions are excepted from the competitive service because they have policy-determining responsibilities or require the incumbent to serve in a confidential relationship to a key official. Most Schedule C positions are at the GS-15 level and below. Appointments to Schedule C positions require advance approval from the White House Office of Presidential Personnel and OPM, but appointments may be made without competition. OPM does not review the qualifications of a Schedule C appointee - final authority on this matter rests with the appointing official.

Agencies may separate Schedule C appointees from employment at any time if the confidential or policy-determining relationship between the incumbent and his or her superior ends. Schedule C appointees are not covered by statutory removal procedures and generally have no rights to appeal removal actions to the Merit Systems Protection Board. This is true regardless of veterans' preference or length of service in the position. Agencies should consult their General Counsel or OPM's General Counsel on Schedule C separations.

Other Excepted Service Positions and Appointments
In addition to the policy-determining or confidential positions described above, Congress, the President, or OPM can except certain agencies and groups of positions from the competitive service and the Senior Executive Service. These exceptions are made for a variety of reasons, none of which relates to policy-determining or confidential factors.

Positions Excepted by Statute and the President
Examples of positions that have been excepted by statute include those in the Foreign Service; the Federal Bureau of Investigation; the Tennessee Valley Authority; the General Accounting Office; the Postal Service; and certain employees within the Department of Veterans Affairs. Most of these positions are under separate merit systems. Examples of Presidential exceptions include jobs overseas held by foreign nationals.

Positions Excepted by OPM. There are two other categories of positions that OPM has administratively excepted from the competitive service because it is not practical to hold competitive examinations for them. These are Schedule A and Schedule B positions.

1. Schedule A Positions. Examples include chaplains, teachers in military dependent school systems overseas, faculty positions of service academies, and certain positions at isolated localities. Attorney positions are also in Schedule A because OPM is prohibited in its appropriations legislation from spending funds to examine for attorney positions.

2. Schedule B Positions. Schedule B is used primarily for career-related work study positions.

The procedural and appellate rights governing the removal of Schedule A and B appointees vary. Employees with veterans' preference who have 1 year of qualifying service are entitled to statutory procedural and appellate rights if they are removed from the Federal service for conduct or performance reasons. In addition, the Due Process Amendments of 1990 [P.L. 101-376, August 17, 1990] gave procedural and appeal protections to many excepted service employees who do not have veterans preference, provided they have completed 2 years of qualifying service.

Excepted Service Agencies
Most Federal civilian positions are part of the competitive civil service. To obtain a Federal job, you must compete with other applicants in open competition. Some agencies, however, are excluded from the competitive civil service procedures. This means that these agencies have their own hiring system that establishes the evaluation criteria they use in filling their internal vacancies. These agencies are called "excepted service agencies."

If you are interested in employment with an excepted service agency, you should contact that agency directly. OPM does not provide application forms or information on jobs in excepted service agencies or organizations. Some examples of excepted service agencies and departments are the: Federal Reserve; Central Intelligence Agency; National Security Agency; U.S. Nuclear Regulatory Commission; Post Rates Commission; Tennessee Valley Authority; and Library of Congress.

Employment of Noncitizens

Several factors determine whether a Federal agency may employ a noncitizen. They are: Executive Order 11935 requiring citizenship in the competitive civil service, whether the position is in the competitive service, the excepted service or Senior Executive Service, the annual appropriations act ban on paying aliens from many countries, and the immigration law ban on employing aliens unless they are lawfully admitted for permanent residence or otherwise authorized to be employed.

Executive Order 11935 on the Competitive Civil Service
Under Executive Order 11935, only United States citizens and nationals (residents of American Samoa and Swains Island) may compete for competitive jobs. Agencies are permitted to hire noncitizens only when there are no qualified citizens available. A noncitizen hired in the absence of qualified citizens may only be given an excepted appointment, and does not acquire competitive civil service status. He or she may not be promoted or reassigned to another position in the competitive service, except in situations where a qualified citizen is not available. The noncitizen may be hired only if permitted by the appropriations act and the immigration law.

Excepted Service and Senior Executive Service
As explained above, some Federal agencies (among them the United States Postal Service, the Tennessee Valley Authority and the Federal Bureau of Investigation), and some types of positions (for example, lawyers and chaplains) are excepted from OPM procedures for filling jobs. An agency may hire a qualified noncitizen in the excepted service or Senior Executive Service, if it is permitted to do so by the annual appropriations act and the immigration law. Many agencies have executive level positions in the Senior Executive Service.

Appropriations Act Restrictions
Congress prohibits the use of appropriated funds to employ noncitizens within the United States. Certain groups of noncitizens are not included in this ban. They are:

- Persons who owe permanent allegiance to the United States (for example, natives of American Samoa and Swains Island).
- Aliens from Cuba, Poland, South Vietnam, countries of the former Soviet Union, or the Baltic countries (Estonia, Latvia, and Lithuania) lawfully admitted to the United States for permanent residence.
- South Vietnamese, Cambodian or Laotian refugees paroled into the United States after January 1, 1975.
- Nationals of the People's Republic of China who qualify for adjustment of status pursuant to the Chinese Student Protection Act of 1992.
- Citizens of Ireland, Israel, or the Republic of the Philippines.
- Nationals of countries currently allied with the United States in a defense effort, (as determined by the Office of the Assistant Legal Adviser for Treaty Affairs, Department of State).
- International broadcasters employed by the U.S. Information Agency.
- Translators employed temporarily.
- People employed up to 60 days on an emergency basis in the field service.

Also, some agencies are exempt from these restrictions.

Although the groups above are not prohibited from being paid from agency appropriated funds, group members are still subject to the requirements of Executive Order 11935, and to the immigration law, as specified below.

Immigration Law Requirements on Employing Citizens and Aliens
For any work to be performed in the United States, immigration law requires private and public employers to hire only individuals who are eligible to be employed. Those individuals are:

- a citizen (either by birth or naturalization) or national of the United States,
- an alien assigned by the Immigration and Naturalization Service (INS) to a class of immigrants authorized to be employed (aliens who are lawfully admitted for permanent residence by INS are the largest class of aliens in this category), or
- an individual alien who is expressly authorized by INS to be employed.

Questions about an individual's citizenship, nationality, immigration status, and eligibility for employment under the immigration law, should be directed to the local INS office. Although an alien may be authorized to work under the immigration laws, he or she is still subject to the requirements of Executive Order 11935 and appropriations act restrictions as stated above.

Noncitizens who have questions about employment eligibility should contact the agency in which they are interested in working for further guidance.

Dual Employment

Generally federal employees, civilian and military, are prohibited from receiving pay from more than one federal government source. The laws on dual employment apply to agencies in the executive, legislative and judicial branches,

corporations owned or controlled by the government, and nonappropriated fund organizations under the jurisdiction of the armed forces.

Civilian federal employees can hold more than one government job in some limited situations. An individual may have more than one federal appointment, but may receive pay from more than one civilian job only when:

- the jobs total no more than 40 hours of work a week, Sunday to Saturday (excluding overtime); or
- there is an authorized exception.

This means an employee on leave without pay (LWOP) from one position may be paid for another position. Paid leave, however, counts toward the 40-hour-per-week limitation unless there is an authorized exception.

Authorized exceptions to the limitation on pay for more than 40 hours a week include:

- exceptions in law, e.g., with agency approval federal employees can work for the U. S. Postal Service;
- emergency services relating to health, safety, protection of life or property, or national emergency;
- expert and consultant jobs when working different hours as an intermittent employee; and
- fee paid on other than a time basis (lump-sum pay for a report, research product or service not based on the number of hours or days worked).

Also, in unusual circumstances, federal agencies can make exceptions to obtain required personal services when they cannot be readily obtained otherwise.

Civilian Federal Employees Working in Outside (Nonfederal) Jobs
Federal employees shall not engage in outside employment or activities that conflict with official duties and responsibilities. Many federal agencies have written policies that allow outside employment, especially when it is not related to the federal work and will not result in, or create the appearance of, a conflict of interest. Agency policies may require employees to receive prior approval for outside employment even when co-workers have similar outside jobs. Ask your supervisor, agency ethics official, and agency personnel office for further information.

Uniformed Service Members Holding Civilian Government Jobs
Members of a Uniformed Service (Army, Navy, Marines, Air Force, etc.) on active duty may not receive pay from another government position, except during terminal leave, or unless specifically authorized by law. Enlisted personnel may be employed part-time during off-duty hours in Department of Defense nonappropriated fund activities. Members of the Armed Forces Reserves and members of the National Guard may receive military pay and allowances in addition to pay from another government position.

Note: With appropriate agency approval, federal employees may work for the District of Columbia (D.C.) government.

Employment of Retirees (Dual Compensation Issues)
Retirees can work for the federal government. However, federal civilian retirees will have their salary reduced by the amount of their annuity unless an exception is approved. In addition, retirees under age 70 may have their Social Security check reduced if their annual earnings exceed the established limit.

Federal Retirees under CSRS and FERS
Most retirees under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS) will have their hourly pay reduced by the hourly rate of the annuity when reemployed by the federal government. These laws apply to federal jobs in the legislative, executive, and judicial branches (including government corporations, nonappropriated fund instrumentalities under the jurisdiction of the armed forces, and the U.S. Postal Service). Generally, the law requires that the employing agency reduce the retiree's hourly pay by the hourly rate of their annuity. This reduction equals the retiree's annual annuity divided by 2087. For example, if a job's gross pay is

$15.80 per hour and a retiree's hourly annuity rate is $5.80, then the retiree's gross pay is reduced to $10.00 per hour. If a retiree works for a year, then his or her retirement is recalculated with this added service.

Note: If retirement was due to involuntary separation or disability, the annuity may terminate upon reemployment. Retirees in this situation should check with the employing agency or call OPM's Retirement Information Office toll-free at 1-888-767-6738 or at (202) 606-0500, if calling from the Washington, D.C. area.

Military Retirees

Retirees of U.S. Uniformed Services are now treated as other retirees (see next heading). Prior reductions in military retired pay were repealed by P.L. 106-65 in October 1999.

Other Retirees - Private Sector, State, and Local Government

Generally, when other retirees become a federal employee there is no reduction in their federal pay or in their retirement pay or annuity. However, paid work may reduce Social Security retirement, survivors or disability benefits if earnings exceed the established limits. For details, contact the Social Security Administration at 1-800-772-1213.

Exceptions for CSRS and FERS Retirees

Federal agencies may request authority to waive the salary reduction in special and unusual circumstances. The law limits waivers to "positions for which there is exceptional difficulty recruiting or retaining a qualified employee" and to temporary employment while "the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances." Generally, to qualify for an exception, a retiree must be the only qualified applicant available or be uniquely qualified for the job. The USAJOBS (www.usajobs.gov) vacancy notice will indicate when an agency has waiver authority or anticipates requesting it.

Retaining Reinstatement Eligibility

Retirees who obtained federal reinstatement eligibility before they retired do not lose it because they retire.

2

The Probationary Period

Career and Career-Conditional Appointments

Purpose
Permanent employees are generally hired into the Federal government under a career-conditional appointment. A career-conditional employee must complete three years of substantially continuous service before becoming a full career employee. This 3-year period is used to determine whether or not the Government is able to offer the employee a career.

Service Requirement for Career Tenure
An employee must have 3 years of substantially continuous creditable service to become a career employee, i.e. obtain career tenure. The 3-year period must begin and end with nontemporary employment in the competitive service. Generally, substantially continuous creditable service must not include any break in service of more than 30 calendar days. If an employee does not complete the 3-year period, a single break in service of more than 30 calendar days will require the employee to serve a new 3-year period. (Periods of time in a nonpay status are not breaks in service and do not require the employee to begin a new 3-year period. However, they may extend the service time needed for career tenure.) Career-conditional employees automatically become career employees upon completion of this service requirement. Additionally, employees with career tenure have a higher retention standing during layoffs.

Required Probationary Period
The first year of service of an employee who is given a career-conditional appointment is considered a probationary period. The probationary period is really the final and most important step in the examining process. It affords the supervisor an opportunity to evaluate the employee's performance and conduct on the job, and to remove the person without undue formality, if necessary. A person who is transferred, promoted, demoted, or reassigned before completing probation is required to complete the probationary period in the new position. Prior Federal civilian service counts toward completion of probation if it is in the same agency, same line of work, and without a break in service.

Care should be taken to distinguish the 1-year probationary period from the 3-year career-conditional period. The probationary period is used to determine the employee's ability and fitness required for permanent Government service. The 3-year career-conditional period is established only to measure the employee's interest in, and the Government's ability to provide, a career in the Federal service.

Acquiring Competitive Status
Competitive status is a person's basic eligibility for assignment (e.g., by transfer, promotion,reassignment, demotion, or reinstatement) to a position in the competitive service without having to compete with members of the general public in an open competitive examination. When a vacancy announcement indicates that status candidates are eligible to apply, career employees and career-conditional employees who have served at least 90 days after competitive appointment may apply. Once acquired, status belongs to the individual, not to a position.

3

Pay and Leave

This chapter provides information on Federal employee pay and leave, specifically basic salary levels, locality pay, pay flexibilities available to address staffing difficulties, pay for reemployed annuitants, types of leave, and severance pay. It is important to remember that the federal government is comprised of several different pay systems and schedules. The primary pay systems and schedules are the General Schedule, the Federal Wage System, the Senior Executive Service, and the Executive Schedule. While the different pay systems and schedules are linked – and, most importantly, are capped by the Executive Schedule - they all cover different groups of employees. Each of these is explained in more detail below.

Federal Pay

Executive Schedule
The Executive Schedule sets the pay rates for the top federal officials, from the U.S. President, Vice-President, and Cabinet Officers on down to heads and sub-heads of federal agencies. Below the President and Vice-President, the Executive Schedule consists of Levels I through V, with Level I being the highest paid, and Level V being the lowest paid. In 2008, Executive Schedule salaries range from $139,600 (level V) to $191,300 (level I).

For the purposes of federal employee pay, the importance of the Executive Schedule is that it serves as a cap on federal employee pay. For example, below federal agency and department heads are a group of employees who are members of the "Senior Executive Service" or "SES." These employees have their own pay scale, which is discussed below, but members of the SES are paid no more than Level II of the Executive Schedule.

Thus, Level II of the Executive Schedule serves as a "cap" on the amount that members of the SES can receive for pay.

Senior Executive Service
The pay system for members of the Senior Executive Service (SES) changed drastically with the November 24, 2003 passage of a performance-based pay system. Previously, members of the SES received both base pay and locality pay. The old SES pay schedule had six grades – ES-1 through ES-6 – and members of the SES could earn no more than Level IV of the Executive Schedule for base pay; Level III of the Executive Schedule for base plus locality pay; and Level I of the Executive Schedule for total compensation. (The Level I cap came into play when a member of the SES was given an allowance or a monetary award, such as a Distinguished Rank Award, which comes with a sizable bonus.)

The new pay-for-performance system was authorized in November 2003 as part of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136, November 24, 2003). It went into effect on the first day of the first pay period beginning on or after January 1, 2004, which for most employees was January 11, 2004.

Under the new system, members of the SES are no longer entitled to locality pay or the automatic, across-the-board pay raises that General Schedule and Executive Schedule employees receive. Instead, SES pay is closely tied to individual and organizational performance. In addition, the old six-level pay system was replaced by a single, open-range "payband" that has only its minimum and maximum rates fixed by statute. For 2008, the payband ranges from a low of $114,468 to a high of either $158,500 or $172,200, depending on whether the agency's performance appraisal system is certified by the Office of Personnel Management (OPM) and the Office of Management and Budget (OMB).

Agencies are granted certification when both OPM and the Office of Management and Budget (OMB) certify that the agency's SES performance appraisal system makes "meaningful distinctions on relative performance." Agencies granted such certification may pay their SESers total compensation up to the Vice Presidential level for salary, awards, and relocation, recruitment or retention allowances.

Rates of Basic Pay for Members of the Senior Executive Service

	Minimum	Maximum
Agencies with a Certified SES Performance Appraisal System	$114,468	$172,200
Agencies without a Certified SES Performance Appraisal System	$114,468	$158,500

OPM issued interim regulations in July 2004 setting forth the requirements for converting SES members to the new pay system and adjusting SES rates of basic pay. In addition, OPM provides guidance on the new salary-based threshold for determining the applicability of certain post-employment restrictions to SES members.

Senior-Level and Scientific or Professional (ST) Positions

The Senior-Level (SL) and Scientific or Professional (ST) pay system includes high-level positions without executive responsibilities, as well as positions that the law or the President excludes from the SES. Agency heads may set the pay of an SL or ST employee at any rate within a range fixed by statute. In 2008, the basic pay for these positions ranges between $114,468 and $149,000, excluding locality payments.

SES, SL/ST Pay Cap Raised to the Vice Presidential Level Under Certain Conditions

Be aware that section 1322 of the Homeland Security Act of 2002 (Public Law 107-296, November 25, 2002) provides, under certain conditions, a higher aggregate limitation on pay for members of the Senior Executive Service (SES) and employees in senior-level (SL) and scientific or professional (ST) positions.

Section 1322 of the Act provides that the aggregate pay limitation established in 5 U.S.C. 5307 for SES and SL/ST employees in an agency may be the total annual compensation payable to the Vice President if OPM, with the concurrence of the Office of Management and Budget (OMB), certifies that the agency has a performance appraisal system that makes meaningful distinctions based on relative performance. The law gives OPM and OMB joint responsibility for issuing regulations, as necessary, including the criteria and procedures for obtaining certification of a performance appraisal system.

As stated above, in July 2004, OPM issued interim final regulations jointly with OMB on the requirements for obtaining certification of agency performance appraisal systems, so that agencies may use the higher aggregate pay limitation for SES and SL/ST employees. Until an agency's performance appraisal system has been certified under the new regulations, the aggregate limitation on pay for all employees remains at the rate for level I of the Executive Schedule.

General Schedule

Most federal employees fall under the "General Schedule" or "GS" pay scale. The General Schedule is the pay scale for professional or "white collar" employees, and is comprised of 15 "grades." The lowest grade is 1, and the highest is 15. Each grade has 10 "steps." Employees advance from one grade to another as they are promoted and their responsibilities increase. Employees move to higher steps within their grade level based on the length of their tenure and acceptable job performance. Advancement to either a higher grade or step means an increase in pay.

Because within-grade, or "step," increases are based in part on an employee's tenure, there are waiting periods before an employee can move to the next higher step. Before an employee can move to a step 2, 3, or 4, the employee must wait 52 weeks (1 year). To move to a step 5, 6, or 7, the employee must wait 104 weeks (2 years). And to be advanced to a step 8, 9, or 10, the employee is required to wait 156 weeks (3 years).

Pay raises for the General Schedule are determined annually each year by Congress and the President. Once the pay increase is set by law, the amount is allocated by the President between base pay and locality pay.

Federal Wage System

The Federal Wage System (FWS) covers federal "blue collar" workers. The system was developed to make the pay of these workers comparable to prevailing private sector rates in each local wage area. The regular pay plan covers most trade, craft, and laboring employees in the executive branch. The FWS does not cover Postal Service employees,

legislative branch employees, or employees of private sector contracting firms.

For each wage area, OPM identifies a "lead" agency. The "lead" agency is responsible for conducting wage surveys, analyzing data, and issuing wage schedules under the policies and procedures prescribed by OPM. All agencies in a wage area pay their hourly wage employees according to the wage schedules developed by the lead agency. OPM has identified DOD as the lead agency for each local wage area. OPM does not conduct local wage surveys.

Under the FWS, the agency bases federal employee pay on what private industry is paying for comparable levels of work in the local wage area. Employees are paid the full prevailing rate at step 2 of each grade level. Step 5, the highest step in the FWS, is 12 percent above the prevailing rate of pay.

Special Pay Authorities

Some agencies have special authorities that govern the setting of pay for all or certain employees. For example, the Administrator of the Federal Aviation Administration (FAA) may set pay for FAA employees. The President may set the pay of certain White House employees.

Locality Pay

As a general rule, federal employees' pay consists of two primary parts – "base pay" and "locality pay." While base pay is the same for each grade and step across the country, locality pay varies by geographic location. Thus, while a GS-9, step 5, employee in Kansas City will earn the same base pay as another GS-9, step 5, employee in Boston, the Boston employee will end up earning approximately $3,665 more annually because of locality pay. Locality pay is, in essence, the federal government's way of acknowledging that in many geographic areas federal employees are paid less than they would be paid in the private sector for a comparable position, and therefore locality pay is added to make up for part of the difference. Locality pay is not paid to employees overseas, or to those in Hawaii, Alaska or Puerto Rico.

Most Federal employees - excluding officials paid under the SES and the Executive Schedule - are eligible for locality pay in addition to their base pay. As indicated above, these payments apply only in the 48 contiguous States. Pay rates outside the continental U.S. are 10% to 25% higher. Also, certain hard-to-fill jobs, usually in the scientific, technical, and medical fields, may have higher starting salaries.

Pay Flexibilities

Agencies may use a number of discretionary pay flexibilities to deal with well-documented staffing difficulties. Specific statutory and regulatory conditions govern the use of each of these flexibilities, including agency justification and documentation requirements. Agencies, however, are cautioned to exercise these flexibilities judiciously, especially when hiring employees other than career employees. These payments are subject to public scrutiny and third-party review.

Advance Payments

Agencies may provide for the advance payment of basic pay (including any locality payment) covering not more than two pay periods to any individual who is newly appointed to a position, except for appointment as agency head.

Above Minimum Hiring Rates – GS

Agencies may appoint individuals to General Schedule positions at a step above the first step of their grade based on the employee's superior qualifications or a special need of the agency for the employee's services. Agencies may make such appointments at any appropriate GS grade. Agencies may set pay at the higher step only upon initial appointment or upon reappointment after a 90-day break in service.

Pre-Employment Interviews -- Payment of Travel and Transportation Expenses

Agencies may pay travel and transportation expenses for travel to and from pre-employment interviews to any individual they consider for employment. Agencies may also pay the travel expenses of a new appointee from his or her place of residence at the time of selection or assignment to the duty station.

Recruitment Incentives

An agency may pay a recruitment incentive to a newly-appointed employee if the agency has determined that the position is likely to be difficult to fill in the absence of an incentive.

Covered Positions

A recruitment incentive may be paid to an eligible individual who is appointed to a General Schedule (GS), senior-level (SL), scientific or professional (ST), Senior Executive Service (SES), Federal Bureau of Investigation and Drug Enforcement Administration (FBI/DEA) SES, Executive Schedule (EX), law enforcement officer, or prevailing rate position. OPM may approve other categories for coverage upon written request from the head of the employing agency.

Excluded Positions

Recruitment incentives may not be paid to Presidential appointees; noncareer appointees in the Senior Executive Service; those in positions excepted from the competitive service by reason of their confidential, policy-determining, policy-making, or policy-advocating natures; agency heads; or those expected to receive an appointment as an agency head.

"Newly Appointed"

Recruitment incentives may be paid to an employee who is newly appointed to the Federal Government. "Newly appointed" refers to the first appointment (regardless of tenure) as an employee of the Federal Government, an appointment following a break in service of at least 90 days from a previous appointment as an employee of the Federal Government, or, in certain cases, an appointment following a break in service of less than 90 days from a previous appointment as an employee of the Federal Government.

Agency Plan

Before paying a recruitment incentive, an agency must establish a recruitment incentive plan. The plan must include the designation of officials with authority to review and approve the payment of recruitment incentives, the categories of employees who may not receive recruitment incentives, the required documentation for determining that a position is likely to be difficult to fill, requirements for determining the amount of a recruitment incentive, the payment methods that may be authorized, requirements governing service agreements (including criteria for determining the length of a service period, the conditions for terminating a service agreement, and the obligations of the agency and the employee if a service agreement is terminated), and documentation and recordkeeping requirements. Unless the head of the agency determines otherwise, an agency recruitment incentive plan must apply uniformly across the agency.

Approval Criteria

For each determination to pay a recruitment incentive, an agency must document in writing the basis for determining that the position is likely to be difficult to fill in the absence of a recruitment incentive, the amount and timing of the incentive payments, and the length of the service period. The determination to pay a recruitment incentive must be made before the prospective employee enters on duty in the position for which recruited.

An agency may determine that a position is likely to be difficult to fill if the agency is likely to have difficulty recruiting candidates with the competencies (i.e., knowledge, skills, abilities, behaviors, and other characteristics) required for the position (or group of positions) in the absence of a recruitment incentive based on a consideration of the factors listed in 5 CFR 575.106(b). An agency also may determine that a position is likely to be difficult to fill if OPM has approved the use of a direct-hire authority applicable to the position.

Groups of Employees

An agency may target groups of similar positions that have been difficult to fill in the past or that are likely to be difficult to fill in the future and may make the required determination to offer a recruitment incentive on a group basis.

Payment
A recruitment incentive may not exceed 25 percent of the employee's annual rate of basic pay in effect at the beginning of the service period multiplied by the number of years (including fractions of a year) in the service period (not to exceed 4 years). With OPM approval, this cap may be increased to 50 percent (based on a critical agency need), as long as the total incentive does not exceed 100 percent of the employee's annual rate of basic pay at the beginning of the service period. The incentive may be paid as an initial lump-sum payment at the beginning of the service period, in installments throughout the service period, as a final-lump sum payment upon completion of the service period, or in a combination of these methods. An incentive may be paid to an individual not yet employed who has received a written offer of employment and signed a written service agreement.

Rate of Basic Pay
For the purpose of calculating a recruitment incentive, an employee's rate of basic pay includes a special rate under 5 CFR part 530, subpart C, a locality payment under 5 CFR part 531, subpart F, or similar payment under other legal authority, but excludes additional pay of any other kind. A recruitment incentive is not part of an employee's rate of basic pay for any purpose.

Aggregate Pay Limitation
Payment of a recruitment incentive is subject to the aggregate limitation on pay under 5 CFR part 530, subpart B.

Service Agreement
Before receiving a recruitment incentive, an employee must sign a written agreement to complete a specified period of employment with the agency. The service agreement must specify the length, commencement, and termination dates of the service period; the amount of the incentive; the method and timing of incentive payments; the conditions under which an agreement will be terminated by the agency; any agency or employee obligations if a service agreement is terminated (including the conditions under which the employee must repay an incentive or under which the agency must make additional payments for partially completed service); and any other terms and conditions for receiving and retaining a recruitment incentive.

Service Period
The employee's required service period may not be less than 6 months and may not exceed 4 years. The service period must begin upon the commencement of service with the agency and end on the last day of a pay period. The commencement of the service period may be delayed under certain conditions described in 5 CFR 575.110(b).

Discretionary Termination of a Service Agreement
An agency may unilaterally terminate a recruitment incentive service agreement based solely on the management needs of the agency, in which case the employee is entitled to recruitment incentive payments attributable to completed service and to retain any incentive payments already received that are attributable to uncompleted service.

Mandatory Termination of a Service Agreement
An agency must terminate a service agreement if an employee is demoted or separated for cause (i.e., for unacceptable performance or conduct), receives a rating of record lower than "Fully Successful" or equivalent during the service period, or otherwise fails to fulfill the terms of the service agreement. In such cases, the employee may retain any recruitment incentive payments attributable to completed service, but must repay any portion of the incentive attributable to uncompleted service. The agency is not obligated to pay the employee any outstanding incentive payment attributable to completed service unless such payment was required under the terms of the recruitment incentive service agreement.

An agency must notify an employee in writing when it terminates a recruitment incentive service agreement. The termination of a service agreement is not grievable or appealable.

Relocation Incentives

An agency may pay a relocation incentive to a current employee who must relocate to accept a position in a different geographic area if the agency determines that the position is likely be difficult to fill in the absence of an incentive. A relocation incentive may be paid only when the employee's rating of record under an official performance appraisal or evaluation system is at least "Fully Successful" or equivalent.

Covered Positions

A relocation incentive may be paid to an eligible individual who is appointed to a General Schedule (GS), senior-level (SL), scientific or professional (ST), Senior Executive Service (SES), Federal Bureau of Investigation and Drug Enforcement Administration (FBI/DEA) SES, Executive Schedule (EX), law enforcement officer, or prevailing rate position. OPM may approve other categories for coverage upon written request from the head of the employing agency.

Excluded Positions

Relocation incentives may not be paid to Presidential appointees; noncareer appointees in the Senior Executive Service; those in positions excepted from the competitive service by reason of their confidential, policy-determining, policy-making, or policy-advocating natures; agency heads; or those expected to receive an appointment as an agency head.

Relocation to Different Geographic Area

Relocation incentives may be paid to an employee of the Federal Government who must relocate to a different geographic area without a break in service to accept a position in an agency or to an employee of an agency who must relocate to a different geographic area (permanently or temporarily) to accept a position. A position is considered to be in a different geographic area if the worksite of the new position is 50 or more miles from the worksite of the position held immediately before the move. If the worksite of the new position is less than 50 miles from the worksite of the position held immediately before the move, but the employee must relocate (i.e., establish a new residence) to accept the position, an authorized agency official may waive the 50-mile requirement and pay the employee a relocation incentive. In all cases, an employee must establish a residence in the new geographic area before the agency may pay the employee a relocation incentive.

Agency Plan

Before paying a relocation incentive, an agency must establish a relocation incentive plan. The plan must include the designation of officials with authority to review and approve the payment of relocation incentives, the categories of employees who may not receive relocation incentives, the required documentation for determining that a position is likely to be difficult to fill, requirements for determining the amount of a relocation incentive, the payment methods that may be authorized, requirements governing service agreements (including criteria for determining the length of a service period, the conditions for terminating a service agreement, and the obligations of the agency and the employee if a service agreement is terminated), and documentation and recordkeeping requirements. Unless the head of the agency determines otherwise, an agency relocation incentive plan must apply uniformly across the agency.

Approval Criteria

For each relocation incentive authorized, an agency must document in writing the basis for determining that the position is likely to be difficult to fill in the absence of a relocation incentive, the amount and timing of the incentive payments, the length of the service period, and that the worksite of the new position is in a different geographic area than the previous position. The determination to pay a relocation incentive must be made before the employee enters on duty in the position at the new duty station. Agency determinations to pay a relocation incentive must generally be made on a case-by-case basis.

An agency may determine that a position is likely to be difficult to fill if the agency is likely to have difficulty recruiting candidates with the competencies (i.e., knowledge, skills, abilities, behaviors, and other characteristics) required for the position (or group of positions) in the absence of a relocation incentive based on a consideration of the factors listed in 5 CFR 575.206(b). An agency may also determine that a position is likely to be difficult to fill if OPM has approved the use of a direct-hire authority applicable to the position.

Groups of Employees

An agency may waive the case-by-case approval requirement when the employee is a member of a group of employees subject to a mobility agreement or when a major organizational unit is being relocated to a new duty station. Under such a waiver, an agency must specify the group of employees covered, the conditions under which the waiver is approved, and the period of time during which the waiver may be applied. Groups of employees must be approved for relocation incentives using the same criteria that apply to individuals. (See 5 CFR 575.208(b).)

Payment

A relocation incentive may not exceed 25 percent of the employee's annual rate of basic pay in effect at the beginning of the service period multiplied by the number of years (including fractions of a year) in the service period (not to exceed 4 years). With OPM approval, this cap may be raised to 50 percent (based on a critical agency need), as long as the total incentive does not exceed 100 percent of the employee's annual rate of basic pay at the beginning of the service period. (See 5 CFR 575.209(c).) The incentive may be paid as an initial lump-sum payment at the beginning of the service period, in installments throughout the service period, as a final lump-sum payment upon completion of the service period, or in a combination of these methods. The agency may not pay a relocation incentive until the employee establishes a residence in the new geographic area.

Rate of Basic Pay

For the purpose of calculating a relocation incentive, an employee's rate of basic pay includes a special rate under 5 CFR part 530, subpart C, a locality payment under 5 CFR part 531, subpart F, or similar payment under other legal authority, but excludes additional pay of any other kind. A relocation incentive is not part of an employee's rate of basic pay for any purpose.

Aggregate Pay Limitation

Payment of a relocation incentive is subject to the aggregate limitation on pay under 5 CFR part 530, subpart B.

Service Agreement

Before receiving a relocation incentive, an employee must sign a written agreement to complete a specified period of employment with the agency at the new duty station. The service agreement must specify the length, commencement, and termination dates of the service period; the amount of the incentive; the method and timing of incentive payments; the conditions under which an agreement will be terminated by the agency; any agency or employee obligations if a service agreement is terminated (including the conditions under which the employee must repay an incentive or under which the agency must make additional payments for partially completed service); and any other terms and conditions for receiving and retaining a relocation incentive.

Service Period

The employee's required service period may not exceed 4 years. The service period must begin upon the commencement of service at the new duty station and end on the last day of a pay period. The commencement of the service period may be delayed under certain conditions described in 5 CFR 575.210(b).

Discretionary Termination of a Service Agreement

An agency may unilaterally terminate a relocation incentive service agreement based solely on the management needs of the agency, in which case the employee is entitled to relocation incentive payments

attributable to completed service and to retain any incentive payments already received that are attributable to uncompleted service.

Mandatory Termination of a Service Agreement
An agency must terminate a service agreement if an employee is demoted or separated for cause (i.e., for unacceptable performance or conduct), receives a rating of record lower than "Fully Successful" or equivalent during the service period, or otherwise fails to fulfill the terms of the service agreement. In such cases, the employee may retain any relocation incentive payments attributable to completed service, but must repay any portion of the incentive attributable to uncompleted service. The agency is not obligated to pay the employee any outstanding incentive payment attributable to completed service unless such payment was required under the terms of the relocation incentive service agreement.

An agency must notify an employee in writing when it terminates a relocation incentive service agreement. The termination of a service agreement is not grievable or appealable.

Retention Incentives
An agency may pay a retention incentive to a current employee if the agency determines that the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee and that the employee would be likely to leave the Federal service in the absence of a retention incentive. A retention incentive may be paid only when the employee's rating of record under an official performance appraisal or evaluation system is at least "Fully Successful" or equivalent.

Covered Positions
A retention incentive may be paid to an eligible individual in a General Schedule (GS), senior-level (SL), scientific or professional (ST), Senior Executive Service (SES), Federal Bureau of Investigation and Drug Enforcement Administration (FBI/DEA) SES, Executive Schedule (EX), law enforcement officer, or prevailing rate position. OPM may approve other categories for coverage upon written request from the head of the employing agency.

Excluded Positions
Retention incentives may not be paid to Presidential appointees; noncareer appointees in the Senior Executive Service; those in positions excepted from the competitive service by reason of their confidential, policy-determining, policy-making, or policy-advocating natures; agency heads; or those expected to receive an appointment as an agency head.

Agency Plan
Before paying a retention incentive, an agency must establish a retention incentive plan. The plan must include the designation of officials with authority to review and approve the payment of retention incentives, the categories of employees who may not receive retention incentives, the required documentation for determining that an employee would be likely to leave the Federal service, requirements for determining the amount of a retention incentive, the payment methods that may be authorized, requirements governing service agreements (including criteria for determining the length of a service period, the conditions for terminating a service agreement, the obligations of the agency and the employee if a service agreement is terminated, and the conditions for terminating retention incentive payments when no service agreement is required), and documentation and recordkeeping requirements. Unless the head of the agency determines otherwise, an agency retention incentive plan must apply uniformly across the agency.

Approval Criteria
For each retention incentive authorized, an agency must document in writing the basis for determining that the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee and that the employee would be likely to leave the Federal service in the absence of a retention incentive. An agency may make this determination based on a

consideration of the factors listed in 5 CFR 575.306(b). In addition, an agency must document in writing the basis for determining the amount and timing of the incentive payments and the length of the service period.

Payment

An agency must establish a single retention incentive rate for the employee, expressed as a percentage of the employee's rate of basic pay, not to exceed 25 percent. With OPM approval, this cap may be increased to 50 percent (based on a critical agency need). (See 5 CFR 575.309(e).) The incentive may be paid in installments after the completion of specified periods of service within the full period of service required by the service agreement or in a single lump sum after completion of the full period of service required by the service agreement. An agency may not pay a retention incentive as an initial lump-sum payment at the start of a service period or in advance of fulfilling the service period for which the retention incentive is received. A retention incentive installment payment may be computed at the full retention incentive percentage rate or at a reduced rate with the excess deferred for payment at the end of the full service period. Explanations of how to compute retention incentive installment payments may be found at 5 CFR 575.309(c).

An agency may not offer or authorize a retention incentive for an individual prior to employment with the agency. An agency may not begin paying a retention incentive during the service period established by an employee's recruitment or relocation incentive service agreement. However, a relocation incentive may be paid to an employee who is already receiving a retention incentive.

Groups of Employees

An agency may pay a retention incentive of up to 10 percent of basic pay (or up to 50 percent with OPM approval, based on a critical agency need) to an eligible group or category of employees if the agency determines that the unusually high or unique qualifications of the group or a special need of the agency for the employees' services makes it essential to retain the employees and that there is a high risk that a significant number of employees in the group would leave the agency in the absence of a retention incentive.

Rate of Basic Pay

For the purpose of calculating a retention incentive, the employee's rate of basic pay includes a special rate under 5 CFR part 530, subpart C, a locality payment under 5 CFR part 531, subpart F, or similar payment under other legal authority, but excludes additional pay of any other kind. A retention incentive is not part of an employee's rate of basic pay for any purpose.

Aggregate Pay Limitation

Payment of a retention incentive is subject to the aggregate limitation on pay under 5 CFR part 530, subpart B.

Service Agreement

Before receiving a retention incentive, an employee must sign a written agreement to complete a specified period of service with the agency. The service period must begin on the first day of a pay period and end on the last day of a pay period. The service agreement must specify the retention incentive percentage rate established for the employee, the method and timing of incentive payments, the conditions under which an agreement will be terminated by the agency, any agency obligations if a service agreement is terminated (including the conditions under which the agency must make an additional payment for partially completed service), and any other terms and conditions for receiving and retaining retention incentives. A written service agreement is not required if the agency pays the retention incentive in biweekly installments and sets the biweekly installment payment at the full retention incentive percentage rate established for the employee.

Discretionary Continuation, Reduction, or Termination of a Retention Incentive

An agency may unilaterally terminate a retention incentive service agreement based solely on the management needs of the agency, in which case the employee is entitled to retain any retention incentive payment attributable to completed service and to receive any portion of a retention incentive payment owed by the agency for completed service.

Mandatory Continuation, Reduction, or Termination of a Retention Incentive
An agency must terminate a service agreement if the employee is demoted or separated for cause (i.e., for unacceptable performance or conduct), receives a rating of record below "Fully Successful" or equivalent during the service period, or otherwise fails to fulfill the terms of the service agreement. In such cases, the employee is entitled to retain retention incentive payments previously paid by the agency that are attributable to the completed portion of the service period. If the employee received retention incentive payments that are less than the amount that would be attributable to completed service, the agency is not obligated to pay the employee any outstanding incentive payments attributable to completed service unless such payment was required under the terms of the retention incentive service agreement.

When No Service Agreement is Required
For retention incentives that are paid in biweekly installments when no service agreement is required, an agency must review each determination to pay the incentive annually to determine whether payment is still warranted and certify this determination in writing. An agency must reduce or terminate the retention incentive whenever payment at the original level is no longer warranted. In addition, an agency must terminate a retention incentive authorization when no service agreement is required if the employee is demoted or separated for cause, receives a rating of record of less than "Fully Successful" or equivalent, or the agency assigns the employee to a different position.

An agency must notify an employee in writing when it terminates a retention service agreement or a retention incentive when no service agreement is required. Termination or reduction of a retention incentive is not grievable or appealable.

Group Retention Incentives
An agency may pay a retention incentive to a group or category of current employees if the agency determines that the unusually high or unique qualifications of the employees or a special need of the agency for the employees' services makes it essential to retain the employees in the group and that there is a high risk that a significant number of employees in the targeted group would be likely to leave the Federal service in the absence of a retention incentive. A retention incentive may be paid to an employee only when the employee's rating of record under an official performance appraisal or evaluation system is at least "Fully Successful" or equivalent.

Covered Positions
Group-based retention incentives may be paid to eligible individuals who are in General Schedule (GS), law enforcement officer, or prevailing rate positions or other categories for which the payment of retention incentives has been approved by OPM at the request of the head of an employing agency.

Excluded Positions
Retention incentives may not be paid to Presidential appointees or those in positions excepted from the competitive service by reason of their confidential, policy-determining, policy-making, or policy-advocating natures. In addition, an agency may not include in a group retention incentive authorization an employee in a senior-level (SL), scientific or professional (ST), Senior Executive Service (SES), Federal Bureau of Investigation and Drug Enforcement Administration (FBI/DEA) SES, or Executive Schedule (EX) position or in a similar category of positions for which the payment of a retention incentive has been approved by OPM.

Agency Plan
Before paying any type of retention incentive, an agency must establish a retention incentive plan. A separate plan is not needed for group retention incentives.

Approval Criteria
For each retention incentive authorized, an agency must document in writing the basis for determining that the unusually high or unique qualifications of the group of employees or a special need of the agency for the employees' services makes it essential to retain the employees and that that there is a high risk that a

significant number of employees in the targeted group would be likely to leave the Federal service in the absence of a retention incentive. An agency may make this determination based on a consideration of the factors listed in 5 CFR 575.306(b). In addition, an agency must document in writing the basis for determining the amount and timing of the incentive payments and the length of the service period.

Defining the Group
An agency must narrowly define the targeted group of employees to be paid a group retention incentive using factors that relate to the employees' unusually high or unique qualifications or the special need for the employees' services that makes it essential to retain the employees in the group and their likelihood to leave. Appropriate factors may be occupational series, grade level, distinctive job duties, unique competencies, assignment to a special project, minimum agency service requirements, organization or team designation, geographic location, and required rating of record. (While a rating of record of higher than "Fully Successful" may be a factor used in defining the targeted category, a rating of record by itself is not sufficient to justify a retention incentive.)

Payment
An agency must establish a single retention incentive rate for each group of employees, expressed as a percentage of the employee's rate of basic pay, not to exceed 10 percent. With OPM approval, this cap may be increased to 50 percent (based on a critical agency need).

Other Provisions
An agency may pay a group-based retention incentive to any individual in the targeted group if all other conditions and requirements for payment of a retention incentive are met. See OPM's website for further information about these conditions and requirements, including conditions related to the service period, service agreement, and the continuation, reduction, or termination of a retention incentive.

Separation Payments

Certain payments may be payable to an individual who is separated from the Federal service, as described below.

Severance Pay
Most Federal employees are entitled to severance pay. Employees who are covered by the severance pay law are entitled to a series of payments equal to their normal salary following an involuntary separation that is not for misconduct or unacceptable performance. Presidential appointees, noncareer SES appointees, Schedule C employees, and other, similar political appointees are not eligible for severance pay.

To be eligible for severance pay, an employee must be serving under a qualifying appointment, have completed at least 12 months of continuous service, and be removed from Federal service by involuntary separation. An employee who declines a "reasonable offer" or who is eligible for an immediate annuity from a Federal civilian retirement system or from the uniformed services is not eligible to receive severance pay. A "reasonable offer" is a position within two actual grades of the employee's current grade level in the same commuting area and agency.

The basic severance pay computation is as follows. An employee will receive one week of severance pay at the rate of basic pay for the position he or she held at the time of separation for each full year of service through 10 years. For each full year of service beyond 10 years, the employee will receive two weeks of pay. For each full 3 months of service beyond the final full year, the employee will receive 25 percent of the otherwise applicable amount.

For example, if an employee has worked for the Federal government for 17 years and 7 months, and is involuntarily terminated and otherwise eligible for severance pay, the severance pay would be computed as follows:

10 weeks of severance pay (1 week of severance pay multiplied by first 10 years of service)
plus
14 weeks of severance pay (2 weeks of severance pay multiplied by 7,
for the years of service from year 11 to year 17)
plus
1 week of severance pay (1 week of severance pay for
6 full months of service beyond 17 years)
totals
25 weeks of severance pay.

For employees with variable work schedules or variable rates of basic pay, the calculation will differ because, in general, it will be based on the weekly average during the previous 26 biweekly pay periods immediately preceding the separation.

Age Adjustment Allowance
In computing severance pay, there is also an age adjustment allowance for employees over the age of 40. Therefore, in addition to the basic severance pay allowance, employees over the age of 40 will receive an extra amount consisting of 2.5 percent of the basic severance pay allowance for each full 3 months of age over 40 years.

Lifetime Limitation
A Federal employee may receive a maximum of 52 weeks of severance pay in his or her lifetime. Thus, if an employee is separated from service and receives 30 weeks of severance pay before beginning another job with the Federal government, and then becomes eligible for severance pay a second time, he or she can receive a maximum of 22 weeks (52 minus 30) of severance pay after being separated from service for a second time.

Creditable Service for Severance Pay Purposes
The following types of service are creditable for computing an employee's severance pay:

a. Civilian service as an employee, excluding time during a period of nonpay status that is not creditable for annual leave accrual purposes;
b. Service performed with the United States Postal Service or the Postal Rate Commission;
c. Military service, including active or inactive training with the National Guard, when performed by an employee who returns to civilian service through the exercise of a restoration right provided by law, Executive order, or regulation;
d. Service performed by an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard who moves to a position within the civil service employment system of the Department of Defense or the Coast Guard, respectively, without a break in service of more than 3 days; and
e. Service performed with the government of the District of Columbia by an individual first employed by that government before October 1, 1987, excluding service as a teacher or librarian of the public schools of the District of Columbia.

Paying Severance
Severance payments are generally paid at the same pay period intervals that salary payments would be made if the individual were still employed by the Federal government. The payments are made by the former employing agency, and are subject to appropriate deductions for income and Social Security taxes.

Termination of Severance Pay
An individual's entitlement to severance pay usually ends when:

1. he or she is reemployed by the Federal government or begins working for the D.C. government;

2. he or she has exhausted the amount of severance pay to which he or she is entitled based on years of service; or
3. he or she has reached the lifetime limitation of 52 weeks.

Lump-Sum Payments for Unused Annual Leave
An employee will receive a lump-sum payment for any unused annual leave when he or she separates from Federal service or enters on active duty in the armed forces and elects to receive a lump-sum payment. Generally, a lump-sum payment will equal the pay the employee would have received had he or she remained employed until expiration of the period covered by the annual leave.

Calculating a Lump-Sum Payment
An agency calculates a lump-sum payment by multiplying the number of hours of accumulated and accrued annual leave by the employee's applicable hourly rate of pay, plus other types of pay the employee would have received while on annual leave, excluding any allowances that are paid for the sole purpose of retaining a Federal employee in Government service (e.g., retention allowances and physicians comparability allowances).

Types of Pay Included in a Lump-Sum Payment:

- Rate of basic pay
- Locality pay or other similar geographic adjustment
- Within-grade increase (if waiting period met on date of separation)
- Across-the-board annual adjustments
- Administratively uncontrollable overtime pay, availability pay, and standby duty pay
- Night differential (for FWS employees only)
- Regularly scheduled overtime pay under the Fair Labor Standards Act for employees on uncommon tours of duty
- Supervisory differentials
- Nonforeign area cost-of-living allowances and post differentials
- Foreign area post allowances

Return to Federal Service
In calculating a lump-sum payment, an agency projects forward an employee's annual leave for all the workdays the employee would have worked if he or she had remained in Federal service. By law, holidays are counted as workdays in projecting the lump-sum leave period. If an employee is reemployed in the Federal service prior to the expiration of the period of annual leave (i.e., the lump-sum leave period), he or she must refund the portion of the lump-sum payment that represents the period between the date of reemployment and the expiration of the lump-sum period. An agency recredits to the employee's leave account the amount of annual leave equal to the days or hours of work remaining between the date of reemployment and the expiration of the lump-sum leave period.

Leave

Annual Leave
An employee may use annual leave for vacations, rest and relaxation, and personal business or emergencies. An employee has a right to take annual leave, subject to the right of the supervisor to schedule the time at which annual leave may be taken. An employee will receive a lump-sum payment for accumulated and accrued annual leave when he or she separates from federal service or enters on active duty in the armed forces and elects to receive a lump-sum payment.

Accrual Rates

Employee Type	Less than 3 years of service	3 years but less than 15 years of service	15 or more years of service
Full-time employees	½ day (4 hours) for each pay period	3/4 day (6 hours) for each pay period, except 1¼ day (10 hours) in last pay period	1 day (8 hours) for each pay period
Part-time employees*	1 hour of annual leave for each 20 hours in a pay status	1 hour of annual leave for each 13 hours in a pay status	1 hour of annual leave for each 10 hours in a pay status
Uncommon tours of duty*	(4 hours) times (average # of hours per biweekly pay period) divided by 80 = biweekly accrual rate.**	6 hours) times (average # of hours per biweekly pay period) divided by 80 = biweekly accrual rate.**	(8 hours) times (average # of hours per biweekly pay period) divided by 80 = biweekly accrual rate. **

* Leave is prorated for part-time employees and employees on uncommon tours of duty.
** In computing leave accrual for uncommon tours of duty, the accrual rate for the last full pay period in a calendar year must be adjusted to ensure the correct amount of leave is accrued.

Annual Leave Accrual Rates for SES, SL and ST Positions
As a result of the "Federal Workforce Flexibility Act of 2004," P.L. 108-411, which was signed into law on October 30, 2004, members of the Senior Executive Service (SES), employees in senior level (SL) and scientific or professional (ST) positions accrue annual leave at the rate of 1 day (8 hours) for each full biweekly pay period.

In addition, OPM has extended coverage for the 8-hour category to employees in the following equivalent categories:

- Senior Foreign Service;
- Defense Intelligence Senior Executive Service;
- Senior Cryptologic Executive Service;
- Federal Bureau of Investigation Senior Executive Service;
- Drug Enforcement Administration Senior Executive Service;
- Department of Defense Highly Qualified Experts, paid under 5 U.S.C. 9303(b);
- Defense Intelligence Senior Level employees paid under 10 U.S.C. 1602;
- Federal Deposit Insurance Corporation's employees in Executive Manager (EM) positions;
- Employees in the Corporation for National and Community Service's NX-2 pay band;
- Streamlined critical pay employees of the Internal Revenue Service who are paid under 5 U.S.C. 9503;
- Employees in the Nuclear Regulatory Commission's Senior Level System (SLS);
- The Senior Counsel and the Director, External Affairs, at the United States Holocaust Museum;
- The Farm Credit Administration's employees in grades VH 42-45;
- Employees in Pay Band V of the Department of Energy's EJ, EK, and EN excepted pay systems;
- Positions covered by the Library of Congress Executive Schedule (EX) -- i.e., the Deputy Librarian of Congress, the Director of the Congressional Research Service, and the Register of Copyrights;
- National Defense University's AD employees hired under 10 U.S.C. 1595;

- Executive Director for the Federal Retirement Thrift Investment Board;
- The Federal Housing Finance Board's TF-1 through TF-5 employees; and
- Office of Federal Housing Enterprise Oversight's OF23 - OF27 employees.

Agency heads may request that OPM authorize an 8-hour annual leave accrual rate for employees who hold positions covered by pay systems which they believe are equivalent to the SES or SL/ST pay system.

Sick Leave
In addition to annual leave, federal employees also accrue sick leave. Employees may use sick leave for their own personal medical needs; to care for a family member; to care for a family member with a serious health condition; or for adoption-related purposes. As will be explained in more detail below, however, there are special restrictions when an employee uses sick leave to care for a family member or for adoption-related purposes.

Sick Leave Accrual.

- Full-time Employees - 1/2 day (4 hours) for each biweekly pay period.
- Part-time Employees - 1 hour for each 20 hours in a pay status.

There are no limits on the amount of sick leave that can be accumulated. Unused sick leave accumulated by employees covered by the Civil Service Retirement System will be used in the calculation of their annuities.

Family and Medical Leave
Under the Family and Medical Leave Act of 1993 (FMLA), an employee is entitled to a total of 12 workweeks of unpaid leave during any 12-month period for: (1) the birth of an employee's child and the care of the newborn; (2) the placement of a child with the employee for adoption or foster care; (3) the care of an employee's spouse, son or daughter, or parent with a serious health condition; and (4) an employee's own serious health condition that makes him or her unable to perform the duties of his or her position. An employee may substitute annual leave or sick leave, as appropriate, for unpaid leave under the Family and Medical Leave Act.

Leave Transfer and Leave Bank Programs
An employee who has a personal or family medical emergency and who has exhausted his or her own leave may receive donated annual leave from other Federal employees through voluntary leave transfer or leave bank programs. All agencies must have a leave transfer program. In addition, an agency may also choose to establish a leave bank for its employees.

Other Leave
Employees should also be aware that they are entitled to court leave, military leave, leave for bone marrow or organ donation, and other types of leave. You can obtain additional information on the Federal Government's leave programs by reading our FREE *2008 Federal Benefits Handbook* available at www.federalhandbooks.com.

Unscheduled Leave

When the federal government announces an "unscheduled leave policy," employees not designated as "emergency employees" may take annual leave or leave without pay without the prior approval of their supervisors. In addition, each agency has discretionary authority to determine when it is appropriate to grant a reasonable amount of excused absence to employees who are unavoidably delayed in arriving for work.

The federal government usually announces an "unscheduled leave policy" due to adverse weather conditions, such as a snowstorm, which would cause employees to be late for work, or unable to come in. Factors such as distance, availability of transportation, and the success of other employees in similar situations are taken into consideration by agencies in determining the amount of excused absence to grant. Employees are responsible for notifying their supervisors of their situation.

It is up to each supervisor to determine what is a reasonable amount of time to allow for excused absences for late arrival to ensure that the employee's work requirements are fulfilled and that the agency's operations are conducted efficiently and effectively. Employees designated as "emergency employees" are expected to report for work on time.

Washington, D.C. Area Dismissal and Closure Procedures

For employees in the Washington, D.C. area, OPM has devised specific procedures to be followed when a significant number of employees are prevented from reporting for work on time, or when agencies are forced to close. Such situations include adverse weather conditions (snow emergencies, severe icing conditions, floods, earthquakes, and hurricanes) and other disruptions of Government operations (air pollution, disruption of power, interruption of public transportation, etc.).

These procedures apply to employees in all executive agencies located inside the Washington Capital Beltway. They do not apply to employees of the U.S. Postal Service, the government of the District of Columbia, or private sector entities, including contractors. Facilities outside the Beltway may prefer to develop their own plans, since they are subject to different weather and traffic conditions than those inside the Beltway. In unusual situations, however, OPM may issue guidelines affecting facilities outside the Beltway as well.

OPM says that it is essential that Federal agencies in the metropolitan area comply with this area-wide plan and the announced decisions on dismissal or closure. They say that agencies should avoid independent action because any change in the work hours of Federal workers in the Washington, DC, area requires careful coordination with municipal and regional officials to minimize disruption of the highway and transit systems. Agencies that find it necessary to exclude certain offices, activities, or categories of employees from this plan should notify OPM of such exemptions and update such notices when necessary. Application of this guidance must be consistent with the provisions of applicable collective bargaining agreements or other controlling policies, authorities, and instructions.

Disruptions Before the Workday Begins

OPM will provide one of the following five announcements to the media when an emergency occurs before the workday begins:

Emergency Announcement	**What Announcement Means**
1. "Federal agencies in the Washington, DC area are **OPEN**; employees are expected to report for work on time."	Employees are expected to report for work on time.
2. "Federal agencies in the Washington, DC area are **OPEN** under an **UNSCHEDULED LEAVE policy**."	Employees who cannot report for work may request unscheduled leave for their entire scheduled workday. *Employees must notify their supervisors of their intent to take unscheduled leave.* *Emergency employees* are expected to report for work on time.
3. "Federal agencies in the Washington, DC area are **OPEN** under a **DELAYED ARRIVAL policy**. Employees should plan to arrive for work no more than xx hours later than they would normally arrive."	Employees should plan their commutes so that they arrive for work no more than xx hours later than they would normally arrive. Employees who arrive for work more than xx hours later than their normal arrival time will be charged annual leave or leave without pay for the additional period of absence from work. *Telework employees* are expected to report for work on time. *Emergency employees* are expected to report for work on time.

Emergency Announcement	What Announcement Means
4. "Federal agencies in the Washington, DC area are **OPEN** under an **DELAYED ARRIVAL/UNSCEDULED LEAVE policy.** Employees should plan to arrive for work no more than xx hours later than they would normally arrive, and employees who cannot report for work may take unscheduled leave."	Employees should plan their commutes so that they arrive for work no more than xx hours later than they would normally arrive. Employees who arrive for work more than xx hours later than their normal arrival time will be charged annual leave or leave without pay for the additional period of absence from work. Employees who cannot report for work may take unscheduled leave for their entire scheduled workday. *Telework employees* are expected to report for work on time. *Emergency employees* are expected to report for work on time
5. "Federal agencies in the Washington, DC area are **CLOSED**."	Federal agencies in the Washington, DC, area are closed. Non-emergency employees (including employees on pre-approved leave) will be granted excused absence for the number of hours they were scheduled to work. This does not apply to employees on leave without pay, leave without pay for military duty, workers' compensation, suspension, or in another nonpay status. *Telework employees* may be expected to work form their telework sites, as specified in their telewok agreements. *Emergency employees* are expected to report for work on time. Employees on alternative work schedules are not entitled to another AWS day off in lieu of the workday on which the agency is closed.

Disruptions After the Workday Begins

When an emergency situation occurs during normal work hours, OPM may announce that Federal agencies in the Washington, D.C. area are operating under an "Adjusted Work Dismissal" policy. When this announcement is made, employees should be dismissed relative to their normal departure times from work. For example, if a 3-hour "Adjusted Work Dismissal" policy is announced, workers who normally leave their offices at 5:00 p.m. would be authorized to leave at 2:00 p.m. See the chart below for more details:

Emergency Announcement	What Announcement Means
"Federal agencies in the Washington, DC area are operating under an **EARLY DISMISSAL policy**. Employees should be dismissed by their agencies xx hours earlier than their normal departure time form work."	Employees should be dismissed by their agencies relative to their normal departure times from work. For example, if a 3-hour **early dismissal policy** is announced, workers who normally leave their offices at 4:00 p.m. should leave at 1:00 p.m. Employees who must leave work earlier than their *early dismissal time* will be charged annual leave or leave without pay from the time of their departure through the remainder of

	their regularly scheduled workday. Employees on pre-approved leave for the entire workday or employees who requested unscheduled leave should be charged leave for the entire day. *Telework employees* may be expected to work form their telework sites, as specified in their telewok agreements. *Emergency employees* are expected to report for work on time.

Lunch or Other Meal Periods

A lunch or other meal period is an approved period of time in a nonpay and nonwork status that interrupts a basic workday or a period of overtime work for the purpose of permitting employees to eat or engage in permitted personal activities. An agency may establish policies for meal periods for most white-collar and blue-collar employees.

The law does not provide employees with an explicit entitlement to a meal period. Each agency has the authority to establish its own requirements for meal periods. An agency may require or permit unpaid meal periods during overtime hours, and the policy may be different from the one for the basic workweek. For example, an agency could permit employees to work 8 overtime hours on a Saturday or Sunday without any requirement for a meal period. In exceptional circumstances, an agency may permit employees to eat their meals while working.

Duration
In most circumstances, an agency is prohibited from scheduling a break in working hours of more than 1 hour during a basic workday. This limitation applies to lunch and other meal periods. An agency may permit or require shorter meal periods.

A basic workday is usually 8 hours, but the basic work requirement may be longer for certain days under alternative work schedules (i.e., flexible or compressed work schedules). The normal 1-hour meal period limitation does not apply if an agency permits an employee who works under a flexible work schedule to elect to take a longer unpaid meal period.

Combination with Rest Periods Prohibited
An agency may not extend a regularly scheduled lunch break by permitting an employee to take an authorized rest period (with pay) prior to or immediately following lunch, since a rest period is considered part of the employee's compensable basic workday. The lunch period may be extended only under limited circumstances.
Interruptions
Unpaid meal periods must provide bona fide breaks in the workday. If an employee is not excused from job duties, or if he or she is recalled to job duties, the employee is entitled to pay for compensable work, including work that is not de minimis in nature. Note that there is no authority to compensate employees for being placed on-call or being required to carry a pager or cell phone.

Restricted Areas
An agency may restrict employees to a limited area (such as a secure Government building or military installation) while in an on-call status during a meal period without creating an entitlement to pay for the meal period. See the exceptions below for certain firefighters and law enforcement officers.

Firefighters and Law Enforcement Officers
Meal periods during 24-hour shifts are compensable hours of work for firefighters paid under 5 CFR part 550, subpart M. Meal periods are hours of work for FLSA nonexempt employees engaged in law enforcement activities who receive annual premium pay for administratively uncontrollable overtime. Bona fide meal periods are not actual hours of work for criminal investigators who receive law enforcement availability pay.

Part-Time Employees
Agencies should establish policies stating whether meal periods will be required or permitted when part-time employees or employees who work under flexible work schedules have basic workdays that are less than 8 hours long.

Compensatory Time Off

Compensatory time off is:

- time off with pay in lieu of overtime pay for irregular or occasional overtime work, or
- when permitted under agency flexible work schedule programs, time off with pay in lieu of overtime pay for regularly scheduled or irregular or occasional overtime work.

Compensatory time off may be approved in lieu of overtime pay for irregular or occasional overtime work for both FLSA exempt and nonexempt employees. Compensatory time off can also be approved for a "prevailing rate employee," but there is no authority to require that any prevailing rate (wage) employee be compensated for irregular or occasional overtime work by granting compensatory time off.

Mandatory
Agencies may require that an FLSA exempt employee receive compensatory time off in lieu of overtime pay for irregular or occasional overtime work, but only for an FLSA exempt employee whose rate of basic pay is above the rate for GS-10, step 10. No mandatory compensatory time off is permitted for wage employees or in lieu of FLSA overtime pay.

Regularly Scheduled Overtime
Compensatory time off may be approved (not required) in lieu of regularly scheduled overtime work only for employees, including wage employees, who are ordered to work overtime hours under flexible work schedules.

Time Limits
An agency may set time limits for an FLSA exempt or nonexempt employee to take compensatory time off. An agency may provide that an FLSA exempt employee who earns compensatory time off will lose entitlement to compensatory time off and overtime pay if it is not used within agency time limits, unless the failure was due to an exigency of the service beyond the employee's control. If compensatory time off is not taken by an FLSA nonexempt employee within agency time limits, an agency must pay the employee for overtime work at the overtime rate in effect during the pay period in which the overtime work was completed.

Amount
1 hour of compensatory time off is granted for each hour of overtime work.

For Travel
Be aware that under the "Federal Workforce Flexibility Act of 2004," federal employees who must travel for business outside normal working hours will receive compensatory time off for their travel time, if the travel time is not otherwise compensable.

4

Performance Management

Defining Performance Management
Performance management is the systematic process by which an agency involves its employees, as individuals and members of a group, in improving organizational effectiveness in the accomplishment of agency mission and goals.

Employee performance management includes:

- planning work and setting expectations,
- continually monitoring performance,
- developing the capacity to perform,
- periodically rating performance in a summary fashion, and
- rewarding good performance.

Planning
In an effective organization, work is planned out in advance. Planning means setting performance expectations and goals for groups and individuals to channel their efforts toward achieving organizational objectives. Getting employees involved in the planning process will help them understand the goals of the organization, what needs to be done, why it needs to be done, and how well it should be done.

The regulatory requirements for planning employees' performance include establishing the elements and standards of their performance appraisal plans. Performance elements and standards should be measurable, understandable, verifiable, equitable, and achievable. Through critical elements, employees are held accountable as individuals for work assignments or responsibilities. Employee performance plans should be flexible so that they can be adjusted for changing program objectives and work requirements. When used effectively, these plans can be beneficial working documents that are discussed often, and not merely paperwork that is filed in a drawer and seen only when ratings of record are required.

Monitoring
In an effective organization, assignments and projects are monitored continually. Monitoring well means consistently measuring performance and providing ongoing feedback to employees and work groups on their progress toward reaching their goals.

Regulatory requirements for monitoring performance include conducting progress reviews with employees where their performance is compared against their elements and standards. Ongoing monitoring provides the opportunity to check how well employees are meeting predetermined standards and to make changes to unrealistic or problematic standards. And by monitoring continually, unacceptable performance can be identified at any time during the appraisal period and assistance provided to address such performance rather than wait until the end of the period when summary rating levels are assigned.

Developing
In an effective organization, employee developmental needs are evaluated and addressed.

Developing in this instance means increasing the capacity to perform through training, giving assignments that introduce new skills or higher levels of responsibility, improving work processes, or other methods. Providing employees with training and developmental opportunities encourages good performance, strengthens job-related skills and competencies, and helps employees keep up with changes in the workplace, such as the introduction of new technology.

Carrying out the processes of performance management provides an excellent opportunity to identify developmental needs. During planning and monitoring of work, deficiencies in performance become evident and can be addressed. Areas for improving good performance also stand out, and action can be taken to help successful employees improve even further.

Rating
From time to time, organizations find it useful to summarize employee performance. This can be helpful for looking at and comparing performance over time or among various employees. Organizations need to know who their best performers are.

Within the context of formal performance appraisal requirements, rating means evaluating employee or group performance against the elements and standards in an employee's performance plan and assigning a summary rating of record. The rating of record is assigned according to procedures included in the organization's appraisal program. It is based on work performed during an entire appraisal period. The rating of record has a bearing on various other personnel actions, such as granting within-grade pay increases and determining additional retention service credit in a reduction in force.

Note: Although group performance may have an impact on an employee's summary rating, a rating of record is assigned only to an individual, not to a group.

Rewarding
In an effective organization, rewards are used well. Rewarding means recognizing employees, individually and as members of groups, for their performance and acknowledging their contributions to the agency's mission. A basic principle of effective management is that all behavior is controlled by its consequences. Those consequences can and should be both formal and informal and both positive and negative.

Good performance is recognized without waiting for nominations for formal awards to be solicited. Recognition is an ongoing, natural part of day-to-day experience. A lot of the actions that reward good performance — like saying "Thank you" — don't require a specific regulatory authority. Nonetheless, awards regulations provide a broad range of forms that more formal rewards can take, such as cash, time off, and many nonmonetary items. The regulations also cover a variety of contributions that can be rewarded, from suggestions to group accomplishments.

Performance Elements

Agencies can use the following performance elements in employee performance plans:

- critical elements,
- non-critical elements, and
- additional performance elements.

Critical Element
A critical element is a work assignment or responsibility of such importance that unacceptable performance on that element would result in a determination that an employee's overall performance is unacceptable. The regulations require that employees have at least one critical element in their performance plans. Critical elements must address performance at the individual level only.

Non-critical Element
A non-critical element is a dimension or aspect of individual, team, or organizational performance, exclusive of a critical element, that is used in assigning a summary level. It may include, but is not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance. Its use is optional but, if used, it must be expressed as an element and standard, be included in the employee's performance plan, and be used in

assigning a summary level for the rating of record. However, a non-critical element cannot be used as a basis for taking a performance-based action. Other features of non-critical elements include:

- non-critical elements cannot be used in two-level appraisal programs (i.e., pass/fail);
- non-critical elements can be given more weight than critical elements when assigning a summary level above Unacceptable (Level 1); and
- while a non-critical element must have a performance standard written for at least one level, the written standard need not describe the Fully Successful or equivalent level.

Additional Performance Element

Additional performance elements provide agencies another tool for communicating performance expectations important to the organization. In essence, they are dimensions or aspects of overall performance that the agency wishes to communicate and appraise, but which will not be used in assigning a summary level. Such additional elements may include objectives, goals, program plans, work plans, and other methods of expressing expected performance. Like non-critical elements, they do not have to be appraised at any particular level. Their major distinctions from non-critical elements are that they can not be used in assigning a summary level and additional performance elements do not require a performance standard. They allow agencies to factor group or team performance into the performance plan of employees under two-level (Pass/Fail) summary appraisal programs.

Summary Levels

Federal employee performance appraisal regulations require that employees annually be assigned a summarizing rating that describes their performance throughout the entire year compared to the elements and standards established in their performance plans. This summarizing rating is called a rating of record and is described using summary levels, which can be one of five levels (Levels 1 through 5, with 1 being Unacceptable, 3 being Fully Successful or equivalent, and 5 being Outstanding or equivalent.)

An agency must assign a summary level when the rating of record is completed at the end of the appraisal period. The principal reason for this requirement is that several other personnel systems and actions rely on the rating of record as a trigger or threshold (e.g., granting within-grade increases, noncompetitive promotions) or as an otherwise necessary input (e.g., for granting additional service credit in a reduction in force (RIF)). Agencies may use between two (Levels 1 and 3) and five (Levels 1, 2, 3, 4, and 5) summary levels, or a specified combination in between, as permitted by the agency's performance appraisal system and specified in the applicable appraisal program.

Other Measures

Agencies may use any procedures they deem appropriate for considering performance when granting awards and taking other personnel actions, with the following exceptions:

- assigning additional service credit in a reduction in force, which requires that ratings of record be used to assign additional service credit, and
- within-grade increases for General Schedule employees and prevailing rate system employees, which are tied to ratings of record and performance ratings respectively

Temporary Employees

Temporary employees are excluded from the performance appraisal system provided they meet the requirements established at section 4302(h) of title 5, United States Code, can be excluded from a performance appraisal system. Under that section, an agency may exclude an employee who:

- is serving in a position under a temporary position for less than 1 year,
- agrees to serve without a performance evaluation, and
- will not be considered for a reappointment or for an increase in pay based in whole or in part on performance.

In addition, the Office of Personnel Management has already excluded by regulation at section 430.202(c) of title 5, Code of Federal Regulations, any excepted service employee in a position for whom employment in a consecutive 12-month period is not reasonably expected to exceed the minimum period that would otherwise have applied to the employee.

Reduction in Force
Under current law, performance ratings must be a factor in the reduction in force process. Only under a demonstration project that waives pertinent law or regulation could an agency drop the use of performance in a reduction in force.

Credited Performance
Additional years of service credit are added to an employee's length of service based on the employee's three most recent ratings of record during the four years prior to the reduction in force. In a competitive area where all the ratings of record being credited were done under a single pattern of summary levels, the additional service credit is computed by averaging the three most recent ratings of record given in the previous four years using the following values:

- 20 years of service for each Level 5 (Outstanding or equivalent rating);
- 16 years of service for each Level 4; and
- 12 years of service for each Level 3 (Fully Successful or equivalent rating).

In an agency where employees in a competitive area have ratings of record being credited for reduction in force that were done under more than one pattern of summary levels, the agency can establish the values for the summary levels (within 12 to 20 years) so that performance crediting will be as fair and equitable as possible. Within a competitive area, the agency must use the same number of years additional retention service credit for all ratings of record with the same summary level in the same pattern of summary levels.

Within Grade Increases

The term "within-grade increase" is synonymous with the term "step increase" and means a periodic increase in a Federal employee's rate of basic pay from one step or rate of the grade of his or her position to the next higher step of that grade or next higher rate within the grade. Employees must be performing at an acceptable level of competence in order to receive a within-grade increase.

Restrict the Application of a Rating
An agency cannot restrict the application of a rating of record that was prepared solely to reflect current performance for the denial of a within-grade increase. When a within-grade increase determination is not consistent with an employee's most recent rating of record (i.e., current performance is not accurately reflected by the rating of record prepared at the end of the most recently completed appraisal period), regulation requires the preparation of a more current rating of record. However, there is no provision for the agency to limit the application of the newer rating of record to the within-grade increase determination only.

Dealing with Poor Performers

Most Federal employees work hard, and their performance is considered good or even exceptional. However, at times Federal supervisors are faced with employees whose performance is not acceptable.

Notification
Good managers provide their employees with performance feedback throughout the appraisal cycle. The Office of Personnel Management reinforces this in its regulations where it states that employees need to be notified of unacceptable performance, "At any time during the performance appraisal cycle that an employee's performance is determined to be unacceptable . . . ."

Notice also that the Governmentwide regulations only call for a determination, not a formal rating of record. Check with your agency on your internal policy regarding whether or not a full performance rating needs to be prepared before you inform an employee of unacceptable performance. Remember, regardless of whatever agency requirements apply, no employee likes to feel "sandbagged" at appraisal time, so confront the poor performance as soon as you become aware of it.

Employee Disability

The question of who is "disabled" under the law is one that is still confusing to experts. In most cases, you will want to turn over any documentation you receive from the employee to the human resources office so that they can obtain a physician's review of the employee's medical documentation. Once you get a decision from the medical experts that the employee's condition significantly impacts his or her ability to perform, you will need to carefully consider what the employee is requesting in the way of accommodation and assess whether or not you can provide the accommodation.

Proposal Notice to Remove

Each agency has a "culture" that defines the amount of information and documentation that will go into a proposal notice. At a minimum, your notice will state which regulation the action is being taken under, specify what critical performance element(s) the employee failed to meet, cite the evidence of unacceptable performance, and discuss the opportunity period (or the lack of one). The notice will also explain to the employee the time allowed for a written and/or oral response. Ask your human resources specialist for some samples of other performance-based notices to get a sense of what your agency requires.

Opportunity Period to Improve

If you take a performance-based action under Part 432, you must provide an employee with a formal opportunity to improve. On the other hand, Part 752 does not require a supervisor to provide an employee with such an opportunity. One reason for not providing an opportunity period may be that your employee has several years of experience in the job and additional training would prove useless. Another reason may be that your employee has already received extensive informal training and additional training or assistance would seem unreasonable.

Failure to Issue Part 432 Decision within 30 days after the notice period expires

The regulations require that an employee receive a decision in Part 432 actions within 30 days of the expiration of the 30-day notice period. This provision automatically gives you a 60-day period of time in which to work. Additionally, the Office of Personnel Management has issued regulations that give agencies the discretion to extend the initial 30-day notice period by another 30 days, so you are actually working within a 90-day timeframe. However, there are always those situations where even more time will be needed, perhaps because the employee has asked for a lengthy extension to prepare a response or the deciding official cannot gather and analyze all the information needed within the 90 days allowed. 5 CFR Part 432 lists six reasons that commonly cause delay and allows agencies to extend the notice period if those conditions exist. If your situation does not fall into any of the six categories, the regulations provide that OPM can approve an extension of the notice period based on a brief written request by the agency.

Suspend, Demote, or Remove

This answer depends largely on whether you proceed under Part 432 or Part 752. Under Part 432, you have the option of demotion or removal and you do not have to defend your reasoning for choosing either action. As was noted in Figure C, mitigation to a lesser action by a third party is not possible. So, if you meet the requirements of proving that the employee was unacceptable, even after being given an opportunity to improve, no third party can challenge your reasons for removing instead of demoting the employee. Therefore, your decision is based on your analysis of whether the employee can function acceptably in a lower graded position or not. Some agencies may have policies that require supervisors to explore demotion options before going to removal, but that policy would be an internal policy, not one that governs all Federal supervisors.

However, reduction in the agency-selected penalty, known as mitigation, is a possibility in any action taken under Part 752. Therefore, you will need to explain in any decision notice, and possibly in a proposal notice as well, what factors

led you to believe that your chosen action (suspension, demotion, or removal) was the right one. Most supervisors who have taken any kind of adverse action against an employee have been told about the Douglas factors. This is a reference to a decision by the Merit Systems Protection Board that listed 12 factors that might be taken into consideration when deciding on the appropriate penalty in any adverse action. Your human resources office will be able to provide you with a copy of these factors. At this point, it is sufficient to understand that the factors force a deciding official to examine any issues that might support a more severe penalty as well as those circumstances that would convince the deciding official to lower the penalty.

Furloughs

There are two types of furloughs:

1. "shutdown" or "emergency" furlough, and
2. "save money" furlough.

In a "shutdown" furlough, the agency no longer has the necessary funds to operate and must shut down those activities which are not excepted by Office of Management and Budget (OMB) standards. In many cases, the agency will have very little lead time to plan for the furlough, making it an "emergency" furlough. A good example of a "shutdown" or "emergency" furlough is if there are no fiscal year 1999 funds appropriated for an agency by October 1, 1998.
On the other hand, a "save money" furlough is a planned event by an agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any other event which requires the agency to save money.

A "save money" furlough is typically a "non-emergency" furlough in that the agency has sufficient time to reduce spending and therefore give adequate notification of its specific furlough plan and how many furlough days will be required. A good example of a "save money" furlough would be when, as a result of Congressional budget decisions, an agency is required to absorb additional reductions over the course of a fiscal year. In order to provide agencies with a broad spectrum of information on these matters, both types of furloughs are addressed in the following questions and answers.

Employee Status
A furlough is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons. For most employees, there are two basic categories of furloughs, each involving different procedures. A furlough of 30 calendar days or less is covered under 5 CFR Part 752, adverse action procedures. A furlough of more than 30 calendar days is covered under 5 CFR Part 351, reduction in force procedures. All furloughs for Senior Executive Service members are covered under 5 CFR Part 359, Subpart H.

Employment during Furlough
Even while on furlough, an individual is an employee of the Government. Therefore, the Executive Branch-wide standards of ethical conduct (the standards), at 5 CFR Part 2635, which include rules on outside employment, continue to apply to employees on furloughs.

Additionally, there are statutes which prohibit certain outside activities. Agencies also have varying supplemental rules regarding the requirement for prior approval of outside employment, and some prohibit certain types of outside employment. Therefore, before engaging in outside employment, employees should review these regulations and then consult their own agency ethics official to learn if there are any agency-specific supplemental rules governing the employee.

Senior Executive Service (SES)
Furloughs of SES career appointees (other than reemployed annuitants) are covered under 5 U.S.C. 3595a and Subpart H of 5 CFR Part 359. The regulations provide only for a single 30-calendar day advance written notice, which must tell the appointee: the reason for the furlough; the expected duration of the furlough and the effective dates; the basis for

selecting the appointee when some but not all SES appointees in a given organizational unit are being furloughed; the location where the appointee may inspect the regulations and records pertinent to the action; the reason, if the notice period is less than 30 calendar days; for a probationer, the effect (if any) on the duration of the probationary period; and the appointee's appeal rights to the Merit Systems Protection Board (MSPB), including the time limit for the appeal and the MSPB office to which it should be sent. A career appointee may appeal a furlough of any length. Competitive procedures are required to select career appointees for any furlough of more than 30 calendar days (or 22 workdays).

An agency may furlough an SES noncareer or limited appointee, or a reemployed annuitant holding a career appointment; there are no specific procedures prescribed in law or regulation for effecting such an action. If an agency chooses to establish its own procedures, OPM suggests that such procedures include certain minimum features, e.g., whenever possible, a written notice at least 1 day before the furlough which states the reasons for, duration of, and effective dates of the furlough. Furlough of an SES noncareer or limited appointee, or a reemployed annuitant holding a career SES appointment, is not appealable to MSPB.

Change to Lower Grade

As positions are reviewed by local or higher level personnel management authorities, there may be times when a position is downgraded because of a determination that the position warrants classification at a lower grade due to a classification error, a change to job grading standards, or erosion of duties.

Effecting such a downgrade (demotion) or change to lower grade of the employee occupying the position is considered an adverse action. It not only lowers the grade of the position but also may lower the employee’s salary rate. Employees do not have entitlement to grade retention if the position has not been classified at the original grade for at least one year. In addition, employees are not entitled to grade retention unless they have served for at least 52 consecutive weeks in the affected position, or equivalent position, prior to the reclassification.

Depending upon circumstances, a change to lower grade may be effected under adverse action procedures or under reduction in force procedures. Supervisors should seek the advice of their servicing personnel specialist in deciding which procedures are applicable.

Hours of Duty, Work Schedules, and Compensation

Supervisors are responsible for establishing the hours of duty and work schedules for their employees. Some schedules and hours of duty provide the employee(s) with special pay entitlements. Employees also receive additional pay for overtime work and work on holidays.

Scheduling of Work

A work schedule has a direct effect on an employee’s pay entitlements. “Regularly scheduled work” means work that is scheduled before the beginning of the administrative workweek. Because the term “regularly scheduled work” is significant in the determining premium pay entitlements, work schedules must reflect the employee’s actual work requirements, including any period of regularly scheduled overtime.

Work Schedules

There are a number of different work schedules. Employees on different work schedules have varying benefits and entitlements, for example, leave accrual, health and life insurance coverage, paid holidays, etc.

Supervisors establish employee work schedules based on such factors as:

- Work requirements for the position and the agency
- The work requirements of other positions in the agency
- Higher management level requirements
- Availability/limitation of funds
- Availability and retention of candidates.

The SF 52, Request for Personnel Action, is used to request a change in work schedule. There may be advance notice period requirements before changes can be effected.

Work Schedule Options:

- Full-Time. A full-time work schedule requires most employees to work 40 hours during the workweek.
- Part-Time. A schedule that requires an employee to work less than full-time, but for a specific number of hours (usually 16-32 hours per administrative workweek) on a prearranged scheduled tour of duty.
- Job Sharing. When two employees voluntarily share the duties and responsibilities of a full-time position. Job sharers are part-time employees and are subject to the same personnel policies on that basis. It is a way for management to offer part-time work schedules in positions where full-time coverage is needed.
- Intermittent. A work schedule that requires an employee to work on an irregular basis for which there is no prearranged scheduled tour of duty.
- On-Call. An employee who works when needed during periods of heavy workload with expected cumulative service of at least 6 months in pay status each year.
- Seasonal. An employee who works on an annually recurring basis for periods of less than 12 months (2080 hours) each year. Snow removal workers and grounds maintenance crews are examples of seasonal employees.

Alternative Work Schedules

An agency may implement for its employees an alternative work schedule (AWS) instead of a traditional fixed work schedule (e.g., 8 hours per day, 40 hours per week). Within rules established by the agency, alternative work schedules can enable employees to have work schedules that help them balance their work and family responsibilities. There are two categories of Alternative Work Schedules: Compressed Work Schedules (CWS) and Flexible Work Schedules (FWS).

Compressed Work Schedules
Compressed Work Schedules (CWS) are fixed work schedules, but they enable full-time employees to complete the basic 80-hour biweekly work requirement in less than 10 workdays.

Employee Coverage
A Federal employee, as defined in section 2105(a) or (c) of title 5, United States Code, who is employed by an agency, as defined in 5 U.S.C. 6121(1), may be covered by a CWS. An employee may request to be excluded for a personal hardship.

Implementation Restrictions

- *For employees in a bargaining unit:* The agency must successfully negotiate a CWS program with the union for a represented group of employees prior to implementation.
- *For employees not in a bargaining unit:* The agency must secure a favorable vote from the majority of employees in the affected group before implementing a CWS program.

Credit Hours
Credit hours are not permitted under a CWS program.

Overtime
For full-time employees, all hours worked in excess of the established compressed work schedule are overtime hours.

Compensatory Time Off
An employee on a CWS may request compensatory time off only for the performance of irregular or occasional overtime work. Compensatory time off may not be approved for any member of the Senior Executive Service (SES).

Night Pay
The normal premium pay rules apply for night pay. See 5 CFR 550.121 and 122 for General Schedule employees and 5 CFR 532.505 for prevailing rate employees.

Holidays
On holidays, an employee is normally excused from work and entitled to basic pay for the number of hours of his or her CWS on that day. In the event the President issues an Executive Order granting a "half-day" holiday, full-time CWS employees are normally excused from work during the last half of their "basic work requirement" (i.e., nonovertime hours) on that day.

Holiday Premium Pay
Holiday premium pay (equal to 100 percent of the rate of basic pay) is paid for nonovertime hours of work that fall within the hours regularly scheduled on the holiday.

Sunday Premium Pay
Sunday premium pay is paid for nonovertime work performed by full-time employees. For an employee on a CWS, Sunday premium pay is paid for the entire nonovertime regularly scheduled tour of duty that begins or ends on Sunday. It may not be paid for periods of nonwork, including leave, holidays, and excused absence.

Flexible Work Schedules
Flexible Work Schedules (FWS) consist of workdays with (1) core hours and (2) flexible hours. Core hours are the designated period of the day when all employees must be at work. Flexible hours are the part of the workday when employees may (within limits or "bands") choose their time of arrival and departure. Within limits set by their agencies, FWS can enable employees to select and alter their work schedules to better fit personal needs and help balance work, personal, and family responsibilities.

Employee Coverage
A Federal employee, as defined in section 2105(a) or (c) of title 5, United States Code, who is employed by an agency, as defined in 5 U.S.C. 6121(1), may be covered by a flexible work schedule. Flexible work schedules are voluntary work schedules that are approved by supervisors or managers.

Credit Hours
Credit hours are any hours within an FWS that are in excess of an employee's basic work requirement (e.g., 40 hours a week) that the employee elects to work to vary the length of a workweek or a workday. Agencies may limit or restrict the earning and use of credit hours. OPM regulations prohibit Senior Executive Service (SES) members from accumulating credit hours under AWS programs. The law prohibits carrying over more than 24 credit hours from one pay period to the next.

Types of FWS
There are various types of FWS arrangements that provide different degrees of flexibility. These include flexitour, gliding, variable day, variable week, and maxiflex schedules.

Overtime Hours
Overtime work means all hours of work in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance.

Compensatory Time Off
An employee who is not a member of the Senior Executive Service may request compensatory time off in lieu of payment for irregular or occasional overtime work or regularly scheduled overtime work.

Night Pay
In general, premium pay for night work is not paid to a General Schedule (GS) employee solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time when night pay is authorized.

However, agencies must pay night pay to GS employees for those hours that must be worked between 6 p.m. and 6 a.m. to complete an 8-hour tour of duty. Agencies must also pay night pay for all designated core hours worked between 6 p.m. and 6 a.m. and for any regularly scheduled overtime work between those hours.

Note: For prevailing rate (wage) employees, see 5 U.S.C. 6123(c)(2).

Holidays
On holidays, a full-time FWS employee is limited to 8 hours of basic pay. A part-time FWS employee is entitled to basic pay for the number of hours scheduled for the holiday, not to exceed 8 hours. In the event the President issues an Executive Order granting a “half-day” holiday, full-time FWS employees are entitled to basic pay for the last half of their “basic work requirement” (i.e., nonovertime hours) on that day, not to exceed 4 hours.

Holiday Premium Pay
Holiday premium pay (equal to 100 percent of the rate of basic pay) is limited to nonovertime hours worked, not to exceed a maximum of 8 nonovertime hours per holiday.

Sunday Premium Pay
Sunday premium pay is paid for nonovertime work performed by full-time employees only. A full-time FWS employee earns Sunday premium pay for an entire nonovertime regularly scheduled tour of duty (not to exceed 8 hours) that begins or ends on Sunday. It may not be paid for periods of nonwork, including leave, holidays, and excused absence.

Adjustment Of Work Schedules For Religious Observance
To the extent that modifications in work schedules do not interfere with the efficient accomplishment of an agency’s mission, an employee whose personal religious beliefs require that he or she abstain from work at certain times of the workday or workweek must be permitted to work alternative work hours so that the employee can meet the religious obligation. The hours worked in lieu of the normal work schedule do not create any entitlement to premium pay (including overtime pay). Adjustments of work schedules for religious observances may be approved for an employee who is employed in or under an executive agency.

Approval
Agencies should require employees to submit a written request for an adjusted work schedule in advance. An employee should specifically state that his or her request for an adjusted work schedule is for religious purposes and should provide acceptable documentation of the need to abstain from work.

When deciding whether an employee’s request for an adjusted work schedule should be approved, a supervisor should not make any judgment about the employee’s religious beliefs or his or her affiliation with a religious organization. A supervisor may disapprove an employee’s request if modifications of an employee’s work schedule would interfere with the efficient accomplishment of the agency’s mission. If an employee’s request is approved, a supervisor may determine whether the alternative work hours will be scheduled before or after the religious observance.

Documenting An Adjusted Work Schedule
An employee’s request for time off should not be granted without simultaneously scheduling the hours during which the employee will work to make up the time. This provides a clear record of the employee’s adjusted work schedule.

An employee should be allowed to accumulate only the number of hours of work needed to make up for previous or anticipated absences from work for religious observances.

If an employee is absent when he or she is scheduled to perform work to make up for a planned absence for a religious observance, the employee must take paid leave, request leave without pay, or be charged absent without leave, if appropriate. These are the same options that apply to any other absence from an employee's basic work schedule.

Impact on Pay

The overtime pay provisions of title 5, United States Code, and the Fair Labor Standards Act of 1938, as amended, do not apply to employees who work different hours or days because of religious observances, even if an employee voluntarily works in excess of 40 hours per week or 8 hours per day for this purpose. If an employee is separated or transferred before using the time set aside for religious observances, any hours not used must be paid at the employee's rate of basic pay in effect when the extra hours of work were performed.

5

Transfers and Reinstatements

Transfers

A career or career-conditional employee of one agency may transfer, without a break in service of a single workday, to a competitive service position in another agency without competing in a civil service examination open to the public. A transfer eligible may apply under vacancy announcements open to status candidates. An employee may transfer to a position at the same, higher, or lower grade level.

Eligibility to Transfer
Present Federal employees who are serving in the competitive service under a career or career-conditional appointment are eligible to transfer to a position in the competitive service.

To transfer, you must meet the qualification requirements for the position. Written tests are not common, but if one is required, arrangements will be made for you to take it.

Employees must be found suitable for employment in competitive service positions. If your current appointment is subject to a suitability investigation, that condition continues after you transfer.
Generally on transfer, a career employee remains a career employee, and a career-conditional employee remains a career-conditional employee.

Applying for Transfer
You must conduct your own job search. Transfer eligibility does not guarantee you a job offer. Hiring agencies have the discretion to determine the sources of applicants they will consider.

Individuals usually apply to agencies in response to vacancies announced under the merit promotion program. Some agencies accept applications only when they have an appropriate open merit promotion announcement, while others accept applications at any time. If you are seeking a higher grade or a position with more promotion potential than you have previously held, generally you must apply under a merit promotion announcement and rank among the best-qualified applicants to be selected. Status applicants include individuals who are eligible for transfer.

Probationary Period
An employee is not required by the civil service rules and regulations to serve a new probationary period after transfer. However, the employee continues to serve the remainder of any probationary period that he or she was serving at the time of transfer. In most cases, an employee must wait at least three months after his or her latest non-temporary competitive appointment before being considered for transfer to a position in a different line of work, at a higher grade, or to a different geographical area. OPM may waive the restriction against movement to a different geographical area when it is satisfied that the waiver is consistent with the principles of open competition.

Positions Restricted to Veterans
Some positions in the competitive service such as guard, messenger, elevator operator, and custodian have been restricted by law to persons entitled to preference under the veteran preference laws. Generally, a nonveteran employee cannot be transferred to such positions if there are veterans available for appointment to them. This restriction does not apply to the filling of such positions by the transfer of a nonveteran already serving in a federal agency in a position covered by the same generic title. For example, a nonveteran who is serving in the position of guard may be considered for transfer to the position of patrolman, guard, fireman, guard-laborer, etc.

Reinstatement

If you have prior career or career-conditional service with the federal government, you may be eligible for reinstatement. Reinstatement allows you to reenter the Federal competitive service workforce without competing with the public in a civil service examination. You may apply for any open civil service examination, but reinstatement eligibility also enables you to apply for Federal jobs open only to status candidates.

Eligibility Requirements
You must have held a career or career-conditional appointment at some time in the past. If so, there is no time limit on reinstatement eligibility for those who have veterans' preference, or acquired career tenure by completing 3 years of substantially continuous creditable service.

If you do not have veterans' preference or did not acquire career tenure, you may be reinstated within 3 years after the date of your separation. Reinstatement eligibility may be extended by certain activities that occur during the 3-year period after separation from your last career or career- conditional appointment. Examples of these activities are:

- Federal employment under temporary, term, or similar appointments.
- Federal employment in excepted, non-appropriated fund, or Senior Executive Service positions.
- Federal employment in the legislative and judicial branches.
- Active military duty terminated under honorable conditions.
- Service with the District of Columbia Government prior to January 1, 1980 (and other service for certain employees converted to the District's independent merit system).
- Certain government employment or full-time training that provided valuable training and experience for the job to be filled.
- Periods of overseas residence of a dependent who followed a Federal military or civilian employee to an overseas post of duty.

Applying for Reinstatement
You must conduct your own job search. Reinstatement eligibility does not guarantee you a job offer. Hiring agencies have the discretion to determine the sources of applicants they will consider.

Individuals usually apply to agencies in response to vacancies announced under the merit promotion program. Some agencies accept applications only when they have an appropriate open merit promotion announcement, while others accept applications at any time. If you are seeking a higher grade or a position with more promotion potential than you previously held, generally you must apply under a merit promotion announcement and rank among the best- qualified applicants to be selected. Status applicants include individuals who are eligible for reinstatement.

To establish your reinstatement eligibility, you must provide a copy of your most recent SF 50, Notification of Personnel Action, showing tenure group 1 or 2, along with your application. You may obtain a copy of your personnel records from your former agency if you recently separated. Otherwise, send your request to the Federal Records Center.

The Federal Records Center has been established as a depository for official personnel folders of persons no longer in the Federal service. Federal agencies, generally, transfer employment records to the Federal Records Center thirty days after the employee has been separated from Federal service. Requests for this information should be directed to:

Federal Records Center
National Archives and Records Administration
111 Winnebago Street
St. Louis, Missouri 63118
Phone: (314) 801-9250

Such inquiries should include your full name under which you were formerly employed, social security number, date of birth, and to the extent known, former Federal employing agencies, addresses and dates of such employment. The Privacy Act of 1974 (5 USC 552a) and OPM require a signed and dated written request for information from Federal records. No requests for information from personnel or any other type of records will be accepted by telephone or e-mail.

Citizenship
You must be a citizen of the United States.

Qualifications
You must meet the qualification requirements for the position. Written tests are not common, but if one is required, arrangements will be made for you to take it.

Suitability
You must meet the suitability standards for Federal employment. If you were removed for cause from your previous Federal employment, it will not necessarily bar you from further Federal service. The facts in each case as developed by inquiry or investigation will determine the person's fitness for re-entry into the competitive service.

Age
There are no maximum age limits for appointment to most positions in the competitive service. Some jobs, such as law enforcement officers and firefighters, do have limits.

Positions Restricted to Veterans
Positions in the competitive service such as guard, messenger, elevator operator, and custodian have been restricted by law to veterans entitled to preference. Generally, a non-veteran may not be reinstated to such positions if qualified veterans are available.

Probationary Period
A former employee who did not complete a required probationary period during previous service under the appointment upon which his or her eligibility for reinstatement is based is required, in most cases, to serve a complete one-year probationary period after reinstatement.

6

Senior Executive Service

The Senior Executive Service is comprised of the men and women charged with leading the continuing transformation of government. These leaders possess well-honed executive skills and share a broad perspective of government and a public service commitment which is grounded in the Constitution. The keystone of the Civil Service Reform Act of 1978, the SES was designed to be a corps of executives selected for their leadership qualifications.

Members of the SES serve in the key positions just below the top Presidential appointees. SES members are the major link between these appointees and the rest of the Federal work force. They operate and oversee nearly every government activity in approximately 75 Federal agencies.

The Office of Personnel Management (OPM) manages the overall Federal executive personnel program. OPM Staff provides the day-to-day oversight of and assistance to agencies as they develop, select, and manage their Federal executives.

Structure of the SES
There are two types of SES positions - General and Career Reserved. A General position may be filled by a career, noncareer, or limited appointee. The same General position may be filled by a career appointee at one time and by a noncareer or limited appointee at another time. However, a Career Reserved position must always be filled by a career appointee. By law, there is a governmentwide minimum number of positions that must be career reserved.

Criteria for Career Reserved Positions
A position is designated Career Reserved if it must be filled by a career appointee to ensure the impartiality, or the public's confidence in the impartiality, of the Government. Career Reserved positions are those that involve day-to-day operations, without responsibility for or substantial involvement in the determination or public advocacy of the major policies of the Administration or agency. They include positions in these occupational disciplines: adjudication and appeals; audit and inspection; civil or criminal law enforcement and compliance; contract administration and procurement; grants administration; investigation and security matters; and tax liability, including the assessment or collection of taxes and the preparation or review of interpretative opinions. They also include:

- scientific or other highly technical or professional positions where the duties and responsibilities of the position are such that it must be filled by a career appointee to ensure impartiality;
- other positions requiring impartiality, or the public's confidence in impartiality, as determined by the agency in light of its mission; and
- positions that the law specifically requires be Career Reserved or be filled by a career appointee.

SES Appointments
In addition, there are four types of SES appointments - career, noncareer, limited term, and limited emergency. The characteristics of each of the types are as follows.

- Career appointments. Incumbents are selected by agency merit staffing process and must have their executive qualifications approved by a Qualifications Review Board (QRB) convened by OPM. Appointments may be to a General or Career Reserved position; rights of the individual are the same in either case.
- Noncareer appointments are approved by OPM on a case-by-case basis and the appointment authority reverts to OPM when the noncareer appointee leaves the position. Appointments may be made only to General positions and cannot exceed 25% of the agency's SES position allocation. Governmentwide, only 10% of SES positions may be filled by noncareer appointees.

- Limited Term appointments may be made for up to 3 years, are nonrenewable, and must be to an SES General position which will expire because of the nature of the work (e.g., a special project).

- Limited Emergency appointment are also nonrenewable appointments, may be for up to 18 months, and must be to an SES General position which has to be filled urgently.

The total number of limited appointments may not exceed 5% of SES positions allocated Governmentwide. Each agency has a pool equal to 3 percent of its allocation for making limited appointments of career or career-type employees from outside the SES. OPM must approve use of this type of appointment authority in other cases.

Selection Process

For initial entry into the SES, agency Executive Resources Boards conduct the merit staffing process leading to initial career appointment. Vacancies must be advertised at least Government-wide and must be published on the USAJOBS website. Veterans preference does not apply. OPM administers interagency Qualifications Review Boards (QRB's) which must certify the executive qualifications of agency selectees before their initial SES career appointment. A one-year probationary period follows initial career appointment.

Non-career and limited appointments are made without competition. The agency head or his/her designee approves the candidate's qualifications. At least 70% of SES positions Government-wide must be filled by individuals with 5 years or more of current, continuous service immediately before initial SES appointment to assure experience and continuity.

To assist employees who aspire to a career in the SES, OPM offers Executive Core Qualifications (ECQs) workshops especially geared for employees at the GS-14/15 level or equivalent. However, anyone whose career goal is the SES can attend. The Guide to Senior Executive Service Qualifications provides detailed information about executive qualifications and how to complete an SES application. The web pages of the Federal Executive Institute and Management Development Centers have information on the developmental programs offered to enhance the leadership skills of Government executives and managers.

Some agencies conduct SES Candidate Development Programs (CDP), which is another way to qualify for an initial career appointment.

Qualifications

The law requires that the executive qualifications of each new career appointee to the SES be certified by an independent Qualifications Review Board based on criteria established by OPM. The Executive Core Qualifications (ECQs) describe the leadership skills needed to succeed in the SES; they also reinforce the concept of an "SES corporate culture."

This concept holds that the Government needs executives who can provide strategic leadership and whose commitment to public policy and administration transcends their commitment to a specific agency mission or an individual profession. OPM has identified five fundamental executive qualifications. The ECQs were designed to assess executive experience and potential - not technical expertise. They measure whether an individual has the broad executive skills needed to succeed in a variety of SES positions - not whether they are the most superior candidate for a particular position. (This determination is made by the employing agency.)

The Executive Core Qualifications are:

- ECQ 1 Leading Change
- ECQ 2 Leading People
- ECQ 3 Results Driven
- ECQ 4 Business Acumen
- ECQ 5 Building Coalitions

Fundamental Competencies

Competencies are the personal and professional attributes that are critical to successful performance in the SES. The fundamental competencies are the attributes that serve as the foundation for each of the Executive Core Qualifications. Experience and training that strengthen and demonstrate the competencies will enhance a candidate's overall qualifications for the SES.

Definition: These competencies are the foundation for success in each of the Executive Core Qualifications.	
Competencies	
Interpersonal Skills	Treats others with courtesy, sensitivity, and respect. Considers and responds appropriately to the needs and feelings of different people in different situations.
Oral Communication	Makes clear and convincing oral presentations. Listens effectively; clarifies information as needed.
Integrity/Honesty	Behaves in an honest, fair, and ethical manner. Shows consistency in words and actions. Models high standards of ethics.
Written Communication	Writes in a clear, concise, organized, and convincing manner for the intended audience.
Continual Learning	Assesses and recognizes own strengths and weaknesses; pursues self-development.
Public Service Motivation	Shows a commitment to serve the public. Ensures that actions meet public needs; aligns organizational objectives and practices with public interests.

7

Rights of Military Personnel

Veterans' Preference

The federal government has a long record of employing veterans. Veterans hold a far higher percentage of jobs in the government than they do in private industry. In large part, this is due to laws providing veterans' preference and special appointing authorities for veterans, as well as the fact that agencies recognize that hiring veterans is just good business. This chapter explains how the federal employment system works and how veterans' preference and the special appointing authorities operate within that system.

OPM administers entitlement to veterans' preference in employment under title 5, United States Code, and oversees other statutory employment requirements in titles 5 and 38. Both title 5 and title 38 use many of the same terms, but in different ways. For example, service during a "war" is used to determine entitlement to veterans' preference and service credit under title 5. OPM has always interpreted this to mean a war declared by Congress. But title 38 defines "period of war" to include many non-declared wars, including Korea, Vietnam, and the Persian Gulf. Such conflicts entitle a veteran to VA benefits under title 38, but not necessarily to preference or service credit under title 5.

Background of Veterans' Preference

Since the time of the Civil War, veterans of the Armed Forces have been given some degree of preference in appointments to federal jobs. Recognizing their sacrifice, Congress enacted laws to prevent veterans seeking Federal employment from being penalized for their time in military service. Veterans' preference recognizes the economic loss suffered by citizens who have served their country in uniform, restores veterans to a favorable competitive position for government employment, and acknowledges the larger obligation owed to disabled veterans.

Veterans' preference is not so much a reward for being in uniform as it is a way to help make up for the economic loss suffered by those who answered the nation's call to arms. Historically, preference has been reserved by Congress for those who were either disabled or who served in combat areas. Eligible veterans receive many advantages in federal employment, including preference for initial employment and a higher retention standing in the event of layoffs. However, the veterans' preference laws do not guarantee the veteran a job, nor do they give veterans preference in internal agency actions such as promotion, transfer, reassignment, and reinstatement.

Veterans' preference in its present form comes from the Veterans' Preference Act of 1944, as amended, and is now codified in various provisions of title 5, United States Code. By law, veterans who are disabled or who served on active duty in the Armed Forces during certain specified time periods or in military campaigns are entitled to preference over others in hiring from competitive lists of eligibles and also in retention during reductions in force.

Preference applies in hiring for virtually all jobs, whether in the competitive or excepted service. In addition to receiving preference in competitive appointments, veterans may be considered for special noncompetitive appointments for which only they are eligible.

Veterans Employment Opportunities Act of 1998

This law gives veterans access to federal job opportunities that might otherwise be closed to them. The law requires that:

- Agencies allow eligible veterans to compete for vacancies advertised under the agency's merit promotion procedures when the agency is seeking applications from individuals outside its own workforce.
- All merit promotion announcements open to applicants outside an agency's workforce include a statement that these eligible veterans may apply.

The law also establishes a new redress system for preference eligibles and makes it a prohibited personnel practice for an agency to knowingly take or fail to take a personnel action if that action or failure to act would violate a statutory or regulatory veterans' preference requirement.

How Federal Jobs Are Filled

There are essentially two classes of jobs with the federal government: 1) those that are in the competitive civil service, and 2) those that are in the excepted service. Competitive civil service jobs are under OPM's jurisdiction and subject to the civil service laws enacted by Congress in title 5, United States Code.

These laws were enacted to ensure that jobs were filled based on a merit system for selecting the best qualified candidates according to job-related criteria. These laws, however, provide individual managers sufficient flexibility to appoint the person they believe is the best qualified for the job. Agencies may fill jobs from outside the civil service or from among candidates with civil service status. In filling jobs, some selections must be made competitively, while others may be made without open competition.

When filling a competitive service job from outside the civil service, agencies may:

- appoint a well-qualified candidate from a competitive list of eligibles developed by OPM or by an agency with delegated examining authority; or
- appoint someone who is eligible under one of a number of special appointing authorities (e.g., the VRA or Schedule B authorities discussed later on, and others authorized by either law or executive order).

Alternatively, in filling jobs from among "status" candidates, agencies may:

- appoint someone from an agency-developed merit promotion list (when these jobs are open to candidates outside the agency, the agency must allow eligibles under the Veterans Employment Opportunities Act of 1998, as amended, to apply); or
- reassign a current agency employee, transfer an employee from another agency, or reinstate a former federal employee.

Note: "Status" candidates are those who are eligible for noncompetitive movement within the competitive service because they either are now or were serving under career-type appointments in the competitive service.

An agency request for a list of eligible candidates or a job posting represents only a search for qualified candidates; there is no obligation on the part of the agency to make a selection. When a selection is made, agencies generally have broad authority under law to select from any number of sources of eligibles - from outside the Federal service as well as from within.

Since 1996, agencies have been required by Presidential directive to give first consideration to surplus and displaced federal employees to soften the effects of widespread restructuring and downsizing aimed at making the government more efficient.

Excepted service jobs, as the name suggests, are excepted from most or all of the civil service laws for various reasons and are not generally subject to OPM's jurisdiction. Positions are excepted by law, by executive order, or by action of OPM placing a position or group of positions in excepted service Schedules A, B, or C. For example, certain entire agencies such as the Postal Service, the Federal Bureau of Investigation, and the Central Intelligence Agency are excepted by law. In other cases, certain jobs or classes of jobs in an agency are excepted by OPM. This includes attorneys, chaplains, student trainees, veterans appointed under the Veterans Employment Opportunities Act of 1998, and others.

Types Of Appointments

There are three ways veterans can be appointed to jobs in the competitive civil service:

1. Competitive appointment through an OPM list of eligibles (or agency equivalent)
2. Noncompetitive appointment under special authorities that provide for conversion to the competitive service
3. Merit promotion selection under the Veterans Employment Opportunities Act (VEOA).

- A competitive appointment is one in which the veteran competes with others on an OPM list of eligibles (or agency equivalent under delegated examining authority). This is the normal entry route into the civil service for most employees. Veterans' preference applies in this situation, and those veterans who qualify as preference eligibles -- i.e., who are entitled to veterans' preference -- have 5 or 10 extra points added to their passing score on a civil service examination. Before a job is filled by competitive appointment, the examining office must report it to OPM for announcing to the public; OPM also notifies State employment service offices. The examining office then determines the candidates' qualifications and rates and ranks them according to job-related criteria. This list of eligibles, or certificate, is then given to the selecting official.

- A noncompetitive appointment under special authority is one such as the Veterans Recruitment Appointment (VRA) authority (formerly known as the Veterans' Readjustment Appointment (VRA) authority) and the special authority for 30 percent or more disabled veterans. Eligibility under these special authorities (which are explained below) gives veterans a very significant advantage over others seeking to enter the federal service in that they do not compete with them. An agency that wants to hire under one of these authorities can simply appoint the eligible veteran to any position for which the veteran is qualified. There is no red tape or special appointment procedures. However, use of these special authorities is discretionary with the agency. Veterans' preference applies when making appointments under these special authorities if there are two or more candidates and one or more is a preference eligible. These authorities provide for noncompetitive conversion to the competitive service after a suitable period of satisfactory service.

- A Merit Promotion selection under the VEOA is one in which the veteran competes with current federal employees under an agency's merit (or internal) promotion procedures. The VEOA allows eligible veterans to apply under an agency merit promotion announcement open to candidates outside the agency. However, agencies do not apply veterans' preference when considering individuals under Merit Promotion procedures or under the VEOA. Use of this special authority, as with other authorities, is discretionary with the agency. A VEOA eligible who competes under merit promotion procedures and is selected will be given a career or career conditional appointment.

In order to maximize their opportunities, veterans who are eligible for both preference and noncompetitive appointment should, where possible, make sure they are being considered both competitively through an OPM exam or equivalent, and noncompetitively under special authority such as the VRA.

Who Is Entitled To Veterans' Preference in Employment

Five-point preference is given to those honorably separated veterans (this means an honorable or general discharge) who served on active duty (not active duty for training) in the Armed Forces:

- during any war (this means a war declared by Congress, the last of which was World War II);
- during the period from April 28, 1952 through July 1, 1955;
- for more than 180 consecutive days, any part of which occurred after January 31, 1955, and before October 15, 1976;
- during the Gulf War period beginning August 2, 1990, and ending January 2, 1992; or
- for more than 180 consecutive days, any part of which occurred during the period beginning September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last day of Operation Iraqi Freedom; or
- in a campaign or expedition for which a campaign medal has been authorized, such as El Salvador, Lebanon, Granada, Panama, Southwest Asia, Somalia, and Haiti.

Medal holders and Gulf War veterans who originally enlisted after September 7, 1980, or entered on active duty on or after October 14, 1982, without having previously completed 24 months of continuous active duty, must have served continuously for 24 months or the full period called or ordered to active duty.

Effective on October 1, 1980, military retirees at or above the rank of major or equivalent, are not entitled to preference unless they qualify as disabled veterans.

Ten-point preference is given to:

- those honorably separated veterans who 1) qualify as disabled veterans because they have served on active duty in the Armed Forces at any time and have a present service-connected disability or are receiving compensation, disability retirement benefits, or a pension from the military or the Department of Veterans Affairs; or 2) are Purple Heart recipients;
- the spouse of a veteran unable to work because of a service-connected disability;
- the unmarried widow of certain deceased veterans; and
- the mother of a veteran who died in service or who is permanently and totally disabled.

When applying for federal jobs, eligible veterans should claim preference on their application or resume. Applicants claiming 10-point preference must complete form SF-15, Application for 10-Point Veteran Preference. Veterans who are still in the service may be granted 5 points tentative preference on the basis of information contained in their applications, but they must produce a DD Form 214 prior to appointment to document entitlement to preference.

Note: Reservists who are retired from the Reserves but are not receiving retired pay are not considered “retired military” for purposes of veterans’ preference.

The Department of Labor’s Office of the Assistant Secretary for Policy and Veterans’ Employment and Training Service developed an “expert system” to help veterans receive the preferences to which they are entitled. Two versions of this system are currently available, both of which help the veterans determine the type of preference to which they are entitled, the benefits associated with the preference and the steps necessary to file a complaint due to the failure of a federal agency to provide those benefits. To find out whether you qualify for veterans’ preference, visit America’s Job Bank, operated by the Department of Labor (DOL).

How Preference Applies In Competitive Examination

Veterans who are eligible for preference and who meet the minimum qualification requirements of the position have 5 or 10 points added to their passing score on a civil service examination. For scientific and professional positions in grade GS-9 or higher, names of all eligibles are listed in order of ratings, augmented by veterans’ preference points, if any. For all other positions, the names of 10-point preference eligibles who have a service-connected disability of 10 percent or more are placed ahead of the names of all other eligibles. Other eligibles are then listed in order of their earned ratings, augmented by veterans’ preference points. A preference eligible is listed ahead of a nonpreference eligible with the same score.

The agency must select from the top 3 candidates (known as the Rule of 3) and may not pass over a preference eligible in favor of a lower ranking non-preference eligible without sound reasons that relate directly to the veteran’s fitness for employment. The agency may, however, select a lower-ranking preference eligible over a compensably disabled veteran within the Rule of 3.

A preference eligible who is passed over on a list of eligibles is entitled, upon request, to a copy of the agency’s reasons for the pass over and the examining office’s response. If the preference eligible is a 30 percent or more disabled veteran, the agency must notify the veteran and OPM of the proposed pass over. The veteran has 15 days from the date of notification to respond to OPM. OPM then decides whether to approve the pass over based on all the facts available and notifies the agency and the veteran.

Entitlement to veterans' preference does not guarantee a job. There are many ways an agency can fill a vacancy other than by appointment from a list of eligibles.

Filing Applications After Examinations Close

A 10-point preference eligible may file an application at any time for any position for which a nontemporary appointment has been made in the preceding 3 years; for which a list of eligibles currently exists that is closed to new applications; or for which a list is about to be established. Veterans wishing to file after the closing date should contact the agency that announced the position for further information.

Special Appointing Authorities For Veterans

The following special authorities permit the noncompetitive appointment of eligible veterans. Use of these special authorities is entirely discretionary with the agency; no one is entitled to one of these special appointments:

1. The Veterans' Recruitment Appointment (VRA)

   The VRA is a special authority by which agencies can appoint an eligible veteran without competition. The VRA is an excepted appointment to a position that is otherwise in the competitive service. After 2 years of satisfactory service, the veteran is converted to a career-conditional appointment in the competitive service. (Note, however, that a veteran may be given a noncompetitive temporary or term appointment based on VRA eligibility. These appointments do not lead to career jobs.)

   When two or more VRA applicants are preference eligibles, the agency must apply veterans' preference as required by law. (While all VRA eligibles have served in the Armed Forces, they do not necessarily meet the eligibility requirements for veterans' preference under section 2108 of title 5, United States Code.)

   Terms and conditions of employment: VRA eligibles may be appointed to any position for which qualified up to GS-11 or equivalent (the promotion potential of the position is not a factor). The veteran must meet the qualification requirements for the position. (Any military service is considered qualifying for GS-3 or equivalent.) After 2 years of substantial continuous service in a permanent position under a VRA, the appointment will be converted to a career or career conditional appointment in the competitive service, providing performance has been satisfactory. Once on-board, VRAs are treated like any other competitive service employee and may be promoted, reassigned, or transferred. VRA appointees with less than 15 years of education must complete a training program established by the agency.

   How To Apply: Veterans should contact the federal agency personnel office where they are interested in working to find out about VRA opportunities.

2. 30 Percent or More Disabled Veterans

   These veterans may be given a temporary or term appointment (not limited to 60 days or less) to any position for which qualified (there is no grade limitation). After demonstrating satisfactory performance, the veteran may be converted at any time to a career-conditional appointment.

   Terms and conditions of employment: Initially, the disabled veteran is given a temporary appointment with an expiration date in excess of 60 days. This appointment may be converted to at any time to a career conditional appointment. Unlike the VRA, there is no grade limitation.

   How to Apply: Veterans should contact the federal agency personnel office where they are interested in working to find out about opportunities. Veterans must submit a copy of a letter dated within the last 12 months from the Department of Veterans Affairs or the Department of Defense certifying receipt of compensation for a service-connected disability of 30% or more.

3. Disabled Veterans Enrolled In VA Training Programs
   Disabled veterans eligible for training under the Department of Veterans Affairs' (VA) vocational rehabilitation program may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. The veteran is not a federal employee for most purposes while enrolled in the program, but is a beneficiary of the VA.

   The training is tailored to individual needs and goals so there is no set length. If the training is intended to prepare the individual for eventual appointment in the agency (rather than just work experience), OPM must approve the training plan. Upon successful completion, the veteran will be given a Certificate of Training showing the occupational series and grade level of the position for which trained. This allows any agency to appoint the veteran noncompetitively for a period of 1 year. Upon appointment, the veteran is given a Special Tenure Appointment which is then converted to career-conditional with OPM approval.

4. Veterans Employment Opportunities Act (VEOA)
   This authority permits an agency to appoint an eligible veteran who has applied under an agency merit promotion announcement that is open to candidates outside the agency.

   Eligibility: To be eligible for a VEOA appointment, a candidate must be a preference eligible or veteran separated after substantially completing at least 3 years of continuous active duty service performed under honorable conditions.

   Terms and conditions of employment: A veterans given a VEOA appointment will be given a career or career conditional appointment in the competitive service.

   How to apply: Veterans interested in applying under this authority should seek out agency merit promotion announcements open to candidates outside the agency. Applications should be submitted directly to the agency. Please note that veterans who have career status or are reinstatement eligible are not eligible for VEOA appointments.

Positions Restricted To Preference Eligibles
Examinations for custodian, guard, elevator operator and messenger are open only to preference eligibles as long as such applicants are available.

Affirmative Action For Certain Veterans Under Title 38
Section 4214 of title 38, United States Code, calls upon agencies to establish a separate affirmative action program for disabled veterans as part of agency efforts to hire, place, and advance persons with disabilities under the Rehabilitation Act of 1973. Agencies are also urged to "promote the maximum of employment and job advancement opportunities" for those veterans eligible for noncompetitive appointment under the above special authorities.

This section requires agencies to:

- provide placement consideration under special noncompetitive hiring authorities for VRA and 30 percent or more disabled veterans;
- ensure that all veterans are considered for employment and advancement under merit system rules; and
- establish an affirmative action plan for the hiring, placement, and advancement of disabled veterans.

Veterans' Complaints
Veterans who believe that they have not been properly accorded their rights have several different avenues of complaint, depending upon the nature of the complaint and the individual's veteran status:

The Veterans Employment Opportunities Act of 1998 allows preference eligibles to complain to the Department of Labor's Veterans' Employment and Training Service (VETS) when the person believes an agency has violated his or her rights under any statute or regulation relating to veterans' preference.

Under a separate Memorandum of Understanding (MOU) between OPM and the Department of Labor, eligible veterans seeking employment who believe that an agency has not properly accorded them their veterans' preference, failed to list jobs with State employment service offices as required by law, or failed to provide special placement consideration noted above, may file a complaint with the local Department of Labor VETS representative (located at State employment service offices). To be eligible to file a complaint under the MOU a veteran must:

- have served on active duty for more than 180 days and have other than a dishonorable discharge;
- have a service-connected disability; or
- if a member of a Reserve component, have been ordered to active duty under sections 12301 (a), (d), or (g) of title 10, United States Code, or served on active duty during a period of war, or received a campaign badge or expeditionary medal (e.g., the Southwest Asia Service Medal).

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) prohibits discrimination in employment, retention, promotion, or any benefit of employment on the basis of a person's service in the uniformed services. Complaints under this law should also be filed with the local Department of Labor VETS representative (located at State employment service offices).

Since a willful violation of a provision of law or regulation pertaining to veterans' preference is a Prohibited Personnel Practice, a preference eligible who believes his or her veterans' preference rights have been violated may file a complaint with the local Department of Labor VETS representative, as noted above.

A disabled veteran who believes he or she has been discriminated against in employment because of his or her disability may file a handicapped discrimination complaint with the offending agency under regulations administered by the Equal Employment Opportunity Commission.

Finally, since OPM is committed to ensuring that agencies carry out their responsibilities to veterans, any veteran with a legitimate complaint may also contact any OPM Service Center. Because there is considerable overlap in where and on what basis a complaint may be filed, a veteran should carefully consider his or her options before filing. Generally speaking, complaints on the same issue may not be filed with more than one party.

Uniformed Services Employment and Reemployment Rights Act

Federal employees who enter the Uniformed Services have certain obligations and rights related to their civilian jobs. This section summarizes the rights and obligations provided by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). Federal agencies are required to tell employees who enter the service about their entitlements, obligations, benefits, and appeal rights.

Covered Employees
All employees, permanent and nonpermanent, in executive agencies, including the U.S. Postal Service, the Postal Rate Commission, and nonappropriated fund employees are covered by the law. Employees in the intelligence agencies have basically the same rights, but are covered under agency regulations rather than OPM's. These employees also have different appeal rights.

Covered Service
The service that is covered is:

- All service, voluntary or involuntary, with the Armed Forces (including active duty, active duty for training, initial active duty for training, and absence for service fitness examination);

- National Guard when engaged in active duty for training, inactive duty training, or full-time Guard duty;
- Commissioned Corps of the Public Health Service; and
- Other groups designated by the President in time of war or emergency.

To have restoration rights, the employee must:

- Give the agency advance notice (except when prevented by military circumstances);
- Be released from the military under honorable conditions;
- Serve no more than a cumulative total of 5 years (exceptions are allowed for training and involuntary active duty extensions, and to complete an initial service obligation of more than 5 years); and
- Apply for restoration within the appropriate time limits (see "Time Limits for Restoration" below).

Employees in a Reserve component have an obligation to both the military and their civilian employers. Some conflict may be unavoidable, and good-faith efforts by the employee and the agency are needed to resolve any differences.

Agencies may not question the timing, frequency, duration, and nature of the uniformed service, but employees are obligated to try to minimize the agency's burden. For example, employees should give as much advance notice as possible when their military service will interfere with their civilian work.

When there is a conflict between Reserve duty and the legitimate needs of the agency, the agency may contact appropriate military authorities to express concern or determine if the military service could be rescheduled or performed by another member. If military authorities determine that the service is necessary, the agency is required to permit the employee to go.

Time Limits for Restoration
Employees who served:

- Less than 31 days (or who leave to take a fitness exam for service) must report back for civilian duty at the beginning of the next regularly scheduled work day following their release from service and the expiration of 8 hours after a time for safe transportation back to the employee's residence.
- More than 30 but less than 181 days must apply for reemployment within 14 days of release from service.
- More than 180 days have 90 days after completion of service to apply for restoration.

Employees who fail to return or apply within these time limits are subject to disciplinary action.
Agencies must reemploy as soon as practicable, but no later than 30 days after receiving the application. Agencies have the right to ask for documentation showing the length and character of the employee's service and the timeliness of the application.

Positions to Which Restored
Employees who served less than 91 days must be placed in the position for which they are qualified and would have attained if their employment had not been interrupted. If not qualified for such position after reasonable efforts by the agency to qualify the person, the employee is entitled to be placed in the position he or she left.

Employees who served more than 90 days have essentially the same rights as above, except that the agency has the option of placing the employee in a position for which they are qualified, with like seniority, status, and pay.

Employees with service-connected disabilities who are not qualified for the above must be reemployed in a position that most closely approximates the position they would have been entitled to, consistent with the circumstances in each case.

Employees serving under time-limited appointment serve out the unexpired portions of their appointments upon return.

OPM Placement
When an employee applies to OPM for restoration and OPM determines that it is impossible or unreasonable for an agency in the executive branch (other than an intelligence agency) to place a returning employee, OPM will order the employee placed in another agency.

If the returning employee is a member of an intelligence agency, a noncareer National Guard technician who was separated involuntarily from the Guard for reasons beyond his or her control, or a legislative or judicial branch employee, OPM will order the individual placed in another agency when the previous employer notifies OPM that it is impossible or unreasonable to reemploy the individual and he or she applies to OPM for placement assistance.

How Service Is Credited
Upon restoration, employees are generally entitled to be treated as though they had never left. This means that time spent in the uniformed service counts for seniority, within-grade increases, completion of probation, career tenure, retirement, and leave rate accrual. (Employees do not earn sick or annual leave while off the rolls or in a nonpay status.)

Employee Protections
Employees who enter the Uniformed Services are not subject to a reduction in force while they are in service. After their return, they may not be discharged (except for cause) for 1 year if they served for more than 180 days, or for 6 months if they served for more than 30 but less than 181 days. The law prohibits an agency from discriminating against or taking any reprisal against an applicant or employee because of his or her application, membership, or service in the Uniformed Services.

Appeal Rights
Individuals who believe their agency has not complied with the law or with OPM's regulations may file a complaint with the Department of Labor or appeal directly to the Merit Systems Protection Board.

Paid Military Leave
Employees serving under permanent appointment are entitled each fiscal year to 15 days of military leave, with pay, to perform active duty service as a member of a Reserve component. Part-time employees are entitled to military leave prorated according to the tour of duty.

Employees may carry over 120 hours of unused military leave into a new fiscal year. Therefore, potentially they may have a total of 240 hours to use in any one fiscal year. This means that Reservists whose military duty spans two fiscal years may use up to 360 hours of military leave at one time. Reservists may now use military leave to cover drill periods since monthly drills are considered inactive duty training and military leave may now be used for that purpose.

Employees may carry over 15 days of unused military leave into the new fiscal year so they may potentially have a total of 30 days to use in any one fiscal year. This means reservists whose military service spans 2 fiscal years could use up 45 days of military leave at one time.

Life Insurance
The life insurance of an employee who takes leave without pay to enter uniformed service can continue for up to 12 months. If the employee separates to enter the uniformed service, life insurance continues for up to 12 months, or until 90 days after uniformed service ends, whichever is sooner. The insurance is provided at no cost to the employee.

Health Insurance
Employees who enter uniformed service can continue their health insurance for up to 12 months, although employees continue to pay their share of the premium.

Employees who remain in uniformed service longer than 12 months may continue health benefit coverage for up to an additional 6 months by paying 102 percent of the premium (i.e., the employee's share, the agency's share, and a 2 percent administrative fee).

Retirement Credit
All uniformed service performed for the United States is generally creditable for civil service retirement. USERRA makes full-time National Guard duty creditable for retirement purposes if it interrupts creditable civilian service and is followed by restoration after August 1, 1990.

To get credit for their uniformed service after August 1, 1990, employees are required to pay to the retirement fund 3 percent towards Federal Employees Retirement System (FERS) or 7 percent towards Civil Service Retirement System (CSRS) of the military basic pay, or, if less, the amount of civilian retirement deductions that would have been withheld had the individual not entered military service. Interest is added under certain circumstances.

Thrift Savings
USERRA allows employees to make up the contributions to the Thrift Savings Plan that they missed because of their uniformed service.

Additional Help
Employees with questions should first contact their Personnel office. By law, the Department of Labor's Veterans' Employment and Training Service (VETS) provides assistance to Federal employees or applicants. VETS staffers try to resolve disputes, and may also ask the Office of the Special Counsel to represent the individual in an appeal before the Merit Systems Protection Board.

Other help is available from the following organizations:

- The Ombudsman for the National Committee for Employer Support of the Guard and Reserve at 1-800-336-4590;
- any national veterans' service organization; or
- the OPM Service Center.

Employment of Military Retirees

On October 5, 1999, the President signed the National Defense Authorization Act for Fiscal Year 2000 (P.L.106-65). Section 651 of this law repeals section 5532 of title 5, United States Code. This action ends the reductions in retired or retainer pay previously required of retired members of a uniformed service who are employed in a civilian office or position of the U.S. Government. This repeal is effective retroactively to October 1, 1999.

The repeal ends two former reductions in military retired pay that applied to some Federal employees:

1. The pay cap that limited the combined total of Federal civilian basic salary plus military retired pay to Executive Level V for all Federal employees who are retirees of a uniformed service; and
2. The partial reduction in retired pay required of retired officers of a regular component of a uniformed service.

As a consequence of the repeal, prior exceptions and waivers to these reductions approved by OPM, or by agencies under delegated authority, are no longer needed effective October 1, 1999.

The uniformed services finance centers are responsible for making all adjustments in military retired or retainer pay for current Federal employees.

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Reductions in Force

Agencies turn to a Reduction In Force (RIF) when they need to separate or downgrade employees due to a reorganization, lack of work, shortage of funds, insufficient personnel ceiling, or the exercise of certain reemployment or restoration rights. A furlough of more than 30 calendar days, or of more than 22 discontinuous days, is also considered a RIF action. (A furlough of 30 or fewer calendar days, or of 22 or fewer discontinuous work days, however, is considered an adverse action.) RIF procedures may not be used to take performance or conduct-based adverse actions.

The law provides that OPM's RIF regulations must give effect to four factors in releasing employees:

1. tenure of employment (e.g., type of appointment);
2. veterans preference;
3. length of service; and
4. performance ratings.

OPM implements the laws through regulations published in Part 351 of Title 5, Code of Federal Regulations.

The agency has the responsibility to decide whether a RIF is necessary, when it will take place, and what positions are to be abolished. However, the abolishment of a position does not always require the use of RIF procedures. The agency may reassign an employee without regard to RIF procedures to a vacant position at the same grade or pay, regardless of where the position is located.

RIF Steps
When conducting a RIF, agencies, by law, must follow specific steps:

- Competitive Area. Before a RIF begins, the agency defines the competitive area (e.g., the geographical and organizational boundary within which employees compete for retention). A competitive area may consist of all or part of an agency. The minimum competitive area is a subdivision of an agency under separate administration within a local commuting area. If an agency wants to change a competitive area within 90 days of a RIF, the agency must obtain OPM's approval for the change.

- Competitive Level. Next, the agency groups similar positions into competitive levels based on grade, series, qualifications, duties and working conditions. Positions with different types of work schedules (e.g., full-time, part-time, intermittent, seasonal, or on-call) are placed in different competitive levels. Finally, competitive and excepted service positions are placed in separate competitive levels.

- Retention Registers. Next, the four retention factors are applied so that each of the employees in the competitive level is ranked in order based on their RIF retention standing. When this listing is done, each competitive level becomes a retention register, because it lists employees in order of their RIF retention standing. RIF retention standing is based on a combination of the following factors:

  1. Tenure
     Employees are ranked on a retention register in three groups according to their type of appointment:

     - Group I - Career employees who are not serving probation. (A new supervisor or manager who is serving a probationary period that is required on initial appointment to that type of position is not considered to be serving on probation if the employee previously completed a probationary period.)
     - Group II - Career employees who are serving a probationary period, and career-conditional employees.

- Group III - Employees serving under term and similar non-status appointments.

Note: An employee serving under a temporary appointment in the competitive service is not a competing employee for RIF purposes and is not listed on the retention register at all. Such employees may be separated at any time at the discretion of the agency without regard to RIF procedures.

2. Veterans' Preference
Each of these groups is divided into three subgroups reflecting their entitlement to veterans preference:

- Subgroup AD. Veterans with a compensable service-connected disability of 30% or more.

- Subgroup A. Veterans not included in subgroup AD.

- Subgroup B. Nonveterans.

Not all employees who served in the armed forces are entitled to veterans' preference for RIF purporses. A retired member of the armed forces is considered to be a veteran for RIF purposes only if the veteran meets one of the following: (i) The armed forces retired pay is directly based upon a combat-incurred disability or injury; (ii) The armed forces retirement is based upon less than 20 years of active service; or (iii) The employee has been working for the Government since November 30, 1964 without a break in service of more than 30 days. (If the veteran meets condition (iii) but retired at the rank of major or higher (or equivalent), he or she must also meet the general definition of disabled veteran in Section 2108(2) of Title 5, United States Code, in order to be a veteran for RIF purposes.)

Veterans' preference may also be awarded to:

- An unmarried spouse of certain deceased veterans;
- A spouse of a veteran unable to work because of a service-connected disability; or
- A mother of a veteran who died in service or who is permanently and totally disabled.

In order to receive veterans' preference, an honorable or general discharge is necessary. Military retirees at the rank of major, lieutenant commander, or higher are not eligible for veterans' preference unless they are disabled veterans. Guard or Reserve active duty for training purposes does not qualify for veterans' preference. Any questions concerning veterans' preference eligibility should be addressed to the employee's servicing personnel office.

Tenure group and veterans' preference are combined to form the employee's TENURE SUBGROUP. For example, a disabled veteran on a career-conditional appointment would be in subgroup II AD.

3. Length of Service
Within each tenure subgroup, employees are ranked for RIF retention by service dates. RIF service dates begins with all creditable civilian and military service, and this date is then adjusted with additional service credit for certain performance ratings. Employees with more creditable service are ranked ahead of those with less service in each subgroup. For example, an employee with a service date of August 1, 1974 is listed before an employee with a service date of January 15, 1981.

4. Performance
Employees receive extra RIF service credit for performance based upon the average of their last three annual ratings of record received during the 4-year period prior to the date the agency issues RIF notices. The 4-year period begins on the date the agency issues RIF notices, or the date the agency freezes ratings before issuing RIF notices, if earlier.

The ratings are: "O" is Outstanding; "EFS" is Exceeds Fully Successful; "FS" is Fully Successful; "MS" is Minimally Successful; and "U" is Unacceptable. Employees receive extra credit only for ratings of Fully Successful or above.

For ratings put on record on or before September 30, 1997, the standard values are used for giving credit, regardless of which type of summary rating pattern (such as "Pass/Fail" or "5-level") was used.

The standard values are:

- 20 years for an "Outstanding" rating;
- 16 years for an "Exceeds Fully Successful" rating;
- 12 years for a "Fully Successful" rating.

For ratings received on or after October 1, 1997, agencies under certain circumstances may use a different method of assigning years of credit to ratings given to ratings at or above the "Fully Successful" level. They still must use a whole number between 12 and 20 years, but they are not required to use the standard values.

An employee receives additional service credit based on the average (rounded up in the case of a fraction to the next whole number) of the value of the employee's last three annual ratings.

If an employee received more than three annual ratings during the 4-year period, the three most recent annual ratings are used. If an employee received fewer than three annual ratings during the 4-year period, the values of the ratings are added together and averaged (i.e., if two ratings were given, their values are added together and divided by two; if only one rating was received, its value is divided by one).

Example: An employee with two years of Federal service received only 2 ratings of record. One rating is an "Outstanding" (20) and one is "Exceeds Fully Successful" (16). The employee would receive additional RIF service credit based upon the two actual ratings or 20 + 16 = 36, divided by 2. The result is 18 years of RIF credit for performance.

A few employees may find themselves with no ratings of record at all due to unusual circumstances such as extended absence for military duty or injury, for example. These employees will receive performance credit based on the performance rating most often given to employees in the organization. This value, called a "modal rating" will be calculated by the agency personnel office.

The years of performance credit are added onto the service computation date to form an adjusted service computation date which is used in determining RIF retention standing.

Running Registers

Putting employees in RIF retention order is commonly referred to in personnel as "running a register." Agencies normally run registers two ways: (1) within each competitive level; and (2) based on overall RIF retention order regardless of series, grade, etc. Number (1) is usually called a competitive level register and number (2) is often referred to as an "absolute" or "master retention" listing.

Many agencies run registers from computer programs specifically designed for reduction in force. The most common program is AUTORIF, created by the Department of Defense. This program is used by many civilian agencies as well.

Release

Agencies determine how many positions in a given series and grade they need to abolish, and this begins the RIF process. If an employee's position is abolished, this may result in their being "released", or cut, from their competitive level. Employees are released from the competitive level in the inverse order of their retention standing. (For example,

the employee with the lowest RIF standing is the individual who is actually released from the competitive level.) Employees in Group III are released before employees in Group II, and employees in Group II are released before employees in Group I. Within tenure subgroups, employees in Subgroup B are released before employees in Subgroup A, and employees in Subgroup A are released before employees in Subgroup AD. Within each subgroup, employees with less service are released before employee's with more service. Any employee reached for release out of this regular order must be notified of the reasons.

Rights To Other Positions: Bumping And Retreating

After employees are released from their competitive level, they may have rights to other positions by exercising assignment rights, which are commonly referred to as bumping and retreating.

"Bumping" means displacing an employee in the same competitive area who is in a lower tenure group, or in a lower subgroup within the released employee's own tenure group. For example, an employee in Tenure group I can bump an employee in Tenure groups II or III, and an employee in Subgroup IAD can bump someone in Subgroups IA or IB. Although the released employee must be qualified for the position, it may be a position that he or she has never held. The position must be at the same grade, or within three grades or grade-intervals, of the employee's present position.

"Retreating" means displacing an employee in the same competitive area and in the same tenure group and subgroup who has less service. For example, a IA employee might be able to retreat to the position of another IA employee who has less service. The position must be at the same grade, or within three grades or grade-intervals, of the employee's present position. The position into which the employee is retreating must also be the same position (or an essentially identical position) previously held by the released employee in any Federal agency on a permanent basis.

Employees in retention subgroup AD have expanded retreat rights to positions up to five grades or grade-intervals lower than the position held. In addition, an employee with a current annual performance rating of "Minimally Successful" only has retreat rights to positions held by employees with the same or lower current performance rating.

Employees in Groups I and II with current performance ratings of at least "Minimally Successful" are entitled to an offer of assignment if they have "bumping" or "retreating" rights to an available position in the same competitive area. An "available" position must: (i) last at least 3 months; (ii) be in the competitive service; (iii) be one the released employee qualifies for; and (iv) be within three grades (or grade-intervals) of the employee's present position.

Employees in Groups I and II with current performance ratings of "Unsuccessful," and all employees in Group III, have no assignment rights to other positions. Employees holding excepted service positions have no assignment rights unless their agency, at its discretion, chooses to offer these rights.

The grade limits of an employee's assignment rights are determined by the grade progression of the position from which the employee is released. The difference between successive grades in a one-grade occupation is a grade difference, and the difference between successive grades in a multi-grade occupation is a grade-interval difference. The grade limits are based upon the position the employee holds at the time of the RIF.

For example, an employee released from a GS-11 position that progresses GS-5-7-9-11 has bump and retreat rights to positions from GS-11 through GS-5. An employee released from a GS-9 position that progresses GS-6-7-8-9 has bump and retreat rights to positions from GS-9 through GS-6.

Vacant Positions

An agency is not required to offer vacant positions in a RIF, but may choose to fill all, some, or none of them. When an agency chooses to fill a vacancy with an employee reached for RIF action, subgroup retention standing is followed. A RIF offer of assignment to a vacant position can only be in the same competitive area, and must be within three grades (or grade-intervals) of the employee's present position. At its discretion, the agency may offer employees reassignment, or voluntary change to a lower-graded position, in the same or other competitive areas in lieu of RIF.

RIF Notices
An agency must give each employee at least 60 days specific written notice before he or she is reached for RIF action. In exceptional circumstances, an agency may, with prior OPM approval, give employees less than 60 days, but not less than 30 days, specific written notice of a RIF action.

RIF Appeals and Grievances

Right To Appeal
An employee who has been affected by RIF and separated, downgraded or furloughed for more than 30 days, has the right to appeal to the Merit Systems Protection Board (MSPB) if he or she believes the agency did not properly follow the RIF regulations. The appeal must be filed during the 30-day period beginning the day after the effective date of the RIF action.

Right to Grieve
An employee in a bargaining unit covered by a negotiated grievance procedure that does not exclude RIF must use the negotiated grievance procedure. The employee may not appeal the RIF action to the MSPB unless the employee alleges the action was based upon discrimination. The collective bargaining agreement covers the time limits for filing a grievance under a negotiated grievance procedure.

9

Workers' Compensation and Reemployment Rights

The Federal Employees' Compensation Act provides workers' compensation coverage to three million Federal and Postal workers around the world for employment-related injuries and occupational diseases. Benefits include wage replacement, payment for medical care, and where necessary, medical and vocational rehabilitation assistance in returning to work. The program has 12 district offices nationwide.

The Division of Federal Employees' Compensation adjudicates new claims for benefits and manages ongoing cases; pays medical expenses and compensation benefits to injured workers and survivors; and helps injured employees return to work when they are medically able to do so.

Services Provided

Prompt Adjudication
If you are an injured worker, you can expect timely adjudication of your compensation claim:

- For traumatic injuries, this means a decision within 45 days of receipt in all but the most complex cases.
- For simple occupational illness cases, a decision will be issued within 90 days of receipt.
- For most occupational illness cases, which require more extensive evidentiary development, a decision should be forthcoming within six months of receipt.
- For very complex occupational illness cases, a decision should be rendered within 10 months of receipt.

Prompt Payment of Medical Bills
Medical bills, whether submitted directly by the providers or as reimbursement requests by injured workers, are usually processed within 28 days of receipt. For any bill that is not payable, an Explanation of Benefits describing the reason for non-payment is issued to the party who submitted the bill.

Prompt Payment of Compensation
Injured workers can also expect prompt payment of claims for wage loss in accepted cases. Where medical evidence supports disability for work, compensation payments are usually made within 14 days of submittal to the district office by the employing agency.

Assistance in Returning to Work
The Federal Employees' Compensation Act gives injured workers the right to reclaim their Federal jobs within one year of the onset of wage loss. The Division of Federal Employees' Compensation assists employees in returning to work during that time period, and, if necessary, beyond. Injured workers and employing agencies can expect timely case management services, which include the following:

- Assignment of a registered nurse if the injured employee cannot return to work soon after the injury. The nurse ensures that appropriate medical care is provided and assists the worker in returning to employment.
- Referral to a medical specialist for a second opinion examination where required by the worker's medical condition or the program's need for additional medical information.
- Referral for vocational rehabilitation services if the employee is unable to return to work at the employing agency or in his or her previous job category.

Funding
Employing agencies are responsible for reimbursing the Division of Federal Employees' Compensation for their workers' compensation expenses. This reimbursement occurs once each year through the charge back process.

The administrative cost of the services provided by the Division of Federal Employees' Compensation is very low. Overhead costs are just 4% of benefits, and Federal workers' compensation costs are only 1.8% of total Federal and Postal payrolls, compared to 2.3% for private insurance and state funds.

Also, because disputes in claims under the Federal Employees' Compensation Act are resolved administratively, the Federal government avoids time-consuming and expensive litigation, which in some non-Federal workers' compensation systems can account for as much as 46% of payout.

When Injured At Work

The Federal Employees' Compensation Act (FECA) is administered by the Office of Workers' Compensation Programs (OWCP) of the U.S. Department of Labor. It provides compensation benefits to civilian employees of the United States for disability due to personal injury sustained while in the performance of duty or to employment-related disease. The FECA also provides for the payment of benefits to dependents if the injury or disease causes the employee's death. Benefits cannot be paid if the injury or death is caused by the willful misconduct of the employee or by the employee's intention to bring about his or her injury or death or that of another, or if intoxication (by alcohol or drugs) is the proximate cause of the injury or death.

Medical Benefits

An employee is entitled to medical, surgical and hospital services and supplies needed for treatment of an injury as well as transportation for obtaining care. The injured employee has the initial choice of a physician and may select any qualified local physician or hospital to provide necessary treatment or may use agency medical facilities if available. Except for referral by the attending physician, any change in treating physician after the initial choice must be authorized by OWCP. Otherwise, OWCP will not be liable for the expenses of treatment.

The term "physician" includes surgeons, osteopathic practitioners, podiatrists, dentists, clinical psychologists, optometrists and chiropractors within the scope of their practice as defined by State law. Payment for chiropractic services is limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist. If the physician selected has been excluded from participating in the Compensation Program, the OWCP District Office will advise the employee of the exclusion and the need to select another physician.

Compensation for Temporary Total Disability

An employee who sustains a disabling, job-related traumatic injury may request continuation of regular pay for the period of disability not to exceed 45 calendar days or sick or annual leave. If disability continues beyond 45 days or the employee is not entitled to continuation of pay, the employee may use sick or annual leave or enter a leave without pay status and claim compensation from OWCP.

When disability results from an occupational disease, the employing agency is not authorized to continue the employee's pay. The employee may use sick or annual leave or enter a leave without pay status and claim compensation.

Compensation for loss of wages may not be paid until after a three-day waiting period, except when permanent effects result from the injury or where the disability causing wage loss exceeds 14 calendar days. Compensation is generally paid at the rate of 2/3 of the salary if the employee has no dependents, and 3/4 of the salary if one or more dependents are claimed.

The term "dependent" includes a husband, wife, unmarried child under 18 years of age, and a wholly dependent parent. An unmarried child may qualify as a dependent after reaching the age of 18 if he or she is incapable of self-support by reason of mental or physical disability, or as long as the child continues to be a full-time student at an accredited institution, until he or she reaches the age of 23 or has completed four years of education beyond the high school level.

Compensation for Permanent Effects of Injury

The Act provides a schedule of benefits for permanent impairment of certain members, functions and organs of the body such as the eye, arm, or kidney, and for serious disfigurement of the head, face or neck. For example, an award of 160 weeks of compensation is payable for total loss of vision in one eye.

In addition, compensation for loss of earning capacity may be paid if the employee is unable to resume regular work because of injury-related disability. This compensation is paid on the basis of the difference between the employee's capacity to earn wages after an injury and the wages of the job he or she held when injured.

OWCP may arrange for vocational rehabilitation and provide a maintenance allowance not to exceed $200 per month. A disabled employee participating in an OWCP-approved training or vocational rehabilitation program is paid at the compensation rate for total disability. If the employee's condition requires a constant attendant, an additional amount not to exceed $1500 per month may be allowed.

Compensation for Death

If no child is eligible for benefits, the widow or widower's compensation is 50 percent of the employee's pay at the time of death, if death was due to the employment-related injury or disease. If a child or children are eligible for benefits, the widow or widower is entitled to 45 percent of the pay and each child is entitled to 15 percent. If children are the sole survivors, 40 percent is paid for the first child and 15 percent for each additional child, to be shared equally. Other persons such as dependent parents, brothers, sisters, grandparents, and grandchildren may also be entitled to benefits. The total compensation may not exceed 75 percent of the employee's pay or the pay of the highest step for GS-15 of the General Schedule, except when such excess is created by authorized cost-of-living increases.

Compensation to an employee's surviving spouse terminates upon his or her death or remarriage. A widow or widower's benefits continue, however, if the remarriage takes place after the age of 55. Awards to children, brothers, sisters and grandchildren terminate at the age of 18, unless the dependent is incapable of self-support, or continues to be a full-time student at an accredited institution, until he or she reaches the age of 23, or has completed four years of education beyond the high school level.

Burial expenses not to exceed $800 are payable. Transportation of the body to the employee's former residence in the United States is provided where death occurs away from the employee's home station. In addition to any burial expenses or transportation costs, a $200 allowance is paid for the administrative costs of terminating an employee's status with the Federal Government.

Cost-of-Living Increases

Compensation payments on account of a disability or death that occurred more than one year before March 1 of each year are increased on that date by any percentage change in the Consumer Price Index published for December of the preceding year.

Settlements With Third Parties

Where an employee's injury or death in the performance of duty occurs under circumstances placing a legal liability on a party other than the United States, a portion of the cost of compensation and other benefits paid by OWCP must be refunded from any settlement obtained. OWCP will assist in obtaining the settlement and the Act guarantees that the employee may retain a certain proportion of the settlement (after any attorney fees and costs are deducted) even when the cost of compensation and other benefits exceeds the amount of the settlement.

Appeal Rights

An employee or survivor who disagrees with a final determination of OWCP may request an oral hearing or a review of the written record from the Branch of Hearings and Review. Oral and/or written evidence in further support of the claim may be presented. The employee may also request a reconsideration of a decision by submitting a written request to the District Office that issued the decision. The request must be accompanied by evidence not previously submitted. If reconsideration has been requested, a hearing on the same issue may not be granted. The employee or

survivor may also request review by the Employees' Compensation Appeals Board (ECAB). Because the ECAB rules solely on the evidence of record at the time the decision was issued, no additional evidence may be presented.

If You Are Injured On the Job

1. Learn about your eligibility for benefits
   It is important that you know what you are entitled to, since benefits are not paid automatically. You or your survivors must claim them.

2. In case of injury, obtain first aid or medical treatment even if the injury is minor
   While many minor injuries heal without treatment, a few result in serious, prolonged disability that could have been prevented had the employee received treatment when the injury occurred.

   For traumatic injuries, ask your employer to authorize medical treatment on Form CA-16 before you go to the doctor. Take Form CA-16 with you when you go to the doctor, along with Form OWCP-1500, which the doctor must use to submit bills to OWCP. Your employer may authorize medical treatment for occupational disease only if OWCP gives prior approval.

   Be sure to submit bills promptly, since bills for medical treatment may not be paid if submitted to OWCP more than one year after the calendar year in which you received the treatment, or in which the condition was accepted as compensable.

3. Report every injury to your supervisor
   Submit written notice of your injury on Form CA-1 if you sustained a traumatic injury, or Form CA-2 if the injury was an occupational disease or illness. (Forms CA-1 and CA-2 may be obtained from your employing agency or OWCP.)

   Form CA-1 must be filed within 30 days of the date of injury to receive continuation of pay (COP) for a disabling traumatic injury. COP may be terminated if medical evidence of the injury-related disability is not submitted to your employer within 10 workdays. You are responsible for ensuring that such medical evidence is submitted to your employing agency. Form CA-2 should also be filed within 30 days. Any claim that is not submitted within 3 years will be barred by statutory time limitations unless the immediate superior had actual knowledge of the injury or death within 30 days of occurrence.

4. Establish the essential elements of your claim
   You must provide the evidence needed to show that you filed for benefits in a timely manner; that you are a civil employee; that the injury occurred as reported and in the performance of duty; and that your condition or disability is related to the injury or factors of your Federal employment. OWCP will assist you in meeting this responsibility, which is called burden of proof, by requesting evidence needed to fulfill the requirements of your claim.

5. File a claim for compensation
   File Form CA-7, Claim for Compensation on Account of Traumatic Injury or Occupational Disease, if you cannot return to work because of your injury and you are losing (or expect to lose) pay for more than three days. Give the form to your supervisor seven to ten days before the end of the COP period, if you received COP. If you are not entitled to COP, submit Form CA-7 when you enter or expect to enter a leave without pay status. All wage loss claims must be supported by medical evidence of injury-related disability for the period of the claim.

   If you continue to lose pay after the dates claimed on Form CA-7, submit Forms CA-8 (Claim for Continuing Compensation on Account of Disability) through your employer to claim additional

compensation until you return to work or until OWCP advises they are no longer needed. You are not required to use your sick or annual leave before you claim compensation.

If you choose to use your leave, you may, with your agency's concurrence, request leave buy-back by submitting Form CA-7 to OWCP through your employing agency. Any compensation payment is to be used to partially reimburse your agency for the leave pay. You must also arrange to pay your agency the difference between the leave pay based on your full salary and the compensation payment that was paid at 2/3 or 3/4 of your salary. Your agency will then recredit the leave to your leave record.

6. Return to work as soon as your doctor allows you to do so
   If your employing agency gives you a written description of a light duty job, you must provide a copy to your doctor and ask if and when you can perform the duties described. If your agency is willing to provide light work, you must ask your doctor to specify your work restrictions. In either case, you must advise your agency immediately of your doctor's instructions concerning return to work, and arrange for your agency to receive written verification of this information. COP or compensation may be terminated if you refuse work that is within your medical restrictions without good cause, or if you do not respond within specified time limits to a job offer from your agency.
   In appropriate cases, OWCP provides assistance in arranging for reassignment to lighter duties in cooperation with the employing agency. In addition, injured employees have certain other specified rights under the jurisdiction of OPM, such as reemployment rights if the disability has been overcome within one year.

7. Tell your family about the benefits they are entitled to in the event of your death
   For assistance in filing a claim they may contact your employing agency's personnel office or OWCP. For additional information or when in doubt about your compensation benefits, write to the Office of Workers' Compensation Programs.

Restoration Rights of Injured or Ill Federal Employees

This section provides federal employees with a general overview of their restoration rights following full or partial recovery from a compensable injury.

As explained in the section above, the Federal Employee's Compensation Act (FECA) provides workers' compensation benefits to federal employees who sustain job-related injuries or illnesses. The law also guarantees employees certain job rights upon recovery. Upon their return to work, employees will be treated as though they had never left for purposes of rights and benefits based upon length of service.

The law assigns dual responsibility to the Department of Labor's Office of Workers' Compensation Programs (OWCP) and to OPM. OPM administers the restoration rights provision of the law. OWCP administers all other aspects of the law.

Virtually all federal employees (including employees in the legislative and judicial branches), except those serving under time-limited appointment, have restoration rights upon full or partial recovery from a job-related injury or illness.

Eligibility For Restoration
To be eligible for restoration, the employee must have been receiving benefits from OWCP (or have been eligible for OWCP benefits).

Note: Receipt of a "schedule award" which OWCP pays to an injured worker for permanent impairment of a specified member, function, or organ of the body (e.g., an arm, foot, lung, or loss of vision or hearing) does not necessarily mean the individual has recovered for purposes of restoration rights. It only means that part of the body has reached

maximum medical improvement. Restoration rights for full recovery are triggered when compensation is terminated on the basis of medical evidence that the employee no longer has residual limitations from the injury and can return to the former job without limitations.

Disability Retirement

Disability retirement and injury compensation are governed by two separate laws and are administered by two different agencies - OPM and OWCP. Thus, entitlement to one does not automatically establish entitlement to the other.

Ordinarily, an injured employee should apply for both disability retirement and injury compensation. If both are approved, he or she must decide between receiving one or the other. A person who chooses disability retirement instead of injury compensation has restoration rights, provided he or she applies for restoration as soon as the specific job-related injury has been overcome.

Agency Obligations

An employee who sustains a job-related injury must be allowed to seek treatment from the physician of his or her choice without agency interference. The agency can require the employee to undergo a medical examination by its own doctors for the purpose of determining employability. An agency-required examination has no effect on the payment of compensation benefits by OWCP.

An employee who is unable to perform the full duties of his or her position may be placed on leave without pay (LWOP) or separated at any time. This is a non-disciplinary action and has no effect on the employee's restoration rights upon recovery. However, an agency must tell an employee who is being separated or placed on LWOP how benefits will be affected and what the employee's restoration rights are. The obligation to reemploy rests with the former agency; other agencies have no obligation to reemploy a recovered worker.

Employee Obligations

The employee has an obligation to cooperate with the agency, to keep the agency informed of his or her medical status, and to seek restoration as soon as the medical condition permits.

Four Categories of Restoration Rights

The restoration rights of employees who sustain compensable injuries fall into four separate categories depending on the length and extent of recovery. Other factors affecting restoration rights are the timeliness of the application for restoration, the employee's performance and conduct prior to the injury, and the availability of positions. Full recovery is determined by the cut-off of compensation on the basis that the employee is medically able to resume regular employment.

Note: For purposes of restoration rights, a position with the same seniority, status, and pay means a position that is equivalent to the former one in terms of pay, grade, type of appointment, tenure, work schedule, and, where applicable, seniority. Standing in the organization, such as first or second supervisory level, is not a factor.

1. Fully recovered within one year
   An employee who fully recovers within one year from the date compensation began has mandatory restoration rights to the position he or she left, or to an equivalent position. An employee's basic entitlement is to a position in the former commuting area. If a suitable vacancy does not exist, the restoration right is agencywide. The employee must apply for restoration immediately and must be restored immediately and unconditionally by his or her former agency.

2. Fully recovered after one year
   If full recovery takes longer than one year from the date compensation begins, the individual is entitled to priority consideration for the former position or an equivalent one, provided he or she applies for restoration within 30 days of the date compensation ceases. Priority consideration means the agency enters the individual on its reemployment priority list. If the agency cannot place the individual in the former

commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency.

3. Physically disqualified
   An individual who is medically unable to return to his or her former occupation, but who is able to do other work, is considered to be physically disqualified. He or she is entitled, within one year of the date compensation begins, to be placed in a position that most closely approximates the seniority, status, and pay to which otherwise entitled, according to the circumstances in each case. This restoration right, too, is agency-wide. After one year, the individual is entitled to the same restoration rights as individuals who partially recover.

   The difference between a physically disqualified employee and one who is partially recovered is that the partially recovered employee is expected to fully recover eventually. By contrast, the physically disqualified employee typically has a permanent medical condition, such as the loss of an arm, which is disqualifying and makes it unlikely that he or she will ever be able to return to the former position.

4. Partially recovered
   An individual who has not yet fully recovered, but who is able to work in some capacity, is entitled to be considered for employment in the former commuting area. The agency must make every effort to place the employee but there is no absolute right to restoration. If the individual is restored at a lower grade or pay level, OWCP will make up the difference in pay, or the agency may elect to pay the employee at the former rate. If the employee later fully recovers, he or she is then entitled to the restoration rights of a fully recovered employee, according to the timing of the recovery. A partially recovered employee has an obligation to seek employment within his or her capabilities. If a partially recovered employee refuses to accept a suitable job offer, OWCP may terminate compensation. OWCP determines whether an agency job offer is suitable according to the individual's medical restrictions, education, and vocational background.

Effect of Performance and Conduct on Restoration Rights

If an employee was separated because of a compensable injury, the agency cannot refuse to restore the individual because of alleged poor performance prior to the injury. In other words, the agency may not use the injury as a basis to circumvent performance-based or adverse action procedures that would otherwise apply. However, an allegation of an on-the-job injury by an employee does not stop an agency from taking action against the employee for performance or conduct. If an employee is removed for cause (performance or conduct) he or she has no restoration rights.

Status Upon Recovery

An employee who is restored following compensable injury is generally entitled to be treated as though he or she had never left. This means that the entire period the employee was receiving compensation or continuation of pay is creditable for purposes of rights and benefits based upon length of service, including within-grade increases, career tenure, time-in-grade restrictions, leave rate accrual, and completion of the probationary period. However, an employee does not earn sick or annual leave while off the rolls or in a non-pay status. The injured employee is also generally entitled to be considered for promotion as though still present. This means that an employee who occupies a career ladder position, or whose position is reclassified at a higher grade, is entitled to be considered for promotion under the provisions of the agency's merit promotion plan. However, an employee on compensation is generally not entitled to a promotion unless it is clear that the employee would have been promoted if the injury had not occurred.

RIF Protection

An injured employee enjoys no special protection in a reduction in force (RIF) and can be separated like any other employee. An injured employee separated by RIF has no restoration rights.

Placement in Other Agencies

The primary responsibility to reemploy an injured worker rests with the employee's former agency. However, if the employee's executive branch agency has been abolished, or the legislative or judicial branch is unable to place employees eligible for competitive status, OPM will provide placement assistance.

Appeal Rights

Executive branch employees who are entitled to restoration or priority consideration because of a compensable injury, may appeal to the Merit Systems Protection Board as follows:

- An employee who fully recovers within one year or who is physically disqualified may appeal the agency's failure to restore or improper restoration.
- An employee who takes longer than one year to fully recover may appeal the agency's failure to place the employee on its reemployment priority list; the agency's failure to reemploy the individual from the priority list by showing that restoration was denied because of the employment of another person who otherwise could not properly have been appointed; or the agency's failure to place the employee in an equivalent position with credit for all rights and benefits.
- A partially recovered employee may appeal by showing that the agency's failure to reemploy is arbitrary and capricious. If reemployed, the employee may appeal the agency's failure to credit time spent on compensation for all benefits based upon length of service.

Appeals must generally be filed with 30 calendar days of the action being appealed.

Additional Assistance

Employees should direct all questions about compensation to the servicing OWCP office. Agency personnel offices can answer questions about restoration rights.

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Important Federal Agencies

As a Federal employee, there are a number of agencies that directly affect your employment with Uncle Sam. Brief descriptions of these agencies – and their responsibilities with respect to your Federal employment – are described in this chapter.

Office of Personnel Management

The Office of Personnel Management (OPM) serves as the federal government's central personnel office. Some of its chief duties are:

- working with agencies to create systems to recruit, develop, manage and retain a high quality and diverse workforce;
- protecting merit principles and veterans' preference;
- serving federal agencies, employees, retirees, their families, and the public through technical assistance, employment information, pay administration, and benefits delivery;
- safeguarding employee benefit trust funds;
- providing leadership to strengthen human resources management throughout the government;
- helping set human resources management rules with agencies' involvement;
- supporting agencies in workforce restructuring; and
- managing federal employee health and life insurance programs.

OPM has oversight responsibility for ensuring that personnel practices are carried out in accordance with the Merit System Principles. Through assessment of agency human resources management, OPM identifies violations of the principles and related laws, rules, and regulations. OPM also administers the government's classification appeals and Fair Labor Standards Act programs.

OPM also improves operations by helping agencies work effectively with federal labor organizations that represent 1.1 million federal employees. OPM regularly consults at the national level with labor organizations, agency managers and labor relations officials in the development of human resource policy and on government rules, regulations, and binding directives affecting conditions of employment.

Merit Systems Protection Board

The U. S. Merit Systems Protection Board is an independent, quasi-judicial agency in the Executive branch that serves as the guardian of Federal merit systems. The Board was established by Reorganization Plan No. 2 of 1978, which was codified by the Civil Service Reform Act of 1978 (CSRA), Public Law No. 95-454. The CSRA, which became effective January 11, 1979, replaced the Civil Service Commission with three new independent agencies: the Office of Personnel Management, which manages the Federal work force; the Federal Labor Relations Authority, which oversees Federal labor-management relations; and the Board.

The Board assumed the employee appeals function of the Civil Service Commission and was given the new responsibilities to perform merit systems studies and to review the significant actions of OPM. The CSRA also created the Office of Special Counsel, which investigates allegations of prohibited personnel practices, prosecutes violators of civil service rules and regulations, and enforces the Hatch Act. Although established as an office of the Board, the Special Counsel has functioned independently as a prosecutor of cases before the Board. In July 1989, the Office of Special Counsel became an independent Executive branch agency.

The Board's mission is to ensure that Federal employees are protected against abuses by agency management, that Executive Branch agencies make employment decisions in accordance with the merit systems principles, and that Federal merit systems are kept free of prohibited personnel practices. The Board accomplishes its mission by:

- Hearing and deciding employee appeals from agency personnel actions (appellate jurisdiction);
- Hearing and deciding cases brought by the Special Counsel involving alleged abuses of the merit systems, and other cases arising under the Board's original jurisdiction;
- Conducting studies of the civil service and other merit systems in the Executive Branch to determine whether they are free of prohibited personnel practices; and
- Providing oversight of the significant actions and regulations of the Office of Personnel Management (OPM) to determine whether they are in accord with the merit system principles and free of prohibited personnel practices.

The Board does not:

- Hear and decide discrimination complaints except when allegations of discrimination are raised in appeals from agency personnel actions brought before Board. That responsibility belongs to the Equal Employment Opportunity Commission (EEOC);
- Resolve negotiability disputes, unfair labor practice complaints, and exceptions to arbitration awards. That responsibility belongs to the Federal Labor Relations Authority (FLRA);
- Provide advice on employment, examinations, staffing, retirement and benefits. That responsibility belongs to the Office of Personnel Management (OPM);
- Investigate allegations of activities prohibited by civil service laws, rules, or regulations. That responsibility belongs to the Office of Special Counsel (OSC).

MSPB also does not accept appeals from private industry, local, city, county or state employees.

Appellate Jurisdiction

The Civil Service Reform Act (CSRA) authorized the Board to hear appeals of various agency actions.
If a personnel action involves a prohibited personnel practice, regardless of whether the action is appealable to the Board, the employee may file a complaint with the Special Counsel, asking that the Special Counsel seek corrective action from the Board. Under the Whistleblower Protection Act of 1989, an individual who alleges that a personnel action was taken, or not taken, or threatened, because of "whistleblowing" may seek corrective action from the Board directly if the Special Counsel does not seek corrective action on his or her behalf.

Most of the cases brought to the Board are appeals of agency adverse actions (removals, suspensions of more than 14 days, reductions in grade or pay, and furloughs of 30 days or less). The next largest number of cases involves appeals of OPM determinations in retirement matters. Other types of actions that may be appealed to the Board include: performance-based removals or reductions in grade, denials of within-grade salary increases, reduction-in-force actions, OPM suitability determinations, OPM employment practices (the development and use of examinations, qualification standards, tests and other measurement instruments), denials of restoration of reemployment rights, and certain terminations of probationary employees.

Additional jurisdictional issues arise where the employee alleges discrimination in connection with an action otherwise appealable to the Board (called a "mixed case"). While the Board has jurisdiction over such appeals, the employee, if dissatisfied with the final decision of the Board, may ask the Equal Employment Opportunity Commission (EEOC) to review the Board's decision. If the EEOC and the Board cannot agree, the case is referred to the Special Panel for final resolution. (The Special Panel consists of a Chairman appointed by the President, one member of the Board appointed by the MSPB Chairman, and one EEOC commissioner appointed by the EEOC Chairman.) A discrimination complaint in connection with an action that is not appealable to the Board may be pursued through internal agency procedures and the EEOC.

There are also additional jurisdictional issues when the employee is a member of a bargaining unit that has a negotiated grievance procedure covering any of the actions that may be appealed to the Board. In such instances, the employee normally must pursue a grievance through the negotiated grievance procedure. There are three exceptions to this general rule: (1) when the action is an adverse action or performance-based action; (2) when the employee raises an issue of prohibited discrimination in connection with the action; and (3) when the employee alleges that the action was the result of a prohibited personnel practice other than discrimination. If any of these exceptions apply, the employee has the choice of using the negotiated grievance procedure or filing an appeal with the Board, but may not do both. (Under the terms of some union contracts, Postal Service employees may be able to pursue a grievance under the negotiated procedure and also file an appeal with the Board.)

The Board also hears complaints of alleged violations of the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans Employment Opportunities Act (VEOA), and complaints from White House employees of alleged violations of civil rights and employment laws under the Presidential and Executive Office Accountability Act.

Probationary employees have very limited appeal rights. They may appeal a termination based on political affiliation or marital status, and they may appeal a termination based on conditions arising before employment on the grounds that the termination was not in accordance with regulations. Employees and annuitants may appeal OPM decisions affecting entitlements under the retirement systems. Certain actions, such as OPM suitability determinations and OPM employment practices, may be appealed by applicants for employment.

An appellant files an appeal with the appropriate MSPB regional or field office having geographical jurisdiction. An administrative judge issues an initial decision. Unless a party files a petition for review with the Board, the initial decision becomes final 35 days after issuance. Any party, or OPM or the Special Counsel, may petition the full Board in Washington, D.C. to review the initial decision. The Board's decision on petition for review is final and constitutes final administrative action.

Judicial Review

In appellate cases, the Board's final decision, whether it is an initial decision or Board decision, may be appealed to the United States Court of Appeals for the Federal Circuit or, in cases involving allegations of discrimination, to a U. S. district court. The Director of OPM may petition the Board for reconsideration of a final decision, and may also seek judicial review of Board decisions that have substantial impact on a civil service law, rule, regulation, or policy.

The Board's decisions in cases brought by the Special Counsel may be appealed to the U. S. Court of Appeals for the Federal Circuit, except in Hatch Act cases involving state or local government employees. State or local government employees affected by the Board's Hatch Act decisions may file appeals in the U. S. district courts. The Board's decisions in other original jurisdiction cases may be appealed to the U. S. Court of Appeals for the Federal Circuit.

Members of the MSPB

The bipartisan Board consists of a Chairman, a Vice Chairman, and a Member, with no more than two of its three members from the same political party. Board members are appointed by the President and confirmed by the Senate. They serve overlapping, nonrenewable 7-year terms.

Prohibited Personnel Practices

The CSRA also set forth prohibited personnel practices that, when engaged in, are a basis for disciplinary action against responsible agency officials. An employee who appeals a personnel action to the Board may raise the affirmative defense that the action resulted from a prohibited personnel practice. Summarized, the prohibited personnel practices are:

- Discriminating on the basis of race, color, religion, sex, national origin, age, disability, marital status, or political affiliation;

- Soliciting or considering statements concerning a person who is being considered for a personnel action unless the statement is based on personal knowledge and concerns the person's qualifications and character;
- Coercing the political activity of any person, or taking any action as a reprisal for a person's refusal to engage in political activity;
- Deceiving or willfully obstructing anyone from competing for employment;
- Influencing anyone to withdraw from competition for any position to help or hurt anyone else's employment prospects;
- Giving unauthorized preferential treatment to any employee or applicant;
- Nepotism;
- Taking or failing to take, or threatening to take or fail to take, a personnel action because of an individual's legal disclosure of information evidencing wrongdoing ("whistleblowing");
- Taking or failing to take, or threatening to take or fail to take, a personnel action because of an individual's exercising any appeal, complaint, or grievance right; testifying or lawfully assisting any individual in the exercise of any appeal, complaint, or grievance right; cooperating with or disclosing information to an agency Inspector General or the Special Counsel, or refusing to obey an order that would require the individual to violate a law;
- Discriminating on the basis of personal conduct that does not adversely affect the performance of an employee or applicant or the performance of others, except that an employee or applicant's conviction of a crime may be taken into account in determining suitability or fitness; and
- Taking or failing to take any other personnel action if the act or omission would violate any law, rule, or regulation implementing or directly concerning the merit system principles.

There is an additional prohibited personnel practice for purposes of disciplinary action only. It is violating a veterans' preference provision in connection with a personnel action.

Equal Employment Opportunity Commission

The Equal Employment Opportunity Commission (EEOC) was created by Title VII of the Civil Rights Act of 1964. EEOC began operations officially on July 2, 1965, one year after passage of the Act. With headquarters in Washington, D.C., and 50 field offices nationwide, EEOC is the federal government's premier civil rights agency.

Federal Laws Prohibiting Job Discrimination
The following federal laws prohibit discrimination on the job:

- Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin;
- the Equal Pay Act of 1963, which prohibits discrimination on the basis of gender in compensation for substantially similar work under similar conditions;
- the Age Discrimination in Employment Act of 1967 (ADEA), which prohibits discrimination against individuals who are 40 years of age and older;
- Title I and Title V of the Americans with Disabilities Act of 1990 (ADA), which prohibit employment discrimination on the basis of disability in the private sector, and in state and local governments;
- Sections 501 and 505 of the Rehabilitation Act of 1973, which prohibit employment discrimination against federal employees with disabilities; and
- the Civil Rights Act of 1991, which, among other things, provides monetary damages in cases of intentional employment discrimination.

The EEOC enforces all of these laws. The EEOC also provides oversight and coordination of all federal equal employment opportunity regulations, practices, and policies.

Other federal laws, not enforced by EEOC, also prohibit discrimination and reprisal against federal employees and applicants. The Civil Service Reform Act of 1978 (CSRA) contains a number of prohibitions, known as prohibited personnel practices, which are designed to promote overall fairness in federal personnel actions. The CSRA prohibits any employee who has authority to take certain personnel actions from discriminating for or against employees or applicants for employment on the bases of race, color, national origin, religion, sex, age or disability. It also provides that certain personnel actions cannot be based on attributes or conduct that do not adversely affect employee performance, such as marital status and political affiliation. OPM has interpreted the prohibition of discrimination based on conduct to include discrimination based on sexual orientation. The CSRA also prohibits reprisal against federal employees or applicants for whistle-blowing, or for exercising an appeal, complaint, or grievance right. The CSRA is enforced by both the Office of Special Counsel (OSC) and the Merit Systems Protection Board (MSPB).

Discriminatory Practices Prohibited By These Laws

Under Title VII, the ADA, and the ADEA, it is illegal to discriminate in any aspect of employment, including:

- hiring and firing;
- compensation, assignment, or classification of employees;
- transfer, promotion, layoff, or recall;
- job advertisements;
- recruitment;
- testing;
- use of company facilities;
- training and apprenticeship programs;
- fringe benefits;
- pay, retirement plans, and disability leave; or
- other terms and conditions of employment.

Discriminatory practices under these laws also include:

- harassment on the basis of race, color, religion, sex, national origin, disability, or age;
- retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;
- employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, or ethnic group, or individuals with disabilities; and
- denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability. Title VII also prohibits discrimination because of participation in schools or places of worship associated with a particular racial, ethnic, or religious group.

Other Discriminatory Practices Under These Laws:

Title VII

Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex.

National Origin Discrimination

It is illegal to discriminate against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group.

A rule requiring that employees speak only English on the job may violate Title VII unless an employer shows that the requirement is necessary for conducting business. If the employer believes such a rule is necessary, employees must be informed when English is required and the consequences for violating the rule.

Religious Accommodation
An employer is required to reasonably accommodate the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship on the employer.

Sex Discrimination
Title VII's broad prohibitions against sex discrimination specifically cover:

> Sexual Harassment
> This includes practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender, including same sex harassment. (The "hostile environment" standard also applies to harassment on the bases of race, color, national origin, religion, age, and disability.)
>
> Pregnancy Based Discrimination
> Pregnancy, childbirth, and related medical conditions must be treated in the same way as other temporary illnesses or conditions. Note that additional rights are available to parents and others under the Family and Medical Leave Act (FMLA).

Age Discrimination in Employment Act (ADEA)
The ADEA's broad ban against age discrimination also specifically prohibits:

- statements or specifications in job notices or advertisements of age preference and limitations. An age limit may only be specified in the rare circumstance where age has been proven to be a bona fide occupational qualification (BFOQ);
- discrimination on the basis of age by apprenticeship programs, including joint labor-management apprenticeship programs; and
- denial of benefits to older employees. An employer may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

Equal Pay Act (EPA)
The EPA prohibits discrimination on the basis of sex in the payment of wages or benefits, where men and women perform work of similar skill, effort, and responsibility for the same employer under similar working conditions. Note that employers may not reduce wages of either sex to equalize pay between men and women. A violation of the EPA may occur where a different wage was/is paid to a person who worked in the same job before or after an employee of the opposite sex. A violation may also occur where a labor union causes the employer to violate the law.

Rehabilitation Act of 1973
The Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in all employment practices. It closely follows the better-known Americans with Disabilities Act. It is necessary to understand several important definitions to know who is protected by the law and what constitutes illegal discrimination:

Individual with a Disability
An individual with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities are activities that an average person can perform with little or no difficulty such as walking, breathing, seeing, hearing, speaking, learning, and working.

Qualified Individual with a Disability
A qualified employee or applicant with a disability is someone who satisfies skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of that position.

Reasonable Accommodation
Reasonable accommodation may include, but is not limited to, making existing facilities used by employees readily accessible to and usable by persons with disabilities; job restructuring; modification of work schedules; providing additional unpaid leave; reassignment to a vacant position; acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters. Reasonable accommodation may be necessary to apply for a job, to perform job functions, or to enjoy the benefits and privileges of employment that are enjoyed by people without disabilities. An employer is not required to lower production standards to make an accommodation. An employer generally is not obligated to provide personal use items such as eyeglasses or hearing aids.

Undue Hardship
An employer is required to make a reasonable accommodation to a qualified individual with a disability unless doing so would impose an "undue hardship" on the operation of the employer's business. "Undue hardship" means an action that requires significant difficulty or expense when considered in relation to factors such as financial resources, and the size, nature and structure of its operation.

Prohibited Inquiries and Examinations
Before making an offer of employment, an employer may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in the same job category. Medical examinations of employees must be job-related and consistent with business necessity.

Drug and Alcohol Use
Employees and applicants currently engaging in the illegal use of drugs are not protected by the Rehabilitation Act when an employer acts on the basis of such use. Tests for illegal use of drugs are not considered medical examinations and, therefore, are not subject to restrictions on medical examinations. Employers may hold individuals who are illegally using drugs and individuals with alcoholism to the same standards of performance as other employees.

The Civil Rights Act of 1991
The Civil Rights Act of 1991 made major changes in the federal laws against employment discrimination enforced by EEOC. Enacted in part to reverse several Supreme Court decisions that limited the rights of persons protected by these laws, the Act also provides additional protections. The Act authorizes compensatory damages, and provides for obtaining attorneys' fees and the possibility of jury trials.

Filing and Processing Federal EEO Complaints
As stated above, the statutes enforced by EEOC make it illegal to discriminate against employees or applicants for employment on the bases of race, color, religion, sex, national origin, disability, or age. A person who files a complaint or participates in an investigation of an EEO complaint, or who opposes an employment practice made illegal under any of the statutes enforced by EEOC, is protected from retaliation.

In addition to the laws that EEOC enforces, there are federal protections from discrimination on other bases including sexual orientation, status as a parent, marital status, political affiliation, and conduct that does not adversely affect the performance of the employee.

Filing a Complaint
Employees or applicants who believe that they have been discriminated against by a federal agency have the right to file a complaint with that agency. The first step is to contact an EEO Counselor at the agency within 45 days of the discriminatory action. The individual may choose to participate in either counseling, or in Alternative Dispute Resolution (ADR) when the agency offers ADR. Ordinarily, counseling must be completed within 30 days and ADR within 90 days. At the end of counseling, or if ADR is unsuccessful, the individual may then file a complaint with the agency.

The agency must investigate the complaint, unless the complaint is dismissed. If a complaint is one containing one or more issues that must be appealed to the Merit Systems Protection Board (MSPB), the complaint is a “mixed case.” It is then processed under the Board’s procedures. For all other EEO complaints, once the agency finishes its investigation, the complainant may request a hearing before an EEOC administrative judge or an immediate final decision from the agency. If the complainant is not satisfied with the final agency decision, he or she can then take the case to federal district court.

In cases where an EEOC hearing is requested, the administrative judge conducts a hearing, issues a decision within 180 days, and sends the decision to both parties. Where discrimination is found, the administrative judge orders appropriate relief. If the agency does not issue a final order within 40 days after receiving the administrative judge’s decision, the decision becomes the final action of the agency. If the agency issues an order notifying the complainant that the agency will not fully implement the decision of the administrative judge, the agency also must file an appeal at the same time.

An individual, acting as a class agent, also may file a class complaint with an agency. Class complaints must be certified by an EEOC administrative judge in order to be accepted for processing.

Appealing to the EEOC

A dissatisfied complainant may appeal to EEOC an agency’s final action within 30 days of receipt. The agency may appeal a decision by an EEOC administrative judge within 40 days of receiving the administrative judge’s decision.

On class complaints, a class agent may appeal an agency’s final decision on the merits of the class complaint within 30 days from receipt, or a class member may appeal the final decision on his or her claim for individual relief within 30 days from receipt of the final decision.

If the complaint is a “mixed case,” the complainant may appeal the final agency decision to the MSPB or ask the Board for a hearing. Once the Board issues its decision on the complaint, the complainant may petition EEOC for review of the Board decision concerning the claim(s) of discrimination.

Remedies

The "relief" or remedies available for employment discrimination, whether caused by intentional acts or by practices that have a discriminatory effect, may include:

- back pay,
- hiring,
- promotion,
- reinstatement,
- front pay,
- reasonable accommodation, or
- other actions that will make an individual "whole" (in the condition s/he would have been but for the discrimination).

Remedies also may include payment of:

- attorneys' fees,
- expert witness fees, and
- court costs.

To obtain additional information, go to EEOC’s web site at http://www.eeoc.gov.

Office of Government Ethics

The Office of Government Ethics (OGE), a small agency within the executive branch, was established by the Ethics in Government Act of 1978. Its job is to exercise leadership in the executive branch to prevent conflicts of interest on the part of Government employees, and to resolve any conflicts of interest that do occur. In partnership with executive branch agencies and departments, OGE seeks to foster high ethical standards for employees and strengthen the public's confidence that the Government's business is conducted with impartiality and integrity.

Executive branch employees hold their positions as a public trust and American citizens have a right to expect that all employees will place loyalty to the Constitution, laws and ethical principles above private gain. Employees fulfill that trust by adhering to general principles of ethical conduct as well as specific ethical standards.

Executive Order 12674 issued by President Bush in 1989 and modified in 1990 by Executive Order 12731 states 14 general principles that broadly define the obligations of public service. Underlying these 14 principles are two core concepts:

1. Employees shall not use public office for private gain; and
2. Employees shall act impartially and not give preferential treatment to any private organization or individual.

In addition, employees must strive to avoid any action that would create the appearance that they are violating the law or ethical standards. By observing these general principles, employees help to ensure that citizens have complete confidence in the integrity of Government operations and programs.

Gifts from Outside Sources

Executive branch employees are subject to restrictions on the gifts that they may accept from sources outside the Government. Generally they may not accept gifts that are given because of their official position or that come from certain interested sources ("prohibited sources"). Those sources include persons (or an organization made up of such persons) who:

- are seeking official action by the employee's agency;
- are doing or seeking to do business with the employee's agency;
- are regulated by the employee's agency; or
- have interests that may be substantially affected by performance or nonperformance of the employee's official duties.

There are a number of exceptions to the ban on gifts from outside sources. These exceptions would allow the acceptance of gifts in the following circumstances:

- where the value of the gift is $20 or less;
- where the gift is based solely on a family relationship or personal friendship;
- where the gift is based on an outside business or employment relationship; or
- where the gift is in connection with certain political activities.

Employees may accept gifts of free attendance at certain widely attended gatherings provided that there has been a determination that attendance is in the interest of the agency. Invitations from non-sponsors of the event may be accepted provided that certain additional conditions are met. There are also exceptions for discounts, awards and honorary degrees, certain social events, and meals, refreshments and entertainment in foreign countries.

These exceptions are subject to some limitations on their use. For example, an employee can never solicit or coerce the offering of a gift. Nor can an employee use exceptions to accept gifts on such a frequent basis that a reasonable person would believe that the employee was using public office for private gain.

Some other things are not treated as gifts and may be accepted without any limitations. Modest refreshments (such as coffee and doughnuts), greeting cards, plaques and other items of little intrinsic value, rewards and prizes open to the general public, and pension benefits from a former employer are just a few examples.

If an employee has received a gift that cannot be accepted, the employee may return the gift or pay its market value. If the gift is perishable and it is not practical to return it, the gift may, with approval, be given to charity or shared in the office.

Gifts Between Employees

Executive branch employees may not make a gift to an official superior, nor can an employee accept a gift from another employee who receives less pay except in certain circumstances or on certain occasions.

On an occasional basis, including occasions when gifts are traditionally given or exchanged, the following individual gifts to a supervisor are permitted:

- gifts other than cash that are valued at no more than $10;
- food and refreshments shared in the office among employees;
- personal hospitality in the employee's home that is the same as that customarily provided to personal friends;
- gifts given in connection with the receipt of personal hospitality that is customary to the occasion; and
- transferred leave provided that it is not to an immediate superior.

On certain special, infrequent occasions a gift may be given that is appropriate to that occasion. These occasions include:

- events of personal significance such as marriage, illness, or the birth or adoption of a child, or
- occasions that terminate the subordinate-official superior relationship such as retirement, resignation or transfer.

Employees may solicit or contribute, on a strictly voluntary basis, nominal amounts for a group gift to an official superior on special infrequent occasions, and occasionally for items such as food and refreshments to be shared among employees at the office.

Conflicting Financial Interests

Executive branch employees are prohibited by a Federal criminal statute from participating personally and substantially in a particular matter that will affect certain financial interests. Those include the financial interests of:

- the employee
- the employee's spouse or minor child
- the employee's general partner
- an organization in which the employee serves as an officer, director, trustee, general partner or employee, and
- a person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

There are a number of ways in which an employee may deal with a potential conflict of interest. The employee may simply not participate in the matter that would pose the conflict. This is called "recusal." The employee may also obtain a waiver from the agency, sell off or "divest" the conflicting interest, or resign from the conflicting position. Which remedy is appropriate will depend upon the particular circumstances.

Agencies may, by supplemental regulation, prohibit or restrict the holding of certain financial interests by all agency employees or a group of employees, and a few extend such restrictions to the employee's spouse and minor children.

Impartiality in Performing Official Duties

Executive branch employees are required to consider whether their impartiality may be questioned whenever their involvement in a particular matter involving specific parties might affect certain personal and business relationships. A pending case, contract, grant, permit, license or loan are some examples of particular matters involving specific parties. A general rulemaking, on the other hand, is not.

If such a matter would have an effect on the financial interest of a member of the employee's household, or if a person with whom the employee has a "covered relationship" is or represents a party to such a matter, then the employee must consider whether a reasonable person would question the employee's impartiality in the matter. If the employee concludes that there would be an appearance problem, then the employee should not participate in the matter unless authorized by the agency.

An employee has a "covered relationship" with the following persons:

- a person with whom the employee has or seeks a business, contractual or other financial relationship;
- a person who is a member of the employee's household or with whom the employee has a close personal relationship;
- a person for whom the employee's spouse, parent or dependent child serves as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
- any person for whom the employee has within the last year served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or
- any organization in which the employee is an active participant.

An employee may have a concern that circumstances other than those expressly described in the regulation may raise a question regarding the employee's impartiality. In such a situation, the employee should follow the procedures described in the regulation to determine whether or not participation in the particular matter would be appropriate. In addition, any employee who is unsure of whether a particular situation poses an ethics violation can always contact their agency's Designated Agency Ethics Official (DAEO) to obtain an informed opinion.

Some persons who enter Government service may receive a special severance payment or other benefit that their former employer does not make to other departing employees not entering into Federal service. If such a payment made prior to entering Government service is in excess of $10,000 and if certain other factors are present, then the employee is disqualified for two years from participating in any particular matter in which the former employer is a party or represents a party. The agency may waive or shorten the disqualification period.

Seeking Other Employment

An executive branch employee may not participate in any particular Government matter that will affect the financial interests of a person or entity with whom he is seeking employment. An employee is considered to be seeking employment if:

- the employee is engaged in actual negotiations for employment;
- a potential employer has contacted the employee about possible employment and the employee makes a response other than rejection; and
- the employee has contacted a prospective employer about possible employment (unless the sole purpose of the contact is to request a job application or if the person contacted is affected by the performance of the employee's duties only as part of an industry).

An employee is considered no longer seeking employment if:

- either the employee or the prospective employer rejects the possibility of employment and all discussions of possible employment have ended; or

- two months have elapsed since the employee's dispatch of an unsolicited resume and the employee has received no expression of interest from the prospective employer.

In some cases, you may be authorized by an agency official to participate in particular matters from which you would otherwise have to be disqualified due to your job search. If a search firm or other intermediary is involved, the employee is not disqualified unless the intermediary identifies the prospective employer to the employee.

Misuse of Position

Executive branch employees must not use their public office for their own or another's private gain. Employees are not to use their position, title, or any authority associated with their office to coerce or induce a benefit for themselves or others. Employees also are not to use or allow the improper use of nonpublic information to further a private interest, either their own or another's. Employees may not use Government property for other than authorized purposes. Government property includes office supplies, telephones, computers, copiers and any other property purchased with Government funds.

Employees may not misuse official time. This includes the employee's own time as well as the time of a subordinate.

Outside Activities

Executive branch employees are subject to a number of limitations on the outside activities in which they may be involved. An employee may not have outside employment or be involved in an outside activity that conflicts with the official duties of the employee's position. An activity conflicts with official duties:

- if it is prohibited by statute or by the regulations of the employee's agency; or
- if the activity would require the employee to be disqualified from matters so central to the performance of the employee's official duties as to materially impair the employee's ability to carry out those duties.

Employees of some agencies may be required by their agency's own supplemental conduct regulations to obtain prior approval before engaging in certain outside employment or activities.

Employees generally may not be paid for outside teaching, speaking and writing if the activity relates to the employee's official duties. However, there is an exception that would allow an employee to be paid for teaching certain courses at accredited educational institutions. Employees may not use their official title or position (except as part of a biography or for identification as the author of an article with an appropriate disclaimer) to promote a book, seminar, course, program or similar undertaking.

Employees may engage in fundraising in a personal capacity subject to several restrictions. An employee cannot solicit funds from subordinates. Nor may an employee solicit funds from persons who have interests that may be affected by the employee's agency, such as those who are regulated by, seeking official action from, or doing business with the agency. Also, an employee cannot use or permit the use of the employee's official title, position or authority to promote the fundraising effort.

Post-Employment

Executive branch employees are subject to certain restrictions on their activity after they leave Government service. Two of the restrictions apply with respect to particular matters involving specific parties that they were involved with while in Government service. If the employee's involvement in such a matter was personal and substantial, then the employee is permanently barred from representing anyone back to any Federal department, agency, or court on that same matter. If the matter was under the employee's official responsibility during the last year of Government service, then the employee is barred for two years after leaving Government service from representing anyone back to the Government on that same matter.

In addition, certain high level officials are subject to a so-called "one-year cooling off period." For a period of one year after leaving a "senior" position, these officials may not make any appearance on behalf of any person (other than the

United States) before his former agency with the intent to influence the agency on any matter in which that person seeks official action.

Employees who participated personally and substantially in an ongoing trade or treaty negotiation and had access to certain information are subject to a one year restriction on representing, aiding or advising anyone concerning that ongoing trade or treaty negotiation after they leave Government service.

Former very senior employees are subject to an additional restriction on the persons throughout the executive branch who may be contacted during the first year after they have left Government. Former senior and very senior employees are restricted for one year after leaving Government service from representing, aiding or advising foreign governments or foreign political parties before an agency or department of the United States.

Representation to Government Agencies and Courts

Executive branch employees are subject to criminal statutes that prohibit the representation of private interests before the Government. One of these laws prohibits an employee from prosecuting a claim against the United States or representing a private party before the Government in connection with a particular matter in which the United States is a party or has a direct and substantial interest. This prohibition applies whether or not the employee receives compensation for the representation.

There are exceptions that would allow an employee to represent with or without compensation:

- the employee (self-representation);
- a parent, spouse or child of the employee; or
- a person or estate that the employee serves as a guardian, executor, administrator, trustee or personal fiduciary.

The matter involved may not be one in which the employee participated personally and substantially or which was the subject of the employee's official responsibility. Also, the employee must obtain approval for the activity from the employee's appointing official.

An employee may represent employee nonprofit organizations (such as child care centers, recreational associations, professional organizations, credit unions or other similar groups) before the U.S. Government under certain circumstances. The employee may not be compensated. And the employee may not represent an employee group in claims against the Government, in seeking grants, contracts or cash from the Government, or in litigation where the group is a party.

An employee may take on uncompensated representation of a person who is the subject of disciplinary, loyalty, or personnel administration proceedings.

Another law governing representational activity prohibits an employee from accepting compensation for certain representational services before the Government whether or not those services were provided by the employee personally or by some other person. Again, there are exceptions to this law that would allow for the representation of a parent, spouse, child or person served in a fiduciary capacity.

Supplementation of Salary

Executive branch employees may not be paid by someone other than the United States for doing their Government job. Thus, for example, a highly paid executive of a corporation upon entering Government service could not accept an offer from her former employer to make up the difference between her Government salary and the compensation she received from her former employer.

This prohibition does not apply to:

- certain special Government employees and employees serving without compensation;

- funds contributed out of the treasury of any State, county, or municipality;
- continued participation in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer;
- payments for travel, subsistence and other expenses made to an employee by a tax-exempt nonprofit organization incurred in connection with training; and
- moving expenses incurred in connection with participation in an executive exchange or fellowship program in an executive agency.

Financial Disclosure

The Office of Government Ethics oversees the administration of the public and confidential financial disclosure systems for the executive branch. It also administers the blind trust and certificate of divestiture programs in the executive branch.

Public Financial Disclosure

Certain senior officers and employees of the executive branch are required to file a public report (SF 278) disclosing their financial interests as well as the interests of their spouse and minor children. Public filers must report:

- any interest in property held in a trade or business or for investment or the production of income (real estate, stocks, bonds, securities, futures contracts, beneficial interests in trusts or estates, pensions and annuities, mutual funds, etc.) that meet reporting thresholds;
- earned income, retirement benefits, honoraria and any other non-investment income;
- gifts and reimbursements that meet reporting thresholds;
- liabilities (personal loans from certain family members, a mortgage on a personal residence, automobile, furniture and appliance loans, revolving charge accounts that do not exceed $10,000 at the close of the reporting period are excluded from reporting);
- agreements or arrangements with respect to future employment, leaves of absence and continuation of payments or benefits from a former employer; and
- outside positions such as an officer, director, trustee, general partner, proprietor, employee, consultant, etc. of any organization (but positions with religious, social, fraternal or political entities are excluded, as are solely honorary positions).

Confidential Financial Disclosure

Certain other less senior executive branch employees whose duties involve the exercise of discretion in sensitive areas such as contracting, procurement, administration of grants and licenses, and regulating or auditing non-Federal entities are required to file confidential financial disclosure reports (OGE Form 450). This reporting system generally tracks the approach of the public disclosure system with some differences. Ranges of values of assets and income from assets are not required to be reported nor are interests in or income from bank accounts, money market mutual funds, U.S. obligations and Government securities. The most notable difference is that confidential reports are not available to the public.

Recusals

One remedy that is often appropriate for avoiding a potential conflict of interest is recusal or disqualification. This simply means that the employee does not participate in a matter that poses a conflict of interest.

Waivers

Another remedy for dealing with conflicts of interest is the use of waivers. An individual waiver of the statutory bar may be granted by an authorized official when the conflicting financial interest is not substantial. For example, an official might grant a waiver where the employee owned only a few shares of a particular stock. Waivers may also be granted to special Government employees serving on advisory committees. OGE is authorized to issue regulatory waivers for certain classes of financial interests and such a regulation was recently issued as a final rule. Finally, waivers are available for dealing with conflicts that arise from financial interests derived from Native American birthrights.

Certificates of Divestiture
Section 1043 of the Internal Revenue Code provides for the deferral of capital gains taxes on assets that must be sold to comply with ethics program requirements. Proceeds from divested assets must be reinvested in certain specified categories of investments. This change allows for a more flexible remedy to conflicts that avoid subjecting an executive branch employee to costly tax consequences that would otherwise result from the sale. In order to take advantage of the tax deferral mechanism, a Certificate of Divestiture must be obtained from OGE before the sale occurs. Certificates of Divestiture are issued by the Office of Government Ethics in accordance with its procedures and policies.

Trusts
Finally, a blind trust may be available as a remedy for a potential conflict of interest. In order to be recognized, the trust must include certain required provisions in the trust instrument and have an approved independent trustee. A blind trust must be approved by the Director of the Office of Government Ethics before it is executed.

There is no requirement that a person utilize a blind trust as a means of resolving potential conflicts of interest. Generally, a blind trust will be appropriate where the holdings are of such an array and magnitude that creation of a qualified trust would be the most practical means of avoiding conflicts.

Informal Advisory Letters and Memoranda and Formal Opinions
The Office of Government Ethics provides both informal advisory letters and memoranda and formal opinions concerning the application of the Ethics in Government Act of 1978 (including its financial disclosure provisions), the criminal conflict of interest laws, the administrative standards of ethical conduct and related Executive orders, and other administrative regulations issued by OGE. At the discretion of the Director, formal advisory opinions will be rendered on matters of general applicability or on important matters of first impression. Where a request does not meet the requirements for a formal advisory opinion, the Office of Government Ethics may respond by way of an informal advisory letter or memorandum.

The informal advisory letters and memoranda and formal opinions for the period 1979-2006 are available at www.usoge.gov.

Office of Special Counsel

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Its basic authorities come from three federal statutes - the Civil Service Reform Act, the Whistleblower Protection Act, and the Hatch Act. OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. A description of prohibited personnel practices (PPPs) is provided below. OSC is also responsible for protecting the reemployment rights of federal employee military veterans and reservists under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Prohibited Personnel Practices and Whistleblower Protection
OSC receives, investigates, and prosecutes allegations of PPPs, with an emphasis on protecting federal government whistleblowers. OSC seeks corrective action remedies (such as back pay and reinstatement), by negotiation or from the Merit Systems Protection Board (MSPB), for injuries suffered by whistleblowers and other complainants. OSC is also authorized to file complaints at the MSPB to seek disciplinary action against individuals who commit PPPs.

OSC provides a secure channel through its Disclosure Unit for federal workers to disclose information about various workplace improprieties, including a violation of law, rule or regulation, gross mismanagement and waste of funds, abuse of authority, or a substantial danger to public health or safety.

OSC promotes compliance by government employees with legal restrictions on political activity by providing advisory opinions on, and enforcing, the Hatch Act. Every year, OSC's Hatch Act Unit provides over a thousand advisory

opinions, enabling individuals to determine whether their contemplated political activities are permitted under the Act. The Hatch Act Unit also enforces compliance with the Act. Depending on the severity of the violation, OSC will either issue a warning letter to the employee, or prosecute a violation before the MSPB.

Organization

The OSC is headed by the Special Counsel, who is appointed by the President, and confirmed by the Senate. The agency employs approximately 106 employees (primarily personnel management specialists, investigators and attorneys) to carry out its government-wide responsibilities. They work in the headquarters office in Washington, D.C., and in the Dallas, Texas, and San Francisco Bay Area field offices.

Twelve Prohibited Personnel Practices

Twelve prohibited personnel practices, including reprisal for whistleblowing, are defined by law at § 2302(b) of title 5 of the United States Code (U.S.C.). A personnel action (such as an appointment, promotion, reassignment, or suspension) may need to be involved for a prohibited personnel practice to occur. Generally stated, § 2302(b) provides that a federal employee authorized to take, direct others to take, recommend or approve any personnel action may not:

1. discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation;
2. solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics;
3. coerce the political activity of any person;
4. deceive or willfully obstruct anyone from competing for employment;
5. influence anyone to withdraw from competition for any position so as to improve or injure the employment prospects of any other person;
6. give an unauthorized preference or advantage to anyone so as to improve or injure the employment prospects of any particular employee or applicant;
7. engage in nepotism (i.e., hire, promote, or advocate the hiring or promotion of relatives);
8. engage in reprisal for whistleblowing - i.e., take, fail to take, or threaten to take or fail to take a personnel action against an employee or applicant for disclosing to the Special Counsel, or to an Inspector General or comparable agency official (or others, except when disclosure is barred by law, or by Executive Order to avoid harm to the national defense or foreign affairs), information which the employee or applicant reasonably believes evidences a violation of any law, rule or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety;
9. take, fail to take, or threaten to take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or to an Inspector General; or refusing to obey an order that would require the individual to violate a law;
10. discriminate based on personal conduct which is not adverse to the on-the-job performance of an employee, applicant, or others; or
11. take or fail to take, recommend, or approve a personnel action if taking or failing to take such an action would violate a veterans' preference requirement; and
12. take or fail to take a personnel action, if taking or failing to take action would violate any law, rule or regulation implementing or directly concerning merit system principles at 5 U.S.C. § 2301.

Who Is Protected From Prohibited Personnel Practices

In general, OSC has jurisdiction over prohibited personnel practices committed against most employees or applicants for employment in Executive Branch agencies and the Government Printing Office.

In some instances, OSC's jurisdiction is more limited. OSC has jurisdiction over allegations of whistleblower retaliation for employees of:

- the government corporations listed at 31 U.S.C. § 9101;

- the Federal Aviation Administration;
- the Transportation Security Administration (TSA).

In addition, OSC has limited jurisdiction over allegations of nepotism at the U.S. Postal Service (USPS). Under a Memorandum of Understanding (MOU) between OSC and USPS, OSC refers alleged violations of the anti-nepotism statute (5 U.S.C. § 3110) to USPS for investigation. Once USPS completes its investigation, it reports its findings and any proposed action to OSC.

As indicated above, TSA non-screener employees may file complaints alleging retaliation for protected whistleblowing under 5 U.S.C. § 2302(b)(8). OSC will process these complaints under its regular procedures, including filing petitions with the Merit Systems Protection Board, if warranted.

TSA security screeners may also file complaints alleging retaliation for protected whistleblowing under 5 U.S.C. § 2302(b)(8) pursuant to a Memorandum of Understanding (MOU) between OSC and TSA executed on May 28, 2002. The MOU and TSA Directive HRM Letter No. 1800-01 provide OSC with authority to investigate whistleblower retaliation complaints and recommend that TSA take corrective and/or disciplinary action when warranted. Additional information on OSC procedures for reviewing security screener whistleblower complaints under the MOU is available at http://www.osc.gov/tsa-info.htm.

Who Is Not Protected From Prohibited Personnel Practices

OSC has no jurisdiction over prohibited personnel practices committed against employees of:

- the Central Intelligence Agency, Defense Intelligence Agency, National Security Agency, and certain other intelligence agencies excluded by the President;
- the General Accounting Office;
- the Federal Bureau of Investigation;
- the U.S. Postal Service (except for nepotism allegations; see above); and
- the Postal Rate Commission.

Complaint Processing

The Complaints Examining Unit (CEU) receives complaints filed with the OSC. The unit initially analyzes all allegations of prohibited personnel practices (as well as allegations of other activities prohibited by civil service law, rule or regulation).

When necessary, the CEU contacts the person requesting OSC action to ensure that CEU clearly understands the nature of and basis for each allegation. It conducts further inquiry to the extent necessary to determine whether the allegation warrants additional investigation.

Persons who have submitted allegations to the CEU will receive one or more of the following responses:

- a letter acknowledging receipt of their complaint and identifying the staff member assigned to handle it, with an information sheet (Form OSC-53) enclosed explaining how the complaint will be processed by the CEU;
- a status report after 90 days, and every 60 days thereafter while the matter is active;
- a letter advising that the matter has been referred to an OSC Investigation and Prosecution Division for further inquiry, with an information sheet (Form OSC-54) about the investigation and legal review process (or, as noted below, a letter inviting the complainant to participate in mediation as an alternative to investigation);
- a preliminary determination letter, with a final opportunity for input when the CEU proposes to close a matter without remedial action or referral to an Investigation and Prosecution Division; or
- a letter advising that the OSC will take no further action because it lacks jurisdiction over the matter.

The OSC asks everyone who seeks an investigation of a possible prohibited personnel practice to select one of three consent statements (Form OSC-49) explaining necessary communications between OSC and the agency involved.

Investigation and Prosecution Division (IPD)
After a thorough initial examination, the CEU refers matters indicating a potentially valid claim (under the laws enforced by the OSC) to one of three IPD units. Each unit conducts investigations to review pertinent records, and to interview complainants and witnesses with knowledge of the matters alleged. Matters not resolved during the investigative phase will undergo legal review and analysis to determine whether the IPD inquiry has established a violation of law, rule or regulation, and whether the matter warrants corrective action, disciplinary action, or both. Complainants will continue to receive 60-day status notices while matters are pending in the applicable division.

Alternative Dispute Resolution (ADR) Unit
After CEU has completed its examination, OSC offers mediation as an alternative to investigation in selected PPP cases. Participation in the OSC mediation program is completely voluntary for both the complainant and the employing agency. If both parties agree to mediate their dispute, the OSC assigns a neutral third party - a mediator - to facilitate a discussion between the parties to reach a mutually agreeable resolution to the complaint.

Delaying a Personnel Action Pending Investigation
An individual may request that the Special Counsel seek to delay, or "stay," an adverse personnel action pending an OSC investigation. If the Special Counsel has reasonable grounds to believe that the proposed action is the result of a prohibited personnel practice, the OSC may ask the agency involved to delay the personnel action. If the agency does not agree to a delay, the OSC may then ask the Merit Systems Protection Board (MSPB) to stay the action. The OSC cannot stay a personnel action on its own authority.

Remedying a Prohibited Personnel Practice
Current and former federal employees and applicants for federal employment may report suspected prohibited personnel practices to the OSC. The matter will be investigated, and if there is sufficient evidence to prove a violation, the OSC can seek corrective action, disciplinary action, or both. Alternatively, parties in selected cases may agree to mediate their dispute in order to reach a mutually agreeable resolution of the PPP complaint.

The OSC may enter into discussions with an agency at any stage of a pending matter in pursuit of a resolution acceptable to all parties. The OSC follows a policy of early and firm negotiation to obtain appropriate corrective action (and/or disciplinary action) for apparent violations.

If an agency fails to remedy a prohibited personnel practice upon request by the OSC, corrective action may also be obtained through litigation before the MSPB. Such litigation begins with the filing of a petition by the OSC, alleging that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is about to occur. Corrective actions that can be ordered by the MSPB include job restoration, reversal of suspensions and other adverse actions, reimbursement of attorney's fees, back pay, medical and other costs and damages.

Note: Current or former federal employees and applicants who allege that they were subjected to any personnel action because of whistleblowing may seek corrective action in an appeal to the MSPB. Such an appeal is known as an "individual right of action" (IRA). By law, the employee or applicant must seek corrective action from the OSC before filing an IRA.

The IRA may be filed:

- after the OSC closes a matter in which reprisal for whistleblowing has been alleged; or
- if the OSC has not notified the complainant within 120 days of receiving an allegation of whistleblower reprisal that it will seek corrective action.

A federal employee or applicant for employment engages in whistleblowing when the individual discloses to the Special Counsel or an Inspector General or comparable agency official (or to others, except when disclosure is barred by law, or by Executive Order to avoid harm to the national defense or foreign affairs) information that the individual reasonably believes evidences the following types of wrongdoing:

- a violation of law, rule, or regulation; or
- gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Procedures for filing an IRA are set forth in MSPB regulations at 5 C.F.R. Part 1209. (In considering an IRA, it should be noted that the MSPB may refuse to take jurisdiction over any matters not specifically raised before the OSC.)

Disciplinary action

The OSC may seek disciplinary action against any employee believed to be responsible for committing a prohibited personnel practice. The OSC begins a disciplinary action case by filing a complaint with the MSPB, charging an employee with the commission of a prohibited personnel practice, and seeking disciplinary action against that person. Rights of employees against whom the OSC seeks disciplinary action in these cases are set forth in MSPB regulations, at 5 C.F.R. Part 1201, Subpart D. Individuals found by the MSPB to have committed a prohibited personnel practice are subject to removal, reduction in grade, debarment from federal employment for up to five years, suspension, reprimand, or fine of up to $1,000.

In the alternative, at any time during its investigation of a matter, the OSC may authorize the agency involved to take disciplinary action against an employee believed to be responsible for committing a prohibited personnel practice. By law, during any OSC investigation under title 5, an agency may not take disciplinary action against any employee for any alleged prohibited activity under investigation, or for any related activity, without approval from the OSC. Intervention. The Special Counsel may intervene as a matter of right, or otherwise participate in most proceedings before the MSPB. The Special Counsel may not intervene in certain proceedings (individual rights of action brought under 5 U.S .C. §1221, or matters otherwise appealable to the MSPB under 5 U.S.C. § 7701) without the consent of the person initiating the proceeding.

Filing a Complaint With OSC

Those who wish to file a complaint with OSC must use Form OSC-11 (Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity) to submit allegations of prohibited personnel practices or other prohibited employment activity. Form OSC-11 may obtained from OSC's web site at http://www.osc.gov/forms.htm#index. OSC will not process a complaint submitted in any format other than a completed Form OSC-11 (except for a complaint alleging only a Hatch Act violation). If a person uses any another format to file a complaint, the material received will be returned to the filer with a blank Form OSC-11 to complete and return to the OSC. The complaint will be considered to be filed on the date on which the OSC receives the completed Form OSC-11.

Complaints of prohibited personnel practices or other prohibited employment activities within the investigative authority of the OSC should be sent to the U.S. Office of Special Counsel, Complaints Examining Unit, 1730 M Street, NW, Suite 201, Washington, DC 20036-4505.

Employees covered by a collective bargaining agreement must choose one of three avenues: an OSC complaint, an MSPB appeal, or a grievance under the collective bargaining agreement.

OSC's Policy About Allegations of Discrimination

The OSC is statutorily authorized to investigate allegations of discrimination based on race, color, religion, sex, national origin, age, or handicapping condition. However, procedures for investigating such complaints have already been established in federal agencies and the Equal Employment Opportunity Commission (EEOC). Therefore, to avoid duplicating those investigative processes, the OSC follows a general policy of deferring complaints involving discrimination to those agencies' procedures.

Allegations of discrimination based on sexual orientation, marital status, and political affiliation are not within the jurisdiction of the EEOC. Such allegations, however, may be prohibited personnel practices or other violations of law subject to investigation by the OSC.

Other Violations Over Which OSC Has Jurisdiction

The OSC is authorized by law to investigate and seek appropriate corrective and disciplinary action for:

- activities prohibited by any civil service law, rule, or regulation (including any activity relating to political intrusion in personnel decision making);
- arbitrary or capricious withholding of information under the Freedom of Information Act; and
- involvement by any employee in any prohibited discrimination found by a court or administrative authority to have occurred in the course of any personnel action.

The OSC also has authority to investigate and litigate cases referred by the Department of Labor involving the reemployment rights of veterans and reservists returning to the federal workplace after active duty.

Cooperating With OSC Investigations

By law, OSC is authorized to issue subpoenas for documents or the attendance and testimony of witnesses. During an investigation, the OSC may require employees and others to testify under oath, sign written statements, or respond formally to written questions.

Federal employees are also required to provide to the OSC any information, testimony, documents, and material, the disclosure of which is not otherwise prohibited by law or regulation, in investigations of matters under civil service law, rule, or regulation. The same rule requires federal agencies to make employees available to testify, on official time, and to provide pertinent records to the OSC.

Whistleblower Disclosures

OSC's Disclosure Unit (DU) serves as a safe conduit for the receipt and evaluation of whistleblower disclosures from federal employees, former employees and applicants for federal employment. In this capacity, DU receives and evaluates whistleblowing disclosures, which are separate and distinct from complaints of reprisal or retaliation for whistleblowing, which are reviewed by OSC's Complaints Examining Unit as a prohibited personnel practice.

The OSC disclosure process differs from other government whistleblower channels in at least three ways: (1) federal law guarantees confidentiality to the whistleblower; (2) the Special Counsel may order an agency head to investigate and report on the disclosure; and (3) after any such investigation, the Special Counsel must send the agency's report, with the whistleblower's comments, to the President and Congressional oversight committees.

As stated above, a whistleblower's identity will not be revealed without their consent. However, in the unusual case where the Special Counsel determines there is an imminent danger to public health and safety or violation of criminal, the Special Counsel has the authority to reveal the whistleblower's identity.

DU attorneys review five types of disclosures specified in the statute: violations of law, rule or regulation; gross mismanagement; gross waste of funds; abuse of authority; and substantial and specific danger to public health and safety. The disclosures are evaluated to determine whether or not there is sufficient information to conclude with a substantial likelihood that one of these conditions has been disclosed.

Jurisdictional Requirements

The Disclosure Unit has jurisdiction over federal employees, former federal employees, and applicants for federal employment. It is important to note that a disclosure must be related to an event that occurred in connection with the performance of an employee's duties and responsibilities.

The Disclosure Unit does not have jurisdiction over disclosures filed by:

- employees of the U.S. Postal Service and the Postal Rate Commission;
- members of the armed forces of the United States (i.e., non-civilian military employees);
- state employees operating under federal grants;
- employees of federal contractors; and employees paid through non-appropriated funds.

Filing a Disclosure

Whistleblowers must make their disclosures to OSC in writing. To facilitate this process, OSC has developed a form that may be used to file a disclosure - OSC Form No. 12, Disclosure of Information. Use of OSC Form No. 12 is not mandatory. However, if you do not use the form, it is important to include your name, address and telephone numbers. For assistance with filing a disclosure, or any other inquiries, contact the DU Hotline at (800) 572-2249 or (202) 653-9125.

Evaluating Disclosures

DU attorneys evaluate the disclosures to determine whether or not there is a substantial likelihood that one of the following conditions has been disclosed: a violation of law, rule or regulation, gross mismanagement, gross waste of funds, an abuse of authority, and a substantial and specific danger to public health and safety. Disclosures are reviewed in the order they are received with disclosures of dangers to public health and safety receiving high priority.

OSC will generally not consider anonymous disclosures. If a disclosure is filed by an anonymous source, the disclosure will be referred to the Office of Inspector General in the appropriate agency. OSC will take no further action on the disclosure.

OSC does not have authority to investigate the disclosures that it receives. In order to make a “substantial likelihood” finding, OSC considers a number of factors including whether the disclosure includes reliable, first-hand information. In general, OSC does not request an agency head to conduct an investigation based on the whistleblower’s second-hand knowledge of agency wrongdoing. Individuals with first-hand knowledge of the allegations are encouraged to file disclosures in writing directly with OSC.

Similarly, speculation about the existence of misconduct does not provide OSC with a sufficient legal basis upon which to send a matter to the head of an agency. If a whistleblower believes that wrongdoing took place, but can provide no information to support that assertion, OSC will not be able to refer the allegations to the head of the agency for an investigation.

If OSC finds no substantial likelihood that the information discloses one or more of the categories of wrongdoing, the whistleblower is notified of the reasons the disclosure may not be acted on further and directed to other offices available for receiving disclosures.

The Referral Process under 5 U.S.C. § 1213(c)

Should OSC find that there is a substantial likelihood that one of the statutory conditions exists, the Special Counsel will refer the disclosure to the appropriate agency head. The head of the agency is then required to conduct an investigation and submit a written report on the findings of the investigation to the Special Counsel.

The statute sets forth specific information that must be included in the agency’s report. The agency reports must be reviewed and signed by the head of the agency and must include the basis for the investigation, the manner in which the investigation was conducted and a summary of the evidence gathered. The report must also list any apparent violations found and include a description of any action to be taken as a result of the investigation. OSC does not decide who within the agency will conduct the investigation. However, agency heads frequently task their Offices of Inspector General with the responsibility for investigating the disclosures referred by OSC.

The statute requires agency heads to complete the investigation and report back to OSC on their findings within 60 days. If an agency needs additional time to complete the investigation and report, an extension of time may be requested. Extension requests must be submitted in writing and must state specifically the reasons the additional time is needed. Extensions will only be granted upon a showing of good cause.

Upon receipt, the agency's report is reviewed to determine whether it contains the information required by the statute and whether or not the report's findings appear to be reasonable. In addition, the whistleblower is afforded an opportunity to review and comment on the agency report. If the report meets the statutory requirements, the Special Counsel then transmits the report with comments and recommendations to the President and the congressional committees with oversight responsibility for the agency involved. OSC is also required to place the report in a public file. The whistleblower's comments are also sent to the President and congressional oversight committees.

If the report reveals evidence of a criminal violation it will not be sent to the whistleblower, nor does it become part of the public file. Instead, the agency is required to forward the information directly to the Attorney General and to notify the Office of Personnel Management and the Office of Management and Budget of the referral.

The Referral Process under 5 U.S.C. § 1213(g)

The Special Counsel may also refer cases to the head of an agency where no substantial likelihood determination has been made. In these cases, the Special Counsel has the discretion to transmit the information provided by the whistleblower to the head of the agency identified in the disclosure. The agency head is then required to inform OSC in writing, within a reasonable time, what action has been or will be taken, and when such action will be completed. The whistleblower is also informed of the referral to the agency head.

OSC may use this discretionary authority in circumstances where the Special Counsel concludes that the information provided by the whistleblower merits the consideration of the agency head, even though it does not meet the statutory criteria for a mandatory investigation under 5 U.S.C. § 1213(c). Thus, this section allows the Special Counsel to issue a formal communication to the head of an agency notifying that agency of a matter of concern within one or more of the five statutory categories.

Section 1213(g)(2) differs significantly from 1213(c). Under 1213(g)(2) there is no requirement for the agency to investigate the allegations nor is the agency required to respond in 60 days. However, the agency is required to inform the Special Counsel in writing within a reasonable amount of time of what action has been taken or is being taken and when the action will be completed. At present, the Special Counsel has interpreted the statutory phrase "reasonable time" to mean 90 days. Thereafter, the agency is required to request extensions of time as in 1213(c) cases.

The Referral Process under 5 U.S.C. § 1213(j)

For disclosures of information involving counterintelligence and foreign intelligence information the statute sets forth a different procedure under 5 U.S.C. § 1213(j). If the Special Counsel determines that a disclosure involves counterintelligence or foreign intelligence information, which is prohibited from disclosure by law or Executive order, the disclosure will be transmitted to the National Security Advisor, the Permanent Select Committee on Intelligence in the House and Select Committee on Intelligence in the Senate. The referral ends the Special Counsel's involvement with the disclosure and the National Security Advisor and the Congressional intelligence committees decide how to proceed with the information. The disclosure will not be referred to the head of the agency involved for an investigation.

Political Activity (Hatch Act)

The Hatch Act restricts the political activity of executive branch employees of the federal government, District of Columbia government and some state and local employees who work in connection with federally funded programs. In 1993, Congress passed legislation that significantly amended the Hatch Act as it applies to federal and D.C. employees (5 U.S.C. §§ 7321-7326). (These amendments did not change the provisions that apply to state and local employees. 5 U.S.C. §§ 1501- 1508.) Under the amendments most federal and D.C. employees are now permitted to take an active part in political management and political campaigns. A small group of federal employees are subject to

greater restrictions and continue to be prohibited from engaging in partisan political management and partisan political campaigns.

Permitted/Prohibited Activities for Employees Who May Participate in Partisan Political Activity

These federal and D.C. employees may:

- be candidates for public office in nonpartisan elections
- register and vote as they choose
- assist in voter registration drives
- express opinions about candidates and issues
- contribute money to political organizations
- attend political fundraising functions
- attend and be active at political rallies and meetings
- join and be an active member of a political party or club
- sign nominating petitions
- campaign for or against referendum questions, constitutional amendments, municipal ordinances
- campaign for or against candidates in partisan elections
- make campaign speeches for candidates in partisan elections
- distribute campaign literature in partisan elections
- hold office in political clubs or parties

These federal and D.C. employees may not:

- use official authority or influence to interfere with an election
- solicit or discourage political activity of anyone with business before their agency
- solicit or receive political contributions (may be done in certain limited situations by federal labor or other employee organizations)
- be candidates for public office in partisan elections
- engage in political activity while:
- on duty
- in a government office
- wearing an official uniform
- using a government vehicle
- wear partisan political buttons on duty

Agencies/Employees Prohibited From Engaging in Partisan Political Activity
Employees of the following agencies (or agency components), or in the following categories, are subject to more extensive restrictions on their political activities than employees in other Departments and agencies:

- Administrative Law Judges (positions described at 5 U.S.C. § 5372)
- Central Imagery Office
- Central Intelligence Agency
- Contract Appeals Boards (positions described at 5 U.S.C. § 5372a)
- Criminal Division (Department of Justice)
- Defense Intelligence Agency
- Federal Bureau of Investigation
- Federal Elections Commission
- Merit Systems Protection Board

- National Security Agency
  National Security Council
- Office of Criminal Investigation (Internal Revenue Service)
- Office of Investigative Programs (Customs Service)
- Office of Law Enforcement (Bureau of Alcohol, Tobacco, Firearms and Explosives)
- Office of Special Counsel
- Secret Service
- Senior Executive Service (career positions described at 5 U.S.C. § 3132(a)(4))

Permitted/Prohibited Activities for Employees Who May Not Participate in Partisan Political Activity
These federal employees may:

- register and vote as they choose
- assist in voter registration drives
- express opinions about candidates and issues
- participate in campaigns where none of the candidates represent a political party
- contribute money to political organizations or attend political fund raising functions
- attend political rallies and meetings
- join political clubs or parties
- sign nominating petitions
- campaign for or against referendum questions, constitutional amendments, municipal ordinances

These federal employees may not:

- be candidates for public office in partisan elections
- campaign for or against a candidate or slate of candidates in partisan elections
- make campaign speeches
- collect contributions or sell tickets to political fund raising functions
- distribute campaign material in partisan elections
- organize or manage political rallies or meetings
- hold office in political clubs or parties
- circulate nominating petitions
- work to register voters for one party only
- wear political buttons at work

Penalties for Violating the Hatch Act
An employee who violates the Hatch Act shall be removed from his or her position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit Systems Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.

Advisory Opinions
OSC issues advisory opinions to persons seeking advice about political activity under the Hatch Act. You may request such advice by phone, fax, mail or e-mail.

Hatch Act Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505

How to File a Complaint Alleging a Violation of the Hatch Act
Filers alleging a violation of the Hatch Act may use Form OSC-13 (Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity) to submit their allegation to OSC. Form OSC-13 can be printed from OSC's website at http://www.osc.gov/foms.htm#index. Filers can fill the form out online or fill it out after printing the form. Once the form is filled out, it should be mailed or faxed (202-653-5151) to OSC. If filers use another format to submit a Hatch Act violation, the following information should be included:

- name, mailing address, and telephone number of the complainant, and a time when the complainant can be safely contacted, unless the matter is submitted anonymously;
- the department or agency, location, and organizational unit complained of; and
- a concise description of the actions complained about, names and positions of employees who took these actions, if known to the complainant, and dates, preferably in chronological order, together with any documentary evidence the complainant may have.

Complaints should be sent to: Hatch Act Unit, U.S. Office of Special Counsel, 1730 M Street, N.W., Suite 201, Washington, DC 20036-4505.

Enforcement
When warranted after investigation of an alleged Hatch Act violation, OSC will prosecute violations before the Merit Systems Protection Board. When violations are not sufficiently egregious to warrant prosecution, OSC may issue a warning letter to the employee involved.

USERRA

The Uniformed Services Employment and Reemployment Rights Act (USERRA) prohibits discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. USERRA prohibits an employer from denying any benefit of employment on the basis of an individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. USERRA also protects the right of veterans, reservists, National Guard members, and certain other members of the uniformed services to reclaim their civilian employment after being absent due to military service or training.

Important Update
Effective Tuesday, February 8, 2005, OSC began directly receiving and investigating certain federal sector USERRA claims.

Pursuant to a demonstration project established by the Veterans Benefits Improvement Act of 2004 (VBIA), P.L. 108-454, signed by President Bush on December 10, 2004, OSC, rather than the Department of Labor's Veterans Employment and Training Service (VETS), has the authority to investigate federal sector USERRA claims brought by persons whose social security number ends in an odd-numbered digit. Under the project, OSC will also receive and investigate all federal sector USERRA claims containing a related prohibited personnel practice allegation over which OSC has jurisdiction regardless of the person's social security number.

OSC is administering the demonstration project, which began on February 8, 2005, and ends on September 30, 2007.

Filing a USERRA Complaint with OSC
If you are a federal employee or applicant for federal employment and believe that a federal agency has violated your USERRA rights, you may file a USERRA claim with OSC if:

- Your social security number ends in an odd numbered digit (i.e., ends in 1, 3, 5, 7, or 9) or

- Regardless of your social security number, if you also allege that the involved federal agency has engaged in a prohibited personnel practice. (Go to OSC's website at http://www.osc.gov and click on the "Prohibited Personnel Practices" heading for more information on what constitutes a prohibited personnel practice.)

If you are not alleging a prohibited personnel practice and your social security number ends in an even numbered digit (i.e., 0, 2, 4, 6, 8), OSC is not authorized to receive directly your USERRA complaint. Instead, you should first file your complaint VETS. If VETS is unsuccessful in resolving the complaint, you may request that VETS refer the complaint to OSC. If the Special Counsel believes there is merit to the complaint, OSC will initiate an action before the MSPB and appear on your behalf. The successful claimant is entitled to receive the employment benefits that he/she was denied as the result of the agency's violation of USERRA. Additionally, a prevailing claimant is entitled to attorney's fees, expert witness fees, and other litigation expenses.

You should use Form OSC-14 to submit a USERRA complaint to OSC. Electronic filing of a USERRA complaint is not currently available.

If you have any questions about OSC's role in enforcing USERRA, you can contact OSC by telephone at (202) 254-3620, or by e-mail at userra@osc.gov. In addition, the Department of Labor's Veterans' Employment and Training Service maintains a home page at http://www.dol.gov/vets. The VETS home page contains an interactive guided program that provides valuable information and answers questions about USERRA.

Federal Labor Relations Authority

The Federal Labor Relations Authority (FLRA) was established by the Civil Service Reform Act of 1978. It is charged with providing leadership in establishing policies and guidance relating to Federal sector labor-management relations and with resolving disputes under and ensuring compliance with Title VII of the Civil Service Reform Act of 1978, known as the Federal Service Labor-Management Relations Statute (Statute).

The FLRA represents the federal government's consolidated approach to its labor-management relations. It is "three agencies consolidated in one," fulfilling its statutory responsibilities primarily through three independent operating components: the Authority, the Office of the General Counsel, and the Federal Service Impasses Panel. It also supports two other components, both of which were established within the FLRA by the Foreign Service Act of 1980: the Foreign Service Impasse Disputes Panel and the Foreign Service Labor Relations Board.

The Authority is a quasi-judicial body with three full-time Members who are appointed for five-year terms by the President with the advice and consent of the Senate. One Member is appointed by the President to serve as Chairman of the Authority and as the Chief Executive and Administrative Officer of the FLRA. The Chairman also chairs the Foreign Service Labor Relations Board.

The Authority adjudicates disputes arising under the Statute, deciding cases concerning the negotiability of collective bargaining agreement proposals, appeals concerning unfair labor practices and representation petitions, and exceptions to grievance arbitration awards. Consistent with its statutory charge to provide leadership in establishing policies and guidance to participants in the Federal labor-management relations program, the Authority also assists Federal agencies and unions in understanding their rights and responsibilities under the Statute, and helps them improve their relationships so they can collaboratively resolve more of their problems without adjudicatory intervention.

Office of the General Counsel

The Office of the General Counsel (OGC) is the FLRA's independent investigator and prosecutor. The General Counsel, who is appointed by the President with the advice and consent of the Senate for a five-year term, is responsible for the management of the OGC, including the management of the FLRA's seven Regional Offices. The General Counsel, through the seven Regional Offices, is initially responsible for processing unfair labor practice (ULP) allegations and representation matters filed with the FLRA. As to ULP matters, the Regional Offices investigate, settle, and determine whether to dismiss or prosecute ULP charges. The General Counsel also decides

appeals of a Regional Director's decision not to issue a ULP complaint. The Regional Offices also ensure compliance with all ULP orders issued by the Authority. The resolution of representation matters includes, among other things, conducting elections and making appropriate unit determinations. The Office of the General Counsel encourages the use of various alternative dispute resolution techniques in striving to help parties in the Federal sector achieve a stable and productive labor-management relationship. This is accomplished through the use of facilitation, intervention, training and education programs.

Federal Service Impasses Panel

The Federal Service Impasses Panel (the Panel) is comprised of seven Presidential appointees who serve on a part-time basis, one of whom serves as Chairman. The Panel resolves impasses between Federal agencies and unions representing Federal employees arising from negotiations over conditions of employment under the Federal Service Labor-Management Relations Statute, the Federal Employees Flexible and Compressed Work Schedules Act, and the Panama Canal Act of 1979. If bargaining between the parties, followed by mediation assistance, proves unsuccessful, the Panel has the authority to recommend procedures and to take whatever action it deems necessary to resolve the impasse. The Panel's staff also supports the Foreign Service Impasse Disputes Panel in resolving impasses arising under the Foreign Service Act of 1980.

Foreign Service Labor Relations Board

The Foreign Service Labor Relations Board (the Board), which is composed of three Members appointed by the Chairman of the Authority, was created by the Foreign Service Act of 1980 to administer the labor-management relations program for Foreign Service employees in the Agency for International Development, and the Departments of State, Agriculture, and Commerce. The Board is supported by the staff of the FLRA. The FLRA Chairman serves as Chairman of the Board and the FLRA General Counsel serves as General Counsel for the Board.

Foreign Service Impasse Disputes Panel

The Foreign Service Impasse Disputes Panel (the Disputes Panel) was created by the Foreign Service Act of 1980. It consists of five part-time members appointed by the Chairman of the Foreign Service Labor Relations Board (the FLRA Chairman). The Disputes Panel resolves impasses between Federal agencies and Foreign Service personnel in the Agency for International Development and the Departments of State, Agriculture and Commerce over conditions of employment under the Foreign Service Act of 1980. The staff of the Federal Service Impasses Panel supports the Disputes Panel.