Chapter 8
Employment Procedures and Policies

Section 1
Hiring and Placement

General Hiring Procedures and Policies

The traditional and still the most-used method to enter federal service is by appointment through the competitive examining process. While for many years this process was centralized, the Office of Personnel Management (OPM) since the mid-1990s has delegated authority to agencies to examine for all positions except for administrative law judges, which remains in OPM’s sole control. OPM also conducts examinations for agencies under contract and maintains standing registers of candidates for certain common occupations from which agencies may hire (see Candidate Assessment and Probation, below).

In addition, however, there are numerous other appointing authorities and processes, as explained under Special Recruitment, Hiring, and Placement programs, below.

Under the various methods used, hiring has become increasingly automated in recent years, with both job postings and applications typically done online. The government’s main resource for job opportunities is www.usajobs.gov. Some departments and agencies also list their available jobs on their own Web sites. An index of home pages is at www.usa.gov. Also see Job Vacancy Information in Chapter 9, Section 2.

Recent Initiatives—OPM in 2008 began an “end-to-end hiring initiative” with the goals of creating user-friendly application procedures, clearer and more understandable job announcements and instructions for applying, timely and informed responses to questions about the requirements of the process, prompt acknowledgement that an application has been received, regular updates on the status of applications, and a timely decision-making process. In 2009, OPM announced a series of follow-up initiatives, including: requiring agencies to use the “end-to-end” guidance to track progress from the time a manager identifies a need to hire until the person selected starts his/her first day on the job; requiring streamlined and plain language vacancy announcements for the top 10 occupations within each agency; increasing hiring manager involvement in the process, including targeting recruitment, drafting job announcements, reviewing initial applications, and selecting applicants; and requiring that applicants be notified of their status at least four times in the process—application received, application assessed for qualifications, applicant referred to selecting official (or not), and application selected (or not).

A Presidential memo of May 11, 2010 ordered several changes designed to speed up and simplify hiring practices. It:

• generally barred agencies from requiring that applicants respond to essay-type questions, such as knowledge, skills and abilities questions, as an initial screening tool, although allowing for such a requirement at a later stage of the assessment process;
• required that applicants be allowed to apply for jobs using resumes and cover letters rather than often-lengthy standardized forms;
• ordered the phase-out of the “rule of three” assessment system and replacing it with general use of category rating;
• required that hiring managers be more involved in the hiring process, including planning current and future workforce requirements, identifying the skills required for the job, and engaging actively in the recruitment and interviewing process;
• required that managers be held accountable, through their performance evaluations, for recruiting and hiring highly qualified employees and supporting their successful transition into federal service; and
• required that agencies notify individuals applying for through USAJOBS about the status of their application at key stages of the application process.

Executive Order 13548 of 2010 required executive departments and agencies to
improve their efforts to employ workers with disabilities through recruitment, hiring, and retention initiatives. See Hiring of the Disabled under Special Recruitment, Hiring, and Placement Programs, below.

In 2011, OPM ordered a series of reporting requirements designed to track agency speed and quality in hiring. It meanwhile started the www.usajobsrecruit.gov site containing information and tools for human resources professionals, recruiters, and hiring officials, with features to encourage development and sharing of best practices in recruiting. It further discontinued form OF 612, Optional Application for Federal Employment, because www.usajobs.gov allows applicants to create and submit résumés online.

Executive Order 13583 of 2011 directed agencies to focus on diversity and inclusion as a key component of their human resources strategies, consistent with merit system principles and other law. Under the order, OPM and other central agencies developed a governmentwide plan focusing on diversity, inclusion, and agency accountability and leadership and highlighting strategies for agencies to identify and remove any barriers to equal employment opportunity in their recruitment, hiring, promotion, retention, professional development, and training policies and practices.

Final rules effective July 10, 2012 carried out changes in entry-level programs for students and recent graduates that had been announced in late 2010 (see Pathways Program under Special Recruitment, Hiring, and Placement Programs, below). OPM also in 2012 issued guidance requiring agencies to give veterans’ preference to active duty personnel even before their separation from the military, under certain conditions (see Veterans’ Hiring Preference in Section 8 of this chapter).


**Applying for a Federal Job**—Applicants for federal jobs—including currently employed federal workers seeking other positions—may submit a résumé or may use any other written format of their choice, including computer-generated forms.

Whatever format they choose, applicants must be sure to include all the information requested on the vacancy announcement (see Vacancy Announcements, below), such as identification, job-related qualifications, personal data needed to satisfy general legal requirements and applicant preferences such as work location and schedule.

An agency may require the use of special forms when filling unique jobs with specialized requirements through automated systems, and when recruiting exclusively from its own employees.

**Competitive Examination**—Competitive examination typically takes one of two forms: an examination conducted by OPM using a process it has established to create a civil service certificate from which a candidate may be selected, or an examination by an examining unit delegated the authority to use the methods set forth by OPM to create the certificate. Competitive examination generally is open to all qualified U.S. citizens.

For many entry-level positions, competitive examination employs a written test, the Administrative Careers With America exam.

**Suitability**—Agencies are responsible for ensuring that applicants are “suitable” for federal employment. Every appointment to a position in the competitive service is subject to investigation by OPM, or an agency conducting investigation under delegated authority from OPM, except: promotions; demotions; reassignment; conversion from career-conditional to career tenure; appointment, or conversion to an appointment, involving an employee of an agency who has been serving continuously with that agency for at least one year in one or more positions under an appointment subject to investigation; and transfer, provided the individual has served continuously for at least one year in a position subject to investigation.

OPM sets standards for sensitivity levels of positions, based on risk levels and other considerations. Rules at 5 CFR 731 cover criteria for determinations, special policies for positions of high public trust, appeal rights, and other issues. While typically agencies initiate a complete suitability/security investigation after an individual is selected and has accepted a job offer, agencies may choose to begin preliminary suitability/security determinations for all applicants at any time during the hiring process. For example, when filling law enforcement positions, agencies often initiate a preliminary suitability/security review.
at the time of application to ensure individuals do not have a criminal background or arrest record.

Under regulations at 5 CFR 731.104, a new background investigation to determine suitability of a current federal employee in a covered position (such as competitive service or career SES position) is not required, except when there has been a change in the employee’s public trust risk level or there is a need for reinvestigation under law, rule, or regulation. Specifically, no new investigation is required when a person has been promoted, demoted, reassigned, converted from career-conditional to career tenure, or appointed or converted to an appointment if the person has been serving continuously with the department or agency for at least one year in one or more positions subject to investigation. An investigation also is not required when a person is transferred from another department or agency, provided the person has served continuously for at least one year in a position subject to investigation.

OPM or agencies may debar from employment for up to three years those found unsuitable, including those applying for or who are in positions that can be non-competitively converted to the competitive service. Such decisions may be appealed to the Merit Systems Protection Board under 5 CFR 731.501.

For excepted service employees, Executive Order 13488 of 2009 mandates reciprocal recognition by federal agencies of a prior favorable suitability determination when the prior determination was based on equivalent criteria. A September 24, 2009, memo from OPM to agencies (available at www.chcoc.gov/transmittals) contains implementing guidance on issues including the relationship between agency-based and OPM-based standards, information that calls the individual’s suitability into question, and conduct that is incompatible with the core duties of the new position. The order and guidance do not apply to competitive service positions nor to positions in the intelligence community except those subject to OPM-governed appointing authorities.

Employment Bars—Certain types of criminal conduct render an individual ineligible for federal employment generally, or for work in certain types of positions. For example, an individual convicted of willful and unlawful concealment, removal, mutilation or destruction of public records and materials is barred from all federal employment, as is anyone who had worked as a federal collection or disbursement officer and who was convicted of carrying on any trade or business in the funds or debts of, or in any public property of, the federal government or any state government. Also for example, an individual convicted of a misdemeanor crime of domestic abuse is barred from being hired into a position requiring the incumbent to possess firearms, and anyone convicted of theft or unlawful concealment of money or other property of value from a bank or safe in a bank that is a Federal Reserve member or is insured by the Federal Deposit Insurance Corporation is barred from employment as a national bank examiner or FDIC examiner.

Citizenship Requirements—The government gives strong priority to hiring United States citizens and nationals, but noncitizens may be hired in certain circumstances. Agencies considering noncitizens for federal employment in the competitive service must follow usual selection procedures and also meet the requirements of immigration law, an appropriations act ban on paying certain noncitizens, and an executive order restriction on appointing noncitizens in the competitive service. See 5 CFR 338.101. In addition, agencies are responsible for applying any citizenship requirements that may appear in their authorization and appropriation laws. Agencies must confirm the employment eligibility of new hires through the Department of Homeland Security-run Employment Eligibility Verification Program.

Qualifications Standards—General OPM policies and instructions regarding qualifications and details on specific policies referenced below are at www.opm.gov/policy-data-oversight/classification-qualifications.

• Medical Qualifications—Generally, applicants and employees cannot be disqualified on the basis of medical standards, physical requirements, fitness tests, or other criteria that do not relate specifically to job performance. In addition, agencies are required to provide reasonable accommodation to persons with disabilities who demonstrate that they can perform the work of the position to be filled. However, OPM has established medical
qualification requirements for certain positions for job-related reasons mainly in the law enforcement, medical and safety fields. In addition, employing agencies have the authority to establish medical standards for positions for which they have 50 percent or more of the employees in the occupational series.

• **Supervisory Qualifications**—The Supervisory Qualification Guide prescribes general guidance when determining requirements for supervisory positions in the general schedule or equivalent at grades 15 and below. Candidates should possess proficiency or the potential to develop proficiency in these competencies prior to entry into a supervisory position. The competencies are accountability, customer service, decisiveness, flexibility, integrity/honesty, interpersonal skills, oral communication, problem solving, resilience and written communication. Many supervisory positions have specific subject-matter knowledge and skill requirements that candidates must meet. Agencies also may emphasize certain leadership competencies, depending on the job.

• **Modification of Qualifications Standards**—An agency may determine that an individual can successfully perform the work of a position even though that person may not meet all the requirements in the OPM qualification standard. In that situation, agencies are authorized to modify OPM qualification standards for reassignments, voluntary changes to lower grades, transfers, reinstatements, and re-promotions to a grade not higher than a grade previously held when the applicant's background includes related experience that provided the knowledge, skills and abilities necessary for successful job performance.

**Age Limits**—There are no maximum age limits for appointment to most positions. However, under 5 U.S.C. 3307, some jobs in fields such as law enforcement and firefighting have limits—typically 37, so that an employee can accumulate a full 20 years under their special retirement systems before mandatory retirement from those positions at age 57. In addition, the upper age limit for hiring of career Foreign Service officers is 59 so that individuals can accumulate the minimum five years to qualify for any retirement benefit before the mandatory retirement age of 65 under the Foreign Service Act of 1980. Those with veterans’ preference may be eligible for a waiver of maximum entry-age limits under certain circumstances, as described in Veterans’ Hiring Preference in Section 8 of this chapter. In addition, the maximum age for an original appointment as a Federal Employees Retirement System law enforcement officer or firefighter is 47 for individuals who are hiring are receiving retired or retainer pay for military service or compensation from the Department of Veterans Affairs instead of such pay. See Chapter 3, Section 8 for special retirement policies applying to jobs with mandatory retirement ages.

**Educational Credentials**—Agencies examine whether employees have valid educational credentials for basic qualification determinations and other purposes. See Educational Credentials in Section 4 of this chapter.

**Security Clearances**—Many jobs require that applicants and incumbents hold security clearances. See Security Clearances in Section 4 of this chapter.

**Vacancy Announcements**

Federal vacancy announcements must comply with the mandates of the first merit system principle which states: “Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a workforce from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.”

“Fair and open competition” requires that vacant positions be publicized for a period of time that gives job seekers the opportunity to apply for positions that they are interested in and for which they qualify. It also requires that applicants be informed of the basis on which they will be rated or assessed.

While posting vacancy announcements is the required method of notification, agencies also use recruiting methods including paid advertising, contract recruiting firms, job fairs, and visits to schools and college campuses to inform potential applicants about federal jobs and the organizations offering them.

Vacancy announcements are used to solicit information for the purpose of assessing
candidates’ qualifications to do the job. The announcements are also a means by which certain groups of applicants—such as veterans, displaced federal employees, or people with disabilities—are informed of special hiring authorities designed to help them find federal employment and how they can exercise their right to be considered through the special hiring authorities that apply to them.

When a vacancy is open to “all sources,” anyone may apply. Although there are no restrictions on candidates who may apply to these types of announcements, in most cases U.S. citizenship is required. A vacancy limited to “status applicants” is open only to current federal employees who hold non-temporary appointments in the competitive service and to certain former employees who have reinstatement rights.

Internal merit promotion announcements may limit who is considered. For example, an announcement may be open to displaced or about-to-be-displaced employees or to agency employees only, or may be extended to employees from other agencies but only within the commuting area.

When soliciting applications from federal employees outside their own workforce, agencies also are obliged to accept applications from military veterans who are eligible under the Veterans Employment Opportunities Act.

Applicants from outside the government are referred to as “external” or “non-status” applicants. This category also includes federal employees serving on temporary appointments or appointed in positions outside the competitive service. Current and former federal employees also may apply under competitive examining. When they do, all the laws and regulations that govern competitive examining apply to them.

Vacancy announcements typically require an applicant to submit:

- an application (an online résumé service is available at www.usajobs.gov);
- proof of military service, if claimed;
- proof of service-connected disabilities or certification of disabilities, if claimed;
- proof of federal service, if claimed;
- a copy of the most current performance appraisal if the applicant is a current federal employee;
- college transcripts, including certification of U.S. equivalency if the education was obtained in another country; and
- a letter showing that the applicant is a federal employee due to be displaced, or proof of displacement if the applicant is claiming priority placement under the government’s career transition assistance programs.

Agencies may also ask for additional documentation depending on the assessment method they use and the proof they need to determine eligibility to apply. Under an OPM memo to agencies of July 7, 2009 (available at www.chcoc.gov/transmittals), agencies may not require applicants to submit official documents as part of their application package when copies are sufficient. This includes college transcripts, proof of disability documentation, DD 214 Certificate of Release or Discharge from Active Duty, SF 50 Notification of Personnel Action, and similar documents. An unofficial transcript or a list of courses, grades earned, completion dates, and quarter and semester hours earned can be used as a substitute for the official transcript at the time the person applies for a job opening. Once selected and prior to appointment, applicants must provide official documentation—for example, an official college transcript if they qualified based on education.

In addition, a Presidential memo of May 11, 2010 (see General Hiring Procedures and Policies, above) ended the general practice of requiring narrative responses to knowledge, skills, and abilities requirements as an initial screening tool, although such requirements still can be imposed later in the process.

Candidate Assessment and Probation

The government primarily hires through “case examining,” which entails advertising and filling jobs one at a time. Other options are available as described in Special Recruitment, Hiring, and Placement Programs, below. In addition, many agencies have specialized hiring authorities under demonstration projects and other alternative personnel practices (see Section 7 in this chapter).
The Office of Personnel Management has delegated authority to agencies to examine for all their positions except for administrative law judges. These “delegated examining units” decide what assessment tools to use and how to use them, subject to OPM regulations. OPM maintains a register of applicants for administrative law judge positions, which it opens to new applicants occasionally. OPM also maintains registers covering more than a dozen occupations with high hiring volumes across the government, most commonly at entry levels. These “shared registers” give applicants an opportunity to be considered for jobs at multiple agencies in multiple locations. Further information, including a listing of the occupations and locations covered, is in an April 9, 2010 memo to agencies at www.chcoc.gov/transmittals.

OPM further maintains a database of candidates eligible to be hired through the Schedule A authority for people with disabilities as described under Types of Appointments, below. See https://max.omb.gov/maxportal.

OPM also operates employment service centers, which assess and refer candidates for agencies for a fee.

There are three basic approaches to pre-appointment applicant assessments:
- written and performance tests;
- a review of each applicant’s training and experience (done manually or via an automated system); and
- interviews and reference checks.

Federal managers and human resources staffs in the delegated examining units typically use some combination of these three methods.

Traditionally, candidate assessment focused on the extent to which individuals possessed the knowledge, skills, abilities and other attributes required in the job, commonly called KSAs. In KSAs:
- knowledge is a body of information applied directly to the performance of a function;
- skill is an observable competence to perform a learned psychomotor act;
- ability is a competence to perform an observable behavior or a behavior that results in an observable product; and
- other includes less easily measured traits such as promptness and honesty.

However, due to a view that broadly requiring KSAs for initial screening was an undue burden on applicants and slowed the hiring process, a Presidential memo of May 11, 2010 (at www.opm.gov/policy-data-oversight/human-capital-management/hiring-reform) ordered that such essay-type questions generally not be required at the initial application stage, while allowing for their use as a further screening tool later in the process.

Also traditionally, most candidate assessment in competitive hiring was based on the “rule of three” under which the examining office determined the three highest-rated candidates and presented that list to the hiring manager who typically had to choose from among them. Under the rule of three, persons eligible for veterans’ preference (see Veterans’ Hiring Preference in Section 8 of this chapter) had additional points added to their earned passing scores, and then were listed ahead of persons without preference points whose earned scores were equal to the augmented scores of the preference eligibles. Under certain circumstances, preference eligibles were placed ahead of all other eligible candidates, and under other circumstances, agencies were allowed, with OPM approval, to pass over preference-eligible candidates.

However, that same Presidential memo phased out the rule of three in favor of the category rating approach to assess and select job applicants for positions filled through competitive examining. That authority, in Title 5, U.S.C. 3319, had existed government-wide previously but had been in only limited use.

In category rating, instead of assigning job applicants specific numerical scores and referring them in score order after adding points for veterans’ preference, the agency assesses applicants against job-related criteria. For each position to be filled, the vacancy announcement must clearly define the categories each applicant will be assessed against based on the job requirements. Agencies may use test scores as part of the criteria used to place candidates into categories.

Qualified applicants are assigned to a category—for example basically qualified, well
qualified, or highly qualified. The law requires two or more categories to be used. The categories must be distinct from one another and clearly differentiate between the relative quality of candidates in each. Those deemed to be not qualified are not placed in a category; there is no “not qualified” category.

The top category is for candidates who possess the type and quality of experience that substantially exceeds the minimum qualifications of the position, including all selective placement factors and quality ranking factors. Such candidates are considered by the human resources office and the selecting official as being highly proficient in all the requirements of the job and can perform effectively in the position almost immediately or with a minimum amount of training and/or orientation. The next lower category is for candidates who meet the minimum qualifications of the position and are proficient in some, but not all, of the requirements of the position. Such candidates may require extensive training and/or orientation in order to satisfactorily perform the duties of the position.

There is no limit to the number of candidates who may be placed in the top category, and within the policies described below, any person in the top category may be selected. Agencies must send all eligible candidates in the highest category on the Certificate of Eligibles or equivalent to the selecting official. If the top category has fewer than three candidates, managers may consider any of the candidates in a merged group composed of the top two categories. There is no general requirement that hiring managers interview all candidates; policies vary by agency.

If using OPM’s standing registers, agencies must follow OPM’s quality categories for each register.

Each agency is required to have an appeal/reconsideration procedure in place for applicants wishing to challenge their rating. The agency must explain to the applicant why the applicant was placed in a particular category. Rules are at 5 CFR 300.104(b).

Veterans’ Preference—Veterans’ preference (See Section 8 in this chapter) applies under category rating in a different form than under the rule of three system described above. Within each category, all qualified preference eligibles are placed ahead of non-preference eligibles. The exceptions are:

- For scientific and professional positions at the grade 9 levels (or equivalent) or higher, qualified preference eligibles with a compensable service-connected disability of 10 percent or more are placed ahead of non-preference eligibles within the same quality category.
- For all other positions (series) and grade levels, qualified preference eligibles with a compensable service-connected disability of 10 percent or more are placed at the top of the highest quality category regardless of the quality category in which they were placed, and ahead of non-preference eligibles rated in the highest quality category (that is, those with disability ratings of 10 percent or more “float” to the highest quality category).

Agencies may pass over preference eligibles under certain circumstances under 5 U.S.C. 3318. A pass over must be based on “proper and adequate reasons,” which may include: affiliations that may present a conflict of interest; lack of education or experience that are part of the minimum requirements for the position; fraud or false statements; a medical condition that would prevent the candidate from performing the full range of essential duties and responsibilities of the position safely and efficiently; past performance or conduct problems in a federal job; or ineligibility for a needed security clearance, among others. Agencies may make pass over decisions except in cases involving medical disqualification or applicants with a 30 percent or greater disability rating; those decisions must be made by OPM. See the Delegated Examining Operations Handbook, Chapter 6, Section D at www.opm.gov/deu/Handbook_2007/DEO_Handbook.pdf.

Probation—Every new federal employee is subject to a probationary period, typically one year although there are exceptions allowing for different (usually longer) periods. This post-appointment assessment approach involves observation of actual performance on the job. During probation, employees have only limited rights to challenge job decisions up to and including removal. See Jurisdiction in Chapter 10, Section 3.

A current federal employee who is appointed to a supervisory or managerial position for the first time in the competitive service is required to serve a new probationary period.
This period is not to be used to assess technical ability or program knowledge not directly related to supervisory or managerial performance. Individual agencies may set the length of the probationary period, so long as it is of reasonable fixed duration, appropriate to the position, and uniformly applied. Most agencies use a one-year probationary period for supervisory and managerial positions.

Managerial and supervisory probation are distinct; an agency may require a managerial probationary period even for someone who has successfully completed supervisory probation. Prior service may be creditable toward the completion of managerial or supervisory probation.

Employees who complete a supervisory/managerial probationary period may not be required to serve another such probationary period regardless of the number of agencies, occupations, or positions in which they serve. If the employee does not complete the period satisfactorily, the agency may remove the employee from that position and return the employee to a position of no lower grade and pay than the previous position. That action generally is not appealable. See 5 CFR 315.901-905.

Types of Appointments

Individuals are hired—formally, “appointed”—into government jobs through a number of different authorities. The type of appointment in turn can affect employee rights in some areas, particularly rights to appeal adverse personnel actions (see Section 3 in Chapter 10). The category of appointment is designated on the employee’s form SF 50, kept in the personnel file.

Under 5 CFR 315, subparts D and E, current career and career-conditional employees may be appointed by transfer. Former career and career-conditional employees may be appointed by reinstatement, but time limits may apply. Transfer and reinstatement eligibles may be required to compete under the merit promotion program. See 5 CFR 335.

Competitive Service—In general, the competitive service (see 5 CFR 212) covers all civil service positions except those:

• specifically excepted from the competitive service;
• to which appointments are made by nomination for confirmation by the Senate; and
• in the Senior Executive Service.

In addition, some career positions in government outside the Executive Branch may be designated as competitive service by statute.

The typical method to enter competitive service positions is by appointment through the competitive examining process. Jobs announced under this process are open to the public.

Competitive service status confers certain advantages in job competitions and protections. Current career and career-conditional employees (see below) may be appointed by transfer. Former career and career-conditional employees may be appointed by reinstatement, but time limits may apply. Transfer and reinstatement eligibles may be required to compete under the merit promotion program. Competitive service employees in general gain the right to appeal to the Merit Systems Protection Board after completing a one-year probation.

Career-Conditional Appointments—A career-conditional appointment (see 5 CFR 315) leads, after three years of substantially continuous service, to a career appointment. For the first year, the employee serves a probationary period.

Excepted Service—Under 5 CFR 213 and 302, certain positions are excepted from the competitive service by law, by executive order, or by OPM, typically on grounds that it is not appropriate to conduct examinations for such positions. Appointments to such positions do not confer competitive status.

• Schedule A is for positions for which it is not practical to hold any examinations, such as attorney, chaplain, law clerk trainee, physician, dentist, and some others. Other Schedule A exceptions enable agencies to fill any job under special circumstances, such as a critical hiring need to fill a short-term job or to fill a continuing job pending completion of examining, clearances, or other procedures; a temporary or part-time job in a remote or isolated location; hiring a noncitizen because no qualified citizen is available; or to quickly staff a temporary board or commission.

Schedule A also provides for 30-day “critical needs” appointments and for non-
competitive appointments of those who have a permanent, severe physical, psychiatric, or mental impairment that substantially limits one or more major life activities, called “targeted” disabilities. See Hiring of the Disabled under Special Recruitment, Hiring, and Placement Programs, below.

- **Schedule B** is for positions for which competitive examinations are impractical. Applicants must meet the qualification standards for the job.

- **Schedule C** is for positions that are of a policy-determining nature or that involve a close personal relationship between the incumbent and an agency’s head or key officials. No examinations are given for Schedule C positions. Generally, the authority to fill a Schedule C job is revoked when the incumbent leaves, and agencies need approval from OPM to establish or re-establish the position.

- **Schedule D** is for appointments into the Pathways Program (see Special Recruitment, Hiring, and Placement Programs, below).

In addition to those distinctions, some positions are designated as excepted on grounds that the individual in the position could not establish ability to perform the job through testing but can establish competency through actual on-the-job performance. This authority most commonly is used for those with certain disabilities. See Hiring of the Disabled, under Special Recruitment, Hiring, and Placement Programs, below.

Some agencies are entirely excepted service. These agencies have their own hiring systems that establish the evaluation criteria they use in filling their internal vacancies. In many cases these procedures parallel those commonly used for competitive service hiring.


In addition, Legislative and Judicial Branch employment falls under the excepted service, as does employment with international organizations such as the International Monetary Fund, United Nations agencies, and the World Bank.

Excepted service employees who are not veterans may not appeal adverse personnel actions against them to the Merit Systems Protection Board unless they have completed two years of current continuous service under other than a temporary appointment limited to two years or less. Service in temporary appointments may not be combined with permanent excepted service to meet this requirement.

See Veterans’ Hiring Preference in Section 8 of this chapter for rules regarding veterans’ preference in excepted service hiring.

**Term Appointments**—In general, term appointments under 5 CFR 316 may be made for nonpermanent work that will last for more than one but not more than four years. However, OPM may extend term appointments beyond the four-year limit when clearly justified.

**Appointment as an Expert or Consultant**—Rules at 5 CFR 304 allow an agency to grant an excepted service appointment to a qualified expert or consultant to a position that requires only intermittent and/or temporary employment. The appointments are excepted from competitive examination, position classification and pay rules and may be for a limited period or without time limit.

Agencies may not use the authority to make appointments to a position requiring Presidential appointment, to the Senior Executive Service, to perform managerial or supervisory work (with some exceptions), to make final decisions on substantive policies or otherwise function in the agency chain of command, to do work performed by the agency’s regular employees, to fill in during staff shortages, or solely in anticipation of giving that individual a career appointment.

Rates of pay are determined by the head of the agency, subject to a cap of the GS-15, step 10, rate in that locality. Individuals appointed under this authority are entitled to sick
and annual leave, holidays and are subject to offsets of pay if they are re-employed federal annuitants. These appointments are distinct from personal services contract-type arrangements; in addition, a special expert hiring authority applies at the Defense Department (see below).

**Appointments Leading to Noncompetitive Conversion**—Several governmentwide appointing authorities permit agencies to noncompetitively convert employees to career or career-conditional appointments from excepted or temporary appointments. These include:

- Veterans Recruitment Appointments (see Noncompetitive Appointments in Section 8 of this chapter);
- appointment of persons with certain severe disabilities (see Hiring of the Disabled under Special Recruitment, Hiring, and Placement Programs, below); and
- Pathways Program appointments (see Special Recruitment, Hiring, and Placement Programs, below).

In addition, certain authorities as described below provide for noncompetitive conversions.

**Special Recruitment, Hiring, and Placement Programs**

**Acquisition Management Intern Program**—The governmentwide Acquisition Management Intern Program, [www.doiu.nbc.gov/intern.html](http://www.doiu.nbc.gov/intern.html), is a full-time program designed to employ contract specialists and to develop them into procurement professionals. Interns complete four six-month rotational assignments in sponsoring departments and agencies and receive technical and business skills training including contract administration, price and cost analysis, customer service, project management and presentation skills. Participants are hired at the GS 5/7 levels with promotion potential to GS-12. Upon completion of the two-year training program, interns will complete a year-long apprenticeship with one of the sponsoring agencies. Upon successful completion of the program, interns are permanently placed within one of the program’s participating agencies.

**Administrative Law Judges**—Administrative law judges (ALJs) preside at formal adjudicatory and rule-making proceedings conducted by Executive Branch agencies. ALJs are selected through a merit selection process administered by the Office of Personnel Management. OPM periodically conducts competitive examinations which are advertised on [www.usajobs.opm.gov](http://www.usajobs.opm.gov) and uses the results of these examinations to rank applicants for ALJ positions according to their qualifications and skills. (For information about ALJ pay policies, see Other High-Level Systems in Chapter 1, Section 1.)

Applicants must be licensed and authorized to practice law under the laws of a state, the District of Columbia, Puerto Rico, or any territorial court established under the Constitution throughout the selection process, including any period on the standing register of eligibles. Judicial status is acceptable in lieu of “active” status in states that prohibit sitting judges from maintaining “active” status to practice law. Being in “good standing” is acceptable in lieu of “active” status in states where the licensing authority considers “good standing” as having a current license to practice law. Incumbent ALJs do not need to continue to meet these conditions throughout the duration of their employment.

Applicants must have seven years of experience as a licensed attorney preparing for, participating in, and/or reviewing formal hearings or trials involving litigation and/or administrative law at the federal, state or local level. Experience involving cases with no formal hearing procedure and uncontested cases involving misdemeanors, probate, domestic relations, or tort matters is not qualifying. Applicants are required to pass an examination.

Applicants who meet these minimum qualification standards and pass the examination are assigned a score and placed on a register for hiring agencies. Policies on hiring and other aspects of ALJ employment are at 5 CFR 930.

**Affirmative Action**—Under the Federal Equal Opportunity Recruitment Program (5 CFR 720) each executive agency must conduct a continuing program for the recruitment of members of minorities for positions in the agency to eliminate under-representation of minorities in the various categories of civil service employment within the federal service, with special efforts directed at recruiting in minority communities, in educational institu-
tions, and from other sources from which minorities can be recruited. Where an agency or OPM has determined that an applicant pool does not adequately provide for consideration of candidates from any underrepresented group, the agency or agency component must take one or more of the following actions:

- expand or otherwise redirect their recruitment activities in ways designed to increase the number of candidates from underrepresented groups in that applicant pool;
- use selection methods involving other applicant pools which include sufficient numbers of members of underrepresented groups;
- notify the office responsible for administering that applicant pool, and request its reopening of application receipt in support of expanded recruitment activities or certifying from equivalent registers existing in other geographic areas; and/or
- take such other action consistent with law which will contribute to the elimination of under-representation in the category of employment involved.

Each agency must have an up-to-date equal opportunity recruitment program plan covering recruitment for positions at various organizational levels and geographic locations within the agency. Agency plans must include annual specific determinations of under-representation for each group and must be accompanied by quantifiable indices by which progress toward eliminating under-representation can be measured.

Affirmative action is a recruitment program, not a selection program.

**Direct-Hire Authority**—Under 5 U.S.C. 3304(a) agencies may hire candidates directly for certain positions for which there is a shortage of qualified candidates or a critical hiring need, without regard to general provisions of hiring law. Implementing rules are at 5 CFR 337. Also see www.opm.gov/policy-data-oversight/hiring-authorities/direct-hire-authority.

OPM may decide, on its own, that a severe shortage of candidates or a critical hiring need exists, either governmentwide or in specified agencies, for one or more specific occupational series, grades (or equivalent), or geographic locations. Direct-hire authority has been granted governmentwide to hire:

- GS-0647 diagnostic radiologic technologists, GS-0602 medical officers, GS-0610 and GS-0620 nurses, and GS-0660 pharmacists, at all grade levels;
- veterinarian medical officer positions at the GS-701-11/15 grade levels;
- positions involved in Iraqi reconstruction efforts that require fluency in Arabic or other related Middle Eastern languages at all wage grade levels, single-grade interval occupations in the General Schedule, and two-grade interval GS occupations at GS-9 and above; and
- information security GS-2210 positions at the GS-9 level and above.

Other authority is granted at times in certain occupations and locations, commonly to meet compelling or quickly arising hiring needs.

OPM can delegate to agencies the authority to determine that there is a shortage or that a critical need exists, as long as agencies exercise the authority in a manner consistent with the regulations.

To demonstrate that a severe shortage of candidates exists for a position or group of positions, an agency must provide information showing that it is unable to identify candidates possessing the competencies required to perform the necessary duties of the position despite extensive recruitment, extended announcement periods, and the use, as applicable, of hiring flexibilities such as recruitment and relocation incentives. To prove that a critical hiring need exists, an agency must demonstrate that it has a critical need to fill the position or positions to meet mission requirements brought about by an exigency such as a national emergency, threat or potential threat, environmental disaster, or other unanticipated or unusual event or mission requirement. A critical hiring need may also be triggered by the need to conform to requirements of law, Presidential directive or administration initiative, or a congressional or other mandate to meet new or expanded mission requirements by a particular date.

Agencies may give eligible individuals competitive service career, career-conditional, term, or temporary appointments, although they must adhere to the public notice requirements in 5 U.S.C. 3327 and 3330 and to Interagency Career Transition Assistance Plan requirements (see Chapter 9, Section 2).
OPM periodically conducts reviews to ensure that an agency is using the authority properly and to determine if its continued use is supportable.

**DoD Expert Hiring Authority**—Section 9903 of Title 5, U.S. Code, provides the Department of Defense with the authority to employ up to 2,500 experts with specialized knowledge in fields of critical importance to the department.

Under internal DoD guidance, a qualified expert under the authority is defined as one possessing uncommon, special knowledge or skills in a particular occupational field beyond the usual range of expertise, and who is regarded by others as an authority or practitioner of unusual competence or skill. The expert knowledge or skills must be generally not available within the department and must be needed to satisfy an emerging and relatively short-term, nonpermanent requirement. Critical occupations are those necessary to promote the department’s national security mission, as determined by the responsible agency official. Individuals employed under the policy are given excepted appointments of up to five years, with the possibility of a one-year extension.

Pay under such appointments may range up to the Executive Schedule Level III rate. In addition, additional payments used as recruitment or relocation incentive or to recognize performance may be made, up to half the employee’s annual rate of basic pay or $50,000, whichever is less.

**Fellowships, Scholarships, and Similar Programs**—The fellowships, scholarships, and similar programs authority at 5 CFR 213.3102(r) provides an excepted service appointing authority for filling positions from limited applicant pools under hiring and operating procedures established between a federal agency and a nonfederal organization, such as a university. Appointments cannot exceed four years and have no conversion privilege. Each program has different requirements as established by the agency. Programs may require that the student actively pursues a degree, certificate, or diploma (high school to doctorate) or is a career professional (teaching faculty to lead scientist). Students need to be in good academic standing at their schools and able to meet security requirements.

**Foreign Service Employees**—Agencies may noncompetitively appoint current and former Foreign Service employees who:

- have served in the Foreign Service under an unlimited, career-type appointment;
- immediately before separation from that appointment, have completed at least one year of continuous service without a break of a work day under one or more non-temporary Foreign Service appointments, which may include the service that made the employee eligible for career-type appointment;
- meet the qualification standard and other requirements governing appointment to the competitive service, except they are not required to compete in a competitive examination, or under internal merit staffing procedures unless an agency’s policies require them to do so; and
- are appointed to the competitive service within three years of separation from a Foreign Service career-type appointment, but the time limit does not apply to a person entitled to veterans’ preference or one who has completed three years of substantially continuous service under one or more non-temporary Foreign Service appointments immediately before separation from unlimited, career-type appointment.

For information about initial hiring into the Foreign Service, see Foreign Service, below in this section.

**Foreign Service Family Members**—The State Department uses several special hiring mechanisms to employ family members in positions at U.S. embassies and consulates abroad (see www.state.gov/m/a/dir/regs/fam). These include: the “family member appointment” for spouses or children between the ages of 18 and 21 who are on orders accompanying a career Foreign Service or civil service employee; temporary appointments of up to one year for the same persons; and “personal service agreements” for the same persons and certain other eligible persons. Eligibility for benefits varies according to the type of appointment and, in some cases, by the individual hired. Other agencies with Foreign Service personnel abroad commonly use personal services contracts for certain family members; those contracts are subject to government contracting authorities and typically do not confer benefits.
Hiring of the Disabled—The Rehabilitation Act of 1973 (PL 93-112, as amended) requires federal agencies to develop plans for the hiring, placement, and advancement of persons with disabilities.

To facilitate employment, federal agencies may use either competitive or special appointing authorities. Realistic standards, based on the tasks of a position, require that applicants possess only the qualifications necessary for safe and efficient performance of the essential duties of a particular position. Reasonable accommodation also must be considered in determining an applicant's ability to perform the essential duties of a job.

Persons with disabilities may be considered under special hiring programs for disabled veterans, if eligible, Schedule A hiring, student employment programs and other authorities, in addition to standard hiring into competitive service positions.

Agencies generally may not use any employment test or other selection criterion that tends to screen out qualified individuals with handicaps or any class of individuals with handicaps. They also generally may not conduct a pre-employment medical examination and may not ask an applicant whether the applicant has a handicap or inquire into its extent or nature.

An agency may, however, make pre-employment inquiries into an applicant's ability to meet the essential functions of the job, or the medical qualification requirements if applicable. Agencies may condition a job offer on the results of a medical exam if all entering employees are subject to such exams. An agency may invite applicants for employment to indicate whether and to what extent they are handicapped for purposes of generating records for its affirmative action program.

An agency may not discriminate against applicants or employees who are qualified individuals with handicaps due to the inaccessibility of its facility.

Schedule A appointing authority for those with certain physical, mental and psychiatric disabilities, also known as “targeted” disabilities, is at 5 CFR 213.3102(u). Agencies may hire upon determining that the person is “likely to succeed” in performing the duties of the position, a decision that can be based on any relevant work, educational or other experience. (Note: Rules changes in 2013 repealed a former requirement for a certification of job readiness from a licensed medical professional, a licensed vocational rehabilitation specialist, or federal or state agency that issues or provides disability benefits.) Agencies may also make temporary (for positions not expected to last more than one year), time-limited and permanent appointments. Persons successfully completing two years in a continuing position under this authority may be noncompetitively converted to a competitive appointment on the recommendation of their supervisors.

The Rehabilitation Act of 1973, as amended, requires agencies to provide reasonable accommodations to qualified employees or applicants with disabilities, unless doing so would cause an undue hardship to the agency. (An undue hardship means that a specific accommodation would require significant difficulty or expense.) A reasonable accommodation is any change to a job, the work environment, or the way things are usually done that allows an individual with a disability to apply for a job, perform the essential job functions, or enjoy equal access to benefits available to other individuals in the workplace.

Federal agencies are required by Executive Order 13164 of 2000 to develop written procedures for providing reasonable accommodation. Different agencies place responsibility for reasonable accommodation in different offices. Contact the agency’s personnel office, reasonable accommodation coordinator, civil rights office, or EEO office to request a copy of the agency's written procedures.

Equal Employment Opportunity Commission Management Directive 715 sets standards for the hiring, placement, and advancement of people with disabilities. Agencies must annually conduct an internal review and analysis of the effects of all policies, practices, procedures, and conditions that, directly or indirectly, relate to the employment of people with disabilities. EEOC encourages agencies to evaluate themselves against the workforce profile of the federal government overall, as well as that of agencies ranked highly in EEOC reports. When an agency's self-assessment indicates that qualified individuals with disabilities may have been denied equal access to employment opportunities, the agency
must take steps to identify and eliminate the potential workplace barriers.

Further, EEOC requires agencies with 1,000 or more employees to maintain a special recruitment program for people with certain “targeted” disabilities as described above, and to establish specific goals for their employment and advancement. All agencies, regardless of their size or ranking, must ensure that goals are set and accomplished in a manner that will affect measurable progress from the preceding fiscal year. See www.eeoc.gov/federal/directives.

EEOC’s Leadership for the Employment of Americans with Disabilities initiative seeks to increase the population of individuals with disabilities employed by the federal government, in particular employment of those with “targeted” disabilities. The initiative involves educational events, focus groups and other efforts designed to increase the awareness of hiring officials, educate hiring officials and applicants about the special hiring authorities that are available, and provide information and resources on reasonable accommodation. See www.eeoc.gov/eeoc/initiatives/lead.

Executive Order 13548 of 2010 reiterated the government’s commitment to be a model employer of the disabled and instructed agencies to improve their recruitment, hiring, and retention efforts. It ordered: creation of model recruitment and hiring strategies; mandatory training programs for both human resources personnel and hiring managers; development of agency-specific plans for promoting employment opportunities, including performance targets and numerical goals; expanded use of the Schedule A hiring authority for “targeted” disabilities; and appointment of senior-level agency officials responsible for enhancing employment opportunities. The order also required development of strategies for retaining workers with disabilities, including increased use of training and accommodations such as assistive technologies and accessible workspaces. (The order also required greater efforts to return to work employees injured on the job; see General Rules and Procedures in Chapter 5, Section 5.)

Guidance on hiring through the Workforce Recruitment Program, a listing of candidates with disabilities who are eligible to be hired through the Schedule A hiring appointment, and other aspects of that initiative are in a January 12, 2012 memo to agencies at www.chcoc.gov/transmittals.

**Interchange Agreements**—OPM and an excepted service agency having an established merit system may enter into an agreement, known as an interchange agreement, prescribing conditions under which employees may be moved from one system to the other. Such agreements exist with respect to many excepted service agencies (see Types of Appointments, above).

To be eligible for career or career-conditional appointment under an interchange agreement, a person must:

• be currently serving under an appointment without time limit in the other merit system or have been involuntarily separated from such appointment without personal cause within the preceding year;

• be currently serving in or have been involuntarily separated from a position covered by an interchange agreement (some agreements do not cover all positions of the other merit system); and

• have served continuously for at least one year in the other merit system prior to appointment under the interchange agreement, except that an employee of the Defense Nuclear Facilities Safety Board must have served continuously for at least two years with the Board under an appointment without time limit.

A person must be appointed to the competitive service without a break in service of one work day, except that a person may be appointed within one year after being involuntarily separated from the other merit system. The qualification standards (including internal placement provisions, subject to 5 CFR 335) and requirements, appointing documents, and determinations for these appointees are the same as for transfer of employees within the competitive service.

Eligible persons may be considered for appointment to positions in the same manner that other individuals are considered for noncompetitive appointment. The appointments are not subject to the merit promotion provisions of 5 CFR 335 unless required by agency policy.
Persons appointed to competitive positions under the interchange agreements will receive career or career-conditional appointments, depending on whether they meet the three-year service requirement for career tenure or are exempt from it under 5 CFR 315.201(c). Service that begins with a person’s current permanent appointment in the other merit system counts toward the three-year service requirement for career tenure. Interchange agreements do not authorize temporary or term appointments.

Interchange agreements provide for two-way movement. This means that career and career-conditional employees are eligible for employment in the other merit systems with which OPM has agreements under similar conditions. A career or career-conditional employee who is not eligible for appointment under an interchange agreement may be eligible for consideration under other appointment procedures of the other merit system.


**National Service Program Participants**—A July 15, 2013 Presidential memo called for improving federal recruitment of people who have participated in national service programs. OPM guidance of November 15, 2013 ([www.chcoc.gov/transmittals](http://www.chcoc.gov/transmittals)) listed steps for agencies to take including expanding outreach efforts, using special hiring authorities, and emphasizing the value of national service in job vacancy announcements.

**Military Spouse Hiring**—Under 5 CFR 315 and 316, agencies may make a noncompetitive appointment to any position in the competitive service, for which the individual is qualified, of an individual who is:

- the spouse of a member of the Armed Forces serving on active duty pursuant to orders that authorize a permanent change of station move (not for training), if the spouse relocates to the member's new permanent duty station;
- the spouse of a 100 percent disabled service member or retiree who was injured while on active duty; or
- the unmarried widow or widower of a member of the Armed Forces killed while performing active duty.

However, there are no enforceable rights to such appointments.

For those eligible under the first category, preference is limited to only one noncompetitive appointment per move and is restricted to the geographic area specified in the service member’s permanent change of station orders and the surrounding area from which people can reasonably expect to travel daily to and from work. Those restrictions do not apply under the latter two categories.

Eligibility continues for a maximum of two years after a permanent change of station and indefinitely in the case of death or 100 percent disability. Those hired under the authority automatically acquire competitive status on completion of probation.


In addition, the Defense Department operates the Military Spouse Preference Program, also called Program S, which applies to competitive service positions in the U.S. and its territories and possessions. To be eligible, spouses must be married to their military sponsor prior to the reporting date of the sponsor’s new assignment. They can apply at any human resources office within the commuting area of the sponsor’s permanent duty location. When a military spouse applies under an OPM announcement or delegated examining or direct-hire procedures, The hiring official must offer the job to the spouse first if the spouse: is within reach for selection; certifies in writing to the employing activity that he or she is entitled to spouse preference; and the selection is not blocked by an applicant with veterans’ preference.

Separately, under the Military Spouse Internship Pilot Program, the department reimburses agencies for first year salary, benefits, and training costs if an eligible military spouse is appointed to a permanent position that provides training and career progression, with a focus on occupations that are portable, either in various geographic locations within the hiring agency or in other agencies throughout the United States, in recognition of the need of the spouse to relocate with the service member when required.
Pathways Program—The Pathways Program (www.opm.gov/policy-data-oversight/hiring-authorities/students-recent-graduates), created under Executive Order 13562 of 2010 and finalized by rulemaking in 2012, replaced or revised several former developmental programs. The program consists of three parts: the Internship Program, the Recent Graduates Program, and the long-standing Presidential Management Fellows Program.

Pathways Program appointments must follow merit-based procedures, equal employment opportunity, and veterans preference laws.

The Internship Program is designed to provide students in high schools, community colleges, four-year colleges, trade schools, career and technical education programs, and other qualifying educational institutions and programs with paid opportunities to work in agencies and explore federal careers while still in school.

Agencies must provide interns with meaningful developmental work and set clear expectations regarding the work experience of the intern. Agencies may convert interns who successfully complete program and academic requirements to any competitive service position for which the intern is qualified, but they are not required to do so.

Agencies may continue to use interns provided by third-party entities such as internship placement agencies and should treat such interns in the same way as interns placed by the agency itself, under an October 19, 2012 memo (at www.chcoc.gov/transmittals). The memo said that those interns should get the same access to training, career development, and mentoring and should have the same type of path to a permanent federal job as they had previously. Such interns who graduate further are eligible to be hired into an agency’s Recent Graduates program.

The Recent Graduates Program provides individuals who have recently graduated from qualifying educational institutions or programs with developmental experiences in the federal government intended to promote possible careers in the civil service.

Participants must have obtained a qualifying degree or have completed a qualifying career or technical education program within the preceding two years; however, veterans who were precluded during that period due to their military service are eligible for six years. Appointments typically last two years. Agencies may convert Recent Graduates Program participants who successfully complete the program to competitive service jobs, but they are not required to do so.

The Presidential Management Fellows Program, www.pmf.gov, is designed to attract outstanding master’s and doctoral-level students to the federal service, as well as those who have, through extensive work experience, demonstrated exceptional leadership or analytical ability and a commitment to excellence in public service.

Students who complete a graduate degree (master’s or doctoral level) from an accredited college or university are eligible to be nominated by their schools as fellows. They are placed in jobs at GS-9 through GS-12 or their equivalents. During the two-year fellowship, agencies arrange for on-the-job training and other developmental opportunities such as seminars, briefings, conferences, and rotational assignments.

Senior fellows may be recruited from within or outside the government. They can be appointed at GS-13 through GS-15 or their equivalents in positions where their expertise is needed. Senior fellows are assigned a Senior Executive Service member as a mentor.

All fellows have individual development plans and have their performance evaluated annually. They earn annual leave and sick leave, are paid for federal holidays, are covered for retirement, and may elect insurance and Thrift Savings Plan options. Upon successful completion of the program, fellows may be converted to competitive service jobs.

A subsidiary program, the Technology Fellows program, is for those with undergraduate degrees in computer science, computational mathematics, information technology or information science, and a graduate degree and/or relevant work experience in an IT-related field. The Senior Presidential Management Fellows program is for mid-career individuals.

The order abolished the Federal Career Intern Program and the Student Educational Employment Program.
Re-Employment of Annuitants—Federal retirees may be rehired without an offset between salary and annuity in some circumstances under special appointing authorities. See Chapter 4, Section 4. Also see Phased Retirement in Chapter 3, Section 1 for a hybrid of work and retirement.

Scholarship for Service—The Federal Cyber Service: Scholarship for Service program, www.sfs.opm.gov, is designed to increase and strengthen the cadre of professionals who protect the government’s critical information infrastructure. This program provides scholarships that fully fund the typical costs that students pay for books, tuition, and room and board while attending an approved institution of higher learning. Additionally, participants receive stipends. While still in school, students funded for more than a year also serve a paid internship at a federal agency. The agency may offer students other paid employment while they are on scholarship provided it does not interfere with their studies. In exchange for the scholarship (including the stipend), students agree to work for the federal government for a period equivalent to the length of the scholarship or one year, whichever is longer. Numerous avenues are available to appoint SFS students to internship or long-term positions; however, hiring most commonly is done under the authority for hiring individuals in fellowship and intern programs at 5 CFR 213.3102(r).

Agencies may participate in other scholarship or fellowship programs that provide authority to hire graduates non-competitively into permanent federal jobs, including the National Security Education Program, the Information Assurance Scholarship Program and the Science, Mathematics, and Research for Transformation Program. Check with the individual agency regarding availability.

Veterans Hiring Programs—There are several special hiring authorities for veterans as described in Noncompetitive Appointments in Section 8 of this chapter.

White House Fellows—The White House Fellows Program, www.whitehouse.gov/fellows offers a small number of fellowships at the GS-14 level in Cabinet-level agencies, the Executive Office of the President or the Vice President’s office for those demonstrating academic and/or professional excellence. The fellowships are for one year and primarily go to those relatively early in their working careers.

Other Authorities—Various other special authorities allow an agency to appoint an eligible individual to any position for which the person meets the qualification standard and other requirements governing appointment to the competitive service, except they are not required to compete in a competitive examination. They are not required to compete with career and career-conditional employees under internal merit staffing procedures unless an agency’s policies require them to do so. These authorities include:

• 39 U.S.C. 3604(e), which permits appointment without a break in service of a single day of an employee or officer of the Postal Regulatory Commission serving under an appointment without time limit. Based on agreement between OPM and the Postal Regulatory Commission, an employee must have completed probation (one year) under a Postal Regulatory Commission career service appointment.

• 31 U.S.C. 732(g), which permits appointment of a current or former Government Accountability Office employee who has completed at least one year of continuous service under a non-temporary appointment.

• 28 U.S.C. 602, which permits appointment of a current or former Administrative Office (AO) of the U.S. Courts employee, except employees appointed to a high-level position under 28 U.S.C. 603 or a position of a confidential or policy-determining nature. An employee must have completed at least one year of continuous service under a non-temporary AO appointment.

• Under Executive Order 12721 of 1990, a United States citizen who is a family member of a federal civilian employee, of a non-appropriated fund employee, or of a member of a uniformed service may be eligible for a noncompetitive appointment to the competitive service based upon service performed overseas. The individual must have been employed overseas within the prior three years in an appropriated-fund position as a local hire for at least 52 weeks (26 weeks under certain circumstances) with at least a fully successful rating. The preference applies for three years after return from overseas. Under a Presidential memo of June 2, 2010, implemented by rules at 5 CFR 315 in 2012, an
employee’s same-sex domestic partner meeting certain qualifications (see Domestic Partners in Section 4 of this chapter) qualifies under this authority.

- An individual who has returned from satisfactory service as a Peace Corps volunteer can be noncompetitively appointed into the competitive service within one year of the individual’s return from volunteer service.
- Agencies including Customs and Border Protection, the Internal Revenue Service and the Library of Congress have authority to convert employees who served under limited appointments to permanent appointments in the competitive service under certain circumstances.

For More Information—Guidance on many of these authorities is at www.opm.gov/policy-data-oversight/hiring-authorities.

Temporary Positions

Under 5 CFR 316, an agency may make a temporary limited appointment when it needs to fill a temporary position that is not expected to last more than one year or a permanent position that will be temporarily vacant. These appointments may be extended for one additional year up to a maximum of two years. Temporary employees can work on a full-time, part-time, seasonal, or intermittent basis.

Agencies can use the temporary appointing authority to: (1) fill a short-term position that is not expected to last longer than one year; (2) meet an employment need that is scheduled to be terminated within 24 months for such reasons as abolition, reorganization, contracting of the function, anticipated reduction in funding, or completion of a specific project or peak workload; or (3) fill positions temporarily when the positions are expected to be needed for the eventual placement of permanent employees who would otherwise be displaced from other parts of the organization.

Agencies are prohibited from using temporary employees to avoid the costs of employee benefits or ceilings on permanent employment levels. Federal employers also cannot use temporary employment as a tryout or trial period prior to permanent employment. In addition, federal employers cannot circumvent the competitive examining process by appointing an individual on a temporary basis when that individual is not among the list of qualified applicants certified for permanent appointment. Finally, under OPM regulations, federal employers generally cannot use a temporary appointment to refill positions that were previously filled with such an appointment for an aggregate of 24 months over the preceding three years.

OPM rules generally set a two-year limit for individual temporary appointments in both the competitive and excepted service. To extend a temporary limited appointment in the same position beyond the maximum of two years, agency officials must request and obtain approval from OPM. In addition, OPM regulations provide an exception to the two-year maximum continuous employment time limits for work that is expected to last less than six months each year. This exception allows for multiple renewals of the temporary appointment authority, as long as the appointment is expected to last less than six months each year.

Temporary limited employees can serve for continuous years under different temporary appointments or in the same appointment without an extension from OPM. If it involves a break in service of three days or less, an agency can reappoint or convert a temporary limited employee from one temporary appointment to another temporary appointment many times over a period of years and not conflict with OPM’s regulations. In addition, after three days have elapsed after a temporary appointment ends, an agency can rehire the employee using a new temporary limited appointment as long as it does not involve the same basic duties, the same major subdivision of the agency, and the same local commuting area as the original appointment.

Seasonal and intermittent positions are exempt from the time limits of temporary appointments.

Pay and Benefits—Temporary limited employees, like permanent employees, receive salary based on the grade and step of the position they occupy, annual pay adjustments, and overtime and premium pay. Those in the General Schedule are not eligible for within-grade increases if the appointment is limited to one year or less, even if the
appointment later is extended beyond one year. However, some blue-collar temporary limited employees are eligible for within-grade pay increases.

Temporary limited employees generally earn annual and sick leave, with those working part-time earning on a prorated basis, but are not eligible for military leave or family and medical leave.

To be eligible under the Federal Employees Health Benefits program, they generally must complete one year of current continuous employment, excluding any break in service of five days or less, and if eligible, must pay the entire cost of the premium. The exception is that rules issued in 2012 at 5 CFR 890 made temporary wildland firefighters and fire protection personnel eligible for FEHB even though they typically do not work for a continuous year. They receive the government contribution toward coverage when employed; coverage when not employed is entirely at their own expense. OPM extended those policies to employees engaged in emergency response work as defined in the Stafford Act, through rules effective November 9, 2012 at 5 CFR 890.102.

Temporary employees eligible to participate in FEHB may also participate in the Federal Employee Dental and Vision Insurance Program and the Federal Long-Term Care Insurance Program.

Temporary limited employees contribute to Social Security and Medicare, but retirement and life insurance benefits are not provided to them, nor can they participate in the Thrift Savings Plan. However, temporary employment time is creditable toward a CSRS annuity if the individual was later appointed to a position under CSRS and makes a deposit into the retirement fund to cover that time. For someone with temporary employment who is later appointed to a position under FERS, crediting is available only for service before January 1, 1989, if a retirement deposit is made. Non-deduction service performed on or after January 1, 1989, is not creditable for any retirement purpose nor may a deposit be made to get credit for that time. See Non-Deduction Service in Chapter 3, Section 3.

Seasonal and Intermittent Employment

Seasonal and intermittent employees can be either permanent or temporary.

Seasonal Positions—Regulations at 5 CFR 340.401 define seasonal employment as “annually recurring periods of work of less than 12 months each year.” The regulations do not specify the duration of a season, but in general, seasonal employment is used when the work is expected to last at least six months during a calendar year. Recurring work that lasts less than six months typically is performed by temporary employees as described in Temporary Positions, above.

Seasonal employees can work full-time or part-time. When not working, they are placed in non-duty/non-pay status. They are recalled to duty in accordance with pre-established conditions of employment.

The regulations require agencies to execute individual employment agreements with each seasonal employee prior to the employee’s entry onto duty, informing the employee that he or she is subject to periodic release and recall as a condition of employment. When a seasonal employee is released in accordance with the conditions set forth in the employee’s individual employment agreement, the release does not constitute an adverse action furlough appealable to the Merit Systems Protection Board. However, if the seasonal employee is released at a time or in a manner inconsistent with the employee’s individual employment agreement, the release constitutes a furlough and may be challenged if the agency fails to comply with the substantive and procedural requirements of 5 U.S.C. 7513. Whether or not the release constitutes an adverse action furlough thus turns on the employee’s reasonable expectations when he or she agreed to work subject to the conditions of employment.

Temporary seasonal employees receive only the same benefits as other temporary employees. Permanent seasonal employees are eligible for the same benefits as other permanent federal employees.

Intermittent Positions—Intermittent positions are positions in which work recurs at sporadic or irregular intervals; agencies commonly use this authority in emergencies or when a work schedule is difficult to define. Because intermittent employees have no
fixed work schedule, they generally are ineligible for federal employee benefits. One exception is that under 5 CFR 890.102(i) effective November 9, 2012, agencies may apply to OPM for authorization to offer Federal Employees Health Benefits program coverage to intermittent employees engaged in emergency response functions. OPM has discretion to limit coverage to periods in which such employees are in pay status.

Part-Time Positions

Permanent part-time employees are those workers who have career or career-conditional appointments (or permanent appointments in the excepted service), work less than full-time schedules each week under a prearranged schedule, and are eligible for benefits. By law (5 U.S.C. 3402), nearly every federal agency is required to have a program for part-time employment. Implementing rules are at 5 CFR 340.

Part-time work schedules are fixed and arranged by management to meet the agency’s needs. Agencies can vary a part-time employee’s schedule as necessary to meet workload requirements.

Under 5 CFR 340.202, a part-time employee must have a work schedule of from 16 to 32 hours per week or from 32 to 64 hours per pay period if the employee is permitted to work under a flexible or compressed work schedule. (In special circumstances, agencies can employ workers for less than 16 hours per week.) Agencies can increase the hours worked above 32 for a limited time to meet workload or training needs but the employee’s schedule must remain at 32 hours per week or less.

In most agencies, temporary variations in the arrangement of a part-timer’s workdays or hours are handled by an agreement between the part-time employee and the supervisor. In such cases, there is usually no requirement that a new personnel action form (SF 50) be issued. The number of hours worked each day would merely be reflected on the employee’s time and attendance card.

If a position with the desired number of hours is available, employees can switch between part-time and full-time schedules (and the reverse) in two ways: (1) noncompetitively, by requesting a change in their work schedule, or (2) filing under merit promotion procedures, if required by the agency’s promotion plan. A request for a schedule change must be submitted to management for approval.

Other employment issues involving part-time workers include:

Pay—A part-time worker’s gross pay is computed by multiplying the employee’s hourly rate by the number of hours worked during the pay period. Pay adjustments and withholding amounts are generally prorated according to the amount of gross pay. Part-time employees generally are entitled to receive overtime pay (for work totaling more than eight hours a day or 40 hours a week). Compensatory time may also be granted in such situations. If a holiday falls on a day part-timers are scheduled to work, they are paid for the number of hours they normally would be scheduled to work.

Leave—Part-time employees earn annual leave according to the number of hours they work per pay period. A regularly scheduled part-time employee with less than three years’ service earns one hour of annual leave for each 20 hours in a pay status. Employees who have between three and 15 years of service earn one hour of annual leave for each 13 hours in pay status. With 15 or more years’ service, they earn one hour for each 10 in pay status. Sick leave accrues at the rate of one hour for each 20 hours in a pay status. Hours in a pay status include non-overtime hours up to 80 hours in a biweekly pay period. Any excess balance in these multiples is carried over to the next pay period.

If a holiday falls on a day the employee normally works, the employee is paid for the number of hours he or she was scheduled to work, not to exceed eight hours, except for an employee on a compressed work schedule. A part-time employee is not entitled to a holiday which falls on a day the employee is not normally scheduled to work.

Service Credits—Permanent part-time employees receive a full year of service credit for each calendar year worked for the purpose of retirement eligibility, date of career tenure, completion of probationary period, within-grade pay increases, change in leave category, and time-in-grade restrictions on advancement. Part-time work is prorated, however, to determine experience for qualification requirements.
Retirement—Annuities are based on an employee’s length of service and the highest average annual pay received for any three consecutive years. See Computing Annuities that Include Part-Time Service in Chapter 3, Section 4.

Insurance—Permanent part-timers are eligible for the Federal Employees’ Group Life Insurance program. The amount of insurance for which an employee is eligible is based on annual salary, but not less than $10,000. A part-timer’s annual salary is the amount of hours scheduled to work times pay rate.

Federal Employees Health Benefits program coverage is the same as that provided for full-time employees but the government contribution is prorated according to the number of hours the part-timer is scheduled to work. For example, a part-timer scheduled for 20 hours a week will pay the employee’s share of the premiums plus one half the government’s share.

An employee who is eligible to enroll in the FEHB is also eligible to enroll in the Federal Employees Dental and Vision Insurance Program and the Federal Long-Term Care Insurance Program.

Appeal Rights—Part-time employees have the same rights as full-time employees when disciplinary action is taken against them. The reduction in scheduled hours is not subject to adverse action procedures.

Classification and Job Grading Standards

Position classification standards and guides developed by OPM are the legal basis for determining the series and grade and, consequently, the basic pay for General Schedule positions. Actual basic pay rates for the various grades are set each year on the basis of comparisons with private-sector pay rates for the same levels of work. Rules are found at 5 CFR 511. (See Pay Banding in Section 5 of Chapter 1 for information about classification in those systems. Also see Section 7 of this chapter for special rules in agencies using alternative personnel policies.)

Position classification standards are developed for broad occupational groupings. These standards are called “job family standards.” Some of them cut across occupational fields and provide guides for the classification of categories of work, such as that performed by supervisors or research scientists.

Position classification standards exist in three basic formats:

• The Factor Evaluation System (FES). Under the FES, grades are assigned to positions based on a comparison of a position’s duties and responsibilities to nine evaluation factors. These are knowledge required, supervisory controls, guidelines, complexity, scope and effect, personal contacts, purpose of contacts, physical demands, and work environment. Position grades are determined by the sum of point values assigned to the nine factors as they occur in a specific job.

• The Point-Factor Format. Like the FES, under this format, grades are assigned to positions based on a comparison of a position’s duties and responsibilities to a given set of classification factors. Each factor has prescribed progressive levels with corresponding points. Position grades are determined by the sum of point values assigned to the factors.

• The Narrative Format. Under this format, the 15 grade-level concepts taken from Title 5, U.S. Code are described in terms of the nature of the position’s assignment, level of responsibility, and certain subfactors, for example, originality required, supervision received, scope of assignments, etc. Most position classification standards in the narrative format also contain illustrations of actual work situations at various grade levels.

Job grading standards, also developed by OPM, are the basis for grading trade and labor positions under the federal wage system. Salary levels for the various grades are determined for each local wage area by a survey of private-sector rates in that area. Job grading standards are developed for separate occupations, such as aircraft mechanic, machinist, and electrician, and for jobs that cross occupational lines, such as trades helper and supervisor.

Also see www.opm.gov/services-for-agencies/classification-job-design.

For information on how to appeal a job classification, see Section 1 in Chapter 10.

Holding More Than One Job

Additional Federal Job—In limited situations, a federal employee can hold more than
one federal job. See 5 U.S.C. 5533 and 5 CFR 550, subpart E. The law allows an individual to have more than one federal appointment, but limits the pay an employee can receive from multiple federal civilian jobs except when:

• the work schedules of all jobs total no more than 40 hours of work a week, Sunday to Saturday (excluding overtime); or
• an authorized exception exists.

This means an employee on leave without pay from one position may be paid for another. Paid leave, however, counts toward the 40-hour-per-week limitation. Authorized exceptions to the limitation on paying an employee for more than 40 hours a week include:

• exceptions in law; for example with the agency’s approval a civilian employee can work for the U.S. Postal Service. (39 U.S.C. 1001(d));
• 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
• fees paid on other than a time basis (for example, lump-sum pay for a report, research product, or service not based on the 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 (5 CFR 550.504(a)).

Additional Nonfederal Job—Under 5 CFR 2635, subpart H, federal employees may 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. Also see Section 5 in Chapter 10.

Employment of Relatives

Under 5 U.S.C. 3110 (5 CFR 310), no public official of the government (including a member of Congress) may appoint, employ, promote, or advance, or advocate the appointment, employment, promotion, or advancement of a relative in the agency in which the official is serving or over which he or she exercises jurisdiction or control. A relative appointed, employed, promoted, or advanced in violation of these restrictions may not be paid.

“Relative” for the purpose of these restrictions means a father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepsister, stepbrother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. In addition to this legal restriction, most agencies have adopted code-of-conduct regulations aimed at controlling the appearance of impropriety and other prohibited actions. These regulations vary; some are narrowly focused while others are quite broad and may govern the employment of relatives.

Exceptions may be allowed for temporary employment of otherwise prohibited persons in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, or when barring their hiring would violate veterans’ preference law. Such appointments are temporary and may not exceed 30 days, but the agency may extend such an appointment for one additional 30-day period if the emergency need still exists at the time of the extension.

Reinstatement Rights

Individuals who were involuntarily separated from the federal government for various reasons not relating to performance or conduct have certain rights under 5 CFR 330 to re-enter the competitive service workforce without competing with the public and to apply for federal vacancies open only to “status” candidates.

If you have held a career or career-conditional appointment at some time in the past, there is no time limit on reinstatement eligibility for those who:

• have veterans’ preference; or
• acquired career tenure by completing three years of substantially continuous creditable service.
If you do not have veterans’ preference or did not acquire career tenure, you may be reinstated within three years after the date of your separation. Reinstatement eligibility may be extended by certain activities that occur during the three-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; and
- periods of overseas residence of a dependent who followed a federal military or civilian employee to an overseas post of duty.

Persons who are reinstated must meet the qualification standards and requirements applicable to the appointment in question. They also must meet the time-in-grade restrictions on promotion if they are reinstated in a position paid under the General Schedule and served in a non-temporary General Schedule position any time within the previous 52 weeks before reinstatement. Additionally, if the reinstatement is to a higher-grade job or to a position with more promotion potential, they must rank among the best qualified under merit promotion procedures.

Former employees who want to be reinstated must depend mainly on their own efforts to locate vacancies for which they are qualified, and the burden is on them to interest the appointing officer in effecting a reinstatement.

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.

The National Personnel Records Center’s Federal Records Center is the depository for official personnel folders of persons no longer in the federal service. Federal agencies generally transfer employment records to the Federal Records Center within 120 days after the employee has been separated from service. Requests for this information should be directed to: National Personnel Records Center, 1 Archives Drive, St. Louis, MO 63138, phone (314) 801-0800, fax (314) 801-9195, www.archives.gov/st-louis.

Such inquiries should include your full name under which 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 U.S.C. 552a) and the 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 email.

You must meet the qualification requirements for the position. You also 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.

Certain 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.

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

Special rules apply for those seeking reinstatement after being called to active military
duty, returning after recovery from a work-related illness or injury or who were separated
in a reduction in force.

**Transfers**

A career or career-conditional employee of one agency may transfer, without a break
in service of a single work day, to a competitive service position in another agency without
competing in a civil service examination open to the public. An employee may transfer to
a position at the same, higher, or lower grade level.

Generally, the employees must be in the competitive service or excepted service oper-
ating under merit systems approved by OPM for an interchange agreement (see Special
Recruitment, Hiring, and Placement Programs, above).

Employees who want to transfer to another agency must locate vacancies for which
they are qualified. A transfer-eligible employee may apply under vacancy announcements
open only to “status” candidates—that is, those who already have civil service status. Transfer eligibility does not guarantee a job offer. Hiring agencies have the discretion to
determine the sources of applicants they 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. Employees seeking a higher grade or a position with more promotion potential
then they have previously held generally must apply under a merit promotion announce-
ment and rank among the best-qualified applicants to be selected.

**Eligibility**—Present federal employees who are serving in the competitive service
under a career or career-conditional appointment have eligibility for transfer to a position
in the competitive service. To transfer, applicants must meet the qualification require-
ments for the position.

Employees must be found suitable for employment in competitive service positions.
If a current appointment is subject to a suitability investigation, that condition continues
after a transfer.

Generally on transfer, a career employee remains a career employee, and a career-
conditional employee remains a career-conditional employee.

Employees with career or career-conditional tenure need not be on a civil service register
(list of eligibles for a certain kind of position) to be considered for a transfer. Such employees
may be transferred to other jobs in the competitive service without again taking a competitive
examination. They must meet qualification standards and requirements applied in making
noncompetitive actions and depending upon the job, may have to rank among the best
qualified under merit promotion procedures. They must also meet the time-in-grade require-
ments when a higher grade job under the General Schedule is involved.

The general rule is that no employee may transfer or be promoted or reassigned
within three months after the employee’s latest career or career-conditional appointment
from a list of eligibles except to a position at the same or a lower grade, in the same line
of work, and in the same geographical area. OPM may waive the restriction against move-
ment to a different geographical area when it is satisfied that the waiver is consistent with
the principles of open competition.

**Probationary Period**—An employee is not required to serve a new probationary
period after transfer. However, the employee continues to serve the remainder of any
probationary period ongoing at the time of transfer.

**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 non-veteran 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 non-veteran already serving in a federal agency in a position covered by the same generic title. For example, a non-veteran who is serving in the position of patrolman, guard, fireman, guard-laborer, etc.

**Effect on Pay**—When an employee’s official worksite is changed, the employee’s rate of basic pay must be converted to the new pay schedules in the new location based on the employee’s current position of record. This geographic conversion is processed after any simultaneous general pay adjustment, but before any other simultaneous pay action (such as a promotion). A reduction in an employee’s rate of basic pay resulting from geographic conversion is not a basis for entitlement to pay retention.

**Effect on Benefits**—Employees are not normally eligible to change Federal Employees Health Benefits program or Federal Employees Dental and Vision Insurance Program benefits elections upon a transfer. However, those who move between the United States and overseas or out of the servicing area of their carrier may elect a new plan. In addition, those who have a qualifying life event in connection with the transfer may be able to change their coverage under either program. (See Chapter 2, Section 1 and Section 4.) Employees may not enroll or elect additional Federal Employees’ Group Life Insurance coverage based on a transfer.

Contributions toward retirement, the Thrift Savings Plan, flexible spending accounts and deductions for Federal Long-Term Care Insurance Program coverage will continue unchanged upon a transfer. Note: Employees paying FLTCIP premiums via payroll deduction who transfer to a new agency should contact LTC Partners as soon as they know where and when they will be transferring in order to arrange payroll deductions there. Depending on the timing of the premiums and the payroll cycles, a payment might be missed; in this case LTC Partners will send a bill directly to the employee. Payroll deductions cannot be adjusted to catch up for missed payments. See Chapter 2, Section 3.)

Accumulated annual and sick leave also transfer.

Non-Appropriated Fund Employees—Under 5 U.S.C. 5334(f) as amended by Public Law 110-181, an employee of a non-appropriated fund instrumentality (a self-funding operation such as a post exchange) of the Defense Department or Coast Guard who moves voluntarily to a General Schedule position in the same agency without a break in service of more than three days may (at the employing agency’s discretion) have the GS rate set at the lowest step rate that equals or exceeds the former NAFI rate. Under previous law, the GS rate could not exceed the formerly applicable NAFI rate in such voluntary movements; thus, setting the rate at a GS step for these former NAFI employees generally resulted in a reduction in pay. The amendment permits an agency to set pay at the next higher step rate, avoiding a pay reduction.

Implementing rules, which cover issues such as the differences between voluntary and involuntary moves, are at 5 CFR 531.216.

**Transfer of Function (When Jobs Move)**

A transfer of function takes place when a function ceases in one competitive area and moves to another competitive areas which does not perform the function at the time of transfer. The gaining competitive area may be in the same or a different agency. A transfer of function may be intra- or interagency. The transfer of function regulations, 5 CFR 351 subpart C, use the same procedures for both types.

A transfer of function also takes place when the entire competitive area moves to a different local commuting area without any additional organizational change. A transfer of function does not take place when after transfer the gaining competitive area performs the work through contract employees, a reimbursable agreement with a different competitive area, or by members of the Armed Forces. The movement of work solely within a competitive area is deemed a reorganization, not a transfer of function.
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An employee who is identified with the transferring function has the right to transfer only if faced with separation or downgrading in the competitive area that is losing the function. An agency may always direct an employee’s reassignment to another position (regardless of location) in lieu of transfer of function rights. The vacant position may be in the same or in a different classification series, line of work, and/or geographic location.

The losing competitive area must use adverse action procedures to separate an employee who chooses not to transfer with the function to a different geographic location unless the losing competitive area at its option includes the employee in a concurrent reduction in force. If the employee chooses not to transfer with the function, the losing competitive area may not separate the employee any sooner than it transfers employees who choose to transfer to the gaining competitive area.

See Transfer of Function in Chapter 9, Section 1, for information about reduction-in-force procedures in these situations.

Hardship Transfers

Federal employees can request hardship transfers to move for personal problems such as caring for sick parents, being closer to children after a divorce, gaining access to medical facilities for specific treatments for the employee or his or her family members and other reasons that create hardships for the employee or employee’s family. (Domestic partners meeting certain standards qualify as family members for this purpose; see Domestic Partners in Section 4 of this chapter.) These transfers can only happen under the condition that there is an open position or anticipated vacancy in the desired location. Further, agencies are not obliged to offer hardship transfers. There is no governmentwide hardship preference; it’s up to management. Check with your agency to see if it has a hardship transfer policy.

Official Duty Station

An employee’s official duty station is the duty station that is documented on the most recent notification of personnel action (for example, SF 50) for his or her position of record. Normally, an employee’s duty station is the city/town, county, and state where he or she regularly works, as determined by the employing agency. For most employees, this will be the location of the employee’s regular worksite—that is, the place where the employee’s activities are based, the location of the employee’s desk or work station, or the place where the employee normally performs his or her duties.

The location of an employee’s official duty station affects location-based pay entitlements including locality payments, special salary rates, law enforcement officer geographic adjustments, and non-foreign area cost-of-living allowances and post differentials. Employees are entitled to receive the location-based pay entitlements associated with their documented official duty station for their position of record.

If an employee is reassigned (temporarily or permanently) to a new work location and receives relocation benefits for moving to the new work location under the General Services Administration’s federal travel regulations, the agency must change the employee’s official duty station to the new work location. The employee will receive the location-based pay entitlements associated with the new work location.

If an employee is temporarily detailed to a position in a different duty station or is in a temporary duty travel status (receiving temporary duty travel allowances, such as per diem), the employee’s official duty station remains the location of the old or permanent worksite for the employee’s position of record.

When an employee’s official worksite is changed, the employee’s rate of basic pay must be converted to the new pay schedules in the new location based on the employee’s current position of record. This geographic conversion is processed after any simultaneous general pay adjustment, but before any other simultaneous pay action (such as a promotion). A reduction in an employee’s rate of basic pay resulting from geographic conversion is not a basis for entitlement to pay retention.

The location of an employee’s official duty station may affect other benefits, including travel, transportation, and relocation benefits and entitlements, and entitlements to overseas allowances and benefits, if applicable.
The Duty Station Locator System at http://apps.opm.gov/dsfls contains the codes used to identify duty stations used in processing personnel actions and reporting to the Central Personnel Data File.

Telework—An agency determines the official duty station for an employee covered by a telework agreement on a case-by-case basis using the following criteria:

- The official worksite for an employee covered by a telework agreement is the location of the regular worksite for the employee’s position (the place where the employee would normally work absent a telework agreement), as long as the employee is scheduled to report physically at least once a week on a regular and recurring basis to that regular worksite.
- A telework employee whose work location varies on a daily basis need not report at least once a week to the regular worksite established by the agency, as long as the employee is performing work within the geographic area designated as the employee’s regular worksite for the purpose of a given pay entitlement. For example, if a telework employee with a varying work location works at least once a week on a regular and recurring basis in the same locality pay area in which the established official worksite is located, the employee need not report at least once a week to that official worksite to maintain entitlement to the locality payment for that area.
- The official worksite for an employee covered by a telework agreement who is not scheduled to report at least once a week on a regular and recurring basis to the regular worksite is the location of the telework site (the home, telework center, or other alternative worksite), except in certain temporary situations.

In certain temporary situations, an agency may designate the location of the regular worksite as the official worksite of an employee who teleworks on a regular basis at an alternative worksite, even though the employee is not able to report at least once a week on a regular and recurring basis to the regular worksite. The intent of this exception is to address certain situations where the employee is retaining his residence in the commuting area for the regular worksite but is temporarily unable to report to the regular worksite for reasons beyond the employee’s control. The fact that an employee may receive lesser pay or benefits if the official worksite is changed to the telework location is not a justification for using this temporary exception.

Also see Worksite for Location-Based Pay Purposes in Chapter 1, Section 2.

Reassignment

Reassignment is the change of an employee, while serving continuously within the same agency, from one position to another without promotion or demotion.

An agency may reassign an employee when it has a legitimate organizational reason for the reassignment, and the vacant position is at the same grade, or rate of pay (i.e., if the movement is between pay systems such as from a General Schedule position to a federal wage system position) as the employee’s present position. The agency’s right to direct reassignment includes the right to reassign an employee from a special rate position to a non-special rate position at the same grade, or to a position with less promotion potential than the present position. (Reassignment to a position with more promotion potential than the present position requires competition under the agency’s merit staffing plan.) The position to which the agency reassigns an employee may be located in the same or a different geographic area.

An agency may reassign an employee without regard to the employee’s reduction in force retention standing, including an employee’s veterans’ preference status. A reassignment to a vacant position at the same grade is not a reduction in force action even if the agency abolishes the employee’s former position.

At its option, an agency may select employees for reassignment on the basis of considerations such as retention standing, total service with the agency, length of time in a position or in the organization, etc. An agency also may canvass its employees to determine whether an individual employee would prefer reassignment to a specific location, a new organization, and/or to a position with different duties and responsibilities.

The agency must use the 5 CFR 752 adverse action regulations when separating an employee who declines a directed reassignment to a position in a different geographic area. Such an employee is potentially eligible for most of the benefits that are available to a dis-
placed employee separated by reduction in force (intra- and interagency hiring priority, severance pay, discontinued service retirement, etc.). An employee who declines reassignment to a position in the same geographic area as the present position is not eligible for any career transition assistance or other benefits.

An employee generally is eligible for relocation expense allowances for a directed reassignment that requires relocation to a different geographic area.

Regulations at 5 CFR 335.102 cover reassignment of competitive service employees, while regulations at 5 CFR 302.102(a)) cover reassignment of excepted service employees.

**Overseas Employment**

Many federal jobs overseas are filled by U.S. citizens, the rest by citizens of the host nations. Most jobs overseas are with the Defense and State Departments. See 5 CFR 301 and [http://iocareers.state.gov](http://iocareers.state.gov).

The Department of State Standardized Regulations (DSSR) are the overriding regulations for allowances and benefits available to civilians assigned to foreign areas. Employees should check agency-implementing regulations because they may be more restrictive than the DSSR but cannot go beyond the scope of the DSSR. Foreign affairs agencies’ implementing regulations are in volume 3, Foreign Affairs Manual 3200 at [www.state.gov/m/a/dir/regs/fam](http://www.state.gov/m/a/dir/regs/fam).

A Foreign Transfer Allowance is available when transferring from the U.S. to a foreign area or between foreign areas. It includes a miscellaneous expense portion, a wardrobe expense portion, a pre-departure subsistence expense portion, and a lease penalty expense portion.

Other special benefits of overseas employment may include:

- **Advance of Pay** of up to three months’ salary (minus certain deductions as designated by agency) may be advanced when assigned to a foreign area or for medical emergencies;
- **Separate Maintenance Allowance** paid to help maintain family member(s) at other than the foreign post of assignment;
- **Foreign Travel Per Diem Allowances** consisting of a lodging portion and a meals and incidental expense portion;
- **Temporary Quarters Subsistence Allowance** to assist with temporary lodging, meals, laundry and dry cleaning in the foreign area prior to occupying permanent quarters or upon final departure from the foreign post after vacating permanent quarters;
- **Living Quarters Allowance** provided for private leased quarters in lieu of government provided housing intended to cover most if not all expenses for rent, utilities and other allowable expenses;
- **Extraordinary Quarters Allowance** provided when employee and family members must partially or completely vacate permanent quarters during foreign tour due to circumstances which cause the kitchen or entire home to become uninhabitable;
- **Post (“Cost of Living”) Allowance** based on a percentage of spendable income which varies depending on salary and family size if the overall cost of goods and services for the foreign post are at least 3 percent above the same goods and services in the Washington, DC, area;
- **Education Allowance** to provide for education costs (grades K-12) which would normally be free of charge in the U.S.;
- **Educational Travel**, which allows for one round trip annually between a school attended in the U.S. and the foreign post of assignment;
- **Post (“Hardship”) Differential**, a percentage of basic compensation (up to 35 percent) for environmental conditions significantly worse than the U.S.;
- **Danger Pay**, a percentage of basic compensation (up to 35 percent) paid for imminently dangerous conditions when the official U.S. community is the target of political violence;
- **Difficult to Staff Incentive Differential**, a percentage of basic compensation (15 percent) for serving at an agency-determined difficult-to-staff post which has a Post Differential above 15 percent;
- **Evacuation Payments** paid when an employee/family member(s) are authorized or ordered to evacuate a foreign post;
- **Representation Allowance** for furthering the interests of the U.S. government in foreign areas including costs for entertainment and customary gifts or gratuities;
• Official Residence Expenses to reimburse for the “unusual” expenses at foreign posts due to occupancy of official residences; and
• Home Service Transfer Allowance paid when transferring from a foreign area back to the U.S. as long as the employee agrees to work 12 more months for the government and to family members who relocate to the U.S. following the death of the employee assigned to the foreign area.

Also see the DSSR at http://aoprals.state.gov.

Domestic Partners—A June 18, 2009 memo from the Secretary of State (see www.state.gov/secretary/rm/2009a/06/125083.htm), extended to same-sex domestic partners certain benefits and allowances provided for family members of Foreign Service officers assigned to overseas posts. These include diplomatic passports, inclusion on employee travel orders to and from posts abroad, shipment of household effects, inclusion in family size calculations for the purpose of making housing allocations, family member preference for employment at posts abroad, use of medical facilities at posts abroad, medical evacuation from posts abroad, emergency travel for partners to visit gravely ill or injured employees and relatives, inclusion as family members for emergency evacuation from posts abroad, subsistence payments related to emergency evacuation from posts abroad, inclusion in calculations of payments of overseas allowances (such as payment for quarters, cost of living, and other allowances), representation expenses, and training at the Foreign Service Institute. Where appropriate, the eligibility for benefits and allowances applies to the children of same-sex domestic partners as well.

To qualify for these benefits and allowances on behalf of a same-sex domestic partner, an employee must file an affidavit certifying to eligibility requirements in 3 Foreign Affairs Manual 1610-1614 (see www.state.gov/documents/organization/84830.pdf).

The memo also began a policy of working with foreign governments to provide same-sex domestic partners with diplomatic visas, privileges and immunities, and authorization to work in the local economy.

Tax Treatment of Allowances—Under 5 CFR 531, a locality rate of pay is considered basic pay for the purpose of computing danger pay allowances under 5 U.S.C. 5928 and post differentials under 5 U.S.C. 5925(a) for certain employees temporarily assigned to work in foreign areas for which the Department of State has established danger pay allowances.

The incentive allowances (post differential, difficult-to-staff incentive differential and danger pay) are additional compensation and are included in gross income for federal income tax purposes. Other allowances under the DSSR are considered “reimbursements” for the extra expense due to a foreign assignment and are not taxed.

Combat Zone Assignments

Special pay and benefits apply to eligible employees assigned in their civilian duties in combat zones (for information about benefits for employees assigned to such zones when activated for military duty, see Employment Rights of Those on Military Duty in Section 8 of this chapter). Pay and benefits may vary depending on the employee’s pay system, assignment location, scope and nature of duties, and nature of assignment.

Agencies may waive premium pay and aggregate pay limitations for work overseas under certain conditions as described in Pay Caps in Chapter 1, Section 2.

Agency heads have the discretionary authority under Section 1107 of Public Law 111-84 as later amended to provide employees assigned or detailed to a combat zone allowances, benefits, and gratuities comparable to those provided to members of the Foreign Service under Section 413 (death gratuities) and Chapter 9 (travel, leave, and associated benefits) of Title I of the Foreign Service Act of 1980. Separate but parallel authority applies regarding employees assigned to Pakistan. See Overseas Employment, above. The Defense Department separately may provide certain Foreign Service benefits for its employees under certain circumstances under 5 U.S.C. 9904.

OPM regulations give agencies the discretionary authority to provide incentive payments of as much as 25 to 100 percent of basic pay, in some cases, to address difficulties in recruiting or retaining employees in combat zones. See Recruitment, Relocation and Retention Payments in Chapter 1, Section 5.
Benefits potentially available under the Federal Employees’ Compensation Act include medical and wage loss benefits, schedule awards for permanent impairment due to loss of hearing, vision or certain organs, vocational rehabilitation for injured employees; and survivor benefits if an employee is killed in performance of duty or if an employee later dies from a covered injury. See General Rules and Procedures in Chapter 5, Section 5.

Other benefits may include:
• eligibility to make enrollment changes under the Federal Employees Health Benefits Program (see Chapter 2, Section 1), Federal Employees’ Group Life Insurance Program (see Chapter 2, Section 2) or Federal Employees Dental and Vision Insurance Program (see Chapter 2, Section 4);
• eligibility for danger pay and post differentials (see Chapter 1, Section 4);
• eligibility to carry 45 days of unused annual leave from one leave to the next rather than the standard 30 days (see Annual Leave Accrual and Accumulation Chapter 5, Section 1); and
• eligibility for death gratuities (see Benefits Upon Death in Service in Section 4 of this chapter).


Foreign Service
Foreign Service officers help formulate and carry out U.S. foreign policy. They serve at some 250 diplomatic posts worldwide, including embassies, consulates and U.S. missions, and also in the United States, mostly in Washington, DC.

Examination and Appointment—Application for Foreign Service positions is a multiple-step process, beginning with registration and proceeding on to the taking of the Foreign Service Officer test, which is offered during eight-day windows at various testing centers several times a year. The next step is scrutiny by a qualifications review panel, followed by an oral assessment, medical and security clearance and a final review panel. Successful candidates are then put on a rank-ordered list, grouped by career track.

Note: The upper age limit for career hiring into the Foreign Service is 59, since an applicant hired beyond that age would not accumulate enough years of service to be vested in retirement benefits by the mandatory retirement age of 65 under the Foreign Service Act of 1980.

Further information, including the locations and dates of tests, is at www.careers.state.gov/officer/selection-process.

Pay and Benefits—A Board of Examiners and the staff of the State Department’s Office of Recruitment, Examination, and Employment determine a Foreign Service officer career candidate’s entry salary based on education and/or experience. If the candidate’s current salary exceeds that amount, the starting salary may be raised to the step in the grade for which the candidate is qualified that is closest to the current salary.

Foreign Service employees traditionally were paid at a higher basic rate when posted in the Washington, DC, area, where most domestic postings occur, but lost that adjustment when posted overseas. Even though they became eligible for various special pays and allowances when overseas, in many cases their total compensation was lower. Language to establish the Washington locality rate as the base pay of all Foreign Service officers was enacted in 2009 by PL. 111-32, Section 1113, which began a three-year phase-in starting in the fall of 2009.

Foreign Service officers are eligible to participate in the government’s insurance plans under generally the same terms as civil service employees and are eligible to receive Social Security and Medicare benefits once they meet the age and contribution requirements of those programs.

Members of the Foreign Service first hired after 1983 participate in the Foreign Service Pension System, under which Foreign Service officers who have reached the age of 50, and who have served for 20 years or more, are eligible for retirement with a full annuity. Officers who have served for 10 years and are at least 57 years of age (55-56 years of age under certain conditions) are eligible to retire with a reduced annuity. Retirement at 65 is mandatory.

The Foreign Service Pension System is a three-tiered program much like the Federal
Employees Retirement System. It consists of Social Security coverage, Thrift Savings Plan participation on the same terms as FERS employees, and a Foreign Service basic benefit. The latter is determined by multiplying the number of years of service by 1.7 percent for the employee’s first 20 years of service, and by 1.0 percent for each year of service in excess of 20 years. Foreign Service officers who retire before their 62nd birthday, and who are otherwise eligible for a full annuity, may be eligible to receive an annuity supplement. This supplement is roughly equivalent to the Social Security benefits the retiree would receive if he or she met the age requirement.

Foreign Service officers get the same federal holidays and annual and sick leave benefits as civil service employees. In addition, they are eligible for home leave—time to be spent in the United States—which accrues at the rate of 15 workdays per year spent on overseas assignment.

The government also pays for travel of the officer and his or her family to the officer’s home in the United States and provides various allowances, including post allowances, post differentials, living quarters allowances, shipment and storage expenses, and others (see Overseas Employment, above).

Details on these and other policies are at www.state.gov/m/alpha/dir/regs/fam/03fam.

Senior Foreign Service—The Senior Foreign Service is a cadre similar to the Senior Executive Service. It consists of three classes: career minister, whose pay ranges from 100 percent of the minimum rate of basic pay for senior level positions to 100 percent of the rate payable to Level II of the Executive Schedule; minister-counselor, whose pay ranges from 100 percent of the minimum rate of basic pay for senior level positions to 107 percent of the rate payable to Level III of the Executive Schedule; and counselor, whose pay ranges from 100 percent of the minimum rate of basic pay for senior level positions to 102 percent of the rate payable to Level III of the Executive Schedule. SFS employees receive raises upon a determination by the head of their department or agency that their performance or contribution to the mission of the agency so warrant.

Judicial/Legislative Branch Employment

Positions in the Judicial Branch and the Legislative Branch share many of the same benefits as Executive Branch workers. Employees of those two branches generally are covered under the federal retirement systems, insurance programs, leave and holiday rules, workers’ compensation, unemployment compensation, flexible spending accounts, the Thrift Savings Plan and many other Executive Branch policies.

However, where most Executive Branch employees have the right to appeal removals and other disciplinary and administrative actions against them, legislative and judicial workers generally do not.

Judicial Branch—Judicial Branch employees are employed as “excepted service” workers as defined in 5 U.S.C. 2105(a)—that is, they serve at the pleasure of the courts and therefore can be, as a general rule, fired “at will.” By statute, employees of a district court clerk’s office are appointed and removed by the clerk with approval of the court (28 U.S.C. 751(b)). Law clerks and secretaries to district judges are appointed by the individual judge (28 U.S.C. 752).

Most court employees are covered under the Court Personnel System, which has 12 pay bands, each with a developmental range and a full performance range. Separate systems apply to some positions; see www.uscourts.gov/Careers/Compensation.aspx.

In general, the courts are not subject to civil rights laws, including Title VII of the Civil Rights Act and the Age Discrimination in Employment Act. Nor are the courts covered by rules issued by the Equal Employment Opportunity Commission. The Judicial Conference of the United States, however, has adopted some rules modeled after these laws, although appeal rights are not provided to court workers. See www.uscourts.gov/Careers.aspx.

Legislative Branch—Legislative Branch positions generally fall into one of two categories: positions filled by elected representatives on their personal staffs and in the congressional committee structure, and positions in legislative support agencies and other offices supporting the general structure of Congress. Positions in the former category generally are “at will” positions with few job protections except what the member or committee
provides through internal office practices. Positions in the latter category typically carry somewhat greater protections.

Employment decisions regarding personal staffs of members of Congress, including hiring, pay setting, promotion, and removal, are at the discretion of the elected member, typically acting through a chief of staff or administrative assistant. Individual members also set their own office’s policies on leave and other benefits, often tracking Executive Branch policies, if only loosely. There is some informal coordination of benefit policies among those offices through internal Capitol Hill organizations. See FEHB Eligibility and Enrollment Rules in Chapter 2, Section 1 for specific policies regarding health insurance coverage.

Positions on congressional committee staffs are similarly controlled by the committee chairman, typically acting through the committee staff director, and by members of the committee. The allocation of positions generally tracks the membership split on the committee between the parties, which in turn reflects the split in the chamber as a whole.

Positions in legislative support agencies such as the Architect of the Capitol, Library of Congress and Government Accountability Office also are excepted service positions, although they tend to track Executive Branch policies more closely and most of those positions are career in nature. Hiring typically is done through personnel offices much like the ones in the Executive Branch.

Non-Appropriated Fund Positions

Non-Appropriated Fund (NAF) positions are those in which the salaries and benefits are not paid from the Treasury. Most such positions are in self-funding “morale, welfare and recreation” operations at Defense Department bases—such as officers’ and enlisted clubs, post exchanges and recreational facilities—although there are also some in other agencies, primarily the Coast Guard and the Department of Veterans Affairs.

Because of this funding arrangement, NAF employment is generally not considered to be federal service for purposes of laws administered by the Office of Personnel Management. NAF employee benefits, including retirement, health and life insurance coverage, are not subject to requirements applicable to civil service positions, although in practice many of those benefits parallel those for “appropriated fund” positions. NAF service generally is not creditable for purposes of civil service benefits, nor is service in an appropriated fund position creditable for purposes of NAF benefits. However, PL. 101-508, Section 1043, as amended by PL. 104-106, granted civil service retirement credit for certain NAF service for those who move without a break in service of more than three days between NAF positions and positions covered by a civil service retirement program. Also, PL. 107-107, Section 1131, removed the requirement for an employee to be vested in the retirement plan the employee left in order to continue retirement coverage after moving between civil service and NAF positions, and Section 1132 permitted employees in the Civil Service Retirement System or Federal Employees Retirement System to use prior NAF service to qualify for immediate retirement.

In addition, an employee who moves between a DoD NAF position and a DoD appropriated fund position with a break in service of three days or less is eligible for a range of pay and benefit protections. Public Law 101-508 permits eligible employees to transfer annual, sick, and home leave balances between the two employment systems; receive service credit for annual leave accrual and reduction-in-force purposes; and have their highest previous rate of pay considered when applying for a job in the other employment system. DoD regulations also permit service credit for severance pay purposes, and authorization for travel, transportation, and relocation allowances. See Transfers, above, for rules regarding how pay is set in transfers involving NAF employees. Employees who move between the two systems should consult the human resources offices of both to ensure that pay and benefits are handled appropriately.

Most NAF employees are paid under a locality pay system similar to that applying to wage grade Executive Branch jobs.

See Transfers earlier in this section for pay-setting policies for NAF employees who transfer to General Schedule positions.

Personal Services Contracts

Some federal agencies use personal services contracts to fill special needs, particu-
larly those requiring special expertise and/or that are likely to be of relatively short duration. In many cases, federal annuitants are re-employed under such arrangements, which often involve consulting type work.

Personal services contracts are subject to restrictions under the Federal Acquisition Regulation (37.104) which states that the government in general is required to obtain its employees by direct hire under the competitive appointment or other procedures required by civil service laws. Specific legislative authority is required for the acquisition of services by contract.

A personal services contract may create varying types of relationships between the government and the individual, acting either as a sole agent or as an employee of a contractor. The terms of the contract, and in some cases the manner of its administration, determine the level of compensation and the length of the expected relationship. In general, those hired under personal services contracts are not eligible for federal benefits unless explicitly authorized by statute and by the contract’s terms.

Insurance—In general, those paid on a contract or fee basis are excluded from insurance coverage. However, you are eligible for Federal Employees Health Benefits coverage when you are a United States citizen, appointed by a contract between you and the federal employing authority which requires your personal service, and paid on the basis of units of time, or a personal services contractor employed by the Department of the Treasury.

Retirement Crediting—In general, to gain service credit for retirement purposes an individual must be an “employee” as defined by 5 U.S.C. 2105(a): an individual who has been appointed by an authorized federal employee or officer into the civil service, engages in the performance of a federal function under authority of law or an executive act, and, while engaged in the performance of the duties of his position, is subject to the supervision of federal officials. All three of these elements must be met for an individual to be a federal employee. The individual must establish his entitlement to retirement credit by preponderant evidence. See *Horner v. Acosta*, 803 F.2d 687, 691 (Fed. Cir., 1986).

Typically, the “appointment” requirement alone excludes personal services contractors because they are not appointed to federal positions but rather their services are engaged under a procurement arrangement. Under the *Horner v. Acosta* decision, an appointment must be “definitive and unequivocal.”

Section 110 of Public Law 100-238 provides for the creditability of service performed under personal service contracts in computing benefits under CSRS in instances where the employing agency certified to OPM that it intended through the personal service contract that the employee was to be considered as having been appointed to a position in which the employee would be subject to CSRS.

Review by the Merit Systems Protection Board of a claim for service credit pursuant to a personal services contract is limited to determining that, in making its decision, OPM properly relied upon the certification or non-certification of the employing agency head whether service credit should be awarded. See *Werley v. OPM*, 39 MSPR 686 (1989).

Buyouts—Under the terms of most buyout authorities, individuals who took buyout separation incentive payments must repay the entire pretax amount plus accrued interest if returning to work for the government within five years, including as a personal services contractor. Unlike the rules governing re-employment as an appointed federal employee, there is no provision for waiver of this requirement for those returning as personal services contractors.

Performance Payments—Personal services contracts can be written to allow for performance-contingent payments.

**Section 2**

**Work Scheduling**

**Alternative Work Schedules**

Federal agencies are allowed by law (Chapter 61 of Title 5, United States Code) to establish alternative work schedules (AWS) that fall into one of two categories: flexible work schedules or compressed work schedules.
A flexible work schedule (see 5 U.S.C. 6120-6126; and 5 U.S.C. 6129-6133 and 5 CFR 610, subpart D) breaks the workday into components of flexible time bands and core time. During the flexible time bands, the employee selects arrival and departure times for the workday. The core time is the period in the schedule during which the employee must be present at work or account for those hours with leave, credit hours (see below), or compensatory time off.

Under a compressed work schedule (see 5 U.S.C. 6120-6121; and 5 U.S.C. 6127-6133 and 5 CFR 610, subpart D), full-time employees fulfill the 80-hour biweekly work requirement in less than 10 days by increasing the number of hours in a workday. The two most common compressed work schedules are the 4-10 and the 5/4-9 schedules. Employees on a 4-10 schedule work four, 10-hour days each work week. Employees on the 5-4/9 schedule work nine hours each day for eight days and work eight hours for one day. In addition to their weekends, the employees get one additional day off each pay period. A compressed work schedule may be established by the agency in a non-union unit if a majority of the affected employees vote to be included.

In unionized work units, compressed and flexible work schedules typically are subject to negotiation.

An agency may not combine features of flexible work schedules and compressed work schedules into a “hybrid” work schedule program.

Also see www.opm.gov/policy-data-oversight/pay-leave/work-schedules.

Credit Hours—In some flexible schedule programs, full-time or part-time employees—including General Schedule, wage grade and non-appropriated fund employees but not Senior Executive Service members—may earn and use “credit hours” under rules established by the agency or negotiated with a union, for hours the employee elects to work, with supervisory approval, in excess of the basic work requirement.

An employee may use credit hours with supervisory approval. For a full-time employee, only 24 credit hours may be carried over to the next pay period. For a part-time employee, only the hours in the employee’s biweekly basic work requirement may be carried over to the next pay period. An agency policy or union agreement may place stricter limitations on how many credit hours may be accumulated or carried over.

There is no authority in law or regulation to advance credit hours. Time cannot be charged against credit hours until the hours have been earned. For this reason, some agencies do not permit employees to use credit hours until the pay period following the one in which they are earned.

Flexible Work Schedules—The basic work requirement of a flexible work schedule (FWS) is the number of hours, excluding overtime hours, an employee must work or otherwise account for by leave, credit hours, holiday hours, excused absence, compensatory time off, or time off as an award. A full-time employee must work 80 hours/biweekly pay period, or a multiple of this requirement, as determined by the agency head. Agencies also may establish daily or weekly basic work requirements. A part-time employee works fewer hours than a full-time employee within a specified period of time, as determined by the agency head consistent with 5 U.S.C. 3401 through 3408 and 5 CFR 340.

In general, the tour of duty comprises all hours and days for which flexible and core hours have been designated. The tour of duty defines the limits within which an employee must complete his or her basic work requirement. Overtime hours are not included in the definition of a tour of duty for employees under AWS.

The types of FWS vary significantly. Agencies have the authority to establish flexible and core hours to meet their needs. Temporary changes in the tour of duty may be made under the terms of a negotiated agreement, if applicable, or agency policy.

For employees under FWS programs, overtime hours are all hours of work in excess of eight hours in a day or 40 hours in a week which are officially ordered in advance by management. The requirement that overtime hours be officially ordered in advance also applies to nonexempt employees under the Fair Labor Standards Act (see Chapter 1, Section 6). Employees on FWS may not earn overtime pay as a result of including “suffered or permitted” hours under the FLSA as hours of work. See 5 CFR 551.401(a)(2).
Management may order an employee who is covered by an FWS program to work hours beyond the number of hours the employee planned to work on a specific day. If the hours ordered to be worked are not in excess of eight hours in a day or 40 hours in a week at the time they are performed, the agency, at its discretion, may permit or require the employee to: take time off from work on a subsequent workday for a period of time equal to the number of extra hours of work ordered; complete his or her basic work requirement as scheduled and count the extra hours of work ordered as credit hours; or complete his or her basic work requirement as scheduled if the agency policy permits.

An agency may grant compensatory time off in lieu of overtime pay at the request of the employee (including prevailing rate employees and nonexempt employees) under an FWS. (See 5 U.S.C. 6123(a).) Compensatory time off in lieu of overtime pay may not be required for any prevailing rate employee, any employee who is nonexempt from the FLSA, or any FLSA-exempt employee whose rate of basic pay is equal to or less than the rate for GS-10, step 10.

If an employee’s tour of duty includes eight or more hours available for work during daytime hours (that is, between 6 a.m. and 6 p.m.), he or she is not entitled to night pay even though he or she voluntarily elects to work during hours for which night pay is normally required (that is, between 6 p.m. and 6 a.m.). Night differential will not be paid solely because a prevailing rate employee elects to work credit hours, or elects a time of arrival or departure at a time of day when night differential is otherwise authorized, except that prevailing rate employees are entitled to night differential for regularly scheduled non-overtime work when a majority of the hours of a FWS schedule for a daily tour of duty occur during the night. (See 5 U.S.C. 5343(f) and 6123(c)(2).)

Under an FWS program, a full-time employee who is relieved or prevented from working on a day designated as a holiday (or an “in lieu of” holiday) by federal statute or executive order is entitled to his or her rate of basic pay on that day for eight hours. (See 5 U.S.C. 6124.) If a holiday falls on a day during a part-time FWS employee’s tour of duty and the employee is relieved or prevented from working on that day, the employee is entitled to his or her rate of basic pay for the typical, average, or scheduled number of hours of work for that day toward his or her basic work requirement (not to exceed eight hours).

A full-time or part-time employee under an FWS program who performs non-overtime work on a holiday (or a day designated as the “in lieu of” holiday) by federal statute or executive order is entitled to his or her rate of basic pay plus premium pay equal to his or her rate of basic pay for that holiday work. Holiday premium pay is limited to a maximum of eight hours. An employee under an FWS program who works during non-overtime and non-holiday hours that are part of the employee’s basic work requirement on a holiday is paid his or her rate of basic pay for those hours of work.

A full-time employee who performs regularly scheduled non-overtime work, a part of which is performed on Sunday, is entitled to Sunday premium pay for the entire daily tour of duty, not to exceed eight hours. It is possible for an employee to have two daily tours of duty that begin or end on the same Sunday.

Paid time off during an employee’s basic work requirement must be charged to the appropriate leave category, credit hours, compensatory time off, or to excused absence if warranted. There is no requirement that employees use flexible hours for medical or dental appointments or other personal matters if the employee wishes to charge this time to leave. To the extent permitted by the agency, an employee may choose to charge time off during flexible hours to an appropriate leave category or use credit hours when time off is scheduled during flexible hours in order to preserve leave.

The head of an agency may grant excused absence with pay to employees covered by an FWS program under the same circumstances as excused absence would be granted to employees covered by other work schedules. For employees on an FWS, the amount of excused absence to be granted should be based on the employee’s established basic work requirement in effect for the period covered by the excused absence.

When an employee covered by an FWS program is assigned to a temporary duty station using another schedule—either traditional or AWS—the agency may allow the
employee to continue to use the schedule used at his or her permanent work site (if suitable) or require the employee to change the schedule to conform to operations at the temporary work site.

When a Fair Labor Standards Act-exempt or nonexempt employee under an FWS program is in a travel status during the hours of his or her regularly scheduled administrative workweek, including regularly scheduled overtime hours, that time is considered to be hours of work and must be used for the purpose of overtime pay calculations, as applicable. Note, however, that overtime hours are initially scheduled for work, not travel.

Compressed Work Schedules—The tour of duty for employees under a CWS program is defined by a fixed schedule established by the agency. Although agencies may change or stagger the arrival and departure times of employees, there are no provisions for employee flexibility in reporting or quitting times under a CWS program.

There is no legal authority for credit hours under a CWS program. The law provides for credit hours only for flexible work schedules. See 5 U.S.C. 6121(4).

For a full-time employee under a CWS program who is exempt from the FLSA, overtime hours are all officially ordered and approved hours of work in excess of the compressed work schedule. For a full-time employee who is covered by the FLSA (non-exempt), overtime hours also include any hours worked outside the compressed work schedule that are “suffered or permitted.” For a part-time employee, overtime hours are hours in excess of the CWS for a day (but must be more than eight hours) or for a week (but must be more than 40 hours).

Employee requests for compensatory time off in lieu of overtime pay may be approved only for irregular or occasional overtime work. Compensatory time off may not be approved for an SES member. Mandatory compensatory time off is limited to FLSA-exempt employees (who are not prevailing rate employees) whose rate of basic pay is greater than the rate for GS-10, step 10, and only in lieu of overtime pay for irregular or occasional overtime work. See 5 U.S.C. 5543(a)(2).

An employee is entitled to night pay for regularly scheduled night work performed between the hours of 6 p.m. and 6 a.m. The regular rules under 5 U.S.C. 5343(f) apply in determining the majority of hours for entitlement to night pay for prevailing rate employees.

A full-time employee on a CWS who is relieved or prevented from working on a day designated as a holiday (or an “in lieu of” holiday) by federal statute or executive order is entitled to his or her rate of basic pay for the number of hours of the CWS on that day. (See 5 CFR 610.406(a). If a holiday falls on a day during a part-time employee’s scheduled tour of duty and the employee is relieved or prevented from working on that day, the employee is entitled to his or her rate of basic pay for the number of hours he or she normally would have been scheduled to work that day. See 5 CFR 610.406(b).

A full-time employee under a CWS program who performs non-overtime work on a holiday (or a day designated as the “in lieu of” holiday) is entitled to basic pay plus premium pay equal to his or her rate of basic pay for the work that is not in excess of the employee’s compressed work schedule for that day. (See 5 CFR 610.407). Since CWS schedules are fixed schedules, employees must not be required to move their regularly scheduled days off solely to avoid payment of holiday premium pay or to reduce the number of holiday hours included in the basic work requirement. See 5 U.S.C. 6101(a)(3)(E).

A part-time employee under a CWS program is entitled to holiday premium pay only for work performed during his or her CWS on a holiday. A part-time employee scheduled to work on a day designated as an “in lieu of” holiday for full-time employees is not entitled to holiday premium pay for work performed on that day, since part-time employees are not entitled to “in lieu of” holidays. See 5 CFR 610.406(b).

A full-time or part-time employee who performs non-overtime work during a tour of duty, a part of which is performed on Sunday, is entitled to Sunday premium pay for his or her entire tour of duty on that day. Paid time off during an employee’s basic work requirement must be charged to sick or annual leave unless the employee used other paid leave or accumulated compensatory time off, or unless excused absence is approved.

The head of an agency may grant excused absence with pay to employees covered by a CWS program under the same circumstances as excused absence would be granted to employees covered by other work schedules.
When an employee covered by a CWS program is assigned to a temporary duty station using another work schedule—either traditional or AWS—the agency may allow the employee to continue to use the schedule used at his or her permanent work site (if suitable) or require the employee to change the schedule to conform to operations at the temporary work site.

When a Fair Labor Standards Act-exempt or nonexempt employee under a CWS program is in a travel status during the hours of his or her regularly scheduled administrative workweek, including regularly scheduled overtime hours, that time is considered to be hours of work and must be used for the purpose of overtime pay calculations, as applicable. Note, however, that overtime hours are initially scheduled for work, not travel.

**Job Sharing for Part-Time Workers**

Job sharing is a form of part-time employment in which the schedules of two or more part-time employees are arranged to cover the duties of a single full-time position—for example, each job sharer may work a portion of the day or week. In some cases, job sharing provides part-time schedules that otherwise would not be available.

There is no definitive list of jobs “suitable” for job sharing, and no law or regulation limits part-time or job sharing to specific jobs or grade levels. Any job may be filled by a part-time employee or by a team of job sharers when the arrangement meets the needs of the agency and the employee(s).

**How Job Sharing Develops**—A proposal can come from a full-time employee who wants to reduce work hours, from a team of job sharers, or from a supervisor who wants to consider filling a vacancy with job sharers. When an employee’s request for part-time work cannot be accommodated because of the need for full-time coverage, job sharing may be an option.

The first place to look is in the office (or a related office) where the employee works to see if another employee is interested. The contact point in the agency’s personnel office may also be keeping a list of employees who want to reduce their work hours. Employees often conduct their own search by contacting organizations and placing ads.

An agency may post a vacancy announcement to let employees know of the job sharing opportunity, but competition under agency merit promotion procedures is generally not required when an employee moves to a position with a different work schedule as long as the positions are at the same or lower grade level and have no more promotion potential.

**Other Considerations**—When two job sharers at the same grade level are jointly responsible for all the duties and responsibilities of the full-time position, there is no need to restructure the position. Each team member should have a copy of the original position description to which a statement has been attached to show that the incumbent is a job sharer jointly responsible for carrying out all the duties and responsibilities of the position.

When the job sharers will be individually responsible only for portions of the job, or when the job sharers are at different grade levels, separate position descriptions are required to reflect the actual duties and responsibilities of each employee. Each job sharer must have a position description that accurately reflects his or her duties and responsibilities.

The decision on whether job sharers should be jointly responsible for the entire position or only for separate functions depends on the job and the abilities of the job sharing team. To determine the arrangement for a particular job, the supervisor should examine the position description and decide which tasks will be shared; that is, handled by whichever team member is on duty, and which will be assigned to a specific individual, based on skills and experience.

Specific work schedules depend on the nature of the job and the needs of the office and the job sharing team. Almost any reasonable arrangement is possible if it meets the needs of the supervisor and the job sharers. Work schedules for job sharers can be from 16 to 32 hours per week and can be varied in the same way as other part-time employees. Each member of a job sharing team must have his or her own performance standards.

In a reduction in force, part-time and job-sharing employees have assignment rights
only to part-time positions. Similarly, full-time employees have assignment rights only to full-time positions.

**Telework**

Telework, also called telecommuting or flexiplace, involves working at home or at another approved location away from the regular worksite, such as a telecommuting center. Telework is voluntary, is not an employee right, and is not to be used as a substitute for dependent care.

The 2010 Telework Enhancement Act (P.L. 111-292) expanded and put into law many previous policies. It required each agency to establish a policy under which employees are generally presumed to be eligible to telework so long as it does not diminish employee performance or agency operations. It excepted occupations involving daily handling of secure materials or daily duties that cannot be handled at an alternative worksite; however, telework is allowed even in those circumstances in emergencies or other situations at an agency’s discretion.

The law also:
- required each agency to designate each position’s telework status and to assign a telework managing officer to oversee and promote the program;
- set requirements for incorporating teleworking into agency continuity-of-operations planning;
- barred telework by employees who had been disciplined for certain reasons, including for unexcused absences of more than five days in a year;
- required written agreements between employees and management specifying the terms of the work arrangement;
- required agencies to provide training to teleworkers and ensure that no distinction is made between teleworkers and non-teleworkers for performance appraisal, training, work requirements, and similar purposes;
- set standards on issues including information security; and
- required ongoing reports to assess agency use of telework.

Telework affects conditions of employment, and agencies must consult and negotiate with unions, as appropriate.

Individual agency practices vary. Most teleworking employees work away from their principal site on a predetermined schedule several days a month, spending most of their time at the regular office to improve communication, minimize isolation, and use facilities not readily available offsite. In addition, employees may telework on a situational basis, such as when working on a certain project or when weather or other conditions hamper commuting to the regular worksite. See Severe Weather Policy, below in this section, for policies regarding previously unscheduled telework in severe weather situations.

However, any employee who wishes to telework, regardless of which type, must first complete a telework training program provided by the agency and must enter into a written agreement with his/her supervisor. Supervisors and managers of teleworking employees must also complete telework training prior to entering into the agreement. The agreements typically cover issues including the schedule, the location, the equipment to be used and who will provide it, safety standards, information security policies, and expectations for working in severe weather or other emergency situations. They are to be updated as circumstances change.

Decisions regarding equipment are made by the agency and individual manager under the agency’s telework policy and any collective bargaining agreements. Generally, the government is responsible for the service and maintenance of government-owned equipment. Teleworkers using their own equipment are responsible for its service and maintenance.

Typically, the regular worksite remains the official duty station for such purposes as special salary rates, locality pay adjustments, and travel (see Official Duty Station in Section 1 of this chapter). The existing rules on hours of duty, pay, leave, and overtime generally continue.

Some teleworking employees work from local telework centers in addition to or instead of working from home.
Employees suffering work-related injuries and/or damages at the alternative worksite are covered under the Military Personnel and Civilian Employees Claims Act, the Federal Tort Claims Act, and the Federal Employees’ Compensation Act.

The Guide to Telework in the Federal Government and other information available at www.telework.gov provide specific guidance on premium pay, leave, work scheduling flexibilities, and other telework-related issues.

An agency may allow a telework-ready employee to work from home on days with high heat and humidity (see Severe Weather Policy, below). Special telework policies also apply in pandemic flu emergencies (see Pandemic Flu, below).

**Family-Friendly Schedules and Work Arrangements**

A July 11, 1994, Presidential memo directed agencies to establish a program to encourage and support the use of flexible family-friendly workplace arrangements. The memorandum challenged agencies to expand opportunities for workers to participate in flexible work arrangements, including job sharing, career part-time employment, alternative work schedules, and telecommuting both from home and satellite work locations.

A June 21, 1996, follow-up memo directed agencies to review their family-friendly programs and, to the extent feasible, expand them to offer their employees the following:

- assistance in securing safe, affordable, quality child care;
- elder care information and referral services;
- flexible hours that will enable them to schedule their work and meet the needs of their families, including encouragement to parents to attend school functions and events essential to their children;
- opportunities to telecommute, when possible, and consistent with their responsibilities;
- policies and procedures that promote active inclusion of fathers as well as mothers;
- an effective mechanism by which employees can suggest new practices that strengthen families and provide for a more productive work environment; and
- leadership and participation in these policies and programs at the highest level of the agency.


**Domestic Violence**

An April 18, 2012 White House memo titled Establishing Policies for Addressing Domestic Violence in the Federal Workforce states that it is the government’s policy to promote the health and safety of its employees by acting to prevent domestic violence within the workplace and by providing support and assistance to employees whose working lives are affected by such violence.

Follow-up guidance issued in 2013 by the Office of Personnel Management defines domestic violence for this purpose as including physical or sexual violence, emotional and/or psychological intimidation, verbal abuse, stalking, economic control, harassment, threats, physical intimidation, or injury. It requires agencies to provide leave and/or other workplace flexibilities to help the employee remain safe and maintain work performance.

Potential accommodations for employees may include: annual leave for purposes including attending to legal matters; sick leave for purposes such as dealing with injuries or meeting with medical providers or counselors; grants of leave without pay, excused absence, family and medical leave and eligibility for leave sharing; flexible work schedules; telework; and compensatory time off, among others. When a need for time off is foreseeable, an employee must provide reasonable advance notice to the agency.

The impact of domestic violence is to be taken into consideration where the victim exhibits workplace behaviors such as absenteeism that could lead to disciplinary actions.

To take adverse action against employees who perpetrate such violence, either at the workplace or away from it, there must be a proven “nexus” between the specific misconduct of the employee and the employee’s ability to perform his or her duties.

Volunteer Activities

A Presidential memo of April 22, 1998, directed federal agencies to make maximum use of existing flexibilities to allow federal employees to plan and take time off to perform community service as the public business permits. Each department and agency must inform its employees of the various flexibilities available to them to participate in volunteer activities.

Guidance from OPM (see the fact sheet at www.opm.gov/policy-data-oversight/pay-leave/leave-administration) states that agencies are encouraged to make appropriate use of this flexibility in responding to requests for changes in work schedules or time off to allow employees to engage in volunteer activities, while giving due consideration to the effect of the employee’s absence or change in duty schedule on work operations and productivity.

Agencies have the flexibility to approve a variety of work arrangements for employees seeking to engage in volunteer activities during normal work hours, including alternative work schedules and use of credit hours (hours within a flexible work schedule that an employee elects to work in excess of his or her basic work requirement) so as to vary the length of a workweek or workday. Employees may use credit hours to fulfill their basic work requirement, thereby gaining time off from work to pursue volunteer activities and for other purposes. If a department or agency authorizes credit hours under its flexible work schedules program, a maximum of 24 credit hours may be carried over from one pay period to another.

Employees seeking to participate in volunteer activities during basic working hours may be granted annual leave, leave without pay, compensatory time off, or, in limited circumstances, excused absence. When employees request annual leave to perform volunteer service, agencies must be as accommodating as possible in reviewing and approving such requests consistent with regulations in 5 CFR 630, subpart C, and applicable collective bargaining agreements.

At the discretion of the agency, leave without pay (LWOP) may be granted to employees who wish to engage in volunteer activities during normal working hours. As with annual leave, OPM encourages departments and agencies, whenever possible, to act favorably upon requests by employees for LWOP to perform volunteer services. However, LWOP is deemed appropriate for extended periods only if the employee is expected to return to his or her job at the end of the period.

Agencies may approve requests from employees for compensatory time off in exchange for performing an equal amount of time in irregular or occasional overtime work. For employees under flexible work schedules, departments and agencies may approve employee requests for compensatory time off for both regularly scheduled and irregular or occasional overtime work.

Each department or agency has discretion to excuse employees from their duties without loss of pay or charge to leave (excused absence or administrative leave). It is the responsibility of each department or agency head to balance support for employees’ volunteer activities with the need to ensure that employees’ work requirements are fulfilled and that agency operations are conducted efficiently and effectively. Agencies should review their internal guidance on excused absence and applicable collective bargaining agreements.

Part-time employment or job-sharing may also be approved for employees who request such arrangements in connection with performing volunteer service.

While managers, supervisors, and other agency officials may encourage employees to become more involved in volunteer activities, 5 U.S.C. 6132 provides that employees may not be coerced for the purpose of interfering with their legal rights under flexible and compressed work schedules.

Conditions of employment (such as work schedules) of bargaining unit employees may not be changed without notifying the exclusive representative of those employees and, upon timely request, bargaining on the matter to the extent required and/or permitted by laws, regulations, and collective bargaining agreements. Moreover, bargaining unit employees may participate in flexible or compressed work schedules “only to the extent
expressly provided under a collective bargaining agreement between the agency and the
exclusive representative.” (See 5 U.S.C. 6130(a)(2).)

Conflict of interest laws and related regulations governing outside employment for
compensation also apply to federal employees who engage in volunteer activities. Hatch
Act restrictions apply to employees who are on duty, as well as to those on paid or unpaid
leave. Employees may not use government facilities and equipment for other than autho-
rized purposes. (See 5 CFR 2635.704.) Employees may consult their agency ethics offi-
cials or office of general counsel for information about what may be authorized by their
agency or department.

In most instances, employees who perform mission-related agency sponsored/ sanc-
tioned, or skills-enhancing volunteer activities while they are on excused absence are

Recognition—Departments and agencies are encouraged to recognize their employ-
ees who volunteer to help others, although usually not in the form of cash or paid time
off. Agencies may establish internal programs to reward employees through appropriate
citations, letters of appreciation, or small mementos.

Combined Federal Campaign—Annual OPM guidance regarding the Combined
Federal Campaign (at www.chcoc.gov/transmittals) encourages agencies to make employ-
ees available without charge to leave to serve in CFC-related roles such as loaned execu-
tives, coordinators, keyworkers, and members of local federal coordinating committees.

Science, Technology, Engineering and Mathematics Programs—An Office of
Personnel Management memo to agencies of August 14, 2012 (available at
www.chcoc.gov/transmittals) encouraged federal employees in careers related to science, technology,
engineering and mathematics to engage in volunteer activities in their communities such
as science festivals, robotics competitions, job shadowing, and mentoring that are
designed to encourage students to pursue those fields. It said agencies should consider
using flexibilities such as alternative work schedules, granting annual leave, leave without
pay, credit hours under flexible work schedules, and compensatory time off to allow such
employees to perform that type of volunteer service. Agencies also may grant excused
absence when in the agency’s best interest.

Preventive Health Services and Screenings

Agencies may use work schedule and leave flexibilities to allow federal employees to
take advantage of health screening programs and other preventive health measures. See
Health Promotion in Section 4 of this chapter.

Lunch Breaks

Lunch is an approved period of time in a non-pay and non-work 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 (see 5 U.S.C. 6101(a)(3)(F) and 5 CFR
551.411(c), 610.101, and 610.121(a)(6)). Agencies are allowed to establish their own
policies, including whether lunch breaks will be required or permitted during overtime
hours and whether they will be required or permitted for part-time 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 pol-
icy may be different from the one for the basic workweek. For example, an agency could
permit employees to work eight overtime hours on a Saturday or Sunday without any
requirement for a meal period.

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

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 that is not minimal in nature. However, 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.

Meal periods during 24-hour shifts are compensable hours of work for firefighters paid under 5 CFR 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 (AUO) work under 5 U.S.C. 5545(c)(2), but are not actual hours of work for criminal investigators who receive law enforcement availability pay under 5 U.S.C. 5545a.

Agencies 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 eight hours long. See the fact sheet at www.opm.gov/policy-data-oversight/pay-leave/work-schedules.

**Work Schedule Adjustments for Religious Observances**

To the extent that modifications in work schedules do not interfere with accomplishing an agency’s mission, federal agencies must approve employee requests to adjust work schedules for the purpose of taking time off without charge to leave or entitlement to overtime pay when employees’ personal religious beliefs require that they abstain from work during periods of a workday or workweek (see 5 U.S.C. 5550a and 5 CFR 550, subpart J). 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.

Any employee who elects to work alternative hours for this purpose is entitled to an equal amount of time off (hour for hour) from his or her scheduled tour of duty. An employee may work such alternative hours (compensatory time) before or after the grant of compensatory time off.

A grant of compensatory time off must be repaid by the appropriate amount of work within a reasonable period. 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.

The overtime pay provisions of Title 5, United States Code, and the Fair Labor Standards Act 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 eight 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.


**Severe Weather Policy**

During weather emergencies, agencies determine closing and related policies and announce the policies to employees and the local media. The decision to have federal employees report to work as scheduled or to implement any one of several work schedule options generally is made several hours before normal starting time, although changes can be made during the working day as events warrant.


Employees who are required to work on-site or to telework during their regular tour of duty on a day when offices are closed (or when other employees are authorized a delayed arrival or an early departure) are not entitled to receive overtime pay, credit hours, or compensatory time off for performing work during their regularly scheduled non-overtime hours.
In all cases, employees designated as emergency employees are expected to report for work on time or remain at their worksite unless otherwise instructed. An agency may grant excused absence to an emergency employee unable to report for work due to hardship or circumstances unique to the employee. For non-emergency employees, the categories are:

- Federal agencies are open—Employees are expected to report to their worksite or begin telework on time.
- Federal agencies are open with an option for unscheduled leave or unscheduled telework—Employees must notify their supervisor of their intent to use unscheduled leave (including annual leave, earned compensatory time off, earned credit hours, leave without pay, or sick leave if they meet normal qualifications) or unscheduled telework (if the employee is telework-ready). Telework-ready employees who are regularly scheduled to perform telework or who notify their supervisor of their intention to perform unscheduled telework must be prepared to telework for the entire workday, or take unscheduled leave, or a combination of both.
- Federal agencies are operating under a delayed arrival policy with the option for unscheduled leave or unscheduled telework—Employees are to plan their commutes so that they arrive at work a specified number of hours later than their normal arrival time. Employees arriving later than the designated time will be charged annual leave for the excess time unless granted excused absence due to a personal hardship. Policies for unscheduled leave and unscheduled telework are the same as those above, as are policies for regularly scheduled telework.
- Federal agencies are operating under a delayed arrival policy requiring employees to arrive at the office no later than a designated time, with the option for unscheduled leave or unscheduled telework—Employees must arrive at their worksites by the announced opening time; they may arrive earlier and should not delay their commutes to arrive precisely at the designated time. Non-emergency employees will receive excused absence up until the designated time. Employees arriving later will be charged annual leave for the excess time unless granted excused absence due to a personal hardship. Policies for unscheduled leave and unscheduled telework are the same as those above, as are policies for regularly scheduled telework.
- Federal agencies are open with a staggered early departure—Employees will be dismissed from work a specified number of hours earlier than their normal departure and will be granted excused absence for that time. Employees may request unscheduled leave in order to depart before their individually staggered early departure times (requesting unscheduled telework is no longer an option). Agencies may grant excused absence to depart before the specified time for personal hardship reasons. Employees performing telework must continue to telework or take unscheduled leave, or a combination of both, for the entire workday.
- Federal agencies are open with a staggered early departure and a requirement that employees must leave by a specified time—This follows the policies immediately above except that, at a designated final departure time, all remaining on-site employees are dismissed and are granted excused absence for any remaining time in their workday. At that time, offices are closed.
- Immediate departure—Federal offices are closed—All employees except emergency employees should leave the office immediately and are granted excused absence for any remaining time in their workday. Employees who depart before an immediate departure policy is announced are charged annual leave or leave without pay for the time between their departure and the end of their regularly scheduled workday. Employees performing telework must continue to telework or take unscheduled leave, or a combination of both, for the entire workday.
- Federal agencies are closed—Emergency and telework-ready employees must follow their agency’s policies—Telework employees may be required to work, as described below, and emergency employees are expected to report for work on time unless otherwise directed. Other employees (including those on pre-approved paid leave) will be granted excused absence for the number of hours they were scheduled to work unless covered by exceptions applying to those on leave without pay, those working from remote locations, those on travel and those on an alternative work schedule day off.
• Shelter in place—Offices are closed to the public; employees (and any members of
the public in the building) should follow the agency’s shelter in place policies and remain
in the designated safe area until receiving further instructions. Agencies have the authority
to order sheltering in place without an announcement from OPM as circumstances dictate.
Employees who are unable to enter their buildings are granted excused absence.
Employees performing telework are expected to continue working unless affected by the
emergency or otherwise notified.

Special policies apply in certain circumstances, such as for employees who: work under
alternative work schedules; are traveling; work from a remote location not considered
telework; are on pre-approved leave; or who experience a personal hardship preventing
them from arriving at the expected time. See the dismissal guide for details. Collective
bargaining agreements may apply to certain agency-specific policies.

Telework and Other Flexibilities—Agencies must ensure that telework is integrated as
part of the flexibilities permitted during disruption of normal operating procedures, ensure
that their information technology allows large numbers of employees to telework simulta-
neously, ensure that employees authorized to telework practice it frequently to maintain
effectiveness, and establish arrangements for employees who can telework but typically do
not, at least not formally.

If it is covered in employees’ telework agreements with the agency, during weather emer-
gency situations when the agency is closed an agency may require teleworkers to continue
working at their alternative worksites, if they are able to, on their telework day or on any of
their regularly scheduled workdays. Agencies do not have to designate teleworkers as emer-
gency employees in order to require them to work during closure. However, OPM recom-
mends that each agency anticipate this possibility in its emergency preparedness planning,
discuss this with each telework employee in advance, and include such expectations in the
employee’s telework agreement. Agencies also may use special hiring authorities. Guidance
is in a June 25, 2012 memo to agencies at www.chcoc.gov/transmittals.

Authority for unscheduled telework is announced at the beginning of the work day.
Under the options above allowing for unscheduled telework, agencies may not require
employees to perform telework that was not previously scheduled. Telework is voluntary
under those announcements and employees are to be given the opportunity to perform
unscheduled telework, take leave, use a combination of the two, or report to the official
worksit. If an employee chooses to use unscheduled telework versus report to the work-
place, the employee should work the entire day.

During days with severe heat and humidity, agencies may use workplace flexibilities
to reduce health risks. With supervisory approval and to prevent work disruptions, a
telework-ready employee may telework from home on a day when air quality conditions
are poor. Additionally, if permitted by agency policy, an employee working a flexible
work schedule may choose to adjust arrival and departure times to avoid commuting
during the hottest periods of the day. Employees also may request annual leave, earned
compensatory time off, or credit hours on a day when severe heat and humidity are
threatening to the employee’s health and welfare. Guidance is in a June 21, 2012 memo
to agencies at www.chcoc.gov/transmittals.

Emergency Dismissal Procedures

The Federal Emergency Dismissal Protocol calls for the General Services Administration
(GSA), the Federal Emergency Management Agency (FEMA) and the Office of Personnel
Management (OPM) to consult and decide on the operating status of the government and
federal buildings during an emergency. In a natural or man-made event (such as a terror
incident), FEMA, GSA and OPM will convene their principals for a review of the situation.
Immediate notification of changes to the operating status of the government will be relayed
to key federal and local authorities, the news media, Federal Executive Boards and other
outlets. The operating status of the government is at www.opm.gov.

Further, OPM may give agencies discretion to excuse employees from their duties without
loss of pay or charge to leave for other reasons, such as localized flooding or power outages.

Agencies designate “emergency employees” critical to agency operations in dismissal or
closure situations. In addition, agencies identify a cadre of “mission-critical emergency employees” who might be activated during emergencies involving national security, extended emergencies, or other unique situations. Emergency employees are necessary to continue agency operations in a variety of emergency situations and may be directed to report for work when the agency is closed. Dismissal procedures typically will not apply to emergency employees, unless their employing agency determines that circumstances justify excusing emergency employees from work. Agencies in the nation’s capital area follow the Washington, DC, Area Dismissal or Closure Procedures (see above) in emergency situations that require agencies to close all or part of their activities. Federal Executive Boards and Federal Executive Associations coordinate similar dismissal or closure procedures in other major metropolitan areas.

Federal agencies in buildings managed by GSA are required to establish an Occupant Emergency Plan (OEP). The OEP is a short-term emergency response program that establishes procedures for safeguarding lives and property. Within every agency’s OEP should be a component which addresses the concerns of special needs employees. If you have special needs, ask your manager about the procedures in place to help you respond to an emergency. As part of every agency’s OEP, employee volunteers are used to assist in effective evacuation and other duties during an emergency.

It is the responsibility of each agency to determine the risks faced by its employees, develop a comprehensive strategy and communicate to employees the safety procedures that are in place, based on both a safety and a threat analysis.

In instances where there is a known or suspected release of biological, chemical, or radiological agents outside an agency, authorities may strongly recommend that employees shelter-in-place. That means that rather than leave their place of work, employees will stay in their office building and wait for instructions.

Employees should familiarize themselves with the procedures that have been put into place at their agency, as well as the means of notification that an agency will use to inform and instruct employees. It is the responsibility of each agency to assess the benefits provided by any protective equipment. These decisions are based largely on the time it takes for an agency to evacuate the building, and other information gained through a threat assessment. Employees should check with their agency’s security/safety personnel to learn the status of any protective equipment provided by their agency.

A FEMA publication at www.fema.gov/library, Emergency Preparedness for Federal Employees in the National Capital Region, contains general information on emergency procedures governmentwide as well as specific considerations for employees in the Washington, DC area.

Employees with Disabilities—Executive Order 13347 of 2004 ordered agencies to consider, in their emergency preparedness planning, the unique needs of agency employees with disabilities and individuals with disabilities who the agency serves. Agencies are to coordinate with other levels of government as well as with private organizations and individuals and facilitate cooperation of emergency preparedness plans as they relate to individuals with disabilities. The order established within the Department of Homeland Security the Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities to coordinate agency activities under the order.

Emergencies that Prevent Employees from Reporting for Work

Agencies in the nation’s capital area follow the Washington, DC, Area Dismissal or Closure Procedures (see above) in emergency situations that prevent significant numbers of employees from reporting for work on time. Federal Executive Boards (see www.feb.gov) and Federal Executive Associations coordinate similar procedures in other major metropolitan areas.

Note: The following policies typically will not affect employees designated as “emergency employees” or “mission-critical emergency employees” (see above) who unless otherwise instructed are expected to report for work.

Short-Term Commuting Delays—Without prior approval from OPM, an agency may grant excused absence to employees who are prevented from reporting for work because of emergency conditions or to employees who experience unanticipated short-term commuting delays. For example, if an employee is unable to report for work due to security
measures, congested roads, disruption of power and/or water, or interruption of public transportation, an agency may use its discretionary authority to excuse the affected employee from work without charge to leave or loss of pay. Excused absence may be granted only for short periods of time.

**Long-Term Commuting Delays**—Employees may experience delays in reaching and entering their worksites for extended periods due to emergency or hazardous situations or heightened security measures. In these situations, employees should anticipate longer, more difficult commutes and should take appropriate action to ensure that they are able to report for work on time or request annual leave, other paid time off, or leave without pay.

**Employees Directed Not to Report for Work**—In the event of severe hazardous conditions, disruption of public services, or other emergency situations of short duration, employees may be instructed not to report for work. If an employee is prevented from working because he or she has been instructed by the head of his or her agency or other authorized official not to report for work, the employee normally will be excused from work without loss of pay or charge to leave. Agency management also may consider use of alternative worksites, where appropriate and feasible.

**Changing Employees’ Work Schedules**—During emergency situations, agencies may need to change employees’ work schedules to meet mission requirements. Typically, an employee’s tour of duty must be scheduled in advance of the administrative workweek and must consist of five consecutive workdays, with the same working hours each day. However, 5 U.S.C. 6101(a)(3) permits the head of an agency to change an employee’s work schedule without regard to these requirements as long as the changes are consistent with other laws and regulations and the agency follows the negotiated collective bargaining agreement, if applicable. In addition, if the head of an agency finds that a particular alternative work schedule (AWS) has had an “adverse agency impact,” the agency must terminate the AWS under 5 U.S.C. 6131(a)(2). If the use of AWS is provided for in a collective bargaining agreement, the agency may reopen the agreement and negotiate the termination of the AWS. (See 5 U.S.C. 6131(c)(3)(A).)

**Furloughs Due to Extended Emergencies**

In the event of a prolonged shutdown due to severe or hazardous conditions, disruption of public services, or other emergency situations, an agency may find it necessary to furlough non-emergency employees. Such an action places an employee in a non-duty, non-pay status for the duration of the furlough.

Under 5 CFR 752, agencies must follow adverse action procedures when furloughing covered employees for 30 consecutive calendar days or less or for 22 nonconsecutive workdays or less. Under normal conditions, these regulations require an agency to give employees against whom an adverse action is to be taken at least 30 days notice and an opportunity to respond before the action is taken. However, under 5 CFR 752.404(d)(2), agencies need not follow these two requirements when an adverse action furlough is based on “unforeseeable circumstances,” such as sudden breakdowns in equipment or sudden emergencies requiring the agency to curtail activities immediately. Agencies must follow reduction-in-force procedures when furloughing employees for 31 or more consecutive calendar days, or for 23 or more nonconsecutive workdays. Guidance regarding furloughs is at www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance. Although this guidance discusses a shutdown or emergency furlough where the agency no longer has the necessary funds to operate, it also applies in situations where employees are prevented from reporting for work due to a sudden emergency requiring the agency to curtail activities immediately.

**Other Emergency Policies**

**Premium Pay**—5 U.S.C. 5547(b) and 5 CFR 550.106 make exceptions to the biweekly premium pay limitation. When the head of an agency or his or her designee determines that an emergency posing a direct threat to life or property exists, an employee who is receiving premium pay for performing overtime work in connection with the emergency will be subject to an annual pay limitation rather than the biweekly pay limitation (with the exception of certain fixed premium payments, such as availability
Employees paid under an annual limitation receive premium pay only to the extent that the aggregate of basic pay and premium pay for the calendar year does not exceed the greater of the annual rate for GS-15, step 10 (including any applicable special rate or locality rate), or Level V of the Executive Schedule.

**Special Solicitations**—OPM may grant permission for special solicitations of federal employees, outside of the Combined Federal Campaign (CFC), in support of victims in cases of emergencies and disasters. Federal employees also may contribute to local relief efforts through their participation in the CFC.

**Emergency Leave Transfer**—The President may direct OPM to establish an emergency leave transfer program to assist employees affected by an emergency or major disaster. The emergency leave transfer program permits employees in an executive agency to donate unused annual leave for transfer to employees of the same or other agencies who have been adversely affected by the emergency or major disaster and who need additional time off from work without having to use their own paid leave.

**Hiring**—Under 5 CFR 213.3102(i)(2), agencies may make 30-day appointments in the excepted service to fill a critical hiring need and may extend them for an additional 30 days. They may use this authority to fill senior level positions, as well as positions at lower grades. Career Transition Assistance Plan (CTAP), Re-Employment Priority List, and Interagency CTAP (ICTAP) requirements under 5 CFR 330 do not apply to these appointments. Agencies also may make competitive service appointments for 120 days or less without clearing CTAP or ICTAP and OPM may authorize other options upon agency request, such as temporary emergency need appointments (up to one year), SES limited emergency appointments, re-employed annuitants, and rehiring retirees or others who left the federal government with buyouts. Agencies may also use governmentwide direct-hire authorities and may request specific direct-hire authority for occupations appropriate for support of relief and recovery efforts, and OPM may authorize other options, including waivers that facilitate the re-employment of annuitants.

**Telework**—An agency may require its teleworkers to continue to work at their alternative worksites on their telework day or on any of their regularly scheduled workdays during emergency situations when the agency is closed. An agency would not have to designate a teleworker as an emergency employee, but any requirement that a telework employee continue to work if the agency closes on his or her telework day or on any of his or her regularly scheduled workdays should be included in the employee’s telework agreement. Also see Worksite for Location-Based Pay Purposes in Chapter 1, Section 2, and Evacuation Payments in Chapter 1, Section 4.

OPM’s Handbook on Pay and Leave Benefits for Federal Employees Affected by Severe Weather Emergencies or Other Emergency Situations, which provides a general summary of the pay and leave benefits available to federal employees prevented from working, or required to work, in an area affected by severe weather emergencies or other emergency situations, is at http://main.opm.gov/policy-data-oversight/pay-leave/leave-administration.

**Pandemic Flu**

Office of Personnel Management guidance for federal departments and agencies as well as for individual employees on personnel practices and continuity-of-operations planning criteria related to pandemic influenza emphasizes the need to carry on the work of the government wherever possible and through whatever means available.

Policies that may be suitable include expanded telework, flexible and compressed work schedules, leave flexibilities, and alternative hiring practices, according to the guidance. In addition, it addresses issues including premium pay, insurance, employee assistance programs, retirement, and other benefits. For example, Federal Employees Health Benefits program carriers are to demonstrate flexibility including the following:

- OPM expects fee-for-service carriers to relax certain provisions such as their precertification requirement that the plan must be notified within two business days of an emergency admission.
- OPM expects fee-for-service carriers and HMOs to relax requirements about notifica-
tion and levels of benefit payment if victims are taken to non-plan and/or non-PPO hospitals or other treatment centers.

- OPM expects all carriers to make certain FEHB members get additional supplies of medications as backup for emergency situations if necessary.

Similarly, it says that the Office of Federal Employees’ Group Life Insurance will follow special procedures in a pandemic health crisis and will expedite all life insurance claims related to the emergency.

**Employees Exposed to Influenza**—Supervisors should consult with their human resources office and follow any public health recommendations or medical advice offered by the employee’s physician when determining whether and when an employee should be allowed to return to work following an absence due to pandemic influenza. See Chapter 5 for information about leave policies when employees or family members are exposed to pandemic flu or other communicable diseases.

**Telework**—During an emergency situation, such as a pandemic health crisis, an agency may direct a telework employee to work from his or her telework site for the duration of the emergency, and the employee may be prevented from reporting at least once a week on a regular and recurring basis to the regular worksite. Under 5 CFR 531.605(d)(3) an agency may make a temporary exception to the requirement that a telework employee must report at least once a week on a regular and recurring basis to the regular worksite.

An agency may make a temporary exception when the telework employee is affected by an emergency situation (such as a pandemic health crisis), which temporarily prevents him or her from commuting to the regular worksite. In such emergency situations, the employee would continue to be entitled to the locality rate for the regular worksite. Also see Worksite for Location-Based Pay Purposes in Chapter 1, Section 2.

OPM in Civilian Policy Memorandum 2009-14 (available at www.chcoc.gov/transmittals) emphasized to agencies the availability of human resources flexibilities in a pandemic. It said telework can be used in advance of any formal evacuation orders and requirements to work at home or at an alternative location and stressed the value of having prepared for and tested telework capabilities if an evacuation is ordered.

**Evacuation Payments**—Rules at 5 CFR 550.409 permit an agency to order its employees to evacuate from their worksites and perform work at home during a pandemic health crisis. The agency may designate an employee’s residence (or an alternative location mutually agreeable to the agency and the employee) as a safe haven and provide evacuation payments under 5 U.S.C. 5523. Evacuated employees may be assigned to perform any work considered necessary or required to be performed during the period of evacuation without regard to the grades, levels, or titles of the employees. However, the employee must have the necessary knowledge and skills to perform the assigned work. An employee’s failure or refusal to perform assigned work may be a basis for terminating evacuation payments, in addition to disciplinary action. Also see Evacuation Payments in Chapter 1, Section 4.

**Special Allowances**—Regulations at 5 CFR 550.409(b) permit the head of an agency, in his or her sole and exclusive discretion, to grant special allowance payments, based upon a case-by-case analysis, to offset the direct added expenses incident to performing work from home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis.


### Section 3

**Evaluation and Advancement**

**Performance Appraisal Systems**

Federal employees are subject to periodic appraisals of their job performance under 5 CFR 430. These performance appraisal procedures can have an impact on a wide variety of personnel decisions. Under the performance management rules, agencies must establish performance appraisal systems that:
• provide for periodic appraisals of job performance;
• encourage employee participation in establishing performance standards; and
• use appraisal results as a basis for personnel actions affecting employees.

The performance appraisal systems set up and used by agencies must be designed to:
• establish performance standards that will permit accurate evaluations of job performance on the basis of objective criteria related to the job;
• communicate to each employee the performance standards and critical elements of the employee’s position with respect to initial appraisal periods, and thereafter at the beginning of each following appraisal period;
• evaluate each employee on such standards during the appraisal period;
• recognize and reward employees whose performance so warrants;
• assist employees in improving unacceptable performance; and
• reassign, demote, or remove employees who continue to have less than acceptable performance, but only after such workers are given an opportunity to demonstrate performance at a level above unacceptable. The appraisal systems must be based on objective, job-related criteria and performance standards must be developed for each element of the job on which an employee is to be evaluated.

Note: Special policies apply to senior executives (see Determining Pay in Section 9 of this chapter) and may apply in alternative personnel systems (see Section 7 of this chapter).

Performance standards are the expressed measure of the level of achievement established by management for duties and responsibilities of a position or group of positions. Performance standards may include, but are not limited to, elements such as quantity, quality, timeliness, and manner of performance. Agencies are encouraged to have employees participate in establishing their standards.

Managers and supervisors will rate subordinates on the elements of the job. Employees who perform at an unacceptable level in one or more of the critical elements will be given the opportunity to improve, with supervisory help. If adequate improvement does not occur, the agency may take action to remove or reduce the grade of the employee.

If an employee’s most recent rating of record (formal summary rating) is below Fully Successful (level 3), the agency is required to deny the employee’s within-grade increase.

Employees have the right to be consulted regarding the setting of performance standards and critical elements and unions have the right to negotiate procedures under which bargaining unit employees are consulted. However, the final determination of what job performance standards and critical elements will be set for a job is not a negotiable issue between unions and an agency, and management has the right to set the performance standards and critical elements as it sees fit. Of course, should removal or demotion result from application of employees’ job performance standards, they would have regular appeal rights to the Merit Systems Protection Board or through their unions via a negotiated grievance procedure, if applicable.

Each department and agency sets up its own performance appraisal system based on OPM’s general regulations.

When an employee fails to meet an acceptable level of performance on a critical element, the first steps an agency must take are corrective in nature. These could include counseling, remedial training, and more direct supervision. When employees fail to improve their performance with respect to one or more critical elements, and after having been given a reasonable time to demonstrate acceptable performance, an agency may take action to remove or reduce the grade of such workers.

Employees so affected are entitled to 30 days advance written notice that identifies the specific instances of unacceptable performance and the critical elements involved in each instance. The employee is also entitled to be represented by an attorney or other representative; a reasonable time to answer orally and in writing; and a written decision within 30 days after the expiration of the notice period. Agencies may extend the initial notice period as circumstances warrant.

At the point where the agency decides to take adverse action, employees have the right to appeal to the MSPB based on the nature of their appointment and the type of position occupied. Employees represented by unions that have negotiated grievance procedures in
their contracts may elect to file a grievance under the negotiated grievance procedure rather than appeal to MSPB, but not both.

OPM periodically reviews performance evaluation systems.

Additional information is at http://apps.opm.gov/perform/clearing.

Training and Professional Development

Training and professional development can be an essential element of a federal employee’s career advancement. Agencies keep records of approved training in their training files, procurement records, and electronic personnel records. Agencies use their records for planning and evaluation purposes. You also should keep your own record of any significant programs, whether sponsored by your agency or taken on your own.

General rules governing training are at 5 CFR 410. Agencies may:

- pay training and education expenses from appropriated funds or other available funds for training needed to support program functions;
- reimburse employees for all or part of the costs of training or education;
- share training and education costs with employees;
- pay travel expenses for employees assigned to training;
- adjust an employee’s normal work schedule for educational purposes not related to official duties;
- use funds appropriated for travel expenses to pay for employees’ expenses to attend meetings, if the meetings concern functions or activities for which the appropriation is made, or will contribute to improved conduct, supervision, or management of the functions or activities;
- allow employees to accept payment, or reimbursement, of travel, subsistence and other expenses incident to attending meetings from a non-profit organization; and
- pay an employee’s membership fee in a professional organization if the membership in the association is an incidental by-product of meeting attendance that the agency pays, or purchase an organizational membership in the association or society.

The Government Employees Training Act (Public Law 85-507, codified in Title 5, United States Code, Chapter 41), makes available to most federal agencies the authority to train employees, thereby recognizing that investments in workforce development are essential to achieving an agency’s mission and performance goals by improving employee and organizational performance.

Under the training law, department and agency heads are required to regularly assess the workforce’s needs for skills essential to meet mission and performance requirements. The review is an ongoing assessment process that is an integral part of human resource planning. Its purpose is to help ensure that the expenditure of public funds to develop an organization’s human resources is directly linked to: (a) fulfilling the organizational mission, (b) improving productivity, and (c) providing quality products and service to the public.

The Federal Workforce Restructuring Act of 1994 amended the Government Employees Training Act to expand the definition of training from that of directly related to the performance of “official duties” to any training that is “mission-related.”

The Federal Workforce Flexibility Act of 2004 required agencies to: develop a comprehensive management succession program; evaluate training programs on a regular basis and ensure alignment with strategic goals; and train new supervisors within one year of appointment, and retrain them at least every three years, in areas including strategies for mentoring employees, improving performance management and productivity, and conducting performance appraisals. In addition, the law set certain standards for SES candidate development programs. See Executive Development in Section 9 of this chapter.

Annual appropriations laws prohibit use of appropriated funds for training that is offensive to federal employees and unnecessary in the execution of their official duties. This includes training associated with religious or quasi-religious and “new age” belief systems, training that induces high levels of stress unrelated to the employees’ work environments, and training meant to change employees’ personal values or lifestyle outside the workplace.

Workforce development needs may be met through an agency’s own facilities, other
government facilities such as interagency or shared training, or nongovernment facilities, whichever is found to be most effective. Agencies are required to open their training programs to employees of other agencies when the sharing of training would result in better training, improved service, and savings to the government. This includes agency sharing of technology-based learning programs.

Travel, per diem, and transportation are training expenses governed by 5 U.S.C. 4109(a)(2)(A) and (B). The provisions in law that pertain to paying all or some of the costs of tuition and other training expenses apply to paying travel expenses. This means that the agency decides which travel expenses it will pay for employees assigned to training.

**Leadership Development**—Under 5 CFR 412, agencies must support initial and ongoing training and development of both current and future leaders. Office of Personnel Management guidance states that agencies must, at a minimum, incorporate these components into their leadership development approaches:

- methods for identifying potential leaders with options for management nomination and for self-nomination;
- initial and periodic assessment of the leadership competencies of each supervisor, manager, and executive, ideally with multiple sources of input;
- plans tailored to the individual’s level of management;
- training for new supervisors and managers to ensure they have completed development of basic supervisory skills, including communicating expectations, and managing, evaluating, improving and rewarding employees’ performance;
- periodic evaluations to determine how a program accomplishes or effectively promotes the agency’s specific performance plans and strategic goals; and
- use of a broad range of learning methodologies.

Agencies are encouraged to include practices such as: active involvement of the leader’s supervisor, coach, mentor, peer group, or management consultant; feedback; learning activities that integrate individual learning with team or organizational learning; structuring development challenges into future assignments; and attention to government-specific issues of concern, such as procurement integrity and ethical standards, or to areas of increasing responsibility, such as managing employees with nontraditional career patterns or managing a multi-sector workforce.

In drafting the required written policy (5 CFR 412.103), agencies must ensure the following criteria are met:

- clear linkage to organizational strategy, goals, and values and to governmentwide leadership competencies and executive core qualifications as well as to agency-specific core requirements;
- top-level commitment as demonstrated by dedicating adequate resources, active involvement of higher-level officials in the development of their managerial subordinates, and by serving as positive role models, mentors, and teachers for leadership;
- integration with other related human capital management processes, such as succession planning, talent management, and performance management;
- needs analysis based on an identification of competency gaps and current mission or business goals and challenges; and
- systematic evaluation of the extent of learning and where feasible, its return on investment.


**LEAD Certificate**—The Leadership Education and Development Certificate Program is designed for current and aspiring government leaders. Participants must complete five seminars within three years in one of the four levels of leadership: project/team lead, supervisor, manager or executive. Participants register for courses individually. To receive a LEAD certificate, they must submit to OPM a list of completed courses and a paper detailing lessons learned and practical application on the job. A list of requirements with links to pertinent courses is at [http://leadership.opm.gov/certificates/LEAD](http://leadership.opm.gov/certificates/LEAD).

**Meeting Learning Needs**—An employee’s performance-based learning needs may be met by planned work experience, details, and developmental assignments; on-the-
job-learning and supervised practice; training and education provided through agency facilities, other government facilities, and nongovernment facilities; coaching and mentoring; and self-study.

Emphasis is placed on using the most economical means available to satisfy agency needs for performance improvement. Interagency training is used instead of internal training when this would result in better training, improved service, or savings to the government. Emerging technologies are used to deliver just-in-time learning and performance support.

Each agency is required by law to have a process in place for determining its performance improvement needs and for administering its human resource development program.

**Human Resource Development Programs**—Human resource development programs may be authorized to:

- orient employees to the federal service, their agencies and organizational assignments, and conditions of employment;
- guide new employees to effective performance during their probationary period;
- provide knowledge and skills to improve job performance;
- prepare employees with demonstrated potential for increased responsibility in meeting future staffing requirements;
- provide continuing professional and technical training to avoid knowledge/skill obsolescence (for example, keeping current the skills of scientists, doctors, engineers, lawyers, registered nurses, computer programmers, procurement specialists, plumbers, electricians, and clerical employees);
- implement reorganizations, changing missions, and administration initiatives;
- develop the managerial workforce focusing on competencies identified as essential to effective performance at supervisory, managerial, and executive levels (for example, communication, interpersonal skills, human resource management, technology management, financial management, planning and evaluation, and vision);
- provide education leading to an academic degree if necessary to assist in the recruitment or retention of employees in occupations in which there are existing or anticipated shortage of qualified personnel, especially in those areas requiring critical skills; and
- provide for the career transition, training, and/or retraining of employees displaced by downsizing and restructuring.

**Training Related to Official Duties**—Agencies are authorized to pay, or reimburse you for, all or a part of the necessary expenses of training related to official duties. This includes tuition, books, supplies, and travel. It also means that you can share with your agency costs of training that benefit both the agency and you. For example, the agency could pay half the cost of a college course, while you pay the other half. However, the agency may not pay for training that is unrelated to your official government duties.

Your agency also may approve a meeting or conference as a developmental activity if the content is pertinent to your official functions and activities and it is evident that you will derive developmental benefits by attending.

A wide variety of basic education, skills development, and career enhancement programs are tailored to agency needs and resources. Some of these are adult basic education programs; the Veterans Recruitment Appointment program; apprenticeship programs; administrative, technical, and professional career ladder programs; and career transition programs.

Agencies may provide training in basic job-related skills. They can also sponsor training courses in local schools under the adult basic education program. These courses may be given at government expense either during or after working hours.

Although training must be related to your official duties, your agency can prepare you for anticipated future assignments or to accomplish special agency initiatives. You can receive training leading to promotion if you were competitively selected for training under your agency’s merit promotion program.

Your agency may pay for training that prepares you for an examination, if the training is relevant to improving your performance. Under Public Law 107-107, an agency may at its discretion pay for expenses for employees to obtain professional credentials,
including expenses for professional accreditation, state-imposed and professional licenses, professional certification, and examinations to obtain such credentials.

Your supervisor may adjust your customary workweek to allow you to take courses not sponsored by the agency if additional costs to your agency will not be incurred, completion of the course will better equip you for work in the agency, and there will not be appreciable interruption of work.

Normally you are in full pay status while participating in agency or interagency training programs. However, training law prohibits paying overtime to Title 5 employees who are in training or while they are traveling to training. If salary payments continue during the training period, the annual and sick leave regulations apply. Normal workdays falling within academic recess periods should be charged to leave unless you devote such periods to study or research or unless you are returned to a work status.

If you feel you have been unjustly denied permission to attend training, you may use your agency’s procedures if the matter cannot be resolved at the supervisory level and your agency has not set up a separate system for this purpose.

When you are assigned to training, your agency may require that you sign an agreement to continue employment in your agency for a period of time. If you do not complete the agreement, you may have to repay the agency for your training expenses.

Some agencies provide individual learning accounts, expressed in terms of dollars or hours or both, for employees to use for personal learning and development and/or to meet workforce needs. See www.opm.gov/hrd/lead/ILA/ilarpind.htm and check with your agency regarding availability.

Under 5 CFR 410.501, agencies may allow their employees to accept reimbursement or waiver of tuition fees from nonprofit organizations for training so long as it does not compromise the integrity of the employee or represent a payment for services rendered to the organization prior to the training. Prior approval from a designated agency official is required.

Training Centers—The Federal Executive Institute (FEI) and the Management Development Centers work to develop career leaders for the federal government. The facilities offer residential learning environments and are staffed with program directors, seminar leaders, and facilitators.

The goals of the management development centers are to create, share, and apply knowledge and skills to address the challenges faced by public sector organizations and develop the values and competencies that are the foundation of public service, transcending individual professions and missions. Trainees, primarily supervisors, managers, and executives, study at the centers for between several days to four weeks. The centers also offer customized programs either on-site or at agency locations, as well as consulting services for identifying and addressing organizational challenges.

Eastern Management Development Center
239 Lowe Drive
Shepherdstown, WV 25443
Phone: (304) 870-8000
Email: emdc@opm.gov

Western Management Development Center
Cherry Creek Place
3151 South Vaughn Way
Aurora, CO 80014
Phone: (303) 671-1010
Email: wmdc@opm.gov

The FEI serves as the government’s development center for senior executives. FEI brings SES members and GS-15s together for courses that help executives develop broad corporate viewpoints, understand their constitutional roles, and enhance skills.

Trainees work individually, in teams, and as a group with FEI faculty. The FEI faculty
comprises a wide range of professionals from academia and private consulting and training organizations, along with executives in residence—senior government leaders on special assignment at the Institute.

**Federal Executive Institute**  
1301 Emmet St.  
Charlottesville, VA 22903  
Phone: (434) 980-6200  
Email: fei@opm.gov

Course catalogs and other information about these training centers are at www.leadership.opm.gov.

**USAlearning**—USAlearning, www.usalearning.gov, is designed to provide one-stop access to e-training. The site contains free courses ranging in topics from communication to project management, along with additional products and services, some free and some for a fee.

**Meetings Related to Agency Functions or to Improve Conduct of Agency Activities**—Training law provides an exception to the prohibition in 5 U.S.C. 5946(1) on using appropriated funds to pay employee expenses for attending professional meetings. Under 5 U.S.C. 4110 an agency may use funds appropriated for travel expenses to pay for employees’ expenses to attend meetings if the meetings concern functions or activities for which the appropriation is made, or will contribute to improved conduct, supervision, or management of the functions or activities.

**Memberships in Professional Organizations**—Statute (5 U.S.C. 5946(1)) prohibits using appropriated funds to pay for individual employee memberships in professional associations and societies. However, association membership is often included in registration fees for a conference or meeting. If the agency pays the registration fees, the employee’s membership in the association is considered an incidental by-product of meeting attendance. In addition, agencies may purchase an organizational membership in the association or society for a specific agency position and the incumbent in that position may use that membership.

**Reimbursement of Meeting Expenses**—A provision of training law (5 U.S.C. 4111) allows agencies to establish procedures under which employees may accept payment, or reimbursement, of travel, subsistence and other expenses incident to attending meetings from a non-profit organization. Accepting meeting expenses must not compromise the integrity of the employee or represent a payment for services rendered to the non-profit organization prior to the meeting. Prior approval from a designated high level agency official is required, often following a consultation with, or review by, the designated agency ethics official.

**Academic Degrees**—Under 5 U.S.C. 4107 (5 CFR 410, subpart C), an agency may select and assign an employee to academic degree training and may pay or reimburse the costs of the training from appropriated or other available funds. The training must contribute significantly to meeting an identified agency training need, to resolving an identified agency staffing problem, or to accomplishing goals in the agency’s strategic plan; be part of a planned, systematic, and coordinated agency employee development program linked to accomplishing the agency’s strategic goals; and be accredited and provided by a college or university that is accredited by a nationally recognized body.

In exercising the authority, an agency must, consistent with the merit system principles at 5 U.S.C. 2301(b)(2) and (7), consider the need to maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in government service and provide employees effective education and training to improve organizational and individual performance. The agency also must assure that the training is not for the sole purpose of providing an employee with an opportunity to obtain an academic degree or to qualify for appointment to a particular position for which the degree is a basic requirement; and assure that no authority is exercised on behalf of any employee occupying or seeking to qualify for a non-career appoint-
ment in the Senior Executive Service; or appointment to any position that is excepted from
the competitive service because of its confidential policy-determining, policy-making, or
policy-advocating character. The agency must, to the greatest extent practicable, facilitate
the use of online degree training.

Agencies that pay or reimburse employees for academic degree training generally must
require the employee to enter into a continued service agreement with the agency prior to
attending the training. Continued service agreement requirements apply to both tuition
reimbursement programs and academic degree training programs.

Training Unrelated to Official Duties—Agencies may adjust an employee’s normal
work schedule for educational purposes. This authority allows the employee to take courses
not related to his or her official duties. A special tour of duty is permissible if the following
conditions are met:

• It will not appreciably interfere with work accomplishment.
• The agency incurs no additional personnel services costs.
• Course completion will equip the employee to more effectively work in the agency.
• The employee receives no premium pay while on the special tour of duty, even if
premum pay would be otherwise payable.

Intergovernmental Personnel Act—The Intergovernmental Personnel Act of 1970 and
Title VI of the 1978 Civil Service Reform Act authorized the temporary assignment of
employees between the federal government and state, local and Indian tribal governments,
institutions of higher education and certain other organizations. Assignments are arranged
by individual employing agencies.

An employee may be assigned for up to two years, which may be extended for up to two
more years if the parties agree, with a six-year lifetime maximum and a minimum one-year
wait after any assignment lasting four years. The employee must agree, as a condition of
accepting an IPA assignment, to serve with the federal government upon completion of the
assignment for a period equal to the length of the assignment. An employee who fails to carry
out that agreement must reimburse the agency for its share of the costs of the assignment,
exclusive of salary and benefits. An agency head has discretion to waive reimbursement.

At the end of the assignment, the employee must be allowed to resume the duties of
the position or must be reassigned to another position of like pay and grade. Assignees
continue to encumber the positions they occupied prior to the assignment, and the position
is subject to any personnel actions that might normally occur. Employees on an IPA
assignment are on detail or leave without pay. The assignee remains an employee of his or
her original organization and retains the rights and benefits attached to that status. The
position is subject to any personnel actions that may occur. Rules on the program are at 5
CFR 334. See www.opm.gov/policy-data-oversight/hiring-authorities/intergovernment-
personnel-act.

IT Employee Interchange Program—Rules at 5 CFR 370 provide authority for informa-
tion technology employees and managers in General Schedule grades 11 and above and
members of the Senior Executive Service who are under a career or career-conditional
appointment or an appointment of equivalent tenure in the excepted service, to work for
between three and 15 months at private sector companies for professional development
purposes. Federal employees continue to receive their federal salaries and benefits during
interchange assignments and do not lose their rights, including consideration for promotion,
leave accrual, continuation of retirement and insurance benefits, pay increases the employ-
ee otherwise would have received and other employment-related rights.

Before the detail begins, an agency and employee must enter into a written agreement
that must specify the terms and conditions of the detail (duties, duration, including the terms
on which extensions may be granted, if applicable), whether the individual will be supervised
by a federal or private sector employee, the requirement for federal employees to remain in
the civil service upon completion of the assignment for a period equal to the length of the
assignment including any extension, and the obligations and responsibilities of all parties.

Only employees rated at the highest levels of the applicable performance appraisal
system are eligible. Eligible companies are those defined as profit-making businesses in the
Central Contractor Registration Database, which generally excludes academic institutions
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and non-profits (similar assignments to such entities may be available under the Intergovernmental Personnel Act—see above). See www.opm.gov/policy-data-oversight/training-and-development.

International Organizations—Under 5 CFR 352 subpart C, an agency may detail or transfer an employee to an international organization deemed eligible by the State Department. A detail or transfer normally may not exceed five years but may be extended three additional years upon the approval of the head of the agency and the State Department. A transferred employee is entitled to be re-employed in his or her former position or one of like status within 30 days of his or her application for re-employment. See www.opm.gov/policy-data-oversight/hiring-authorities/details-transfers.

Promotions

A promotion is a change to a higher grade separate from within-grade increases or quality step increases, which provide salary increases within the scheduled rates of the grade (see Chapter 1, Section 4). Opportunities for advancement often occur when new positions are established because of reorganization, added program responsibilities or when an employee vacates a position. Competition among employees is generally required. In addition, there are “career ladder” promotions (see below) in which no further competition is required once the employee meets certain requirements.

General rules governing promotion are at 5 CFR 335.

For promotion from one General Schedule position to another in the competitive service, the employee must also meet time-in-grade requirements. Generally, for advancement to positions at GS-12 or above, the candidate must have completed a minimum of 52 weeks in a position no more than one grade lower than the position to be filled. For advancement to positions at GS-6 through GS-11, candidates must have completed a minimum of 52 weeks in a position no more than two grades lower when the position is classified at two-grade intervals; no more than one grade lower when the position is classified at one-grade intervals; or no more than one or two grades lower when the position is classified at one-grade intervals but has a mixed interval promotion pattern.

Advancement to positions up to GS-5 have no time restrictions if the position to be filled is no more than two grades above the lowest grade the employee had held within the preceding 52 weeks. Employees in competitive service GS positions at grades 5 and above must serve 52 weeks in grade before becoming eligible for promotion to the next grade level.

Each agency is required to have a merit promotion plan conforming to OPM requirements and detailing how promotions are made in the agency. To be eligible for promotion, employees generally must meet the position's qualification requirements and, if applicable, time-in-grade requirements, the time-after-competitive-appointment restriction, and requirements for fully successful performance. Awards can be part of promotion consideration.

Promotions are made either competitively or noncompetitively. Examples of noncompetitive promotions are situations where employees are promoted because (a) they are in a career ladder that provides for successive promotion up to an established full performance level, or (b) their position is reclassified at a higher grade due to the addition of higher-level duties and responsibilities.

Merit Promotion—The purpose of the federal merit promotion policy is to ensure the selection of the best qualified candidates through a system of open competition based on relative ability, in accordance with the requirements of the merit system principles in Title 5, United States Code. Responsibility for the day-to-day operation of the merit promotion program rests primarily with individual agencies, but is subject to requirements prescribed by OPM. These requirements apply only to the competitive civil service and describe when competition is required and how it is to be carried out.

The rules that government agencies must use in deciding whom to promote or hire for a vacant position are provided in Section 335.103 of Part 335 of Title 5, Code of Federal Regulations. These regulations require that each agency adopt and administer a program designed to ensure a systematic means of selecting for promotions according to merit. As part of the program, agencies must develop merit promotion plans that cover all positions to which promotions are made. Each agency is also responsible for ensuring that its merit
promotion plans operate compatibly with each other. The plans must be in writing with copies available to all job candidates.

In addition to specifying the positions that are covered, agency merit promotion plans must establish areas of consideration that are sufficiently broad to ensure the availability of high-quality candidates, taking into account the nature and level of the positions to be filled. Additionally, under the Veterans Employment Act of 1998, preference eligibles or veterans who have been separated under honorable conditions from the Armed Forces after three or more years of continuous active service may compete for vacancies under merit promotion procedures when an agency accepts applications from individuals outside of its own workforce.

Agency merit promotion plans also specify the methods that will be used to evaluate applicants for promotion as well as to select employees for training that leads to promotion. Moreover, these plans outline management’s right to use selection procedures to select or not select from among any particular group of best-qualified candidates. This right includes the right to select from other appropriate sources, such as re-employment priority lists, reinstatements, transfers, applicants with disabilities, or applicants from outside the government who are certified as eligible by agency delegated examining units or OPM.

By regulation, in deciding which source or sources to use, agencies are responsible for determining which source is the most likely to provide candidates who will best help the agency meet its mission objectives and affirmative action goals. Areas of consideration are sometimes affected by negotiated agreements between agencies and employee unions. These agreements may place limits on the area of consideration that can be used to fill vacancies under certain conditions.

Most often, vacancies are filled in one of three ways. If a current employee is chosen to fill a vacancy and the selection involves an increase in the selectee’s grade level, then the process is governed by the competitive merit promotion regulations. If the person selected is already at the grade level of the job being filled or was once at that grade level, that person can be noncompetitively selected for the job. If the selectee is not a federal employee, competitive procedures that are in most ways analogous to those used in the merit promotion process govern the selection process. In actual practice, a number of basic steps typically occur whenever an agency has a vacancy to fill.

**Position Reclassifications and Grade Change**—Occasionally, federal employees may be given work assignments that change the level of difficulty, responsibility, or qualification requirements of their positions. When this change in duties is recognized as a continuing assignment, the affected employee’s position description normally is rewritten and the position is analyzed and evaluated. If this process determines that the employee’s new assigned duties are sufficiently different, the worker’s position may be reclassified.

When a position is changed and placed in a higher grade in this way, the incumbent may be eligible for a noncompetitive promotion in accordance with the agency’s merit promotion plan.

**Alternative Promotion Methods**—In settings such as demonstration projects that feature integrated job classification, performance management, and pay banding systems, changes in an employee’s compensation may be based upon his or her contribution to meeting organizational goals. An employee’s movement both within a given pay band and between pay bands is determined by his or her contributions, as scored under the performance evaluation system in place. Employees who have made significant contributions to organizational performance can be moved to higher pay bands without the need for formal competitive merit promotion processes.

**Career Ladder Promotions**

A career ladder promotion occurs when competitive hiring procedures are used to select someone to fill what is often a lower level trainee position with the purpose of developing the person to fill a higher level full-performance position. It is also a merit promotion in the sense that the individual must meet certain performance criteria to gain the promotion.

Although career ladders are typically found in the General Schedule, they are not restricted to that salary system. They are found throughout the federal workforce in pro-
professio nal, administrative, and support occupations. They may be but are not typically in trades, craft and labor jobs.

Agencies set their own policies on career ladder promotions in accordance with 5 CFR 335, generally in their merit promotion plans and collective bargaining agreements, if applicable.

For example, an agency might establish a management analyst position as a career ladder, GS-9/11/12. The employee is selected at the GS-9 level with a full performance level, or career ladder, to the GS-12 level. The employee is eligible for promotion to GS-11 after meeting the qualification requirements of OPM’s Operating Manual: Qualifications Standards for General Schedule Positions (or an agency-specific qualification standard approved by OPM, if applicable), time-in-grade restrictions under 5 CFR 300, subpart F, and having a performance rating of record of fully successful (or equivalent) or higher with no critical element of the performance standard being rated at less than fully successful (required by 5 CFR 335.104). The employee should discuss what is required for promotion with his/her supervisor.

Once the employee competes for and is placed in the career ladder position, there is no additional competition as the employee progresses through the grade levels of the ladder. A higher level position is not created for the employee as he or she progresses; it is the same position with the employee now compensated at the higher grade and taking on additional responsibilities to reflect the additional proficiencies and skills.

Employees do not have a “right” to a career ladder promotion. Although the employee might meet the eligibility requirements for promotion to the next grade of the ladder, the agency determines when to effect the promotion, unless the agency has an established policy or a collective bargaining agreement stipulating when career ladder promotions are effective upon meeting eligibility requirements.

The agency may choose not to effect a career ladder promotion for a variety of reasons, including for budgetary or program reasons, unless the agency has an established policy or collective bargaining agreement provision stipulating when career ladder promotions are effected.

The determinations to create a career-ladder position, the grade levels of the progression, the duty criteria, the qualification standards, and performance levels required for the career ladder progression are not negotiable, as these are management rights and/or prescribed by law or regulation. The procedures that an agency is required to follow in implementing these determinations might be negotiable, depending on the proposal.

An employee may grieve an alleged failure to comply with a law, rule, regulation, or bargaining agreement provision through a negotiated grievance procedure if one is available, provided the action is not specifically excluded from the grievance procedure by its terms, if “but for” that violation, the agency would have promoted the employee.

If covered under an agency administrative grievance procedure, failure to be promoted could be raised under such a procedure. Failure to be promoted is not an adverse action, and absent a claim of discrimination or whistleblower reprisal it could not be appealed to Equal Employment Opportunity Commission or Merit Systems Protection Board.

Note: This information pertains only to positions subject to Chapters 51 and 53 of Title 5, United States Code. Positions exempt from these chapters by statute—for example, certain alternative personnel systems (see Section 7 in this chapter)—establish their own systems under their specific statutory authority.

Executive Core Qualifications

The Executive Core Qualifications (ECQ) are required for entry to the Senior Executive Service (SES) and are used by many departments and agencies in selection, performance management, and leadership development for management and executive positions. Thus, developing skills in these areas can be crucial for individuals who aspire to the SES ranks. They are:

- **Leading Change**—The ability to bring about strategic change, both within and outside the organization, to meet organizational goals. Inherent to this ECQ is the ability to establish an organizational vision and to implement it in a continuously changing environment.
Leading People—The ability to lead people toward meeting the organization’s vision, mission, and goals. Inherent to this ECQ is the ability to provide an inclusive workplace that fosters the development of others, facilitates cooperation and teamwork, and supports constructive resolution of conflicts.

Results Driven—The ability to meet organizational goals and customer expectations. Inherent to this ECQ is the ability to make decisions that produce high-quality results by applying technical knowledge, analyzing problems, and calculating risks.

Business Acumen—The ability to manage human, financial, and information resources strategically.

Building Coalitions—The ability to build coalitions internally and with other federal agencies, state and local governments, non-profit and private sector organizations, foreign governments, or international organizations to achieve common goals.

In addition, a set of competencies is considered fundamental to the SES. These are interpersonal skills, oral communication, integrity/honesty, written communication, continual learning and public service motivation.

Also see www.opm.gov/policy-data-oversight/senior-executive-service.

Section 4
General Employment Policies

Security Clearances

Requirements that federal employees hold security clearances authorizing their access to classified information can affect individuals either before or after they are employed by the federal government. In some jobs in certain agencies, possession of a security clearance is a mandatory condition of employment. In other situations, a currently employed worker may need access to classified information only on a temporary or short-term basis.

The Office of Personnel Management has general responsibility for personnel security investigations and suitability policy. Executive Order 12968 of 1995 created a governmentwide policy on security clearances designed to replace differing rules in use by various agencies. The order set new standards and guidelines for determining who may have clearances and conducting background investigations. It also established a governmentwide policy on employee appeals of denials or revocations of clearances and contained a policy statement on nondiscrimination in granting of clearances.

Key features of the order are:

Access to Classified Information—Persons shall not be granted access to classified information unless they have been determined to be eligible for access by agency heads or designated officials based upon a favorable adjudication of an appropriate investigation of their background, have a demonstrated need-to-know, and have signed an approved non-disclosure agreement.

All employees are subject to investigation by an appropriate government authority prior to being granted access to classified information and at any time during the period of access to ascertain whether they continue to meet the requirements for access.

All employees granted access to classified information shall be required as a condition of such access to provide to the employing agency written consent permitting access by an authorized investigative agency, for such time as access to classified information is maintained and for a period of three years thereafter, to relevant financial records, consumer reports and records maintained by commercial entities within the United States pertaining to any travel by the employee outside the United States. Information may be requested where there are reasonable grounds to believe, based on credible data, that the employee or former employee is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power; information the employing agency deems credible indicates the employee has incurred excessive indebtedness or has acquired a level of affluence that cannot be explained by other information; or circumstances indicate the employee had the capability and opportunity to disclose classified information that is known to have been lost or compromised.
Financial Disclosure—Agencies shall designate each employee, by position or category where possible, who has a regular need for access to classified information that, in the discretion of the agency head, would reveal: the identity of covert agents; technical or specialized national intelligence collection and processing systems; the details of any code, cipher, or cryptographic system or equipment; particularly sensitive special access programs; or especially sensitive nuclear weapons design information.

Those employees may not be granted access unless the employee: files with the head of the agency a financial disclosure report, including information with respect to the spouse and dependent children of the employee, as part of all background investigations or reinvestigations; is subject to annual financial disclosure requirements, if selected by the agency head; and files relevant information concerning foreign travel, as determined by the Security Policy Board.

Eligibility Determinations—Except in agencies where eligibility for access is a mandatory condition of employment, eligibility for access to classified information shall only be requested or granted based on a demonstrated, foreseeable need for access. Eligibility for access to classified information may be granted where there is a temporary need for access, such as one-time participation in a classified project of a given duration provided the appropriate investigative standards have been satisfied. Access to classified information shall be terminated when an employee no longer has a need for access.

No employee shall be deemed to be eligible for access to classified information merely by reason of federal service or contracting, licensee, certificate holder, or grantee status, or as a matter of right or privilege, or as a result of any particular title, rank, position, or affiliation.

The government may not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation in granting access to classified information. In determining eligibility for access, agencies may investigate and consider any matter that relates to the determination of whether access is clearly consistent with the interests of national security. No inference concerning the investigative and adjudicative standards may be raised solely on the basis of the sexual orientation of the employee.

No negative inference concerning the investigative and adjudicative standards may be raised solely on the basis of mental health counseling. Such counseling can be a positive factor in eligibility determinations. However, mental health counseling, where relevant to adjudication of access to classified information, may justify further inquiry to determine whether other access eligibility standards are satisfied.

Appeals Procedure for Denials or Revocations of Clearances—Applicants and employees who are determined to not meet the standards for access to classified information shall be provided with:

• as comprehensive and detailed a written explanation of the basis for that conclusion as the national security interests of the United States and other applicable law permit;
• any documents, records, and reports upon which a denial or revocation is based, within 30 days upon request and to the extent the documents would be provided if requested under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a);
• information of their right to be represented by counsel or other representative at their own expense; to request any documents, records, and reports as described above upon which a denial or revocation is based; and to request the entire investigative file, as permitted by the national security and other applicable law, which, if requested, shall be promptly provided to the employee prior to the time set for a written reply;
• a reasonable opportunity to reply in writing to, and to request a review of, the determination;
• written notice of and reasons for the results of the review, the identity of the deciding authority, and written notice of the right to appeal;
• an opportunity to appeal in writing to a high level panel, appointed by the agency head, comprised of at least three members, two of whom shall be selected from outside the security field. Decisions of the panel shall be in writing, and final except for a personal involvement by the agency head; and
• an opportunity to appear personally and to present relevant documents, materials, and
information at some point in the process before an adjudicative or other authority, other than the investigating entity, as determined by the agency head. A written summary or recording of such appearance shall be made part of the applicant’s or employee’s security record, unless such appearance occurs in the presence of the appeals panel described above.

Determinations of Need for Access—A determination that an employee does not have, or no longer has, a need for access is discretionary and shall be conclusive.

Reinvestment Requirements—Employees eligible for access to classified information shall be the subject of periodic reinvestigations and may also be re-investigated if, at any time, there is reason to believe that they may no longer meet the standards for access.

Employee Education and Assistance—The head of each agency shall establish a program for employees with access to classified information to educate them about individual responsibilities and to inform them about guidance and assistance available concerning issues that may affect their eligibility for access to classified information, including sources of assistance for employees who have questions or concerns about financial matters, mental health, or substance abuse.

Employee Responsibilities—Employees granted eligibility for access to classified information shall: protect classified information in their custody from unauthorized disclosure; report all contacts with persons, including foreign nationals, who seek in any way to obtain unauthorized access; report all violations of security regulations to the appropriate security officials; and comply with all other security requirements.

Employees are encouraged and expected to report any information that raises doubts about another employee’s continued eligibility for access to classified information.

Sanctions—Employees shall be subject to appropriate sanctions if they knowingly and willfully grant eligibility for, or allow access to, classified information. Sanctions may include reprimand, suspension without pay, removal, and other actions in accordance with applicable law and agency regulations.

Timeliness—The Intelligence Reform and Terrorism Prevention Act of 2004, P.L. 108-458 required each adjudicative agency to: make a determination on at least 80 percent of all applications for personnel security clearances within an average of 120 days after the receipt of the application for a security clearance, including no more than 90 days to complete the investigative phase and no more than 30 days to complete the adjudicative phase; and make a determination on at least 90 percent of all applications within an average of 60 days after receipt of the application, including no more than 40 days for the investigation and 20 days for adjudication.

Review—The Merit Systems Protection Board has limited authority to review personnel actions involving security clearances or sensitive positions in general (see Jurisdiction in Chapter 10, Section 3). However, under Presidential Policy Determination 19 of 2012, employees who believe that a decision affecting their eligibility for access to classified information was an act of retaliation for their whistleblowing may challenge the action through an independent procedure, with higher-level review in certain circumstances (see Whistleblowing in Chapter 10, Section 3).

Other Orders—Several other executive orders established specific policies relating to security clearances:

- Executive Order 13381 of 2005 assigned to the Office of Management and Budget responsibility for improving the process for determining eligibility for access to classified national security information.
- Executive Order 13467 of 2008 generally required that background investigations and adjudications must be reciprocally accepted by all agencies and that each successively higher level of investigation and adjudication may build upon, but not duplicate, the ones below it. Implementing rules covering issues including breaks in service and changes in risk level are at 5 CFR 731.104 and 731.106.

Discipline

There are two general types of discipline: that based on performance and that based on conduct. Generally, misconduct is the failure to follow a workplace rule (for example, tardiness and absenteeism) and poor performance is the failure of an employee to do his or her job at
an acceptable level. Depending on the action taken, appeals of final agency actions may be filed either with the Merit Systems Protection Board (see Chapter 10, Section 3) or through grievance procedures—either administrative (see below) or those negotiated under union contracts, if applicable (see Negotiated Grievance Procedures in Section 6 of this chapter). The employee may use one route or the other, but not both. Also, the employee must meet eligibility requirements—for example, the completion of a mandatory probationary period.

In addition, some agencies employ “alternative discipline” techniques designed to resolve workplace disputes that might come from a circumstance where formal disciplinary action otherwise might be taken.

**Performance-Based Discipline**—Federal agencies may demote or remove an employee for unacceptable performance—that is, performance of an employee which fails to meet established performance standards in one or more critical elements of such employee’s position—under Chapter 43 of Title 5 of the United States Code. (Note: Where the agency determines that the level of performance is so poor that it constitutes misconduct, discipline for poor performance may be taken under Chapter 75—see below). While most employees may appeal such an action to the MSPB, the appeal will not succeed if the agency can support its action with substantial evidence that the employee has failed to meet performance standards. MSPB regulations define substantial evidence as the degree of evidence that a reasonable person might accept as adequate to support a conclusion, even though other reasonable persons might disagree. This is a lower burden of proof than exists in disciplinary actions for misconduct.

A key component of an action taken for unacceptable performance is the performance standards. These should reflect what agency management wants from the incumbent of a position and should provide a means to measure the accomplishment of those goals. Agencies have flexibility to develop performance standards, but in a Chapter 43 action an agency must show that the employee’s performance under one or more critical elements was below the minimally successful level. The critical elements an employee failed to meet must be reasonable, realistic, attainable, and, in the language of the law, “to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria.”

Employee performance standards need not be completely objective, but must be precise enough to invoke a general agreement regarding their meaning, and must provide a firm benchmark toward which employees can aim their performance. The degree of objectivity and specificity required in performance standards varies with the position. Positions with greater discretion and independence frequently require less objectivity and specificity in their performance standards. Even when the standards fail to clearly communicate management’s expectations, the Board will sustain a Chapter 43 action if the agency otherwise informed the employee of the specific work requirements.

While an employee may challenge the validity of the performance standards, MSPB will strike down a standard only if it determines that the agency harmed the employee by abusing its discretion in establishing the standards. For example, MSPB will not uphold a removal or demotion based on a standard that requires an unreasonably high level of performance.

Nor may an agency hold an employee to a standard that requires perfect performance—not a single error during the rating period—unless the agency can show that death, injury, or a breach of security could result from a single failure to fulfill the standard. Finally, where an agency writes a performance standard that describes acceptable performance in terms of what employees should not do, but fails to inform them of what they should do, the agency has crafted an invalid “backward standard.”

An agency may notify the employee of performance deficiencies as soon as they become known; it need not wait until an annual performance review to do so.

OPM regulations require an agency that seeks to remove or demote an employee for poor performance to first (1) inform the employee of the critical job elements in which he or she is deficient, (2) inform the employee what is required under those critical elements, (3) inform the employee that failure to fulfill the elements may lead to demotion or removal, (4) provide the employee an opportunity to improve his or her performance, also
known as an “opportunity period,” and (5) assist the employee in improving his or her performance.

Many federal agencies use performance improvement plans, or PIPs, to meet those requirements. An agency may not substantially change the employee’s performance standards at the beginning of the opportunity period and then find that the employee’s performance is unacceptable under the new standards. However, an agency may limit an employee’s duties and responsibilities during the opportunity period to specific parts of his or her regular duties, which puts focus on the areas of deficiency.

There is no definitive rule on the length of the opportunity period. The sole criterion is that the employee must have a reasonable opportunity to improve. How long is “reasonable” depends on the position and the duties involved, but the MSPB has found opportunity periods of 30 days, and even less, acceptable in some instances. If an employee is on extended leave during the opportunity period, extension of the period may be considered in order to ensure a reasonable opportunity to improve. When an employee’s performance improves to an acceptable level, but then, within a year, relapses in the same area in which the improvement had occurred, the agency may remove or demote the employee without affording a new opportunity to improve.

An agency has considerable flexibility in the assistance it provides during the opportunity period. For example, the agency can provide written feedback on work products, oral counseling and guidance, or formal training sessions. However, the agency must do something and it must meet its commitments. Where an agency either fails to provide assistance or fails to provide promised types of assistance, MSPB has held that the agency has not provided a reasonable opportunity to improve. In that event, the agency action may be reversed.

Finally, the agency must monitor and document the employee’s performance during the opportunity period. The agency must be prepared to prove, by substantial evidence, that the employee’s performance during the opportunity period was deficient as measured against the critical elements of the position.

Although the agency bears a relatively low burden of proof in taking a disciplinary action on performance grounds, it must present evidence, testimonial and documentary, about an employee’s performance during the opportunity period. If the agency fails to present substantial evidence, the Board will reverse the action.

Conduct-Based Discipline—Adverse actions based on conduct charges are brought under Chapter 75 of Title 5, United States Code. In general, an agency must establish by a preponderance of the evidence that the action is in the interests of the efficiency of the service because of the employee’s conduct (or, when this section is used for performance reasons, that the employee has performed poorly), and that all relevant factors were considered in selecting the penalty.

When taking an adverse action on conduct grounds an agency generally must comply with certain requirements in personnel laws and rules. These requirements include 30 days of advance notice in writing of the charges (unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment might be imposed) that must explain the charges and be specific enough to permit a detailed reply. The employee must be told of his or her right to review the material on which the action is based.

An agency generally may not suspend an employee or put him or her on annual leave during a notice period. However, an agency may shorten the notice period or indefinitely suspend an employee if it has reason to believe he or she has committed a crime, so long as there is a connection between the alleged crime and the efficiency of the service.

MSPB and arbitrators have the authority to impose lesser penalties, under the standards MSPB outlined in a 1981 decision, Douglas v. Veterans Administration (6 MSPB 313). These “Douglas factors” are used to weigh whether a penalty is appropriate for an offense and whether it is consistent with past disciplinary actions in similar situations.

An employee also can successfully challenge a conduct-based action by showing that it was the result of a prohibited personnel practice. If this claim is raised, the agency must show that its decision was taken for legitimate reasons. If a prohibited
practice is proved, the Office of Special Counsel may seek discipline against the supervisor who took it by filing a complaint with MSPB.

Also, an agency’s failure to meet procedural requirements in taking an adverse action, if it is judged a “harmful error” to the employee’s case, can be grounds for overturning the decision.

An employee believing the action was motivated by discrimination further could challenge the decision through equal employment opportunity channels.

**Alternative Discipline**—Alternative discipline is used by some agencies instead of traditional discipline, usually when the traditional penalty would be less than removal. For example, in a case where traditional discipline might call for a penalty of suspension without pay, under alternative discipline, the employee and the agency might agree that a letter in lieu of the suspension is appropriate. Like alternative dispute resolution (see Chapter 10, Section 7) commonly cited benefits of alternative discipline include avoidance of the costs of litigating appeals, grievances, or complaints that often follow traditional discipline, as well as reducing the negative impact on the relationship between a supervisor and a disciplined employee.

Typical features of an alternative discipline agreement between an employee and agency are: description of the employee’s offense; employee admission of wrongdoing; employee promise to modify his or her behavior; notation of the specific traditional disciplinary penalty and the specific alternative discipline; acknowledgment that the agreement will be kept to support possible future disciplinary action based on new offenses and/or acknowledgment of the disposition of the agreement at the end of a specified reckoning period; and notification of the possible penalty for a subsequent offense. Also, there is usually a waiver of appeal and/or grievance rights, and a statement that the agreement was voluntarily entered into by the employee and the agency.

**Employees with Disabilities**—Agencies may hold employees who are protected under the Americans with Disabilities Act (see Chapter 10, Section 2) to the same performance and conduct standards applying to all employees, although agencies must make reasonable accommodations to enable individuals with disabilities to meet those standards. Guidance is at www.eeoc.gov/facts/performance-conduct.html.

**Challenging Discipline**—Employees who have been disciplined may be able to:

- File an appeal with the MSPB. After a decision from an administrative judge, the employee can request a further review by the Board and can appeal that decision to the U.S. Court of Appeals for the Federal Circuit. In discrimination cases, the employee can also ask the Equal Employment Opportunity Commission (EEOC) to review the Board’s action, and in some cases they can obtain additional review from a Special Panel appointed by the two agencies. Matters taken to the EEOC (and the Special Panel) can then be taken to court.

- File a grievance. Employees covered by union bargaining units—whether or not they are dues-paying union members—can file grievances under the negotiated procedures agreed to by the union and their agency (employees not in a bargaining unit may be able to file administrative grievances; see below). The first step in the negotiated grievance process is typically an informal hearing presided over by an agency official other than the employee’s supervisor. With concurrence from the union, further review can be obtained by taking the grievance to arbitration. The arbitrator’s decision can then be reviewed in the U.S. Court of Appeals for the Federal Circuit or, if discrimination issues are involved, alternatively at the MSPB. After the MSPB issues a decision, the employee can take the case to a U.S. district court for a new trial.

- File a discrimination complaint. Employees can seek review of discrimination claims, first in their agencies and then at the EEOC. At the agency level, the process includes a counseling stage and an investigative stage. The agency’s EEO office then issues a recommended decision stage which the agency then accepts or modifies in its final decision. Further multilevel review is then available at the EEOC, and, after that, the employee can file a discrimination complaint in a U.S. district court. (In addition, at various points during the administrative process the employee can decide to go directly to court.)

- Seek assistance in other forums. There are a variety of other ways for employees to
contest discipline. Among them is seeking to have the agency’s inspector general conduct an investigation or seeking to have the Office of Special Counsel pursue a corrective action against the agency.

Eligibility to use these routes depends in many cases on the action taken, the employee’s job status, and other factors. See the pertinent sections of Chapter 10 for details.

**Administrative Grievances**

In non-union settings, administrative grievance processes generally are available for matters not ordinarily appealable elsewhere, such as suspensions of fewer than 14 days. Agencies have a great deal of latitude in the design of such programs, but in general they provide a route to present a complaint and receive fair consideration, which may involve hearings, fact-finding and other information gathering techniques.

Union-represented employees also may use administrative grievance processes if there is no negotiated grievance procedure or where such a procedure excludes the matter at issue.

Decisions on administrative grievances are final.

For information on negotiated grievances, see Negotiated Grievance Procedures in Section 6 of this chapter.

**Educational Credentials**

Agencies examine whether employees have valid educational credentials for purposes of basic qualification determinations, to meet education requirements, to substitute for specialized experience and to assure proper use of agency funding of academic degree programs and repayment of student loans.

Only degrees from an accredited college or university recognized by the Department of Education are acceptable to meet education requirements or to substitute for experience (see [www.opm.gov/policy-data-oversight/classification-qualifications](http://www.opm.gov/policy-data-oversight/classification-qualifications)). Student loan repayments are allowable only for tuition paid to colleges or universities accredited by a nationally recognized accrediting agency or association recognized by the Department of Education (see 20 U.S.C. 1085, 1071, and 1001-1002). Federal agencies may not pay for degree training at “diploma mill” institutions (5 U.S.C. 4107(a)(3) and 5 CFR 410). The Department of Education lists the accrediting institutions it recognizes at [www.ope.ed.gov/accreditation](http://www.ope.ed.gov/accreditation).

Note: 5 U.S. Code, Section 4101, allows agencies to fund individual training courses for employees that are provided by private vendors, including non-accredited institutions.

Approval of such training requires participation by supervisors and human resources personnel. The training must be clearly job related and the provider must deliver the quality and quantity of training purchased.

Agencies are responsible for ensuring that qualification requirements are met and independently validate educational claims. OPM attempts to verify the most recent or highest degree claimed in most background investigations. Whenever a claimed degree is not verified, or a potential bogus degree is identified, OPM notifies the requesting agency’s personnel security officer. If it appears fraud occurred, the case may be referred for review and possible adjudication.

Fraud occurs when an individual makes an intentional false statement in an attempt to obtain employment, promotion, training, special assignment, or other employment-related benefit. Claiming a degree the individual knows to be bogus and attempting to obtain one of these benefits is fraud. To be disqualifying under 5 CFR 731, the false statement must be material and intentional. Section 731.101(b) defines a “material” statement as one that is “capable of influencing, or has a natural tendency to affect, an official decision.” To establish intent in a diploma mill case, evidence must show the individual reasonably knew the educational institution was a bogus institution (for example, the individual only had to pay a sum of money for the degree without doing any work, had the degree backdated, or bought a transcript that shows the grades the person desired).

Under 5 CFR 5.2, 5.3, and 731, OPM is authorized to investigate and adjudicate cases where qualification falsification or fraud occurs in appointments subject to investigation by
OPM. Agencies may take actions when OPM does not have authority to do so, or decides not to exercise authority.

When the individual holds a security clearance or a position where standards of trustworthiness and integrity are particularly high, an agency may consider whether that person should continue to hold a security clearance or remain in the position even when the bogus degree claimed was not material in the initial employment decision.

Agencies are responsible for deciding appropriate action in cases involving excepted service employees and competitive service employees who made bogus claims after or outside the initial examination or appointment process (for example, during the merit placement process). Agencies take actions involving competitive service employees under authorities such as 5 CFR 315 or 5 CFR 752.

**HIV/AIDS in the Workplace**

Office of Personnel Management guidelines (see www.opm.gov/ehs/hivaids.htm) state that employees with HIV/AIDS must be allowed to continue working as long as they are able to maintain acceptable performance and do not pose a safety or health threat to themselves or others in the workplace. If the HIV infection results in medical conditions that impair an employee’s ability to perform safely and effectively, the agency should treat the employee the same way it would any other employee suffering from a serious illness.

Employees may not refuse to work with fellow employees or clients who are HIV-infected or diagnosed with AIDS and they may not engage in behavior that creates an uncomfortable or hostile environment for them. Co-workers who engage in this type of conduct may be subject to disciplinary action under the Rehabilitation Act of 1973, as amended in 1992 to conform with the Americans with Disabilities Act of 1990. Supervisors are responsible for making sure that the agency’s HIV/AIDS workplace policies are understood and complied with.

Nevertheless, the concerns of these employees should be taken seriously and should be addressed with appropriate information and counseling. In addition, employees, such as health care personnel, who may come into direct contact with the body fluids of persons having HIV/AIDS are to be provided with appropriate information and equipment to minimize the risks of such contacts.

Employees who object to attending HIV/AIDS training based on a personal religious belief or practice may request to be exempted. Title VII of the 1964 Civil Rights Act and Equal Employment Opportunity Commission regulations (29 CFR 1605.2) state that employers have an obligation to accommodate the religious practices of an employee unless the employer can demonstrate that accommodation would result in undue hardship on the conduct of its business.

Employees with HIV/AIDS may request sick leave, annual leave, or leave without pay to pursue medical care or to recuperate from the ill effects of their medical condition. The agency should make its determination on whether to grant leave the same way it would for other employees with medical conditions. In addition, employees with HIV/AIDS are entitled to a total of 12 administrative weeks of unpaid leave under the Family and Medical Leave Act of 1993. Under the Federal Employees Leave Sharing Amendments Act of 1993, they may also participate in leave sharing programs run by their agency after their own leave has been exhausted.

Employees with HIV/AIDS can continue their coverage under the Federal Employees Health Benefits (FEHB) and/or the Federal Employees’ Group Life Insurance (FEGLI) programs in the same manner as other employees. Although the law requires that employees in leave-without-pay status for 12 continuous months will have their FEHB and FEGLI coverage terminated, the employee does have the privilege of converting to private policies without having to undergo a medical examination. Coverage under the Federal Long-Term Care Insurance Program continues as long as the enrollee pays the premiums. Federal Employees Dental and Vision Insurance Program enrollees who begin a period of non-pay status must make arrangements to make direct premium payments or else coverage will be canceled.

Federal employees who are diagnosed as terminally ill with a life expectancy of nine
months or less may elect to receive all or a portion of their FEGLI basic life insurance as a “living benefit.” For more information, see Section 2 in Chapter 2.

Employees with HIV/AIDS may be eligible for disability retirement (see Chapter 3, Section 6) if their medical condition warrants and if they have the requisite years of federal service to qualify.

HIV/AIDS-related policies or programs that would affect the working conditions of bargaining unit employees are subject to collective bargaining where applicable.

**Health Promotion**

Agencies are responsible for determining the best way to provide employee health programs based on the agency mission, employee health needs, program goals and objectives, and available resources. Some agencies share employee health services with other agencies. For example, in a building or location with multiple agencies, one program may be developed to provide health services to participating agency employees. This can be done through interagency agreements or consortia.

Health promotion staff may be employed either full-time or part-time, or assigned the duties on a collateral basis. Sometimes agencies form employee health committees with representatives from various offices to integrate services and coordinate and promote programs. An agency might also choose to use a contractor to provide employee health program services, while many agencies rely on employees who volunteer to coordinate and communicate health promotion activities at their office locations.

Employee health programs can be fully funded by the agency, by employee contributions or fees, or by a combination. In some cases employees form a non-profit organization to provide health activities. Many federal fitness centers are operated this way. The employee organization enters into an agreement with the agency, which provides support such as space and equipment. An employee organization can collect fees directly from employees to cover the costs of services.

Typically, agencies use one or a combination of the following:

- **Health Units**—A health unit or occupational health center can be a source for providing preventive health services to employees. An occupational health registered nurse is the most common staff, however, occupational health physicians, physicians’ assistants, nurse practitioners, licensed practical nurses, and trained technicians may be available depending on the size, scope, and complexity of the services required.

- **Fitness Centers**—Many agencies provide fitness centers. These facilities also might be used to provide health education and intervention activities, as well as health screenings. Many fitness centers require some type of screening to identify health risks before membership is granted. On-Site facilities can be sponsored by the agency, a consortia, and/or employee organizations.

- **Educational Programs**—Agencies can provide information to help employees understand their risks for disease and the tools for making healthy lifestyle choices.

- **Preventive Screenings and Health Fairs**—Agencies may offer screenings including body fat, cholesterol and blood pressure measurements, health risk appraisals, and cardiac risk profiles, as well as health information, smoking cessation classes, and nutrition counseling. Agencies may use work scheduling flexibilities to allow employees to participate. Such flexibilities include alternative work schedules, granting sick and annual leave including advance leave, and granting excused absences.

Information designed to foster a healthier lifestyle is at [www.opm.gov/policy-data-oversight/worklife/health-wellness](http://www.opm.gov/policy-data-oversight/worklife/health-wellness).

**Genetic Information**

Executive Order 13145 of 2000 prohibited federal departments and agencies from making employment decisions based on protected genetic information, a request for genetic services, or the receipt of genetic services. The order applies to current federal employees, applicants for federal jobs, and former federal employees.

The order defined protected genetic information as information about an individual’s genetic tests or genetic tests of that individual’s family members and information about the occurrence of disease, or medical condition or disorder in family members of the individ-
Protected genetic information does not include current health status information about applicants and employees, such as age, sex, and physical examination results exclusive of family medical history. Departments and agencies have a limited right under the Rehabilitation Act of 1973 to acquire information about, and act on the basis of, an individual’s current health status.

Federal departments and agencies may not discharge, fail or refuse to hire, or otherwise discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment because of protected genetic information or a request for, or receipt of, genetic services. Similarly, federal departments and agencies may not limit, segregate, or classify an individual or otherwise adversely affect the individual’s status because of such information. They may request or require family medical history from an applicant or employee only in limited circumstances:

• First, a federal department or agency may request or require family medical history from an applicant as long as it has made a conditional offer of employment. A federal department or agency also may ask for family medical history from a current employee where the request or requirement is consistent with the Rehabilitation Act standards for seeking medical information from current employees.

• Second, departments and agencies must meet these additional prerequisites: the information may be used only to determine whether the department or agency needs to require further medical testing of the individual to assess whether the individual has a current medical condition that may affect his/her ability to perform the essential functions of the job s/he seeks or holds; and medical personnel involved in making the decision whether to require further testing will be the only persons with access to this information.

The order further permitted a department or agency to use an applicant’s or employee’s family medical history where the department or agency subsequently provides genetic or health care services to the individual at the individual’s request.

The order also restricted the conditions in which an agency may obtain or disclose protected genetic information about an individual or information about an individual’s request for genetic services. These circumstances include:

• where the department or agency provides genetic or health care services;

• where the department or agency engages in research that complies with 45 CFR 46, which concerns the protection of human subjects of medical research;

• where the department or agency seeks to monitor the biological effects of toxic substances in the workplace;

• where the department or agency is compelled by proper authority, and

• where the genetic information is collected as a part of a lawful program, the primary purpose of which is for identification purposes.

An individual must consent to the collection and use of protected genetic information before the department or agency may obtain it for health care or monitoring purposes. Consent must be knowing and voluntary.

Protected genetic information must be kept confidential and separate from personnel files, just like other medical information.

The order does not create any legally enforceable right or benefit. Because much of what is prohibited under the order is also prohibited under Section 501 of the Rehabilitation Act of 1973, federal sector applicants and employees who believe that a department or agency has violated a provision of the order may pursue that issue under the procedure at 29 CFR 1614. Individuals should be aware, however, that not all conduct that violates the order will also constitute a violation of the Rehabilitation Act.

The Genetic Information Nondiscrimination Act of 2008 also prohibits the use of genetic information in making employment decisions. See Other Forms of Discrimination in Chapter 10, Section 2.

**Transgender Employees**

Office of Personnel Management policy (www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance) instructs agencies to provide a non-discriminatory work environment to employees irrespective of their gen-
nder identity or perceived gender non-conformity. For employees who transition from living and working as one gender to another, the agency is to treat the transition “with as much sensitivity and confidentiality as any other employee’s significant life experiences, such as hospitalization or marital difficulties.”

Medical information about individual employees is protected under the Privacy Act. Other employees may be given only general information about the employee’s transition. Personal information about the employee is considered confidential and is not to be released without the employee’s prior agreement. Agencies may provide a trainer or presenter to meet with employees to answer general questions.

Agency dress codes are to be applied to employees transitioning to a different gender in the same way that they are applied to other employees of that gender. Dress codes are not to be used to prevent a transgender employee from living full-time in the role consistent with his or her gender identity. Managers, supervisors, and co-workers are to use the name and pronouns appropriate to the employee’s new gender in their communications and in employee records.

Guidance on insurance coverage issues is in FEHB Carrier Letter 2011-12 at www.opm.gov/healthcare-insurance/healthcare/carriers.

Drug Testing

The Drug-Free Federal Workplace Program was mandated in 1986 by Executive Order 12564. It required all agencies to develop a program including testing, education, and rehabilitative services through an employee assistance program (EAP). The Mandatory Guidelines for Federal Workplace Drug Testing Programs were published in 1988 and revised in 1994. Every agency has a plan in place that spells out the extent of the agency’s efforts to make the workplace drug free.

There are six drug testing situations:

• random testing, including unannounced testing of employees in positions designated because of safety or security-sensitive issues;
• applicant testing, normally for positions requiring random testing;
• reasonable suspicion testing, when performance or conduct problems and unusual behavior suggest that drugs may be involved;
• post-accident testing, after a serious accident;
• follow-up testing, for those who have already tested positive or otherwise identified themselves as drug users; and,
• voluntary testing for those willing to be included in the random testing pool.

Employees who come forward and admit illegal drug use prior to being tested or otherwise are found to be using illegal drugs are not immediately disciplined. However, this “safe harbor,” which is designed to provide such workers with an opportunity to undergo rehabilitation, also provides for mandatory follow-up testing.

Agencies must comply with the disciplinary instructions of E.O. 12564, which require the following actions in cases of confirmed positive drug tests:

• removal from sensitive positions;
• mandatory EAP referrals for assessment and rehabilitation;
• mandatory initiation of discipline on a first finding of illegal drug use; and
• mandatory initiation of removal from the federal service upon a second finding of illegal drug use.

All agencies follow essentially the same type of procedures and follow a model plan that was developed by the Department of Health and Human Services, OPM, and the Department of Justice. Differences from one agency to another are found primarily in the types of positions tested. Also see www.opm.gov/policy-data-oversight/worklife/employee-assistance-programs.

Alcohol Policy

Use or abuse of alcohol by federal employees is a management concern to the extent that it affects an employee’s ability to perform his or her duties or raises concerns about health and safety issues or employee conduct. Supervisors are not responsible for diagnosing alcoholism in employees. But they are responsible for taking corrective and disciplin-
ary actions when performance or conduct problems surface, and referring employees to the agency’s employee assistance program.

Indicators that might trigger a referral to the EAP include: unexplained or unauthorized absences from work; frequent tardiness; excessive use of sick leave; patterns of absence such as the day after payday or frequent Monday or Friday absences; frequent unplanned absences due to “emergencies”; absence from duty station without explanation or permission for significant periods of time; performance problems; strained relationships with co-workers; and the appearance of being inebriated or under the influence of alcohol.

EAPs provide short-term counseling, assessment, and referral of employees with alcohol and drug abuse problems, among other services. This service is confidential.

Human resources or employee relations officers may advise management of adverse, disciplinary, or other administrative actions that may be taken. They also advise employees of their rights and the procedures in such cases. They do not obtain confidential information from the EAP nor do they independently approach the employee regarding the problem.

If an employee is away from work receiving treatment, he or she will usually be carried in some type of approved leave status. In most cases, it is considered appropriate for the employee to be carried on any available sick leave. Otherwise, annual leave or leave without pay may be appropriate. Normally, the employee would not be charged as absent without approved leave (AWOL) unless the employee’s absence had not been approved.

The cost of treatment is the employee’s responsibility. FEHB program plans have some kind of coverage; however, that coverage is limited.

After the employee’s return to duty, there typically will be some type of follow-up care such as a 12-step program or other group meetings, therapy, EAP sessions, or a combination.

Alcohol Testing—Generally, agencies do not have the authority to conduct mandatory alcohol testing. Although some agencies may have the equipment and trained personnel to administer an alcohol test, such a test would be voluntary. Most alcohol testing would probably be conducted with a breathalyzer.

Unless the employee is in a job with specific medical or physical requirements, the agency cannot order the employee to undergo any type of medical examination, including a breathalyzer. Examples of the types of jobs that may have specific medical requirements include police officers, certain vehicle operators, air traffic controllers, and various direct patient-care personnel.

Law enforcement personnel on federal property may administer alcohol tests to drivers when there is an accident or reasonable cause to do such testing. However, cause for such testing must be based on a violation of motor vehicle and traffic rules and not mandatory testing by the agency.

An agency may conduct voluntary alcohol testing. If intoxication is indicated by the test, the agency may use it as a basis for some type of administrative action, such as sending the employee home, or taking disciplinary action. An agency may not take disciplinary action solely because an employee declines to undergo a voluntary alcohol test. See www.opm.gov/policy-data-oversight/worklife/employee-assistance-programs.

Smoking Policy

General Services Administration Bulletin 2009-B1 generally bans smoking in interior space owned, rented or leased by the Executive Branch, in any outdoor areas under its control in front of air intake ducts, in courtyards, and within 25 feet of doorways. The bulletin overrode prior policies that had allowed smoking in specially equipped indoor areas and certain other areas, leaving exceptions only for: residential accommodations for persons residing in a building owned, leased or rented by the government; portions of federally owned buildings leased, rented or otherwise provided in their entirety to nonfederal parties; and nonfederal governmental workplaces that serve as the permanent or intermittent duty station of one or more federal employees.

The requirements apply to leased or owned space under the jurisdiction, custody or control of GSA. In addition, federally leased space located in a privately owned building is subject to state and local government smoking restrictions, if the restrictions are more stringent than the federal policy.

In some cases, local smoking policy is subject to bargaining.
Domestic Partners

A June 2, 2010 Presidential memo directed agencies, to the extent consistent with law, to provide to the same-sex domestic partners of agency employees and their children the same level of access to certain agency-administered benefits as is provided to spouses and their children.

The memo defines “domestic partnership” as a committed relationship between two adults, of the same sex, in which the partners:

1. are each other’s sole domestic partner and intend to remain so indefinitely;
2. maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);
3. are at least 18 years of age and mentally competent to consent to contract;
4. share responsibility for a significant measure of each other’s financial obligations (including partnerships in which only one partner earns income);
5. are not married or joined in a civil union to anyone else;
6. are not the domestic partner of anyone else;
7. are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which they reside at the time the partnership was formed;
8. are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, shall be determined by the agency; and
9. are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

Agencies may choose to secure documentation such as a sworn affidavit to establish the existence of a domestic partnership but they are not required to do so. In determining whether to require documentation, agencies are to consider whether a similar requirement is imposed upon opposite-sex spouses, consistent with the memo’s intention that same-sex domestic partners be treated in the same manner as opposite-sex spouses for purposes of these benefits, to the extent permitted by law.

For most purposes, the dissolution of a domestic partnership will end eligibility for benefits. Notice must be provided to the employing agency within 30 days by either the employee or the former partner.

The memo directed that the following benefits should be made available to same-sex domestic partners and their children to the same extent that such benefits are available to spouses and their children: credit union membership; access to fitness facilities; hardship transfers to maintain or improve the health of a domestic partner; planning and counseling services including briefings on employee pay and allowances, career counseling, retirement counseling, financial counseling, resource and referral services, planning sessions for permanent change of duty station, deployment support, parenting support groups, and elder care support groups; family assistance services including adoption counseling, parenting counseling, child care, elder care, financial planning, and home improvements; family and morale/wellness/recreation events; access to medical treatment; access to lodging or allowances; joint consideration of transfers; and accidental death and dismemberment insurance.

It further ordered that same-sex domestic partners and/or their children qualify for child care services and subsidies, employee assistance programs, certain noncompetitive appointments when returning with an employee from an overseas assignment, evacuation payments, and unpaid leave for family purposes. Rules carrying out those policies were finalized in 2012.

In addition, the memo noted certain other benefits being offered by agencies that are outside Title 5, U.S. Code, and directed such agencies to ensure that such benefits being offered to their employees’ spouses and their children are also offered at an equivalent level, wherever legally permissible, to their employees’ same-sex domestic partners and their children. The types of such benefits include: reimbursement of a portion of a health insur-
ance premium paid to insure their same-sex domestic partner; dental insurance; vision insurance; dependent life insurance; relocation assistance and expense program; employment opportunities for spouse/same-sex domestic partner upon permanent transfer of employee; business travel accident insurance; receipt of transferred annual leave to provide care to same-sex domestic partner with medical emergency; reimbursement for certain eligible expenses such as fitness center memberships, physical exams and homeowners insurance; and expressions of sympathy recognizing hospitalization, illness, or death.

The memo also created an ongoing obligation for agencies to make sure that any new benefits they make available to their employees’ spouse or spouse’s children also be made available to employees’ same-sex domestic partners or their children.

OPM was ordered to issue rules to include same-sex domestic partners among those presumed eligible for insurable interest annuities (see General Types of Survivor Annuities in Chapter 3, Section 4), and the General Services Administration was ordered to make them eligible as family members for certain travel and relocation payments (see General in Chapter 11, Section 1).


In addition, domestic partners and/or their children may be eligible for certain other benefits, although policies vary among programs. See Chapter 2 for policies under insurance programs; see Qualifying Family Members in Chapter 5, Section 1 for policies regarding use of shared leave due to a family member’s condition or use of sick leave for family care or bereavement; see Family and Medical Leave Act in Chapter 5, Section 4 for policies under that law; and see Overseas Employment in Section 1 of this chapter for policies regarding certain overseas assignment benefits and allowances.

In a June 26, 2013 decision, the U.S. Supreme Court struck down the Defense of Marriage Act, which had defined marriage for federal benefits purposes as only between a man and a woman. This made “legally married” same-sex spouses, meaning those married in a jurisdiction that recognizes such marriages (including in a foreign country), regardless of place of residence, eligible for spousal rights under certain federal employment benefits that had been barred by the DOMA law—specifically, flexible spending accounts (see Chapter 1, Section 9), insurance programs (see Chapter 2) and standard retirement survivor annuity rights (see Chapter 3, Section 4).

Benefits Administration Letter 13-203 (at www.opm.gov/retirement-services/publications-forms/benefits-administration-letters) described specific policies for spouses and further stated that children of legally married same-sex couples are to be treated for federal benefits purposes the same as children of married opposite-sex couples. In addition, eligibility under the health insurance and vision-dental insurance programs extends to children of unmarried same-sex partners living in a state that does not recognize that type of marriage and who submit a declaration that they would marry if allowed to by their state. Eligibility does not extend to the partner himself or herself, however. See Benefits Administration Letter 13-211 at the above online address.

**Child Care**

There are more than 200 child care centers in federal buildings, about half in space controlled by the General Services Administration and the rest operated by other departments and agencies—most numerous by the Defense Department, whose centers generally are open to children of civilian employees as well as to children of military personnel. A listing of child care centers in GSA-controlled space is at www.gsa.gov—select Child Care in GSA Buildings under For Citizens & Consumers. Information on the DoD child care program is at www.defense.gov/specials/childcare.

The Office of Personnel Management compiles child and elder care resources, which provide employees, managers, and employee assistance counselors with information about organizations and agencies across the country that can help employees locate quality child (and elder care—see below) services. See www.opm.gov/policy-data-oversight/worklife.

Public Law 107-67, Section 630, created permanent authority for federal agencies to
provide subsidies to their lower-income employees for certain child care expenses for children under age 13; under age 18 if disabled.

A child may bear any of the following relationships to either an employee, the employee’s spouse or the employee’s same-sex domestic partner who meets certain standards (see Domestic Partners, above): a biological child who lives with the federal employee; an adopted child; a stepchild; a foster child; a child for whom a judicial determination of support has been obtained; or a child to whose support the federal employee, who is a parent or legal guardian, makes regular and substantial contributions. The law and implementing regulations at 5 CFR 792 allow agencies flexibility in determining financial eligibility and procedures under the program.

Executive agencies may use any appropriated funds, including revolving funds, ordinarily used for salaries for this purpose. Agencies determine the amount of funds they are willing to allocate for this purpose.

Federal employees interested in participating in this program should contact the individual or organization named on their agency’s announcements to get more information about any tuition assistance program operating there. If their child is not yet enrolled in child care, employees should identify a licensed and/or regulated child care provider of either center-based or family child care, and assure there is a space for their child before applying for tuition assistance.

The subsidy is not limited to enrollment in government centers but is open to all licensed and/or regulated child care. If employees already have their child(ren) enrolled in licensed and/or regulated child care (center-based or family child care), and they wish to receive tuition assistance, they should fill out the tuition assistance application forms and submit them to the person or organization named on the agency’s form.

Employees are free to choose among both accredited and non-accredited providers so long as the provider is state or locally licensed or regulated standards of safety and care for children. Eligible programs include programs at overseas locations, daytime summer programs, full- and part-time care and before and after school programs. Overseas programs do not have to be state licensed or regulated; agencies with such programs can adopt their own criteria.

Employees may be required to apply for the tuition assistance subsidy on an annual basis. Employees must be prepared to provide copies of their recent pay stubs and latest IRS tax submissions. If a family receives local and/or state child care subsidies, they must indicate the source and the amount on their application.

Agencies can choose to administer the program themselves or they can enter into an agreement or contract with an organization that provides scholarship services. Regardless of who administers the program, the decision about which model to use for determining eligibility and the amount of the subsidy is the responsibility of the agency.

In most cases the agency pays the child care provider directly. The agency can pay for up to one month in advance. Child care subsidies can only be paid from appropriated funds.

Each agency has the discretion to determine who qualifies. Agencies may choose a particular definition for one location and a different definition at another location. In general, agencies consider the total family income and that the amount of subsidy would be reduced by any current state and/or local subsidy the parents/guardians currently receive. Agencies also determine the amount of tuition assistance for each eligible employee. They may use a sliding scale, prescribe a sum based on a percentage of total family income or a percentage of child care costs, or use another model.

Child care subsidies are generally taxable as income to the employee who benefits from them. However, if an agency implements the child care subsidy program as a dependent care assistance program as described in section 129 of the Internal Revenue Code, amounts of up to either $2,500 or $5,000 may be excluded from gross income.

Also see www.opm.gov/policy-data-oversight/worklife.

Flexible Spending Accounts—Under the flexible spending account program (see Chapter 1, Section 9), federal employees may set aside up to $5,000 annually pretax to be used for certain dependent care expenses. However, this amount is reduced by any amount received as a child care subsidy.
Elder Care

Unlike child care, federal agencies do not host on-site elder care facilities, nor do they offer subsidies for employees to pay the costs of such care. Many agencies do, however, have programs at the workplace to ease the stress that caregiving employees experience. In most cases these efforts are directed by the agency’s work/life coordinator.

The scope and number of programs vary by agency. They typically include resource and referral programs, on-site seminars and other information sessions, employee assistance programs, and support groups. Some agencies provide briefings to supervisors and managers on the need to support those with elder care responsibilities, including guidance on allowable flexibilities.

OPM encourages agencies to use personnel flexibilities available to federal employees to ease the burden of elder care such as part-time employment, flexible work schedules, compressed work schedules, leave programs, and telework. It publishes a Handbook of Elder Care Resources that covers health insurance, finances (including Social Security and taxes), legal issues such as power of attorney, and housing options. The handbook also describes resources to help older adults function independently, addresses medical issues, helps find nursing homes and home health care agencies and includes a list of federal and national elder care organizations. The handbook and other resources are at www.opm.gov/policy-data-oversight/worklife.

Flexible Spending Accounts—Under the flexible spending account (FSA) program (see Chapter 1, Section 9), federal employees may set aside up to $5,000 annually pretax to be used for certain dependent care expenses. An adult (for example, parent, grandparent, adult disabled child) may qualify as a dependent for purposes of an FSA if the employee is providing more than half of that person’s maintenance for the year and is claiming that person as a dependent for federal income tax purposes.

Payment of Expenses to Obtain Professional Credentials

Under 5 U.S.C. 5757, agencies may use appropriated funds or funds otherwise available to the agency to pay for expenses for employees to obtain professional credentials. This also includes expenses for professional accreditation, state-imposed and professional licenses, and professional certification, and examinations to obtain such credentials. Agencies may not use this authority on behalf of any employee occupying or seeking to qualify for appointment in any position that is excepted from the competitive service because of the confidential, policy-determining, policy-making, or policy-advocating character of the position.

Payment of Liability Insurance Premiums

Under P.L. 106-58, federal agencies are required to reimburse law enforcement employees, supervisors and managers for up to half the cost of professional liability insurance. Some agencies reimburse the maximum, others less; check with your personnel office regarding your agency’s policy.

Generally speaking, professional liability insurance insures against legal liability (and litigation defense costs) for suits alleging damages due to injuries to other persons, damage to their property or other damage or loss to other persons, including the expenses of litigation and settlement that result from or arise out of any “tortious act,” error or omission—whether common law, statutory or constitutional—while in the performance of official duties. This can include payment of punitive damages where allowed under state law.

The IRS has determined that the reimbursement is not taxable to the employee receiving it.

For purposes of the reimbursement provision:

• a law enforcement officer is anyone whose duties are primarily the investigation, prosecution or detention of individuals suspected of convicted of offenses against the criminal laws of the United States—generally speaking, all those covered by the special retirement system for law enforcement officers;

• a supervisor is anyone having the authority over personal actions such as assignments,
promotions, discipline or removal if the exercise of the authority is not merely routine or clerical but requires exercise of independent judgment; and

- a management official is someone whose duties require or authorize the individual to form, determine or influence the policies of the agency—effectively, anyone not eligible for membership in a bargaining unit.

### Student Loan Repayments

Student loan repayment authority in 5 U.S.C. 5379 (5 CFR 537) permits agencies to repay the student loans of federal employees to attract or keep highly qualified individuals. These payments (before taxes) can be up to $10,000 a year and $60,000 lifetime. To receive student loan repayment benefits, an employee must sign a service agreement to remain in the service of the agency for a period not less than three years.

This authority is used at the discretion of the agency. Those interested in participating in the program must contact the agency in which they work or wish to work for further details. Agencies choosing to use this flexibility must establish a plan describing how this incentive will be implemented within that agency. Agencies can use the incentive in conjunction with other recruitment and retention incentives. The repayment authority is limited to federally insured student loans made by educational institutions or banks and other private lenders authorized by the Higher Education Act of 1965 and the Public Health Service Act. The Higher Education Act covers guaranteed student loan programs such as Stafford Loans, Supplemental Loans, Plus Loans, Federal Consolidation Loans, Defense Loans, National Direct Student Loans and Perkins Loans. Loans covered under the Public Health Service Act include Nursing Student Loan Program loans, Health Profession Student Loan Program loans, and Health Education Assistance Loan Program loans.

The level of academic degree for which a student loan was obtained is not a consideration in determining eligibility for the incentive, nor is whether a degree, diploma, or certificate was earned. The repayment authority does not exclude employees who have defaulted on their student loans from receiving this benefit. However, agencies may exclude them.

Part-Time employees and excepted service employees (except Schedule C), assuming they are otherwise eligible, can receive student loan repayment benefits. However, temporary employees and term employees with less than three years remaining on their appointments are not eligible.

Agencies are not required to make payments in one lump sum. They may if they choose, but doing so may result in a large tax liability for the recipient of the student loan repayment benefit.

Tax withholdings must be deducted or applied at the time any loan repayment is made. Tax withholdings may not be amortized or assessed later than when the loan repayment is made.

The three-year service requirement begins when the first payment is made by the agency to the holder of the loan and may not be pro-rated. Any employee who does not meet the service requirement is required to reimburse the government. However, agencies may waive recovery if they determine it to be against equity and good conscience or contrary to the public interest.


Notes: P.L. 110-84 authorized forgiveness of the balance remaining on certain federal student loans after public servants, including federal employees, have made required payments for 10 years, starting with October 2007. Thus, the benefit won’t be available until 2017. The Department of Veterans Affairs has a separate student loan repayment authority under Section 7681 of Title 38, United States Code called the Education Debt Reduction Program. VA may make payments of up to about $53,000 over five years on behalf of recently appointed employees in certain health care occupations for which it is having recruitment or retention problems to repay loans acquired while pursuing the degree that led to qualification for the position. Payments under the program are not taxable.

### Public Transit Subsidies

As a general rule, the federal government cannot subsidize an employee’s cost of commuting to or from work. Section 629(a), Title IV-General Provisions of Public Law 101-509,
constitutes a specific legal exception to this general rule. It provides that federal agencies may participate in any program established by a state or local government that encourages employees to use public transportation. Such programs may involve the sale of discounted transit passes or other incentives that reduce the cost to the employee of using public transportation. The provisions of section 629 were made permanent in 1993 (P.L. 103-172), which also encouraged agencies to provide non-monetary incentives for alternatives to commuting, such as telecommuting.

The law establishing the transit subsidy program is permissive in nature by allowing but not mandating federal agencies’ participation in state or local government programs (including, for example, those sponsored by transit districts, authorities, etc., created by a state or local government) designed to encourage the use of public transportation. This may be as general as participating in state or local government sponsored events promoting the use of public transportation or as specific as providing reduced cost incentives to the employee.

Federal agencies that choose to offer reduced cost incentives to their employees may use appropriated funds, if otherwise available, to subsidize up to $130 of federal employees’ public transportation costs per month. There is no specific appropriation to cover this expense, however. The cost must be absorbed from other appropriated funds. In union-represented workplaces, terms of the program often are set by contract. Employer operated and employee operated vanpools as well as private or public transit operated vanpools may qualify.

Under tax law, such subsidies are tax-free to the employee so long as the value is under that monthly amount. Any amount, up to the monthly tax-free limits, by which an employee elects to reduce compensation to fund either transit or vanpool benefits, is not subject to the Federal Insurance Contributions Act (FICA; that is, Social Security), the Federal Unemployment Tax Act, and federal income tax withholding. These amounts may also be exempt from city or state income taxes. For pretax program participants, since FICA would not be collected on the amount of compensation that is exchanged for the benefit, employees under the Federal Employees Retirement System may experience a minimal reduction in their Social Security benefits at retirement. The tax implications are the same whether the employee receives a direct cash payment or a transit pass worth a certain amount.

Federal agencies that elect to participate in the program are required to set up safeguards that preclude any improprieties in the use of federal funds and to limit program participation to eligible federal employees. Office of Management and Budget memo M-07-15 sets general guidance, although agencies that have sufficient other controls can use their own procedures with OMB consent.

Parking Costs—Federal agencies may elect to reimburse employees for their qualified parking expenses at or near transit stations, park-and-ride lots, or vanpool staging areas, using employee pretax salary funds, up to a maximum of $250 per month. Appropriated funds may not be used for these purposes unless exceptional circumstances exist.

Parking costs are treated separately from transit costs, even if they are incurred in conjunction with an employee’s use of public transit or vanpools. Agencies also may provide such parking at the agency’s office for vanpools and carpools. Agencies that make cash reimbursements for parking must establish a bona fide reimbursement arrangement to establish that their employees have, in fact, incurred such expenses.

Waivers of Collections

Overpayments—Under 5 U.S.C. 5584, the heads of Executive Branch agencies may waive collection of debts owed to the agency, regardless of the amount of the debt, due to overpayments. Each agency is responsible for establishing waiver policies and standards and determining levels of approval. All waiver requests must be directed to the agency that made the erroneous payment resulting in an overpayment debt.

The Office of Personnel Management is responsible for regulating various types of pay and allowances and also issues claims settlement decisions regarding compensation and leave matters (see Chapter 10, Section 1). However, OPM does not have authority under
Section 5584 to waive overpayment debts resulting from erroneous payments of pay and allowances, except for such overpayment debts owed to OPM by its own employees. Also, while the General Services Administration Civilian Board of Contract Appeals has authority to settle claims involving expenses incurred by federal civilian employees for official travel, transportation, and relocation (see Chapter 11, Section 3), it does not have authority under Section 5584 to waive collection of debts resulting from erroneous payments of such expenses. Any waiver request involving such matters must be directed to the agency that made the erroneous payment, and any agency waiver decision is not subject to review by GSA.

A waiver may be granted only if the authorized official determines that collection of the overpayment debt would be against equity and good conscience and not in the best interests of the United States. A waiver may not be granted if, in the opinion of the authorized official, there is an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person with an interest in obtaining a waiver, in connection with the overpayment debt. A waiver may not be granted unless an application for waiver is received within three years of the date on which the erroneous payment was discovered. If an agency collected some or all of an overpayment debt prior to the granting of a waiver, the agency must refund any amount covered by the waiver if an application for refund is made within two years of the date of the waiver.

While waiver makes an erroneous payment a valid payment, it does not make the payment creditable basic pay in computing retirement contributions and benefits.

Other Debts—Other laws establish an independent authority to waive collection of certain other compensation-related debts owed to employing agencies by federal employees. These include:

- The law governing federal student loan repayment benefits for federal employees provides discretionary authority to waive, in whole or in part, collection of a debt resulting from an employee's failure to complete the required period of service if it is shown that recovery would be against equity and good conscience or against the public interest. (5 U.S.C. 5379(c)(3) and 5 CFR 537.109(e).)

- The law governing federal recruitment and relocation incentives provide discretionary authority to waive the requirement to repay all or part of an incentive for an employee who does not complete the agreed-upon service period when the agency determines collection would be against equity and good conscience and not in the best interest of the United States. (5 U.S.C. 5753(g) and 5 CFR 575.111 and 575.211.)

- The law governing physicians comparability allowances provides that a physician who fails to complete at least one year of service is liable to refund allowances received unless the head of the agency waives the liability based on a determination that such failure is necessitated by circumstances beyond the control of the physician. (5 U.S.C. 5948(e).)

- The law governing OPM-approved voluntary separation incentive payments (buyouts) provides that OPM may waive repayment of the gross amount of the payment when re-employment with the government of the United States triggers the repayment requirement. (5 U.S.C. 3524(c) and 5 CFR 576.203.)

Separately, agency-specific buyout authorities may provide for waivers by those agencies.

Combined Federal Campaign

Authorized by 5 CFR 950, the Combined Federal Campaign (CFC) is the government’s only annual fund-raising drive. Once a year, employees are given the opportunity to contribute to eligible charities of their choice. They may select from among hundreds of eligible national, international, and local charitable organizations. Eligibility is determined by OPM’s office of CFC operations. Local organization eligibility is determined by committees of federal employees in each CFC throughout the country. Employees who wish to donate make a pledge in which they state the amount they wish to give and the charitable organization(s) participating in the campaign to which they wish their contributions to go. Most employees choose to participate through payroll deductions. If they do, CFC contributions are deducted each pay period and sent to the charity or charities of choice by the local campaign office.
Dates for the CFC drive are decided locally, but most take place between September 1 and December 15. Annual campaigns usually run for about six weeks. Pledges are deducted from the donor’s paycheck starting in the first pay period of the following year. Participation by federal employees in the CFC is strictly voluntary. Federal regulations stipulate that managers cannot solicit from those they supervise. Neither may 100 percent participation goals be set nor may donations be required in a certain amount. Also contributor lists cannot be sold or leased, and lists of non-contributors cannot be compiled and used for any purpose.

Information about CFC policies is at www.opm.gov/combined-federal-campaign.

### Personal Use of Office Equipment

Each agency has its own policies governing acceptable use of office equipment for personal purposes. Many of them use a model policy published by the Federal Chief Information Officers Council titled Recommended Executive Branch Model Policy/Guidance on Limited Personal Use of Government Office Equipment Including Information Technology (available at www.cio.gov/resources/document-library).

Under the model policy, limited personal use of the government office equipment by employees during non-work time is considered to be an “authorized use” of government property. Federal employees are permitted limited use of government office equipment for personal needs if the use does not interfere with official business, involves minimal additional expense to the government and is done during the employee’s non-work time. This privilege to use government office equipment for nongovernment purposes may be revoked or limited at any time by appropriate federal agency or department officials.

The policy does not create right to use government office equipment for nongovernment purposes. Nor does the privilege extend to modifying such equipment, including loading personal software or making configuration changes.

“Government office equipment including information technology” includes but is not limited to personal computers and related peripheral equipment and software, library resources, telephones, facsimile machines, photocopiers, office supplies, Internet connectivity, and email.

“Minimal additional expense” means that employee’s personal use of government office equipment is limited to situations where the government is already providing equipment or services and the employee’s use of such equipment or services will not result in any additional expense to the government or the use will result in only normal wear and tear or the use of small amounts of electricity, ink, toner or paper. Examples of minimal additional expenses include making a few photocopies, using a computer printer to print a few pages of material, making occasional brief personal phone calls (within agency policy and 41 CFR 101-35.201), infrequently sending personal email messages, or limited use of the Internet for personal reasons.

“Employee non-work time” means times when the employee is not otherwise expected to be addressing official business. Employees may for example use government office equipment during their own off-duty hours such as before or after a workday (subject to local office hours), lunch periods, authorized breaks, or weekends or holidays (if their duty station is normally available at such times).

“Personal use” means activity that is conducted for purposes other than accomplishing official or otherwise authorized activity. Executive Branch employees are specifically prohibited from using government office equipment to maintain or support a personal private business. The ban on using government office equipment to support a personal private business also includes employees using government office equipment to assist relatives, friends, or other persons in such activities. Employees may, however, make limited use under this policy of government office equipment to check their Thrift Savings Plan or other personal investments, or to seek employment, or communicate with a volunteer charity organization.

Employees are expected to refrain from using government office equipment for activities that are inappropriate.

It is the responsibility of employees to ensure that they are not giving the false impres-
tion that they are acting in an official capacity when they are using government office equipment for nongovernment purposes.

Executive Branch employees do not have a right of privacy while using any government office equipment at any time, including accessing the Internet, using email. By using government office equipment, Executive Branch employees imply their consent to disclosing the contents of any files or information maintained or pass-through government office equipment.

By using this office equipment, consent to monitoring and recording is implied with or without cause. Any use of government communications resources is made with the understanding that such use is generally not secure, is not private, and is not anonymous. Agency officials, such as system managers and supervisors, may access any electronic communications.

Unauthorized or improper use of government office equipment could result in loss of use or limitations on use of equipment, disciplinary or adverse actions criminal penalties and/or employees being held financially liable for the cost of improper use.

In addition, restrictions may apply to electronic communications with political content, including the creation or forwarding of email and the use of social media. See Hatch Act in Chapter 10, Section 4.

**Telephone Use**

Rules governing use of federal telephones are at 41 CFR 101.35. The general policy is that all telephone calls placed over government-provided and commercial long-distance systems that will be paid for or reimbursed by the government must be used to conduct official business only. Official business calls may include emergency calls and other calls the agency determines are necessary in the interest of the government.

Telephone calls may be authorized when they: do not adversely affect the performance of official duties by the employee or the employee’s organization; are of reasonable duration and frequency; and could not reasonably have been made at another time; or are provided for in a collective bargaining agreement.

Individual agencies have their own policies on using telephone facilities and services. Many of these policies allow for a certain amount of local phone calling for routine personal purposes and for some government-paid long-distance calls for personal purposes, for example by employees on travel. The directives also include individual agency procedures for collection and reimbursement for unauthorized calls.

**Freedom of Information Act**

Under the Freedom of Information Act (FOIA) (5 U.S.C. 552) individuals may request from agencies documents that otherwise might not be disclosed or published by the government.

While some documents and information are protected from disclosure for national security, business confidentiality, personal privacy, or other reasons, millions of other reports, correspondence, and regulations may be released.

Agencies have an obligation, under this 1966 statute, to make a reasonable effort to search for and turn over copies of records they have decided are releasable. If an individual’s request is denied, the agency must state the reason, and there are formal administrative appeal rights for such denials.

The law specifies only two requirements for requesting information: (1) requests must “reasonably describe” the document sought, and (2) they must be made in accordance with an agency’s published FOIA procedures.

Agencies have up to 20 working days to answer an FOIA request and must “promptly” provide information deemed releasable. They may charge reasonable search fees, copying fees, and, in the case of commercial-use requests, fees for the review of records.

Requesters can apply for a waiver of fees under a “public interest” standard. Agencies have up to 20 working days to decide an appeal of a denial and to inform the individual that he or she may bring a court action to challenge it.

A January 21, 2009 Presidential memo directed agencies to administer FOIA with a “clear presumption” of openness. “The government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears,” it said.
“Non-disclosure should never be based on an effort to protect the personal interests of government officials at the expense of those they are supposed to serve.” The presumption of disclosure should be applied to all decisions involving FOIA, it said, and agencies should take affirmative steps to make information public rather than wait for specific requests, should use modern technology and make timely disclosures. See www.foia.gov. In addition, many agencies maintain online postings of information they have released under FOIA requests. An index of agency home pages is at www.usa.gov.

**Privacy Act**

The Privacy Act of 1974 gives federal employees several rights with regard to records that are part of what the Act calls a “system of records.” A system of records under the Privacy Act means “a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying particular assigned to the individual.”

The Act allows federal employees to inspect and receive copies of their files, subject to various exemptions that an agency may claim if it has published regulations pursuant to the exemptions.

Employees can request correction or amendment of any Privacy Act-covered information about them that the employee feels is in error. If the agency does not correct the record, the employee can appeal the agency’s denial to a person whose name and address should be provided in the denial letter. If the employees lose such an appeal, they have the right to file a brief statement giving reasons for disputing the record, which will accompany the record if it is sent somewhere else by the agency.

Agencies are also required to publish public notices of all systems of records maintained.

The law requires agencies to obtain an employee’s written permission prior to disclosing to other persons or agencies information about the individual, unless such disclosures are specifically authorized under the Act. Information can be disclosed without an individual’s consent, for example, under circumstances in which: disclosure would be required under the Freedom of Information Act; disclosure is to an employee or officer of the agency that maintains the record who has a need for the information to perform official duties; disclosure is pursuant to a “routine use” as published in the agency’s public notice of the system of records containing the information; disclosure is to another agency for a specific civil or criminal law enforcement activity in response to the written request of the agency head; disclosure is pursuant to a showing of compelling circumstances affecting the health or safety of an individual; or disclosure is made pursuant to a court order.

The Privacy Act generally bars the release of personal information such as names and home addresses to unions. However, the information can be provided without the employee’s consent if there are no other adequate alternative means of communicating with bargaining unit members.

Agencies are required by the Act to keep an accurate accounting of all disclosures of their employees’ records to other agencies or persons, except when the disclosure was required by the Freedom of Information Act or when a disclosure was made within the agency on a need-to-know basis. With the exception of disclosures requested by law enforcement agencies, a list of all recipients of an employee’s records must be given to the worker upon request.

Under the Privacy Act, federal employees may sue an agency for refusing to release or amend their records. Employees also may sue if they are adversely affected by an agency’s failure to comply with any of the other provisions of the Act. Employees may be able to obtain money damages in certain circumstances if they can prove, among other things, that they have been adversely affected as a result of the agency’s intentional and willful disregard of the Act’s provisions. Court costs and attorney fees may be awarded.

The Act provides criminal penalties for the knowing and willful disclosure of records to those not entitled to receive them, willfully maintaining a record that is not in accordance with the Privacy Act, and knowing and willful attempt to gain access to an individual’s records under false pretenses.

Currently employed workers who desire access to or amendment of their personnel
records should contact their personnel office or their agency’s designated Privacy Act officer if they need assistance in processing their request. Usually, the request will have to be made to the employing agency. Requests from former federal employees regarding their Official Personnel Folders should be directed to:

National Personnel Records Center  
1 Archives Drive  
St. Louis, MO 63138  
Phone (314) 801-0800  
Fax (314) 801-9195  
www.archives.gov/st-louis

When making a Privacy Act request, employees should be sure to provide enough identifying information to enable the agency to find their records, and assure the agency of their identity. Generally, this means that employees should provide their full name, date of birth, and Social Security number to facilitate this process.

Religious Freedom Guidelines

Employees’ religious practices ranging from keeping a Bible or Koran on a desk to participating in prayer sessions during breaks and wearing religious medallions and symbols must be tolerated and protected by federal supervisors and other agency officials, under a Presidential memo of August 14, 1997. While the “Guidelines on Religious Exercise and Religious Expression in the Federal Workplace” did not create any new legal rights or substantive procedures, they spell out what all federal agencies must do to protect government workers’ rights to practice, pursue, or express their religious beliefs on the job.

The guidelines generally instruct the heads of all executive departments and agencies to permit and protect employees’ exercise of religious freedom rights in the workplace. They include a number of specific examples designed to demonstrate how and what supervisors and managers must allow (or refrain from) in carrying out this general religious freedom mandate. However, while casting a protective mantle over most forms of workplace religious expression, the guidelines also warn that under the First Amendment “supervisors and employees must not engage in activities or expressions that a reasonable observer would interpret as government endorsement or denigration of religion or a particular religion.”

Main points of the guidelines include:

• Federal Employees’ Religious Expression Rights—The guidelines stress that a federal worker generally has the right to express personal religious convictions on the job “except where the employee’s interest in the expression is outweighed by the government’s interest in the efficient provision of public services or where the expression intrudes upon the legitimate rights of other employees or creates the appearance, to a reasonable observer, of an official endorsement of religion.” These protections extend to employees’ religious expressions in private work areas, religious discussions with co-workers, and display of religious messages or symbols on personal attire. Generally, these practices must be permitted as long as they do not interfere with workplace efficiency or convey any official government endorsement of religion. Similarly, even workplace “proselytizing”—that is, employees’ efforts to “spread the faith” or “persuade fellow employees of the correctness of their religious views”—is protected “to the same extent as those employees may engage in comparable speech not involving religion,” according to the guidelines. However, workers must refrain from proselytizing, the guidelines add, “when a fellow employee asks that it stop or otherwise demonstrates that it is unwelcome.”

• A Ban on Employment-Based Religious Discrimination—This prohibition covers discrimination in employment terms and conditions (that is, hiring, firing, promotions, pay, etc.). It also extends to religious harassment that creates a hostile environment (for example, an employee’s repeated derogatory remarks to co-workers “about their faith or lack of faith”), as well as coercive actions that encourage or discourage employee participation in religious activities (for example, supervisors may invite co-workers to family
religious celebrations or ceremonies, but may not indicate they “expect to see” employees in church or at a religiously oriented meeting).

- **Management’s Religious Accommodation Obligation**—Under federal law, the guidelines stress, an agency must accommodate workers’ religious beliefs and practices “unless such accommodation would impose an undue hardship on the conduct of the agency’s operations.” Additionally, an agency cannot deny a worker’s religious accommodation request if it “regularly permits similar accommodations for nonreligious purposes.” This means that managers must make accommodations—like work schedule adjustments and tolerance of religious attire at work—as long as these accommodations do not result in a real (rather than “speculative”) undue hardship that affects the agency’s ability to conduct business or carry out its mission.

**Association Rights**

The 1996 Federal Employee Representation Improvement Act (P.L. 104-177) guaranteed the right of employee associations to represent the views of their members before higher management.

Rules at 5 CFR 251 require agencies to consult with employee associations and govern agency relations with managerial, supervisory, professional and other organizations that are not labor unions. The rules:

- Require agencies to establish and maintain systems for intra-management communication and consultation with their supervisors and managers, and establish consultative relationships with associations whose membership is primarily composed of federal supervisory and/or managerial personnel.
- Authorize agencies to provide support services to organizations representing federal employees, and their members, when such action would benefit the agency’s programs or be warranted as a service to employees. This includes space for meeting purposes, excused absence for training, internal agency mail and email and other support.
- Reaffirm the eligibility of members of managerial and other federal employee organizations to make an allotment for dues withholding from their paychecks.

Agencies have broad discretion in implementing these requirements.

While agencies are required to communicate and consult with associations of supervisors and managers, dealings with other non-labor organizations representing federal employees are discretionary, because, among other things, of the likelihood that members of such organizations will also be members of bargaining units for which labor organizations hold exclusive recognition regarding their conditions of employment.

**Benefits Upon Death in Service**

The following summarizes policies governing benefits for employees who die in service—that is, while actively employed. These benefits differ from benefits upon the death of a retiree. For further details on each of these benefits, see the pertinent material in each applicable section of this *Federal Employees Almanac*.

- **Unpaid Compensation**—This includes the unpaid hours worked, and the unused hours of annual leave accrued as of the date of death. This amount is distributed in a lump sum payment to the employee’s beneficiary or by order of precedence established by federal statute.
- **Health Insurance**—If the employee was enrolled in the self and family option under the Federal Employees Health Benefits program at the date of death and there is a survivor annuity payable to a spouse and/or children, the survivor may continue health insurance coverage. Premiums will be deducted from the survivor annuity. If the employee was enrolled in the self and family option at the date of death, but there is no survivor annuity payable, the enrollment terminates with the survivors having the right to convert to a private policy within 30 days. Exception: If covered under the Federal Employees Retirement System and the deceased federal employee has at least 18 months of service, the survivor may keep the health benefits coverage, but will be required to pay the enrollee’s share of the premiums directly to OPM. If the employee was enrolled in self-only coverage at the date of death, the enrollment terminates at death with no right to enroll or convert for the survivors.
- **Life Insurance**—Any Federal Employees’ Group Life Insurance benefits payable will
be paid in the order of precedence established by federal statute, unless the employee has an SF 2823, Designation of Beneficiary form, on file. However, a valid court order filed with the employing agency after October 1998 and before the employee’s death will take precedence over a designation of beneficiary.

**Long-Term Care Insurance**—If a spouse or other eligible family member is enrolled in the Federal Long-Term Care Insurance Program upon the employee’s death, that coverage continues as long as the enrollee continues to pay the premiums. However, eligibility to first enroll would end unless the individual is eligible through receipt of a survivor annuity or under other eligibility rules.

**Dental and Vision Insurance**—A member of a family who receives an immediate annuity as the survivor of an employee or of an annuitant is eligible to enroll in the Federal Employees Dental and Vision Insurance Program or to continue coverage if covered by that person’s enrollment at the time of death.

**Thrift Savings Plan**—All money in the employee’s TSP account is payable in the order of precedence established by federal statute, unless the employee has a TSP-3, Beneficiary Election form on file, which would govern instead. A spouse beneficiary may keep the account open and has the same account management and withdrawal rights as employee participants. Other beneficiaries must close out the account, either by taking a withdrawal or by transferring the money to an individual retirement account or other qualifying retirement savings plan.

**Death Gratuity Payment**—If an employee’s death results from an injury sustained in the line of duty, a death gratuity payment may be paid to the personal representative of the employee. The amount payable is up to $10,000 minus the amount payable by Office of Workers’ Compensation Programs (OWCP) under 5 U.S.C. 8331 (f), usually $200, and 8134 (a), usually $800.

**Flag Honor**—Agencies are authorized to present an American flag to the next of kin of a federal or postal employee who dies of injuries incurred in connection with employment with the government, including death in the line of duty and death due to the individual's status as an employee. If no request is received from the next of kin, the flag may be presented to the appropriate individual as determined by the Office of Personnel Management. An agency may disclose information necessary to show that a deceased individual was an employee to the extent that the information is not classified and such disclosure does not endanger national security. Policies are at 5 CFR 550.1501.

**Death Overseas**—Section 3973 of Title 22, U.S. Code, provides for the payment of a death gratuity in an amount equal to one year of the employee’s salary at the time of death to members of the Foreign Service who died outside the United States in the performance of duty. Additionally, certain travel and transportation benefits are provided.

In addition, under 5 U.S.C. 8102(a) a death gratuity of $100,000 is payable upon the death of an employee due to injuries incurred in connection with the employee’s service with an Armed Force in a contingency operation. This includes employees of non-appropriated fund instrumentalities. The gratuity is payable by the Department of Labor’s Office of Workers’ Compensation Programs as a death benefit under the Federal Employees Compensation Act. It is paid to survivors under a standard order of precedence unless the employee chose a different payout on a designation form that agencies are to provide to employees deployed in a contingency zone of operations. The amount is offset by any other death gratuity payment as described above.

The death gratuity is payable for employees of certain agencies who died on or after October 1, 2001, due to injuries incurred in connection with service with an Armed Force in theater of operations of Operation Enduring Freedom and Operation Iraqi Freedom. Implementing rules are at 20 CFR 10, subpart J.

**Public Safety Officers Benefits**—The Public Safety Officers’ Benefits Act of 1976 (42 U.S.C. 3796) authorizes a benefit to specified survivors of public safety officers, including those of the federal government, found to have died as the direct and proximate result of a personal injury, traumatic injury involving external force sustained in the line of duty, and to officers found to have been permanently and totally disabled as the direct result of a catastrophic injury sustained in the line of duty. The benefit varies according to the
date of death or disability; it is inflation-adjusted each October 1 ($334,604 in fiscal 2014). The payment is offset by any death gratuity payable as described above. Contact the Public Safety Officers’ Benefits Program, Bureau of Justice Assistance, 810 7th St. N.W., Washington, DC 20531, phone (888) 744-6513, https://www.psob.gov.

Under 5 U.S.C. 5724 agencies may pay the moving, transportation and relocation expenses attributable to a change of residence within the United States of the immediate family of a federal law enforcement officer who dies in the performance of official duties, and may pay the expenses of preparing and transporting the remains of the deceased officer to where the family will reside, or to another appropriate place for interment.

**Survivor Annuity, General**—The surviving spouse and/or children of an employee who dies in service may be eligible for a survivor annuity under CSRS or FERS, depending on the employee’s retirement system. (Note: These policies generally parallel those for survivors of retirees; see Chapter 3, Section 4.)

For survivor benefits to be payable upon death in service, the employee must have 18 months of creditable civilian service and be covered by the applicable retirement system at the date of death. Except in cases of accidental death, the surviving spouse must have been married to the employee for at least nine months at the time of death or be a parent of a child of the marriage.

Benefits may also be payable to a former spouse in accordance with a court order. The amount awarded by the court to a former spouse reduces the amount payable to any surviving spouse.

Annuity payments are taxable.

**CSRS:** A spousal annuity is 55 percent of an annuity computed as if the employee had retired on a disability retirement as of the date of death. Spouses receive 55 percent of the higher of:

- an annuity computed under the general formula based on the deceased employee’s high-3 average salary and length of service to date of death, including credit for unused sick leave; or
- a “guaranteed minimum” which is the lesser of 40 percent of the deceased employee’s high-3 average salary; or the regular annuity obtained after increasing the deceased employee’s length of service by the period of time between the date of death and the date he or she would have been age 60.

A lump-sum death benefit may be payable if the annuity amounts paid out by the time survivor annuities end—such as at the survivor’s death—do not equal the deceased employee’s contributions, plus interest.

**FERS:** If the employee has at least 18 months of civilian service, the surviving spouse will receive:

- a lump sum ($31,786.21 in 2014, indexed each year), plus
- a lump sum of the higher of 50 percent of annual basic pay at time of death or 50 percent of high-3 average salary, plus
- any Social Security benefits payable.

In addition, if the employee had more than 10 years of service and died while subject to FERS deductions, the surviving spouse will receive an annuity equal to 50 percent of the employee’s basic annuity as of date of death. This earned annuity is computed in the same manner as if the employee retired, but without any reduction for age.

**Children’s Benefits**—In addition to any spousal benefits payable, eligible children receive benefits in a set dollar amount established by law. Children must be unmarried, under the age of 18 (or 22 if attending school) or any age if disabled before age 18.

Children’s benefits are indexed each year. In 2014 the children’s rate when there is a surviving parent is $502 per month per eligible child or $1,506 per month divided by the number of eligible children (if four or more). If there is no surviving parent the rate is $603 per month per eligible child or $1,808 per month divided by the number of eligible children (if four or more). The amount payable to children of CSRS employees is not reduced by any Social Security survivor benefits payable to the children; benefits to children of FERS and CSRS Offset employees are reduced by the amount of the Social Security benefit. A child annuity is paid to his or her legal guardian if one has been appointed. If there is no
legal guardian, OPM will make the payment (at its discretion) to the person who is responsible for the child.

If No Survivor Annuity Is Payable—If your spouse and/or children are not eligible for a survivor annuity under the rules described above in Survivor Annuity, General, or if there is no surviving spouse or child, your retirement contributions, plus interest as applicable, will be paid as a lump-sum to the beneficiary you designated (on form SF 2808 for CSRS, SF 3102 for FERS, available from your personnel office or at www.opm.gov/forms) or, in the absence of a designated beneficiary, in the order of precedence established under statute (see Chapter 3, Section 4). The amount includes:

• CSRS: Retirement deductions withheld from your pay, redeposits of refunds previously paid, deposits for civilian service where no deductions were taken, deposits for post-1956 military service and interest on deductions through December 31, 1956 (if any). Note: In the case of an employee or former retiree who dies with less than five years of creditable service, interest is paid to the date of separation (or transfer to a position not covered by CSRS) on any amount over one year of service.

• FERS: Retirement deductions (including any CSRS Interim and CSRS Offset) withheld from pay, deposits for civilian service performed before January 1, 1989, deposits for post-1956 military service, redeposits of CSRS refunds previously made, the balance left after the return of excess deductions (civilian and military), and the variable interest on deductions and deposits if the service covered totals at least one year. Note: For transferees with a CSRS component, interest on the CSRS component of the lump sum accrues under CSRS rules.

Section 5
Separation Before Retirement Eligibility

The following summarizes policies governing benefits for employees who separate before retirement eligibility. These benefits differ in some ways from benefits upon retirement. For further details on each of these benefits, including the rules on retirement eligibility, see the pertinent material in each applicable section of this Federal Employees Almanac.

Thrift Savings Plan

Upon separation before retirement eligibility, you have the same options for withdrawing your TSP account that apply to retirees. You may leave your money in TSP; transfer all or part of your TSP balance into an Individual Retirement Account (IRA) or other eligible retirement plan; receive your TSP account balance in a lump sum payment; receive your balance in equal monthly installments; purchase a life annuity; or use a combination of those choices. Special rules apply in various situations, including for participants with outstanding loans and those with “Roth” balances. See Section 4 in Chapter 6.

Federal Employees’ Group Life Insurance

Your life insurance automatically terminates effective with your separation from federal employment. You then have a 31-day extension of coverage during which coverage will continue at no cost to you. During the 31-day period, you may apply for conversion to an individual policy.

You may convert all or any part of your Basic and Optional insurance to an individual policy. However, if you assigned your insurance, only your assignee may apply for conversion. Also, you may not convert Option C family coverage if you no longer have any eligible family members.

The purchase of a policy is a private business transaction between you and the insurance company. The cost is determined by the insurance company and is based on your age and class of risk. See Converting to an Individual Policy in Chapter 2, Section 2.

Federal Long-Term Care Insurance Program

Coverage under the FLTCIP is fully portable. As long as you continue paying premiums, your insurance coverage will continue. If you were paying premiums by payroll deduction
and you leave the government, you’ll have to make arrangements with the insurance carrier, LTC Partners, to start paying premiums directly or by automatic debit from your bank account. But you get to keep the insurance at the same premiums as if you never left the eligible group. Certain relatives are qualified relatives as long as you are in one of the groups eligible to apply for this insurance. If they enrolled while you were eligible (whether you enrolled or not), they will keep the coverage by continuing to pay their premiums, even if you leave the eligible group. However, once you leave the eligible group, they can no longer first apply for the insurance unless they are otherwise eligible.

**Federal Employees Health Benefits Program**

Enrollment in the Federal Employees Health Benefits (FEHB) program terminates on the last day of the pay period during which you separate. You then have a 31-day free extension of coverage. During the 31-day period, you may apply to convert to a non-group contract or apply for temporary continuation of coverage (TCC).

**Temporary Continuation of Coverage**—When you separate from service, you may choose to continue FEHB coverage for a period of 18 months after your separation. TCC allows you to continue the same level of health benefits coverage enjoyed while employed. The TCC family enrollment covers the same family members as were covered under your plan while employed.

If you take advantage of the TCC option, you must pay both the employee and the employer share of the health benefits premium plus an administrative charge of 2 percent of the premium. You can choose to enroll in the same plan you had at separation or any other plan, option, or type of enrollment for which you are eligible. (Defense Department employees who are involuntarily separated by reduction in force, or who volunteer to be separated from a “surplus position,” may receive TCC based on 5 U.S.C. 8905a(d)(4). If you are eligible for this special TCC, you pay only the employee contribution for up to 18 months, with a 31-day period to convert to a private policy following.)

TCC begins as soon as the 31-day free extension of coverage ends regardless of when you elect it. Your agency is required to notify you about your eligibility for temporary continuation of coverage within 60 days after you separate. You have 60 days after receiving the notice to enroll. If you enroll after the 31-day free extension expires, your enrollment will be retroactive to the expiration of the 31-day free extension and you will be billed for the retroactive coverage.

You are not entitled to TCC if your separation from service is involuntary due to gross misconduct. Also, cancellation of coverage prior to expiration at 18 months results in a loss of conversion privilege.

Coverage under TCC qualifies for purposes of avoiding potential tax penalties under the Affordable Care Act for those who do not have health insurance meeting certain standards. See FEHB Eligibility and Enrollment Rules in Chapter 2, Section 1.

Also see Temporary Continuation of Coverage in Chapter 2, Section 1.

**Conversion**—If you do not want to continue your health benefits coverage under the temporary continuation provision described above, you may convert to an individual (non-group) contract. The conversion contract is available only from the carrier of the plan you are enrolled in when you separate.

If you convert to a non-group contract, you will not be able to later apply for TCC; by the time the conversion process is completed, the time limit for applying for TCC will have passed. But if you continue your coverage under the temporary continuation provision, you will have another opportunity to convert to an individual contract at the end of the 18-month period.

To convert, you must contact your health plan within 31 days of the termination of your health insurance coverage and request information on converting to a non-group contract. The plan will provide you with an application for conversion and information on benefits and costs. Additional information on the conversion process is on Standard Form 2810, Notice of Change in Health Benefits Enrollment, available at www.opm.gov/forms.
If you do convert, you must pay the entire cost of coverage and your benefits may be less than previous coverage. However, the carrier must offer you a non-group contract regardless of any health problems you or your family members may have.

When you separate, your employing office must terminate your enrollment by completing an SF 2810 and forwarding you a copy. The SF 2810 tells about the 31-day extension of coverage and how to convert to an individual (non-group) contract and gives information about TCC. Your agency will also give you a notice about your eligibility for the TCC described above (and information about how to enroll).

You cannot reinstate your health benefits coverage if you receive a deferred annuity.

Also see www.opm.gov/healthcare-insurance/healthcare.

Federal Employees Dental and Vision Insurance Program

Coverage under the Federal Employees Dental and Vision Insurance Program (FEDVIP) ends when you no longer meet the definition of an eligible employee (see Eligibility in Chapter 2, Section 4). Those who separate with eligibility for a deferred annuity are not eligible to enroll in FEDVIP and cannot continue a FEDVIP enrollment. Those who retire on a Minimum Retirement Age+10 annuity under the Federal Employees Retirement System and who elect to postpone receipt of their annuity lose FEDVIP coverage upon separation from service but can enroll in FEDVIP within 60 days of when they start receiving their annuity.

Coverage for family members also ends when you as the enrollee lose coverage.

Under FEDVIP, there is no 31-day extension of coverage, temporary continuation of coverage, or right to convert to an individual policy.

Flexible Spending Accounts

If you separate before the end of a plan year, a health care FSA terminates on separation. Any expenses incurred before separation will still be reimbursable, even if claims are submitted after separation. Any remaining balance in an account is not refunded. A dependent care account balance will still be available for any eligible expense incurred within the plan year.

Retirement—FERS

If you separate before retirement eligibility you have two basic options regarding your retirement, a refund or a deferred annuity.

Refund—You may apply for a refund of your retirement contributions if you have been separated from federal service for at least 31 days (or have occupied a position not covered by the Federal Employees Retirement System for at least 31 days). If you have more than one year of service, interest on the contributions will be part of the refund. The form to use is SF 3106, Application for Refund of Retirement Deductions, available at www.opm.gov/forms, call (888) 767-6738 or (724) 794-2005, or write to: Office of Personnel Management, P.O. Box 45, Boyers, PA 10617-0045.

Before you can receive a refund, generally you must notify your spouse and any former spouse that you have filed the application. Also, you may be barred from receiving a refund if the refund would end the court-ordered right of any spouse or former spouse to future benefits based on your service.

A refund of all deductions voids any retirement options, including survivor benefits.

A refund may be paid directly to you or rolled over into an IRA or into a qualifying retirement plan of another employer. See the information on the form regarding procedures and tax consequences.

See Redeposit Service in Chapter 3, Section 3, for rules on recapturing service time after taking a refund and later returning to federal employment.

Deferred Annuity—If you have left your retirement contributions or deposits in the fund when you separated from the government, and you are not eligible for an immediate retirement benefit, you may be eligible for a deferred annuity.

If you have at least five years of creditable service, you may receive a deferred annuity beginning on the first day of the month after you attain age 62.

If you have at least 10 years of creditable service, you may receive a deferred annuity
as early as the first day of the month after you attain your Minimum Retirement Age (MRA). However, your deferred annuity will be reduced by 5/12 percent for each month (5 percent per year) by which the commencing date of annuity precedes your 62nd birthday, unless you: have at least 30 years of service; have 20 years of service and postpone the commencing date until you are age 60; or have at least 20 years of service as an air traffic controller, firefighter, law enforcement officer, or Member of Congress.

The form to use is RI 92-19, Application for Deferred or Postponed Retirement, available through the contact points above. Complete the form and mail it to OPM no sooner than two months before you are eligible to receive a deferred annuity.

The deferred annuity is based on the length of your service and your high-3 average salary (see High-3 Salary Base in Chapter 3, Section 4) on the day you left government. The annuity computation formula is 1 percent of your high-3 average pay times years of creditable service, with full months beyond a full year credited proportionately.

If you want to make a deposit for post-1956 military service so that you can receive credit for this service in the computation of your deferred annuity, you must pay the deposit to your employing agency before you separate from federal employment (making the payment while OPM is adjudicating a retirement application is no longer allowed).

Unused sick leave is not creditable toward a deferred annuity. Also see Chapter 3, Section 4.

If you die before applying for a deferred annuity and you have less than 10 years of creditable service or no eligible survivor, any contributions remaining in the retirement fund are paid in a lump sum (with interest) to your designated beneficiary or person in the order of precedence set by law.

If you die before applying for a deferred annuity, your surviving spouse is entitled to a survivor annuity if:

• you have at least 10 years of creditable service for which withholdings or deposits remain in the fund (five years of which is creditable civilian service); and

• your spouse was married to you at the time of your separation from federal service.

Your surviving spouse may elect to receive a lump-sum payment of your retirement contributions in lieu of the survivor annuity.

Retirement—CSRS

If you separate before retirement eligibility you have two basic options regarding your retirement, a refund or a deferred annuity.

Refund—You may apply for a refund of your retirement contributions if you have been separated from federal service for at least 31 days or have occupied a position not covered by the Civil Service Retirement System or Federal Employees Retirement System for at least 31 days. The form to use is SF 2802, Application for Refund of Retirement Deductions, available at www.opm.gov/forms, call (888) 767-6738 or (724) 794-2005, or write to: Office of Personnel Management, P.O. Box 45, Boyers, PA 10617-0045.

Before you can receive a refund, you generally must notify your spouse and any former spouse that you have filed the application. Also, you may be barred from receiving a refund if the refund would end the court-ordered right of any spouse or former spouse to future benefits based on your service.

A refund of all deductions voids any retirement options, including survivor benefits, until the refund is redeposited.

A refund may be paid directly to you or transferred into an IRA or into a qualifying retirement plan of another employer. See the information on the form regarding procedures and tax consequences.

See Redeposit Service in Chapter 3, Section 3 for rules on recapturing service time after taking a refund and later returning to federal employment.

Deferred Annuity—If you have at least five years of creditable civilian service, do not receive a refund of all retirement contributions, and are not eligible for an immediate retirement benefit, you may be eligible for a deferred annuity at age 62. The form to use is OPM Form 1496A, Application for Deferred Retirement, available at the contact points above. Complete the form and mail it to OPM no sooner than two months before you turn age 62.
The deferred annuity begins on your 62nd birthday. The deferred annuity is based on the length of your service and your “high-3” average salary on the day you left government and is calculated according to the following formula (full months beyond a full year are credited proportionately):

- 1.50 percent per year for the first five years (7.50 percent) plus
- 1.75 percent per year for the next five years (8.75 percent) plus
- 2.00 percent per year for service over 10 years.

If you want to make a deposit for post-1956 military service so that you can receive credit for this service in the computation of your deferred annuity, you must pay the deposit to your employing agency before you separate from federal employment (making the payment while OPM is adjudicating a retirement application is no longer allowed).

Unused sick leave is not creditable toward a deferred annuity.

No survivor annuity is payable to a former employee’s spouse, former spouse, or children if the former employee has title to a deferred annuity but dies before reaching age 62, or reaches age 62 but dies before filing an application for CSRS retirement. The only benefit payable in either case would be a lump-sum payment of the former employee’s retirement contributions, without interest.

Also see Chapter 3, Section 4.

Section 6
Labor/Management Relations

Title VII of the Civil Service Reform Act of 1978 (CSRA), established a system for federal employees to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal. Labor organizations exclusively represent the bargaining unit employees in all matters affecting their working conditions. This portion of the CSRA (Chapter 71 of Title 5 of the U.S. Code) is referred to as the Federal Service Labor-Management Relations Statute.

Although most local unions are nationally affiliated, local officers and stewards are members of the installation’s workforce and have been elected or appointed to office by the local union membership. Management is not involved in this selection process.

The statute requires supervisors to deal exclusively with the certified labor union on establishing or modifying conditions of employment affecting bargaining unit employees. This means that supervisors and management officials cannot negotiate over personnel policies, practices, or working conditions directly with bargaining unit employees. Rather, these dealings must be solely with the union officials representing them. Failure to adhere to this requirement may result in an unfair labor practice being found, with management’s actions being reversed until the requirement to negotiate with the union, if requested, has been satisfied.

Key elements of the labor/management program are:

- Federal employees have the right to join or not to join a labor organization. Unions with exclusive recognition have the right and the obligation to represent all employees in an exclusive unit. Third-party procedures are provided for resolving labor/management disputes.
- An independent Federal Labor Relations Authority (FLRA) of three members who serve five-year terms, subject to removal only for cause, and a general counsel who investigates and prosecutes complaints of unfair labor practices. The FLRA (see Chapter 10, Section 6) generally is responsible for administering the federal government’s labor relations program. There is within the FLRA a Foreign Service Labor Relations Board whose function in the Foreign Service is similar to that performed by the FLRA in the civil service.
- The scope of matters subject to negotiated grievance and arbitration procedures includes such adverse actions as discharge, demotion, and long-term suspensions. The negotiated procedures do not cover prohibited political activities, retirement, insurance, suspension or removal for national security, examination, certification or appointment, position classification which does not result in loss of grade or pay or any matter the union and agency agree to exclude. Concerning matters covered by the negotiated grievance procedure, binding arbitration is the sole procedure available to bargaining unit
employees—except that in adverse actions, unacceptable performance and discrimination cases the employee may use either the negotiated procedure or the statutory appeals procedure (but not both).

- The Act specifies “management rights,” reserving to agency officials the authority to make decisions and take actions which are not subject to the collective bargaining process, and excludes bargaining on federal pay and benefits or non-voluntary payments to unions by employees. In the management rights area, the Act: (1) prohibits agencies from bargaining on mission, budget, organization, number of employees or internal security; and (2) permits, but does not require, them to negotiate over the methods, means and technology of conducting agency operations. Management’s right to select or non-select from a promotion certificate or to fill a position from any appropriate source (internally or externally) is specifically stated.

- The Act contains the basic rights of federal employees to form, join and assist labor organizations or to refrain from these activities. It also contains prohibitions against strikes and slowdowns, as well as picketing which interferes with government operations.

Other key features and provisions of the federal government’s labor relations program include:

- A special expedited procedure to determine whether a particular matter falls within the obligation to bargain.
- FLRA decisions and orders are subject to court enforcement, including judicial review in unfair labor practice and negotiability cases.
- Authority to make an employee whole in an unjustified or unwarranted personnel action—including back pay plus attorney fees.
- Dues withholding—based on voluntary allotments by employees—is allowed at the exclusive union’s request. Allotments are irrevocable for one year, and the withholding service is at no charge to the employee or labor organization. Dues withholding also is authorized for unions with 10 percent or more membership in appropriate bargaining units where there is no exclusive union.
- Official time for employees representing the union in negotiations during regular working hours (including attendance at impasse settlement proceedings), but the number of employees on official time shall not exceed the number of management officials representing the agency.

To assist in resolving negotiation impasses, the mediation services of the Federal Mediation and Conciliation Service are available, and unresolved negotiation impasses may be referred to the Federal Service Impasses Panel, an entity within the FLRA.

Supervisors and managers are excluded from coverage under the program. They cannot be represented in dealings with management by unions that represent rank-and-file employees. (They may be covered instead by agency systems for intra-management communication and consultation under OPM guidelines.)

**Union Organizing**

The Federal Service Labor-Management Relations Statute provides that an agency shall recognize a labor organization as the exclusive representative of employees in a bargaining unit, if that organization has been selected as the representative by a majority of the unit’s employees who voted in a secret ballot election.

For a union to represent employees, it must first file a petition with the FLRA. That petition must establish that at least 30 percent of the employees in the proposed unit wish to be represented by the union as evidenced by their signatures and that the unit is appropriate. To be appropriate, a unit must insure a clear and identifiable community of interest among unit employees, promote effective dealings with the agency, and promote the efficiency of agency operations.

Employees already represented by a union may petition the FLRA to be represented by another union or to be unrepresented. A petition must be filed with signatures of at least 30 percent of the employees in the unit asserting that the exclusive representative is no longer the representative of a majority of unit employees. Provided at least one year has elapsed since a representation election was conducted, the FLRA will hold an elec-
tion and representation (or lack thereof) will be determined by a majority of the ballots cast. A negotiated agreement between labor and management bars another union from seeking to represent the bargaining unit until shortly before the expiration of the existing negotiated agreement. At that time (not more than 105 or less than 60 days prior to the expiration of an agreement of three years or less), the FLRA will consider timely a petition filed by a rival union.

In addition to determining questions of representation, petitions may be filed to amend or clarify the description of a bargaining unit, and to consolidate two or more bargaining units.

**Bargaining Units**

The bargaining unit is a group of employees with common interests who are represented by a labor union in their dealings with agency management.

Bargaining unit status (that is, whether the position is in or out of the unit) pertains solely to the employee’s position in the agency—it does not take into consideration whether the employee is a dues paying union member. As such, these are two distinct groups. Bargaining unit members are employees whose positions are included in the defined bargaining unit while union members are employees who pay dues to the labor organization. Bargaining unit employees may elect to join the local union and pay dues either through direct payment to the union or through automatic dues withholding, or they may decide not to join the union.

Once a union has been certified as the exclusive representative, though, it must represent all bargaining unit members equally, regardless of their union membership. As such, when the union and management negotiate a collective bargaining agreement, its terms and conditions cover all employees in the bargaining unit irrespective of their union membership.

There are, however, limited situations where the union can favor union members over nonmembers by offering certain services to only dues paying members. In these instances, though, the services are not related to the employee’s conditions of employment. For example, a union can offer the services of a tax attorney to only dues paying union members.

The Federal Service Labor/Management Relations Statute specifically excludes certain positions from bargaining unit coverage. Individuals employed as supervisors, management officials and employees engaged in personnel work in other than a purely clerical capacity cannot be included in a bargaining unit. These individuals cannot be represented by unions and their conditions of employment can be unilaterally set by management.

**Exclusions for Security Reasons**

FLRA generally determines when a bargaining unit is appropriate. However, 5 U.S.C. 7112(b)(6) provides that a unit shall not be determined to be appropriate if it includes “any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security.” In general, if there is a question about an employee or position after the FLRA has determined that a unit is appropriate, the union or agency may file a clarification of unit petition to obtain a decision from the FLRA as to whether an employee or position should be excluded from or included in the unit.

5 U.S.C. 7103(b)(1), added by the Civil Service Reform Act of 1978, authorizes the President to exclude any agency or subdivision of any agency from the ability to bargain collectively if the agency or subdivision has a primary function of intelligence, counterintelligence, investigative, or national security work, and application of the labor/management relations provisions of the CSRA cannot be applied in a manner consistent with national security requirements and considerations.

**Department of Homeland Security**—Under the law creating the Department of Homeland Security (PL. 107-296) the President has discretion to deny recognition of bargaining units, and to exclude positions or employees from appropriate units at that department where the President determines in writing that union representation would have a substantial adverse impact on the department’s ability to protect homeland security. The action could not be effective until 10 days after Congress had been notified of such a decision.
Negotiations

The Federal Service Labor-Management Relations Statute outlines the broad topics that must be negotiated with a labor union, those that are reserved to management, and those that may be negotiated at management’s election, as described in Management Rights, below. (Note: Different policy on negotiability applies at the Transportation Security Administration; see Other Major Alternative Personnel Authorities in Section 7 of this chapter.)

Negotiations occur at various times and for different reasons. The most prominent is the formal negotiations for a collective bargaining agreement. These are full scope negotiations. This process results in a written collective bargaining agreement signed by both management and the union establishing various personnel policies, practices, and conditions of employment. The document may be referred to as the contract, the collective bargaining agreement or the labor/management negotiated agreement. It is normally subject to renegotiations every three years but is frequently automatically renewed (rolled over) from year to year.

At times, negotiations arise as a result of management-proposed changes to bargaining unit employees’ conditions of employment (for example, an agency reorganization, the introduction of new equipment, changes in regulations of outside authorities, etc.), which are not addressed in the parties’ negotiated agreement or where there is no current agreement. In these cases, when an agency decides to make changes to conditions of employment during the life of an agreement—sometimes called midterm bargaining—or when there is no agreement, two types of negotiations may result:

- negotiations on the decision itself (substance bargaining); and/or
- negotiations on the effects of the proposed change—normally referred to as impact and implementation bargaining.

Management Rights

Management rights is a term which defines those areas over which management exercises exclusive decision-making authority. These rights are spelled out in Section 7106 of the Federal Service Labor-Management Relations Statute. There are two categories of management rights, “mandatory” or reserved rights, and “permissive” rights.

Rights reserved to management under Section 7106(a)(1) governing general management practices include the authority to determine the agency’s mission, budget, organization, number of employees, and internal security practices. Reserved rights under Section 7106(a)(2) governing employment practices include the authority to: hire, assign, direct, lay off, retain, suspend, remove, reduce in grade or pay, or take other disciplinary action against employees, assign work, make determinations with regard to contracting out, determine the personnel by which agency functions will be performed, make selections from among properly ranked and certified candidates for promotion or any other appropriate source; and take whatever action may be necessary to carry out the agency mission during emergencies.

Permissive rights under Section 7106(b)(1) are those rights that management may bargain, but is not statutorily required to do so. These include the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, and the technology, methods, and means of performing work. See Labor/Management Cooperation, below, for information about a test program of bargaining in these areas.

Even with respect to nonnegotiable “mandatory” management rights, management must bargain, upon request, over the procedures it will use in exercising these rights and on appropriate arrangements for employees adversely affected by the exercise of such rights. For example, in a reduction in force, the decision to RIF is a management right, but how that RIF is conducted and outplacement or other assistance is provided for displaced employees are negotiable issues.

When there is a question whether a proposal is outside the duty to bargain because it involves a management right or is subject to bargaining as a condition of employment, the matter may be raised as a negotiability appeal to the Federal Labor Relations Authority. Negotiability decisions of the FLRA can be challenged in federal court.
A union may propose measures whose purpose is to alleviate the adverse impact on unit employees of a management action. If, however, the union's proposal seriously interferes with the exercise of a management right, the FLRA will apply the “excessive interference” test. That test provides that a union proposal whose purpose is to ameliorate the adverse effects of a management decision is negotiable unless it impinges upon a management right to an excessive degree.

**Employees’ Rights**

Employees have the right to form, join or assist a union or to refrain from doing so. Employees are free to exercise this right without fear of penalty or reprisal and shall be protected in exercising this right.

Employees have the right to:
- act as a union representative, and in that capacity, to present union views to agency management, the Congress or other authorities; and
- negotiate over conditions of employment through their chosen representative.

While typically an employee has no control over whether he or she is in a bargaining unit, it is the employee’s decision whether to be a union member, and if a union member, how actively engaged. Additionally, management does not have a say in which bargaining unit employee serves as a union official.

**Union Rights**

**Representational Rights**—Several provisions of the Federal Service Labor-Management Relations Statute address the opportunities unions have in representing the bargaining unit employees’ interests. For example, the union is able to:
- negotiate with management in good faith concerning conditions of employment for bargaining unit members;
- obtain data normally maintained by management that are reasonably available and necessary to the union for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining;
- present its views to heads of agencies and other officials of the Executive Branch of the government, the Congress, or other appropriate authorities;
- have employees representing the union on official time when negotiating agreements with management; and
- be represented at certain discussions management may have with bargaining unit employees.

**Formal Discussions**—Management has an obligation to invite the union to attend any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.

For a meeting to be considered a formal discussion, it must include:
- one or more representatives of the agency (for example, supervisor(s), management official(s), personnelist(s), or attorney(s)); and
- one or more employees in the bargaining unit or their representative(s).

A meeting does not become a formal discussion unless the subject concerns an individual’s grievance or general conditions of employment.

A discussion between management and a grievant relating to a grievance is a formal discussion. The union must be invited to attend even if the employee is representing him- or herself in the negotiated grievance proceeding.

Discussions with bargaining unit members about general conditions of employment or personnel policies and practices and normal “shop talk” are not formal discussions.

If the meeting meets the definition of a formal discussion, the supervisor must invite the union to attend. Having a shop steward who works in the office at the meeting in his or her role as an employee does not meet this obligation. Rather, the supervisor must invite the union to the meeting with the union being free to designate whom it wants to act as its representative.

Finally, the union is allowed to participate in these meetings by raising questions/comments/concerns, but it cannot disrupt them.
Examination of Employees (‘Weingarten’ Meetings)—The union is entitled to represent bargaining unit employees at meetings in connection with an investigation. This provision is often referred to as employees’ “Weingarten” rights, based on a Supreme Court decision. The Federal Service Labor-Management Relations Statute establishes three conditions for a “Weingarten” meeting:

• one or more agency representatives are examining (questioning) a bargaining unit employee in connection with an investigation;
• the employee reasonably believes that the examination may result in disciplinary action against the employee; and
• the employee requests union representation.

Once all three conditions have been met, supervisors may generally not continue the examination without allowing the employee his or her requested representation.

“Weingarten” rights are not applicable when management issues a disciplinary action, because management is not asking any questions. Additionally, the “Weingarten” right does not come into play when engaging in performance counseling as this does not concern disciplinary matters but, rather, performance issues.

Negotiated Grievance Procedures

The Federal Service Labor-Management Relations Statute defines a negotiated grievance as any complaint by any employee concerning any matter relating to the employment of the employee, by any labor organization concerning any matter relating to the employment of any employee or by any employee labor organization, or agency concerning:

• the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or
• any claimed violation, misinterpretation or misapplication of any law, rule, or regulation affecting conditions of employment.

Every negotiated agreement contains a negotiated grievance procedure. This is the exclusive procedure for resolving bargaining unit employees’ grievances that fall within its coverage; the union is the exclusive representative under this procedure. Negotiated grievance procedures do not apply to employees serving probationary periods.

The negotiated grievance system is a full-scope procedure. That is, it covers all matters falling within the definition that are not specifically excluded by the Statute. (For example, the negotiated grievance system cannot include grievances concerning retirement, insurance, or the classification of any position which does not result in the reduction in grade or pay of an employee.) Management and the union can, through collective bargaining, exclude any additional subject from coverage of the negotiated procedure. For example, if the parties agree that grievances over performance appraisals are to be excluded from the negotiated procedure, these types of grievances would then have to be raised under the administrative grievance procedure or some alternative system developed by the parties.

Employees filing grievances under the negotiated procedure can elect to have the union represent them or they can represent themselves. They cannot hire their own representatives unless the union states that the private representative is acting for the union. Even if the employee represents him or herself, the union must be invited to attend any grievance meetings as these are considered formal discussions.

The negotiated grievance procedure usually begins with the grievant or his or her representative presenting an informal grievance to the first-line supervisor. If not resolved, the grievant can raise the matter up through the chain of command. (Each negotiated agreement details the grievance process.) Once the final decision has been issued, the matter can be raised to final and binding arbitration only by the union; an employee cannot raise a matter to arbitration.

Under alternative dispute resolution (ADR) procedures, alternate means are introduced to resolve employee complaints before a grievance reaches the final stage. Some ADR processes include mediation, peer-panel reviews, facilitation, etc. The goal of ADR is to provide an informal, local method for amicably resolving disputes at the lowest possible level without the need for invoking third party arbitration. See Chapter 10, Section 7.
Unfair Labor Practices

An unfair labor practice (ULP) is normally a violation of the Federal Service Labor-Management Relations Statute. Anyone can file a ULP charge—an individual, an employee, the union or management. The respondent to the charges, though, will always be either management or the union. The vast majority of ULP charges are filed by the union against management. The reason for this is that management is usually the party which takes the actions.

Unfair labor practice charges are filed with the general counsel of the Federal Labor Relations Authority. The general counsel investigates the charge to determine if there is sufficient evidence to warrant issuing a complaint. If a complaint is issued, a hearing is set and the parties go before an administrative law judge (ALJ) with the general counsel prosecuting. The administrative law judge will issue a decision either finding that a ULP was committed or dismissing the complaint. If either party is dissatisfied with the ALJ’s decision, the case can be appealed to the Authority.

If the agency is found to have committed a ULP, various remedies can be ordered. The most common is an announcement that the agency committed a ULP and a promise not to do it again. Another potential remedy is a reversal of the management action that caused the ULP. For example, if management realigns an office without giving the union an opportunity to bargain, a remedy may be to reverse the realignment and require management to bargain with the union. This is called a status quo ante remedy; back pay may be ordered if employees lost pay or allowances due to management’s action. FLRA seeks to have ULP notices announced electronically where the agency or union customarily communicates with bargaining unit employees in that way.

Management Unfair Labor Practices—Section 7116(a) of the Federal Service Labor-Management Relations Statute (see Title 5 of the U.S. Code) provides that it is an unfair labor practice for management to:

- interfere with, restrain, or coerce employees in the exercise by the employee of any right under the Statute;
- encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
- sponsor, control or otherwise assist any labor organization, other than to furnish, upon request, customary, and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;
- discipline or otherwise discriminate against an employee because the employee has filed a grievance, complaint, affidavit, or petition or given information or testimony;
- refuse to consult or negotiate in good faith with a labor organization;
- fail or refuse to cooperate in impasse procedures and impasse decisions;
- enforce any rule or regulation (other than a rule or regulation addressing prohibited personnel practices) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulations was prescribed; or
- otherwise fail or refuse to comply with any provision of the Statute.

Union Unfair Labor Practices—Section 7116(b) of the Federal Service Labor-Management Relations Statute defines those actions which, if taken by the union, would result in a ULP. The statute provides that it is an unfair labor practice for the union to:

- interfere with, restrain, or coerce any employee in the exercise by the employee of any right under the Statute;
- cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right;
- coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member’s work performance or productivity as an employee or the discharge of the members duties as an employee;
- discriminate against an employee with regard to the terms of conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or non-preferential civil service status, political affiliation, marital status, or handicapping condition;
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- refuse to consult or negotiate in good faith with a labor organization;
- fail or refuse to cooperate in impasse procedures and impasse decisions;
- call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor/management dispute if such picketing interferes with an agency’s operations, or
- otherwise fail or refuse to comply with any provision of the Statute.

**Official Time**

Official time is the time granted to an employee by the agency to perform representational functions on behalf of the union. Official time is granted without charge to leave or loss of pay and is authorized only when the employee would otherwise be in a duty status. Official time is considered hours of work.

Official time must be granted to employees representing a labor organization when engaged in collective bargaining, to include attendance at impasse proceedings. The number of employees for whom official time is authorized may not exceed the number of individuals designated as representing the agency in the negotiations. (The union can bargain for additional union negotiators to be on official time.)

Official time cannot be granted for internal union business.

The Federal Labor Relations Authority can authorize official time for employees representing the union in any phase of proceedings before the Authority, including unfair labor practice proceedings, bargaining unit representation proceedings, etc.

Official time for representing bargaining unit employees on matters covered by the Statute may be granted in any amount the agency and the union involved agree to be reasonable, necessary and in the public interest. The amount and use of official time for representational purposes is fully negotiable. The amount of official time authorized to union representatives at the installation is detailed in the parties’ negotiated agreement or is set through past practice.


**Strikes**

Individuals who participate in a strike against the government of the United States may not accept or hold a position in the government under 5 U.S.C. 7311. Such individuals are also not considered employees within the meaning of the Act, 5 U.S.C. 7103(a)(2)(B)(v).

As noted above, it is an unfair labor practice for a labor organization to “call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency’s operations” or to condone any such activity by failing to take action to prevent or stop it (5 U.S.C. 7116(b)(7)(A) and (B)). Further, the Act by definition excludes labor organizations that engage in such activity from coverage and thus from acting as the exclusive representative of employees (5 U.S.C. 7103(a)(4) (D)).

If it finds a labor organization has willfully and intentionally violated Section 7116(b)(7) of the Act, the FLRA may take disciplinary action up to revoking exclusive recognition status.

A strike by employees against the government also constitutes a criminal violation (18 U.S.C. 1918). Any person found guilty of violating this section of the law is subject to a fine of not more than $1,000 or imprisonment of not more than a year and a day, or both.

**Labor/Management Cooperation**

Executive Order 13522 of 2009 created the National Council on Federal Labor-Management Relations, consisting of senior central agency officials and representatives of unions and management organizations, responsible for: supporting the creation of agency-level labor/management forums and promoting partnership efforts between labor and management; developing measures for assessing their effectiveness; providing guidance on labor/management improvement efforts, including results achieved; using the expertise of individuals both within and outside the government to foster cooperative labor/management relations arrangements; and recommending ways to improve delivery of services to the public while cutting costs and advancing employee interests.
Agency heads meanwhile were ordered to:
- establish agency-level labor/management forums by creating labor/management committees or councils at appropriate levels, or adapting existing councils or committees if such groups exist;
- involve employees and their union representatives as “full partners” with management representatives to identify problems and craft solutions;
- allow employees and their union representatives pre-decisional involvement on all workplace matters, without regard to whether those matters are negotiable subjects of bargaining, and provide adequate information on such matters expeditiously to union representatives where not prohibited by law; and
- evaluate and document, in consultation with union representatives, progress and improvements in employee satisfaction and organizational performance resulting from the labor/management forums.

In addition, the order mandated the creation of pilot projects to test negotiations over some or all of the subjects negotiable at management’s discretion. In 2011, projects began in parts of eight departments and independent agencies, each involving at least 500 bargaining unit employees or a significant agency process. Assessments of the projects and other information are at www.lmrcouncil.gov; online training is at www.vahracademy.com/flra.html.

Section 7
Alternative Personnel Practices

Overview

Alternative personnel systems fall into several categories. Some agencies and quasi-corporate agencies have been outside the structure of Title 5 of the U.S. Code, the body of law generally governing federal employment programs, for many years. The demonstration project authority has been used for decades to test new systems in specific settings; several of them have become permanent.

In addition, many agencies, or parts of them, have received specific personnel authorities on grounds that they have special needs that standard policies do not meet. Affected policies commonly include hiring, position classification, compensation, performance evaluation and pay-for-performance, among others. However, retirement, insurance and most other benefits remain unchanged, as do protections such as equal employment opportunity laws, veterans’ preference, the merit principles and prohibited personnel practices. Two initial examples involved the Federal Aviation Administration in 1996 and the Internal Revenue Service in 1998. Similar flexibilities were granted in the 2001 law establishing the Transportation Security Administration and in the 2002 law establishing the Department of Homeland Security. The Defense Department received similar authorities in 2003, and the Securities and Exchange Commission received some exemptions in 2002 and others in 2003. NASA and the Government Accountability Office followed suit in 2004.

In some cases, authorities later were either scaled back or repealed, however, as described below.

In addition, numerous flexibilities give agencies more discretion in hiring, work scheduling, compensation, job classification, performance management, dispute resolution and in other aspects of employment. Further information is in the pertinent sections of this Federal Employees Almanac and at www.opm.gov/policy-data-oversight/pay-leave (select “Reference Materials” then “Handbooks”).

Governmentwide Personnel Flexibilities

Largely in reaction to complaints that governmentwide personnel rules created recruiting and retention problems and did not always mesh well with agency missions, numerous special authorities have been created in recent years giving individual agencies—and even individual hiring officials, managers and supervisors—far greater discretion over personnel decisions on a localized basis than was true in the past. Other
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authorities have existed for many years and have been widely applied across the government. These flexibilities include:

**Hiring**—Agencies have the authority to: conduct competitive examining for all positions (except administrative law judges); use commercial recruiting firms and nonprofit employment services to recruit for vacancies; waive the 40 hours per week limitation (called the “dual pay limitation”) on basic pay to one position and recruit current federal employees for second jobs when “required services cannot be readily obtained otherwise” and “under emergency conditions relating to health, safety, protection of life or property, or national emergency;” allow a detail within a department of its employees for up to 120 days, plus extensions in 120-day increments (intra-agency details in increments of 120 days are allowed when approved by the head of the department); use commercial temporary help services for brief periods (120 days, with extension of additional 120 days) for short-term situations; use excepted service appointments when appropriate; request and use direct-hire authority where there is a severe shortage of candidates or a critical hiring need; use temporary appointments for short-term needs that are not expected to last longer than one year; use Veterans Recruitment Appointments; use term appointments when the need for the employee’s services is not permanent; employ experts or consultants for temporary or intermittent employment; and give a noncompetitive temporary appointment of more than 60 days or a term appointment to any veteran retired from active military service with a disability rating of 30 percent or more or rated by the Department of Veterans Affairs within the preceding year as having a compensable service-connected disability of 30 percent or more (see Noncompetitive Appointments in Section 8 of this chapter). Also see Special Recruitment, Hiring, and Placement Programs in Section 1 of this chapter.

**Alternative Staffing Options**—Agencies have the authority to: use the Pathways Program to attract and recruit exceptional individuals into a variety of occupations; allow eligible veterans to apply for positions announced under merit promotion procedures when the agency is recruiting from outside its own workforce; use the Presidential Management Fellows Program to attract outstanding graduate students (master’s and doctoral-level) from a wide variety of academic disciplines; and use other authorities as described in Special Recruitment, Hiring, and Placement Programs in Section 1 of this chapter.

**Compensation**—Agencies have considerable discretionary authority to provide additional direct compensation in certain circumstances to support their recruitment, relocation, and retention efforts. Some of these are at the agency’s sole discretion while others require approval by the Office of Management and Budget and/or the Office of Personnel Management. See Section 5 in Chapter 1.

**Lateral and Upward Movement**—Agencies may determine the knowledge, skills, and abilities and define the specialized experience required to perform each job. They may use training agreements under which employees may receive accelerated training or on-the-job experience to gain new skills more rapidly. Agencies may design merit promotion plans. Agencies also may establish career ladders that allow noncompetitive promotion based on performance and acquisition of appropriate knowledge and skills. See Section 3 of this chapter.

**Student Loan Repayment**—Using this authority, agencies may repay federally insured student loans as a recruitment or retention incentive for candidates or current employees. See Section 4 of this chapter.

**Hours of Work and Scheduling Flexibilities**—Agencies have the discretionary authority to determine the hours of work for their employees to help agencies meet organizational goals and employees balance personal needs. See Section 2 of this chapter.

**Telecommuting**—Telecommuting allows employees to work at home or at another approved location away from the regular office. See Section 2 of this chapter.

**Leave Flexibilities**—Agencies may permit employees to use flexibilities in work scheduling (see Section 2 of this chapter) and leave policies (see Chapter 5, Section 2).

**Classification**—Agencies may: use generic or job family standards for General Schedule positions that use a broader approach to job evaluation by consolidating an entire family of work into one position classification standard, with one set of job family
grading criteria; redesign the duties of positions by eliminating a higher level skill so that more candidates may qualify for the position or by adding higher level skills and restructuring the position so that they may offer higher starting salaries; redesign jobs to make them more appealing to candidates by adding desirable duties and eliminating undesirable duties; structure new and vacant positions to allow entry at lower levels from the current workforce; use team leaders rather than supervisors when practical; and plan positions so that there are logical entrance levels and logical career patterns for progression to more skilled and higher-grade positions.

Performance Management—Within a broad framework, the performance management regulations give agencies the freedom to choose the design of their appraisal systems and programs. An agency can establish an overarching performance appraisal system that allows its components to design a variety of appraisal programs, or requires one program for all its employees, or is some variation of these options.

Appraisal programs can use as few as two and as many as five summary rating levels in official ratings of record.

OPM’s regulations require that each employee’s performance plan include at least one critical element, which, by definition, measures individual performance and establishes individual accountability. However, appraisal programs can also include noncritical and additional performance elements, which can measure individual, group, or organizational performance.

Agencies can take group and organizational performance into account when assigning ratings of record above Unacceptable.

Incentive Awards and Recognition—Agencies have authority to design extensive awards programs that include cash awards, honorary awards, informal recognition awards, and time-off awards. Agencies can give these awards to employees to recognize employee and group performance, and can design incentive programs with awards granted because an individual or a group achieved pre-established goals. OPM award regulations allow: referral bonuses to provide incentives or recognition to employees who bring new talent into the agency; rating-based cash awards of up to 10 percent of salary, or up to 20 percent for exceptional performance; individual or group cash awards in recognition of accomplishments that contribute to the efficiency, economy, or other improvement of government operations of up to $10,000 without external approval, up to $25,000 with OPM approval, and in excess of $25,000 with Presidential approval; quality step increases to employees who have received the highest rating of record available under the applicable performance appraisal program; honorary and informal recognition programs that use recognition items as awards to recognize individual and group performance; and time off from duty without charge to leave or loss of pay as an award to individuals or groups of employees. Also see Chapter 1, Section 4.

Title 5 Exemptions

Certain agencies have been exempted fully or partially from the requirements of Title 5 of the United States Code, which governs federal personnel rules in general. Agencies such as the Tennessee Valley Authority, the Veterans Affairs Department (many of its medical-related positions in the Veterans Health Administration, which account for the majority of the department’s workforce), and the Federal Reserve Board have been outside Title 5 for decades. The U.S. Postal Service constitutes the majority of the Title 5-exempt workforce.

Title 5 exemptions apply to certain government corporations, independent establishments, Executive Branch agencies with legislative approval to create alternative personnel systems, and other entities. Some of these are quasi-governmental because they have some type of corporate or other self-funding aspects, while others are in security or other highly specialized fields. Examples include the Central Intelligence Agency, the National Security Agency, “Sallie Mae,” the Metropolitan Washington Airport Authority, the Peace Corps, the Office of Federal Housing Enterprise Oversight, the Federal Deposit Insurance Corporation, and non-appropriated fund entities of the Defense Department. Legislative agencies such as the Library of Congress and Government Accountability Office also have Title 5 exemptions.

The scope of Title 5 coverage is a continuum, with totally Title 5-covered agencies on the one end, totally non-Title 5 on the other, and many gradations in between. For exam-
ple, organizations such as the TVA and USPS have extensive exemptions from Title 5, while other organizations, such as NASA, the Securities and Exchange Commission, the Nuclear Regulatory Commission and the Office of Federal Housing Enterprise Oversight, are only partially exempt. Such agencies may be exempt for classification and compensation purposes, for example, but must adhere to all other provisions of Title 5, such as staffing, performance management, and adverse action rules.

In addition, there are some organizations where only certain classes or portions of employees are exempt from Title 5, while the remainder of the organization is covered. Examples include the Department of State, where only Foreign Service employees are outside of Title 5, and the Smithsonian Institution, where part of the workforce operates under a trust fund, with the remainder covered under the Title 5 system.

While some agencies are formally exempt from certain provisions of Title 5, they may follow them as a matter of policy nevertheless. For example, many exempt agencies are not covered by the merit system principles, but still employ them, or similar merit-based organizational values, such as equity, fairness, and open competition, in their personnel systems. And they typically provide for some form of rating and ranking, classification and compensation systems based on rank or position, and formal due process procedures that mirror Title 5 in many ways. However, this does not mean that they necessarily interpret and implement Title 5’s merit system principles or merit processes the same way as covered agencies.

Similarly, all these organizations are covered by the civil rights laws and, in many cases, by collective bargaining agreements similar to those in effect at other agencies. The USPS, for example, is a highly unionized environment in which the unions play a stronger role than they do elsewhere in government.

**Demonstration Projects**

Demonstration projects, sometimes called “Chapter 47” projects for the chapter of Title 5 authorizing them, may run for no more than five years, with some extension permitted, and may involve no more than 5,000 employees. There may be no more than 10 active demonstration projects at one time. In a Chapter 47 demonstration project, an agency obtains authorization from OPM to be exempt from Title 5’s regulations and to propose, develop, test, and evaluate changes in its own human resources management system. Examples of allowable changes in these projects include:

- qualification requirements, recruitment, and appointment to positions;
- classification and compensation;
- assignment, reassignment, or promotions;
- disciplinary actions;
- providing incentives;
- establishing hours of work;
- involving employees and labor organizations in personnel decisions; and
- reducing overall agency staff and grade levels.

No waivers are permitted in areas of employee leave, employee benefits, equal employment opportunity, political activity, merit system principles, or prohibited personnel practices. Consultations and negotiations with affected employees and unions are required.

Many demonstration projects have studied ideas that later became governmentwide policy, such as enhanced recruiting and retention payments, and greater flexibility in hiring. Other ideas studied include the concept of pay banding—replacing traditional grade and step schedules with broad pay bands in which agencies have greater flexibility in setting employee pay rates and rewarding good performance.

Another common theme of demonstration projects is linking performance evaluations more closely to promotions, merit-based pay increases, and downsizing protections. Also common are tests of alternative employee evaluation methods, including specific requirements for achievements related to overall agency goals.

Also see <www.opm.gov/aps/demoproject>.

The ongoing projects under Chapter 47 and their key features are:

**Department of Defense Acquisition Workforce**—Started in 1999, this is the only
demonstration project to cover an occupational workforce rather than an organizational entity. Key features include: hiring based on scholastic achievement in a field of study specified for an occupation with a positive education requirement, with veterans’ preference continuing to apply but the “rule of three” eliminated; occupations with similar characteristics grouped together into three career paths with broad bands; and a contribution-based compensation and appraisal system.

**National Nuclear Security Administration**—The NNSA, an arm of the Energy Department, started a demonstration project in 2008 featuring accelerated hiring, more discretion for managers to set higher starting pay for highly qualified hirers, pay banding, faster pay progression for high-performing employees, and pay for performance.

**Food Safety and Inspection Service**—The Food Safety and Inspection Service, an arm of the Agriculture Department, began a demonstration project in 2009 featuring simplified job classification, pay banding, and pay for performance.

**Defense Department Research Laboratory Projects**

Separate from the Chapter 47 demonstration project authority is authority for the Defense Department to conduct similar types of tests at its research laboratories, in a program now called the Science and Technology Reinvention Laboratory project. These authorities mirror in many ways the tests under Chapter 47. However, the DoD laboratory projects are exempt from Chapter 47’s time limit and cap on the number of affected employees and can be made permanent without further legislation.

Typical features of these projects include pay banding, a pay-for-performance system, special hiring and appointment authorities, employee development emphasis, and revised reduction-in-force procedures.

Participating components are: Aviation and Missile Research Development and Engineering Center; Army Research Laboratory; Medical Research and Materiel Command; Engineer Research and Development Command; Communications-Electronics Command; Soldier and Biological Chemical Command; Naval Sea Systems Command Centers; Naval Research Laboratory; Office of Naval Research; Air Force Research Laboratory; Tank and Automotive Research Development and Engineering Center; Naval Air Warfare Center, Weapons Division; Naval Air Warfare Center, Aircraft Division; Space and Naval Warfare Systems Center, Pacific; Space and Naval Warfare Systems Center, Atlantic; and the laboratories within the Army Research, Development and Engineering Command.

**Permanent Demonstration Projects**

These demonstration projects have been made permanent:

**The Navy Demonstration Project**—Commonly known as “China Lake,” this was the first personnel demonstration project under Chapter 47 and put the term “pay banding” in the federal personnel vocabulary. The project draws its commonly used name from the location of one of the Navy facilities where it was tested, the Naval Air Warfare Center, Weapons Division at China Lake, Calif. It involves about 3,800 employees, including scientists, engineers, technicians, administrative, technical specialists and clerical staff there and at the Naval Command, Control and Ocean Surveillance Center in San Diego.

Key features include: a pay banding system that employs five career paths or occupational groupings; a rank-in-person system that allows employees moving from one position to another in the same pay band to retain their rank or pay; a performance-based compensation system that allows employees who exceed performance expectations to get incentive pay increases substantially exceeding governmentwide pay increases, while those who fully meet expectations get at least the governmentwide increases; performance evaluation procedures that call for employees to get an annual performance plan, containing specific details about what is expected during the performance year; and RIF retention procedures that base employee rankings within each competitive level primarily on performance, and allows for retention of outstanding performers at all levels, with secondary factors consisting of such elements as tenure, veterans’ preference, and length of service.

**National Institute of Standards and Technology**—This authority involves about 2,700 employees, including scientists, engineers, technicians, clerks, and administrative staff at Gaithersburg, Md., and Boulder, Colo.
Key features include: pay banding; pay for performance for all white-collar employees; supervisory pay differentials; recruitment and retention bonuses; expanded hiring authority and flexibility in setting starting salaries; expanded hiring authorities for professional and support occupations; agency-based hiring for the administrative and technical occupations; and flexible probationary periods.

**Department of Agriculture**—This program involves certain sites of the Forest Service and Agricultural Research Service testing a simplification of the hiring system for both white- and blue-collar employees.

Key features include: decentralized determination of shortage categories; streamlined examining process using quality groupings in place of numerical ratings and “rule of three;” recruitment incentives, including bonuses and relocation expenses; and extended probationary periods for research scientists.

**Department of Commerce**—This program involves about 7,400 employees of several Commerce sub-agencies, primarily the National Oceanic and Atmospheric Administration. It builds on certain elements of the former demonstration project at Commerce’s National Institute of Standards and Technology (see above).

Key features include: pay-for-performance in a pay banding framework, supervisory performance pay and pay differentials, extended probationary periods for research scientists, delegated examining authority, supplemental hiring tools such as flexible entry salaries, more flexible promotion pay increases, and a two-level rating system (eligible or unsatisfactory).

**Department of Defense**


DoD in late 2005 announced the specifics of NSPS and a schedule calling for department-wide implementation in 2006 of changes in disciplinary, appeal and labor-management practices, and a multi-year phase-in of changes in job classification, personnel management and compensation policies as different segments of the workforce moved into NSPS.

However, in early 2006 a federal court in a union-filed lawsuit enjoined the disciplinary, appeal and labor provisions. An appeals court later lifted the injunction, but the department did not implement those provisions pending possible further legal or legislative action. The unions in early 2008 dropped the lawsuit after enactment of P.L. 110-181, which among other things repealed those authorities.

Those events did not affect the job classification, personnel management and compensation policies, which DoD implemented over 2006-2009, ultimately affecting more than 225,000 employees.

However, an internal DoD review ordered by the White House in 2009 recommended a thorough overhaul of NSPS to address both technical issues and a lack of employee confidence in it. In response, Congress enacted P.L. 111-84, which ordered that NSPS be abolished by calendar year 2012. Employees were transitioned out over 2010-2011 and placed into other pay systems, mostly the General Schedule.

NSPS featured a pay banding system of four career groups, with several pay schedules within each, and one to four pay bands under each pay schedule. Employees could receive a pay increase through local market supplements that replaced locality pay and special rate pay, general adjustments to the rate range, or for promotion, reassignment, or performance.

In the transition out of NSPS, when an employee’s salary fell below the minimum rate of the grade the employee was placed at the minimum rate; where it fell between two steps the employee was placed at the higher step; and where it fell above the maximum for the grade the employee was placed on retained pay.

Those on retained pay are eligible for annual raises of half the local GS increase until the underlying rate catches up. Pay retention ends in situations including a break in service, declining a reasonable offer of a position in which the rate of basic pay would be equal to or greater than the retained rate, or a move to a position where pay retention does not apply. In such situations the employee is assigned the pay rate of the top step.
of the grade. Pay retention also ends on a promotion to a position with an equal or higher pay rate, or on a reduction in grade for disciplinary reasons.

During pay retention, any recruitment or relocation incentives paid biweekly continue until the end of the designated term. Retention incentives are based on the step 10 level of the grade. Under certain circumstances, an employee whose salary is at or near the Executive Level IV rate may be eligible to retain pay at that rate plus 5 percent.

**Department of Homeland Security**

The 2002 enabling legislation for the Department of Homeland Security (DHS), PL. 107-296, required that the department operate a “flexible” and “contemporary” personnel system to include alternative practices in areas such as pay setting, performance evaluation, hiring, job classification, and discipline. However, basic employee protections in areas such as merit principles, veterans’ preference, due process and anti-discrimination law remained unchanged. Certain DHS employees, most numerously in the Transportation Security Administration, were excluded because they already fell under separate personnel authorities.

In 2005, DHS issued final rules at 5 CFR 9701 to carry out a system it called MaxHR. However, a union-sponsored lawsuit resulted in an injunction blocking many of the labor/management and adverse action and appeal rights provisions. DHS essentially put implementation of the entire program on hold pending an appeal because those provisions were intertwined with the provisions not affected by the court order. In 2006, an appellate court generally upheld the lower court’s action, and DHS decided not to appeal to the U.S. Supreme Court.

The department and the unions then started discussions on implementing the provisions that were not enjoined, and DHS converted certain non-union supervisory and managerial employees to a new performance evaluation system. Amid continued union opposition to MaxHR, DHS dropped that name in 2007 and folded the initiative into a broader program called the Human Capital Operational Plan.

Meanwhile, Congress imposed a series of funding and policy restrictions that effectively tied the department’s hands. That culminated in a law enacted in 2008, PL. 110-325, completely barring the department from spending money to carry out an alternative personnel system, although like prior restrictive laws it did not repeal the authorities.

In the wake of that funding cutoff, DHS abandoned the effort and returned employees covered by the revised evaluation system to the prior policies. The action did not affect the separate personnel system at TSA (see below).

**Other Major Alternative Personnel Authorities**

**Internal Revenue Service**—Title I, Subtitle C of the IRS Restructuring Act of 1998, PL. 105-206, created an alternative personnel system at the agency whose features include: critical pay to attract senior managers; streamlined authority to conduct demonstration projects of alternative personnel systems; rewards to senior executives for meeting IRS goals and objectives; requirements to terminate employees for certain specified types of misconduct; a new performance appraisal system to set retention standards for employees that could be used to deny pay increases, promotions, transfers, reassignments or other actions to resolve performance problems; freer use of relocation, recruitment and retention payments; an end to the use of enforcement statistics in employee evaluations; and a training program that emphasizes customer service.

Also authorized was a new awards program that provides incentives and recognition for individual achievements and group or organizational accomplishments. The IRS is required to operate these new personnel flexibilities “consistent with” merit systems principles. Key features include:

- Revised performance standards to permit evaluation of each employee’s performance on the basis of the individual and organizational performance requirements, taking into account individual contributions toward the attainment of any goals or objectives.
- Authority to conduct demonstration projects: to improve personnel management; provide increased individual accountability; eliminate obstacles to the removal of or imposing any disciplinary action with respect to poor performers, subject to the requirements of
due process; expedite appeals from adverse actions or performance-based actions; and promote pay based on performance. Such projects will not be subject to the OPM approval processes generally applicable.

- Mandatory firing of employees for offenses including: willful understatement of tax liability, willful failure to file returns on time, making false statements under oath, falsifying or destroying documents to conceal mistakes, and using tax laws to harass or retaliate against taxpayers or for personal gain.
- Authority to establish pay banding to replace the General Schedule structure and give greater flexibility in setting salaries. However, in large part due to union opposition, the IRS has applied this provision only to managers. It has created three managerial pay bands: senior manager (former GS-14 and -15 managers who report directly to an executive or who manage one or more subordinate managers); department manager (former GS-11 through -13 second-level managers in accounts management, submission processing and compliance); and frontline manager (former GS-5 through -15 managers not falling into either of the other categories). All managers are eligible to receive a performance-based salary increase commensurate with their annual ratings. The performance-based increase replaces the GS within-grade step increase, quality step increase, and annual across-the-board pay adjustment.

Federal Aviation Administration—Section 347 of P.L. 104-50 provided more flexibility in hiring, training, compensating, and deploying personnel at the FAA. Key elements include:
- A centralized applicant pool system that provides automatic consideration for applicants and the opportunity for managers to hire without announcing a vacancy, on-the-spot hires for special program needs and hard-to-fill positions, elimination of time-in-grade requirements for promotions, noncompetitive conversion from temporary to permanent status if competition is held initially for the temporary position, standardized position descriptions, and reduction in the number of hiring authorities to three (permanent, temporary with time limit, and temporary without time limit).
- Decentralized and deregulated training funding and decision making. Each organizational “line of business” identifies its needs and develops a training plan. Line of business units have more flexibility to make decisions about employee training, including support for employees pursuing degree programs that address the organization’s mission.
- A personnel appeals process called Guaranteed Fair Treatment consisting of a three-member panel made up of one advocate chosen by each side and a neutral arbitrator. FAA employees have the choice of using that system or pursuing traditional Merit Systems Protection Board appeal rights. (Note: A 2009 decision from the U.S. Court of Appeals for the Federal Circuit, Gonzalez v. Department of Transportation, No. 2007-3309, held that MSPB’s authority in FAA cases does not include awarding back pay.)
- Pay bargaining with air traffic controllers.

Government Accountability Office—GAO is a Legislative Branch agency that generally follows Executive Branch personnel policies. Its positions are placed into bands based on job content and rates are linked to the market. The annual amount of funding available for performance-based compensation increases is calculated as a percentage of the salaries within each pay band. GAO uses a five-level performance rating system and does not use pay pools or review boards to validate ratings across different units, nor does it require ratings consistency across units.

GAO employees who perform at a “meets expectations” level or higher generally are guaranteed a permanent pay adjustment at least equal to the annual adjustment for General Schedule employees for the local pay area. The exceptions are members of the Senior Executive Service, wage system employees and employees in entry-level development programs. Those in the latter group receive performance reviews and associated permanent pay raises more than once a year that generally are substantially greater than what the floor guarantee would provide. GAO employees are subject to a pay cap of Level III of the Executive Schedule, a cap higher than that applying to most other federal employees. GAO also has permanent authority to offer early retirements and buyouts for workforce shaping.

Transportation Security Administration—The Transportation Security Administration
was exempted from many standard personnel policies when it was established as part of the Transportation Department by P.L. 107-71. TSA kept those exemptions when it was later moved into the Department of Homeland Security.

Most TSA employees are passenger or baggage screeners working at airports. TSA has broad authority to employ, appoint, discipline, terminate, and fix their compensation, terms, and conditions of employment. Prior to 2011, screeners and employees in certain associated jobs could not bargain collectively under agency policy, although they could join a union and enjoy some benefits of union membership, including the right to have a union representative in some personnel proceedings.

TSA in 2011 authorized bargaining for screeners and related employees, although only at the national level and only on certain issues, including performance management, awards and recognition, attendance management, and shift bids. It excluded subjects including any form of compensation, proficiency testing, job qualifications, and disciplinary standards. Later that year, a national bargaining unit was certified, with an initial contract finalized in 2012.

The contract replaced a former pay for performance system called the Performance and Accountability Standards System, which relied heavily on certification tests, with a new Transportation Officer Performance System emphasizing on-the-job performance. Under TOPS, at the beginning of each rating cycle management must establish and communicate written performance standards and expectations for employees, including benchmarks to be achieved and the measures to be used in assessing performance. The employee’s performance plan must include a schedule of progress reviews and is subject to revision when there is a significant change in the employee’s work situation such as a change in assignments, a change in the rating official or an extended absence. The system also includes provisions for ongoing communications, performance improvement plans and grievances of performance ratings.

The contract also set policies in areas including: scheduling shifts and annual leave; uniform allowances and the wearing of uniforms; rights to appeal personnel decisions involving suspensions of more than 14 days to the Merit Systems Protection Board; and rights to appeal lesser discipline through grievances.

TSA was exempt from the Uniformed Services Employment and Reemployment Rights Act (see Employment Rights of Those on Military Duty in Section 8 of this chapter) until enactment of P.L. 112-199 of 2012 extended standard whistleblower protections to TSA employees; previously, they had certain rights under interagency agreements (see Whistleblowing in Chapter 10, Section 3).

Intelligence Community—In 2008, the Office of the Director of National Intelligence created the National Intelligence Civilian Compensation Program, which commits agencies to setting the pay of their employees in intelligence-related functions according to a common set of pay and performance management policies. Each agency carries out the program through internal regulations.

The program created a pay banding system for intelligence community employees with three occupational groups: technician and administrative support; professional; and supervisory. Employees are to be evaluated on behaviors such as personal leadership and integrity, collaboration and critical thinking.

Under the policy, intelligence agencies are required to submit pay budget requests to the Office of Management and Budget and Congress that are no less than the amount that would have been budgeted had the affected jobs remained under the General Schedule.

Affected employees receive written performance expectations at the start of an evaluation period and receive a mid-year review. All end-of-cycle appraisals are subject to at least two levels of management review and approval before they are finalized. Ratings quotas or forced distributions are prohibited, and employees may appeal their rating to a management official above and/or outside the rating chain and may have the right to file a grievance in accordance with the agency’s regulations.

All employees who receive a performance rating of successful or higher receive the full annual GS pay raise, plus the applicable locality adjustment, and are eligible for performance-based raises or bonuses. Performance payouts are based on factors includ-
ing the employee’s rating and current salary, the ratings distribution in the performance pay pool, and the funds allocated to the pool, subject to possible change by higher-level management under certain criteria.

**Defense Civilian Personnel Intelligence System**—This Defense Department personnel system involving pay banding and performance-based pay is designed to conform to the policies of the National Intelligence Civilian Compensation Program and is based on a program in the National Geospatial-Intelligence Agency. Elements of DCPIS include a specialized occupational structure, a common performance evaluation system and the use of bonuses, awards and within-grade increases to reward good performers.

**Financial Regulatory Agencies**—The Securities and Exchange Commission, Federal Housing Finance Agency, and Federal Deposit Insurance Corporation have independent authority for performance-based pay systems. The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) granted other federal financial regulatory agencies the flexibility to establish their own compensation systems. FIRREA agencies also are required to consult with one another for the purpose of keeping their compensation systems in line with others. The FIRREA agencies in general link employee performance objectives to organizational goals and the overall strategic direction of their organizations. These agencies include the Treasury Department’s Office of Thrift Supervision and its Office of the Comptroller of the Currency, and the National Credit Union Administration, Farm Credit Administration, Commodity Futures Trading Commission and Federal Housing Finance Agency, among others.

**Performance-Based Organizations**

A performance-based organization (PBO) is a government program, office, or other discrete management unit with strong incentives to manage for results. The organization commits to specific measurable goals with targets for improved performance. In exchange, the PBO is allowed more flexibility to manage its personnel, procurement, and other services.

The goal is to set forth clear measures of performance, hold the head of the organization clearly accountable for achieving results, and grant the head of the organization authority to deviate from governmentwide rules if needed to achieve agreed-upon results. PBOs are characterized by:

- separating service operations from their policy components and placing them in separate organizations reporting to the agency or department head;
- negotiating a three- to five-year framework document between the PBO and the departmental secretary to set out the explicit goals, measures, relationships, flexibilities, and limitations for the organization; and,
- creating the position of chief operating officer to head the service operation functions, where the chief operating officer is appointed or hired on contract through a competitive search for a fixed term, with a clear agreement on services to be delivered and productivity goals to be achieved.


**Section 8**

**Veterans’ Employment Benefits**

**General Preference Policy**

Under certain circumstances, preferential treatment in federal employment situations is granted under the Veterans’ Preference Act to those who have served in the Armed Forces and were honorably discharged. That preference gives veterans (plus spouses, widows, widowers, and mothers of veterans in certain situations) an advantage in hiring for government jobs and gives them additional protections in reductions in force (RIFs). Eligibility for veterans’ preference is determined by the period in which an individual performed military service and the length of that service. Additional credits may be granted to veterans who are disabled.
Executive Order 13518 of 2009 created the Veterans Employment Initiative (see www.fedshirevets.gov) to increase the employment of veterans within the Executive Branch, help agencies identify qualified veterans, clarify the hiring process for veterans seeking employment with the federal government, and help veterans adjust to civilian life once they are hired. The order also:

- required establishment of a Veterans Employment Program office in most agencies, responsible for helping veterans identify employment opportunities within those agencies, providing feedback to veterans about their employment application status, and helping veterans recently employed by the agencies adjust to civilian life and the federal workplace culture;
- required OPM to issue a governmentwide strategic plan focusing on creating leadership commitment and an infrastructure in each agency to promote continued skills development and employment success for veterans, along with marketing strategies aimed at agency hiring managers as well as veterans and transitioning service members; and
- created an interagency Council on Veterans Employment to oversee the initiative.

In 2010, that council created a model to guide an agency’s goal setting based on the percentage of veterans hired, including disabled veterans. Agencies with lower hiring percentages have more aggressive goals and move to other tiers based on their performance.

**Veterans’ Hiring Preference**

To receive hiring preference, a veteran must have been discharged or released from active duty in the Armed Forces under honorable conditions (with an honorable or general discharge). Under 5 U.S.C. 2108(1), a “release or discharge from active duty” has the same effect as a “separation from the Armed Forces.”

Under 5 U.S.C. 2108a, agencies must treat active duty service members as preference eligibles for purposes of competitive service hiring before their discharge or release from active duty, with submission of any written certification from the armed forces that the member is expected to be discharged or released from active duty under honorable conditions within 120 days. General guidance is in a June 15, 2012 memo to agencies and specific policies affecting eligibility for 10-point preference are in a February 25, 2013 memo, both available at www.chcoc.gov/transmittals. The latter also addresses special policies applying to those released on a “sole survivorship” discharge.

As defined in 5 U.S.C. 2101(2), “Armed Forces” means the Army, Navy, Air Force, Marine Corps and Coast Guard. The veteran must also be eligible under one of the preference categories below (also shown on the Standard Form (SF) 50, Notification of Personnel Action).

Active duty for training or inactive duty by National Guard or Reserve members generally does not qualify as “active duty” for preference; however, for preference based on a service-connected disability under 5 U.S.C. 2108(2), active duty may consist entirely of service for training purposes in the Reserves or National Guard. See 5 CFR 211.102(f).

A “war” means only those armed conflicts declared by Congress as war and includes World War II, which covers the period from December 7, 1941, to April 28, 1952.

Under 5 CFR 211, five points are added to the passing competitive examination score or rating of a veteran who meets those qualifications and who served:

- during a war;
- during the period April 28, 1952, through July 1, 1955;
- for more than 180 consecutive days, other than for training, any part of which occurred after January 31, 1955, and before October 15, 1976;
- during the Gulf War from August 2, 1990, through January 2, 1992;
- for more than 180 consecutive days, other than for training, from September 11, 2001, through the close of Operation Iraqi Freedom; or
- in a campaign or expedition for which a campaign medal has been authorized. Any Armed Forces expeditionary medal or campaign badge qualifies.

A campaign medal holder or Gulf War veteran who originally enlisted after September 7, 1980, (or began active duty on or after October 14, 1982, and had not 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. The 24-month service requirement does not apply to 10-point preference eligibles separated for disability incurred or aggravated in the line of duty, or to veterans separated for hardship or other reasons under 10 U.S.C. 1171 or 1173.

Military retirees at the rank of major, lieutenant commander, or higher are not eligible for preference in appointment unless they have disabled veteran status. (This does not apply to Reservists who will not begin drawing military retired pay until age 60.)

The following persons are eligible to receive 10 points in addition to their earned ratings: a disabled veteran, the spouse of a veteran who suffered a service-connected disability and is too disabled to work, the unmarried widow or widower of a campaign veteran or one who served between December 7, 1941, and July 1, 1955, and in some cases the mother of a dead or totally and permanently disabled veteran.

Preference points are added only after a passing rating is obtained.

In jobs where experience is necessary, the veteran gets full credit for military service. It is counted as additional experience in a pre-service job or as experience gained in the service depending on which type of credit is more beneficial to the veteran.

Selection—A Presidential memo of May 11, 2010 ordered the phase-out in competitive hiring of the “rule of three” assessment system, under which managers generally had to hire from among the three candidates deemed best qualified, and replacing it with general use of category rating, which uses broad categories of qualifications. Veterans’ preference applies in category rating in a different way than under the rule of three. See Candidate Assessment and Probation in Section 1 of this chapter.

Reserved Positions—Some federal positions are reserved for veterans entitled to preference as long as they are available. These include guards, elevator operators, messengers, and custodians.

Excepted Service—Excepted service positions are those using different hiring rules than the competitive service, often on grounds that it is not appropriate to conduct examinations for such positions. Regulations setting procedures for applying veterans’ preference rights to the excepted service, at 5 CFR 302, state that general rating and ranking procedures of 5 U.S.C. 3309 apply to nominations and appointments in the excepted service when an agency uses numerical scoring in evaluating applicants. However, not all appointments within the excepted service are made using numerical rate and ranking procedures. For these positions, the regulations provide for a more qualitative accounting of veterans’ preference rights. In addition, some positions within the excepted service are exempt from the appointment procedures of 5 CFR 302. For these positions, the rules direct agencies to follow the principle of veterans’ preference as far as administratively feasible.

Age Limit Waivers—Under 5 U.S.C. 3307, some federal jobs have maximum age limits for appointment (often 37, so that an employee can accumulate a full 20 years before mandatory retirement from those positions at age 57). However, the Merit Systems Protection Board in Isabella v. Department of State and Office of Personnel Management, 2008 MSPB 146, held that an agency’s failure to waive the maximum entry-age requirements for a preference eligible veteran violates the Veterans Employment Opportunities Act of 1998 if there was no demonstration that a maximum entry age was essential to the performance of the position.

Due to that decision, qualified preference eligibles may apply and be considered for vacancies regardless of whether they meet the maximum age requirements. In order to determine whether it must waive a maximum entry age requirement, an agency must first analyze the affected position to determine whether age is essential to the performance of the position. If the agency decides it is not, the agency must waive the requirement for veterans’ preference-eligible applicants. Where the maximum is waived, the mandatory retirement age for affected individuals also is higher. Agencies still must apply suitability, occupational qualification standards, and medical qualification determinations. See 5 CFR 338, subpart F, and an August 26, 2009, memo to agencies at www.chcoc.gov/transmittals.

Note: Section 1086 of Public Law 111-84 increased effective October 28, 2009 the maximum age limit for an original appointment as a FERS law enforcement officer or firefighter to 47 for individuals who on the effective date of such appointment are receiving retired pay.
or retainer pay for military service or premium or compensation from the Department of Veterans Affairs instead of such retired or retainer pay.

Noncompetitive Appointments

Veterans Recruitment Appointment—Public Law 107-288 (see 38 U.S.C. 4214 and 5 CFR 307) revised the eligibility requirements for the former Veterans Readjustment Appointment, which the act redesignated as a Veterans Recruitment Appointment (VRA).

The VRA is an excepted appointment authority by which agencies can appoint an eligible veteran without competition to a position that is otherwise in the competitive service. After two years of satisfactory service, the veteran is converted to a career-conditional appointment in the competitive service. (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.

Eligible veterans are those who received either an honorable or general discharge and who: are disabled; served in active duty in the armed forces during a war or in a campaign or expedition for which they received an authorized campaign/expedition badge/medal; while serving on active duty participated in a United States military operation for which they received an Armed Forces Service Medal; or separated from active service under honorable conditions within the last three years. Under the eligibility criteria, not all five-point preference eligible veterans are eligible for a VRA appointment.

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 two 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, VRA appointees 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.

30 Percent or More Disabled Veterans—These veterans may be given a temporary or term appointment 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.

Initially, the disabled veteran is given a temporary appointment with an expiration date in excess of 60 days. This appointment may be converted at any time to a career conditional appointment.

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 percent or more.

Disabled Veterans Enrolled in a VA Training Program—Disabled veterans eligible for training under the 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. While enrolled in the VA program, the veteran is not a federal employee for most purposes but is a beneficiary of the VA. Training is tailored to the individual’s 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 provide work experience, the agency must ensure that the training will enable the veteran to meet the qualification requirements for the position.

Upon successful completion, the host agency and VA give the veteran a Certificate of Training showing the occupational series and grade level of the position for which trained. The Certificate of Training allows any agency to appoint the veteran noncompetitively under a status quo appointment which may be converted to career or career-conditional at any time.
Veterans Employment Opportunities Act (VEOA)—The Veterans Employment Opportunities Act of 1998 (P.L. 105-339) 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, regardless of where they are located. To be eligible for a VEOA appointment, a candidate must be a preference eligible or veteran separated after substantially completing at least three years of continuous active duty service performed under honorable conditions. A veteran given a VEOA appointment will be given a career or career conditional appointment in the competitive service.

The 1998 law also:
- established a redress system for veterans modeled after the one in the Uniformed Services Employment and Re-Employment Rights Act of 1994;
- made it a prohibited personnel practice 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;
- expanded certain provisions of Titles 31 and 38, U.S. Code, relating to employment of veterans by federal contractors;
- required the Federal Aviation Administration to apply veterans’ preference in reductions-in-force, as it previously was required to do in hiring; and
- extended veterans’ preference to certain White House, Legislative Branch and Judicial Branch positions.

Veterans’ Appeal Rights

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) (located at state employment service offices) when the person believes an agency has violated his or her rights under any statute or regulation relating to veterans’ preference.
- Under a Memorandum of Understanding between the Office of Personnel Management 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, may file a complaint with the local Department of Labor VETS representative.
- The Uniformed Services Employment and Re-Employment 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 be filed with the local Department of Labor VETS representative.
- 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 Office of Special Counsel (see Chapter 10, Section 4).
- A disabled veteran who believes he or she has been discriminated against in employment because of his or her disability may file a discrimination complaint with the offending agency under regulations administered by the Equal Employment Opportunity Commission.
- Any veteran may contact any OPM service center.

Generally speaking, complaints on the same issue may not be filed with more than one party.

Veterans’ Rights in RIF Situations

In government layoff programs brought about by economic or other factors, the law gives certain veterans in the federal service job priority rights over certain non-veterans.

Generally, employees with career civil service tenure who are eligible for veterans’ preference in a reduction in force (except for certain “20-year” military retirees) have job retention rights over other federal workers in the same competitive level and, if qualified, in other jobs in the same competitive area.
Although military retirees are preference-eligibles for purposes of examinations and appointments, the retention rights of "20-year military retirees" are reduced. Most of these retirees are not entitled to veterans' preference for a RIF. For RIF purposes, they will receive credit for periods of military service during a war, or in any campaign or expedition for which a campaign badge is authorized. Retention rights remain unchanged for military personnel retired on the basis of combat disability and in certain other limited situations. See 5 U.S.C. 3501.

Veterans with career-conditional tenure do not have job retention rights over non-veterans who have career civil service tenure. However, they do have retention rights over non-veteran career-conditional or term workers. Veterans who are rated 30 percent disabled or more have higher standing over other preference-eligibles in a RIF.

No job retention rights are given to employees—veterans or non-veterans—who have temporary appointments with definite time limitations.

Having veterans’ preference in a RIF does not mean that the employee won’t be separated. In many large-scale reductions, there are not enough jobs to go around and even veterans may be separated.

For a description of RIF rules and the specific role veterans’ preference plays, see Chapter 9, Section 1.

Disabled Veterans Affirmative Action Program

Federal departments and agencies, including the U.S. Postal Service and Postal Regulatory Commission, are required to have an affirmative action plan for the recruitment, employment, and advancement of disabled veterans, under 38 U.S.C. 4214 and 5 CFR 720.

To be considered a disabled veteran, the individual must meet the requirements in 38 U.S.C. 4211(3). Generally, a disabled veteran must have a compensable disability.

OPM annually asks agencies to submit their Disabled Veterans Affirmative Action Program (DVAAP) accomplishment reports and plan certifications. OPM then reviews each agency’s submission to determine if it is consistent with law and regulation.

Minimum DVAAP plan requirements are outlined in 5 CFR 720.304(e). Such plans typically include:

• an assessment of the current status of disabled veteran employment within the agency;
• a description of recruitment methods used to seek out disabled veteran applicants, including 30 percent or more disabled veterans;
• a description of internal advancement opportunities for disabled veterans; and
• a description of how the agency will monitor, review, and evaluate its planned efforts during the period covered by the plan.

OPM’s oversight responsibility for governmentwide DVAAP consists of monitoring agencies’ plans, evaluating agencies’ program effectiveness, providing technical assistance and guidance and reporting annually to Congress. OPM does not entertain or prosecute specific individual complaints of unfair treatment of disabled veterans, nor does it have the authority to adjudicate individual discrimination complaints. Individuals should pursue resolutions of these problems through the avenues available to them at the agency in question.

Employment Rights of Those on Military Duty

Civilian federal employees who are members of the Armed Forces Reserve and who are called to duty are entitled to federal job rights and protections that are guaranteed by the Uniformed Services Employment and Re-Employment Rights Act of 1994, Public Law 103-353. (Note: These policies are separate from those affecting employees who perform certain work related to military operations as civilians, as described in Combat Zone Assignments in Section 1 of this chapter). The rights and benefits of such individuals include:

Pay—Federal workers performing active military duty typically are placed in leave without pay status during their military tour of duty, and receive compensation from the Armed Forces in accordance with the terms and conditions of their military appointment. Under 5 U.S.C. 5538 as amended by Section 751 of P.L. 111-8 effective March 15, 2009, federal employees who are absent from employment with the government because
they are ordered to perform active duty in the uniformed services under 10 U.S.C. 101(a) (13)(B) and who are entitled to re-employment rights under 38 U.S.C. 43 based on that absence, are to receive from their agency for each covered biweekly pay period a “reservist differential.” That is a supplemental payment equal to the amount by which their civilian basic pay exceeds the military pay and allowances allocable to the given period. Amendments to that provision in Public Law 112-239 of January 2013, effective retroactive to calendar year 2012 and after, include eligibility in the case of a call to duty by the Coast Guard Ready Reserve.

For this purpose, civilian basic pay is the basic pay including locality-based comparability payments and special rate supplements the employee would have received if employment had not been interrupted, and military pay and allowances are the payments payable to the employee for active-duty service allocable to the given pay period.

Civilian leave provisions such as military leave, annual or sick leave, compensatory time off, or other forms of paid leave remain available for use, if employees are otherwise eligible. However, the supplemental payment does not apply during any period for which the employee receives any kind of paid leave or other paid time off. For employees who elect to use military leave or annual leave, agencies continue the payment of annual premium pay for administratively uncontrollable overtime work or regularly scheduled standby duty during periods of military leave or annual leave.

The employing agency must determine the projected gross amount of civilian basic pay that would otherwise have been payable to an employee for each pay period within a qualifying period if the employee’s civilian employment had not been interrupted by military active duty. It also must adjust an employee’s projected rate of basic pay as it would have been adjusted (with reasonable certainty) but for the interruption of military active duty. This would include general increases, locality pay increases, and within-grade increases (based on longevity and acceptable performance). It could also include certain career-ladder promotion increases and performance-based basic pay increases, if the reasonable certainty standard is met.

The employee must provide his or her employing agency with a copy of his monthly military leave and earnings statement for each affected month. Based on those statements, the employing agency must determine the actual paid gross amount of military pay and allowances allocable to each pay period in a qualifying period. For each affected month, a daily rate is computed by dividing the monthly total by 30 days for full months or by the actual number of days for partial months. Military pay and allowances will be allocated to a civilian pay period (usually a two-week period) based on the applicable daily rate for days within the pay period.

If the projected civilian basic pay is greater than the allocated military pay and allowances, the difference represents the unadjusted reservist differential.

The reservist differential:

• is not basic pay for any purpose and is not counted as part of aggregate compensation in applying the aggregate pay limit in 5 U.S.C. 5307;
• is considered to be pay for the purposes of various other laws governing federal employee compensation (e.g., laws governing salary offset for debt collection, waiver of overpayments, garnishment, back pay);
• is taxable income for federal income tax purposes and is treated as wages for federal income tax withholding purposes regardless of the length of the active duty and regardless of whether the payment is for a period of active duty or for a period following active duty; and
• is subject to Social Security and Medicare taxes if paid for periods of active duty of 30 days or less but is not subject to those taxes if paid for active duty of more than 30 days.

Detailed guidance, including policies for employees in certain specialized situations, is at www.opm.gov/policy-data-oversight/pay-leave/pay-administration.

Note: A separate Reserve Income Replacement Program provides income replacement payments for certain reserve component members experiencing extended and frequent mobilization for active duty service. An employee who is entitled to a reservist differential may not receive payments under both policies for the same period.
Military Leave—Employees who perform active military duty or training, as specified in 5 U.S.C. 6323(a), may request the use of paid military leave. Under the law, an eligible full-time employee accrues 15 calendar days of military leave each fiscal year, and any unused military leave at the beginning of the succeeding fiscal year (up to 15 calendar days) is carried forward for use in addition to the 15 days credited at the beginning of that fiscal year.

Employees who perform active military duty may be granted an additional 22 days of military leave under 5 U.S.C. 6323(b) for the purpose of providing military aid to assist domestic civilian authorities to enforce the law or protect life and property, or to perform full-time military service as a result of a call or order to active duty in support of a contingency operation. The 22-day entitlement is an annual limit that cannot be carried from one year to the next.

For details about these and other leave entitlements, see Military Leave in Chapter 5, Section 1.

Leave and Compensatory Time Off—Employees who perform active military duty may request the use of accrued annual leave to their credit. OPM encourages agencies to grant such requests to the extent that they do not involve the use of annual leave that has not yet been earned as of the date the employee is placed in a LWOP status (after exhausting any available military leave or annual leave). As in the case of military leave, employees who elect to use annual leave will receive full compensation from their civilian position throughout the period charged to annual leave in addition to their military pay for the same period. Employees do not earn sick or annual leave while in a non-pay status.

Employees who enter into active military duty may choose to have their annual leave remain to their credit until they return to their civilian position, or receive a lump-sum payment for all accrued and accumulated annual leave. However, an agency must make a lump-sum payment for any restored annual leave under 5 U.S.C. 6304(d). There is no requirement to separate from a civilian position to receive a lump-sum leave payment under 5 U.S.C. 5552.

If an employee who has been on military duty returns to active federal service prior to the end of the period covered by the lump-sum payment, the employee must refund an amount equal to the pay that covers the period between the date of re-employment and the expiration of the lump-sum leave period. Agencies may not re-credit any restored annual leave to the employee’s leave account. Employees also may use sick leave, where appropriate, and earned compensatory time off for travel under 5 CFR 550, subpart N, to perform uniformed service. However, they may not use compensatory time off earned in lieu of overtime pay or credit hours earned under alternative work schedules.

Health Benefits—Under 5 CFR 890, employees who are put in a non-pay status or separated for a period of more than 30 consecutive days in support of a contingency operation on or after September 14, 2001, may keep their Federal Employees Health Benefits (FEHB) coverage for up to 24 months from the date the absence to serve on military duty begins. Federal agencies have discretionary authority to pay both the employee and government shares of the premium for employees who are called to active military duty in support of a contingency operation (see 5 U.S.C. 8906(e) as amended by Sec. 519, Public Law 107-107). If the agency does not pay the employee share, during the first 365 days, employees are responsible for the employee share of the premium; they can either pay on a current basis or repay it when they return to active federal service, just as any other employee on non-pay status. During the remainder of the 24 months, they are responsible for both the employee and government share of the premium, plus a 2 percent administrative fee. These must be paid on a current basis.

FEHB coverage terminates at the end of 24 months. Employees get a free 31-day extension of coverage during which they can convert to a non-group policy. They are not eligible for Temporary Continuation of Coverage. An employee who does not want to continue FEHB while on military duty may elect in writing to have the coverage terminated. Employees participating in premium conversion who want to terminate FEHB may do so only within 60 days of beginning their leave of absence (as this is a qualifying life event (QLE)), or during an annual open season.
Employees who prefer to have the option of terminating coverage at a later date must waive premium conversion participation within 60 days of this QLE or during an annual open season, since only those who do not participate in premium conversion may terminate FEHB at any time. The FEHB enrollment of an employee whose enrollment was terminated during military service is automatically reinstated when the employee is restored to a civilian position under 5 CFR 353.

However, an employee may waive his or her rights to immediate reinstatement of FEHB to take advantage of Transitional Tricare, which provides up to 180 days of continued Tricare military health care benefits for members of the military who are discharged from active duty. Eligible employees may postpone reinstating their FEHB enrollment until their Tricare coverage expires, or at any time up to that point. Individuals must take care to avoid any breaks in health insurance coverage between the end of their Tricare and the reinstatement of their FEHB. They may make any changes to enrollment or premium conversion participation within 60 days of reinstatement of FEHB enrollment.

Postponement of automatic reinstatement in FEHB because of Transitional Tricare will not affect eligibility to continue FEHB enrollment into retirement. While the time an employee is covered under Transitional Tricare counts toward meeting the five-year/initial opportunity requirement to continue FEHB into retirement, the employee must be covered under FEHB on the day he/she retires. An employee who plans to retire during a Transitional Tricare period must reinstate FEHB coverage before the retirement date.

Employees who return to their civilian positions but are not restored under 5 CFR 353, may enroll within 60 days of returning to civilian service provided the position is not excluded from FEHB coverage.

Life Insurance—Employees who enter on active duty or active duty for training in one of the uniformed services for more than 30 days—regardless of whether they separate are put in non-pay status—can keep their Federal Employees’ Group Life Insurance (FEGLI) coverage at no cost to them for up to 12 months. Public Law 110-181 allows coverage for up to an additional 12 months. However, employees must pay both the employee and agency share of the premiums for that period. Affected employees receive a notice from their agencies giving them the opportunity to elect to continue coverage beyond the initial free 12 months. Employees who wish to continue coverage must indicate their election on the notice, and return it to the employing office. Employees may make their elections at any time before the end of their first 12 months in non-pay status. Employees who elected to continue coverage during the second 12 months and then wish to stop or reduce coverage must notify their agencies in writing. Notification should not be made on the SF 2817 “Life Insurance Election,” because that might have the undesired effect of canceling non-extended coverage as well. Employees whose coverage terminates at the end of the second 12 months in non-pay status have a 31-day extension of coverage with the right to convert to an individual policy. Employees who do not wish to continue coverage beyond the initial 12 months should submit the notice indicating their election for coverage to terminate at the end of 12 months in non-pay status. FEGLI coverage will continue at no cost to the employee for the initial 12 months, after which it will terminate, subject to a 31-day extension of coverage and the right to convert to an individual policy.

FEGLI coverage remains in effect for employees called to active-duty status. Accidental death benefits in addition to regular death benefits are payable under Basic insurance (and Option A, if the employee had that coverage) unless the employee was in combat or unless nuclear weapons were being used at the time of the injury that caused the employee’s death. Even if accidental death benefits are not payable, regular death benefits are payable.

When an employee who has been on military duty returns to active federal service, he or she gets back whatever type(s) of life insurance he or she had before going into non-pay status (as long as the position is not excluded from coverage), even if the employee declines to continue coverage for up to the additional 12 months, reduces some or all of the coverage, or allows coverage to terminate due to non-payment.

Long-Term Care—There is no war exclusion under the Federal Long-Term Care
Insurance Program. Whether you are a civilian or member of the uniformed services, benefits may be payable for conditions due to war or acts of war, declared or undeclared, or service in the armed forces or auxiliary units. However, the FLTCIP does not pay benefits for care or treatment you would receive in a government facility, including a Department of Defense or Department of Veterans Affairs facility, unless otherwise required by law. Also, a catastrophic coverage limitation might affect the benefits some enrollees receive in the event of war. See Benefit Eligibility Determination and Appeals in Chapter 2, Section 3.

Employees called to active military duty may still initially apply for FLTCIP.

Premium payments must be kept current during active military duty. In some cases direct payment of premiums might not be feasible. Employees may arrange to have premiums deducted from active duty pay by contacting LTC Partners at (800) 582-3337 or TTY (800) 843-2557, online www.ltcfeds.com.

Federal Employees Dental and Vision Insurance Program—You may cancel enrollment upon your deployment or your spouse’s deployment to active military duty by contacting Benefeds at www.benefeds.com, phone (877) 888-3337.

Flexible Spending Accounts—Employees who go on LWOP for military deployment may either cancel or change the amount of their annual elections in their flexible spending accounts by filing a Qualifying Life Event election form, available at www.fsafeds.com/forms/qscform.pdf.

Retirement—An employee who is placed in an LWOP status while performing active military duty continues to be covered by the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS). Death benefits will be paid as if he or she were still in the civilian position. If the employee becomes disabled for his or her civilian position during the LWOP and has the minimum amount of civilian service necessary for title to disability benefits (five years for CSRS, 18 months for FERS), the employee will become entitled to disability benefits under the retirement law. Upon eventual retirement from civilian service, the period of military service is creditable under either CSRS or FERS, subject to the rules for crediting military service.

If an employee separates to enter active military duty, he or she generally will receive retirement credit for the period of separation when the employee exercises restoration rights to his or her civilian position. If the separated employee does not exercise the restoration right, but later re-enters federal civilian service, the military service may be credited under the retirement system, subject to the rules governing credit for military service.

Return to Civilian Duty—Any federal employee, permanent or temporary, in an executive agency other than an intelligence agency, but including the U.S. Postal Service, Postal Regulatory Commission, and non-appropriated fund activity, who performs duty with a uniformed service (including active duty, active duty for training, or inactive duty training), whether voluntary or involuntary, is entitled to be restored to the position he or she would have attained had the employee not entered the uniformed service. This is possible, provided the employee: gave the agency advance notice of departure except where prevented by military circumstances; was released from uniformed service under honorable conditions; served no more than a cumulative total of five years (exceptions are allowed for training and involuntary active duty extensions, and to complete an initial service obligation of more than five years); and applies for restoration within the appropriate time limits.

Employees in the intelligence agencies have substantially the same rights, but are covered under agency regulations rather than OPM’s and have different appeal rights.

While on duty with the uniformed services, the agency carries the employee on leave without pay unless the employee requests separation. A separation under these circumstances does not affect restoration rights.

Employees who served in the uniformed services:

• Less than 31 days (or who leave to take a fitness exam for service) must report back to work at the beginning of the next regularly scheduled work day following their completion of service and the expiration of eight hours after a time for safe transportation back to the employee’s residence.
• More than 30 but less than 181 days must apply for re-employment no later than 14 days after completion of service.
• More than 180 days must apply for re-employment no later than 90 days following completion of service.

Employees who fail to meet these time limits are subject to disciplinary action. Agencies must re-employ 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.

Employees who served less than 91 days must be placed in the position for which qualified that they would have attained had their employment 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 described above except that the agency has the option of placing the employee in a position for which qualified of like seniority, status, and pay.

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

An employee who was on a temporary appointment serves out the remaining time, if any, left on the appointment. The military activation period does not extend the civilian appointment.

An employee performing active military duty is protected from a reduction in force and may not be discharged from employment for a period of one year following separation (six months in the case of a Reservist called to active duty under 10 U.S.C. 12304 for more than 30 days, but less than 181 days, or ordered to an initial period of active duty for training of not less than 12 consecutive weeks), except for poor performance or conduct or for suitability reasons.

A Presidential memo of July 19, 2012 ordered agencies to “ensure robust compliance” with USERRA’s employment and re-employment protections through steps including providing training and information, undertaking re-employment measures, and allocating sufficient resources to enforce those protections. Guidance on those requirements is in a September 10, 2013 memo to agencies at www.chcoc.gov/transmittals. The memo also created an interagency working group to: monitor agency performance under the law; coordinate best practices, training and other steps to improve compliance; and reach out to veterans and uniformed services members to assist them in exercising their rights under the law. For appeal procedures related to denial of restoration rights, see Other OSC Responsibilities in Chapter 10, Section 4.

Post-Combat Care—Under 5 U.S.C. 7906, each agency must assign a point of contact to ensure that employees who incur a qualifying injury, disability, or illness while performing civilian duties in a war-risk hazard assignment receive the benefits to which they are entitled. Guidance on “post-combat care coordinators” and positions of similar responsibility is in Benefits Administration Letter 13-201 at www.opm.gov/retirement-services/publications-forms/benefits-administration-letters.

Excused Absence—Agencies must grant five work days of excused absence, without charge to leave, to employees upon return to federal civilian employment. The benefit applies to each deployment, for employees deployed more than once. See Military Leave in Chapter 5, Section 1.

OPM Job Placement—if the employing agency is unable to re-employ an individual returning from duty with a uniformed service, OPM will order placement in another agency when:
• OPM determines that it is impossible or unreasonable for an agency in the Executive Branch (other than an intelligence agency) to re-employ the person;
• an intelligence agency or an agency in the legislative or Judicial Branch notifies OPM that it is impossible or unreasonable to re-employ the person, and the person applies to OPM for placement assistance; or
• a non-career National Guard technician who is not eligible for continued member-
ship in the Guard for reasons beyond his or her control applies to OPM for placement assistance.

**Service Credit**—Upon restoration, employees are generally treated as though they had never left. This means that time spent in the uniformed services 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 non-pay status.)

To receive civil service retirement credit for military service, a deposit to the retirement fund is usually required to cover the period of military service. Only active, honorable military service is creditable for retirement purposes. If the employee is under the Civil Service Retirement System, a deposit of 7 percent of military basic pay (plus interest under certain conditions) is required. The deposit is 3 percent if the employee is under the Federal Employees Retirement System. However, these amounts may be different if: the employee’s creditable civilian service was interrupted by military duty; and re-employment occurred pursuant to 38 U.S.C. Chapter 43 on or after August 1, 1990. In such a situation, the contribution is either the above-prescribed amount or the amount of civilian retirement deductions which would have been withheld had the individual not entered uniformed service, if this amount is less than the normal deposit for military service. Certain special considerations apply to Federal Employees Retirement System “Revised Annuity Employees”—see Benefits Administration Letter 13-102 at www.opm.gov/retirement-services/publications-forms/benefits-administration-letters.

**Thrift Savings Plan**—Employees who perform uniformed service may make up any contributions to the Thrift Savings Plan they missed because of such service. In addition, members of the Ready Reserve or National Guard serving on active duty and in any military pay status can contribute to the TSP through a uniformed services TSP account. See Military Reserve TSP Accounts in Chapter 6, Section 1.

### Section 9

## Senior Executive Service

### General Rules and Procedures

The Senior Executive Service (SES) covers most managerial, supervisory, and policy positions in the Executive Branch above grade GS-15, except those that require Senate confirmation. The SES is a system in which salary and career status are personal rather than dependent on the position occupied. There are two main types of SES positions: career-reserved (which must be filled by career appointees) and general (which may be filled by career or non-career appointees, or by limited-term or limited emergency appointees). The number of non-career executives is limited by law to 10 percent of the total SES allocation.

Most agencies have SES members. By law, however, certain agencies and classes of employees are excluded from SES provisions. These include the Foreign Service, Federal Aviation Administration, FBI, Drug Enforcement Administration, CIA, Defense Intelligence Agency, National Security Agency, and the National Imagery and Mapping Agency, some government corporations, such as the Tennessee Valley Authority, and certain financial regulatory agencies. Many of them have senior executive corps whose policies largely parallel those of the SES. Subpart D in 5 CFR 534 prescribes the rules for setting and adjusting rates of basic pay and granting awards to SES members. The agencies’ plans may establish policies on the minimum increase in pay that may be offered to current employees upon initial appointment to the SES.

Pay adjustments for SES members must be based on the employee’s individual performance and/or contribution to the agency’s performance. Agencies may consider such things as the individual’s unique skills, qualifications, or competencies and their significance to the agency’s mission, as well as the individual’s current responsibilities.

Under 5 CFR 430, an agency’s highest-performing senior employees receive the largest pay adjustments and/or highest pay levels (including both basic pay and performance awards), particularly above the rate for level III of the Executive Schedule. Agencies must provide for transparency in the processes for making pay decisions. For example, agen-
cies may consider communicating the overall results of performance management decisions to senior employees, if individual confidentiality can be assured.

The system features a single pay range from a minimum of 120 percent of the base General Schedule (not including locality pay) grade 15, step 1, to a maximum that is either Level III or Level II of the Executive Schedule. The higher Level II cap applies in agencies whose performance appraisal systems make “meaningful distinctions based on relative performance,” as certified by the Office of Personnel Management, with concurrence by the Office of Management and Budget. Most agencies have that certification.

Under 5 U.S.C. 5307, in agencies with such a certification, the total compensation cap (comprising base salary, plus premium pay, performance bonuses for career SES members, and certain other allowances and incentives, but excluding certain other forms of compensation) also is higher—the rate of the Vice President’s salary, versus Executive Schedule Level I for agencies without certification.

Under 5 U.S.C. 5307(d), an agency’s senior executive performance appraisal system must be certified on a calendar year basis.

See Aggregate Limit on Compensation in Section 2 of Chapter 1 for details of the certification procedure and what forms of compensation are counted toward the total compensation cap.

**Determining Pay**

Upon an initial appointment to an SES position, an agency may set a senior executive’s rate of basic pay at any rate within the applicable range, taking into account factors such as performance, unique skills or competencies the individual possesses, and their significance to the agency’s mission, as well as the individual’s responsibilities.

Rates of basic pay higher than the rate for Level III of the Executive Schedule up to the rate for Level II of the Executive Schedule generally are reserved for executives who have demonstrated the highest levels of individual performance and/or made the greatest contributions to agency performance, as determined by the agency through its performance appraisal system for senior executives or, in the case of newly appointed senior executives, those who possess superior leadership or other competencies, consistent with the agency’s strategic human capital plan. For example, rates of pay higher than the rate for level III of the Executive Schedule may be reserved for a senior executive with an exceptionally meritorious accomplishment, for one who is assigned to a position with substantially greater scope and responsibility, or for one who is critical to the mission of the agency. In all cases, setting pay above the rate for level III of the Executive Schedule must be approved by the agency head or designee.

OPM and the Office of Management and Budget on January 4, 2012 jointly revised SES performance evaluation procedures (see [www.chcoc.gov/transmittals](http://www.chcoc.gov/transmittals)) to standardize among agencies what is evaluated and replace traditional practices under which agencies could use either four or five rating levels. The goals were to promote consistency in ratings across the government and to facilitate movement of executives among agencies.

Five rating levels are required and critical elements of the ratings must be aligned with the executive core qualifications (see Executive Core Qualifications in Section 3 of this chapter). Agencies may develop additional critical elements with OPM approval. Agencies may assign differing weights to each of the qualifications, except that each must be worth at least 5 percent of the overall rating, and the “results driven” standard must be worth at least 20 percent.

Scores for each critical element are multiplied by the weight of each critical element, added together to determine a summary rating. Executives rated “unsatisfactory” must be reassigned, transferred or removed from the SES. Those assigned two ratings in the lowest two levels within three years, or two ratings at the bottom level in five years, must be removed from the SES.

A senior executive is entitled to have the initial rating reviewed by a higher level official before that rating is presented to the performance review board. That reviewer may recommend a different rating. The board must review and evaluate the initial appraisal and summary rating, the senior executive’s response and any recommenda-
tion by a higher-level reviewer, and conduct any additional review necessary to make written recommendations to the appointing authority on annual summary ratings, bonuses and pay adjustments.

Those performance appraisals and ratings may not be appealed. However, an executive may file a complaint about any aspect of the rating process the executive believes to involve unlawful discrimination to the Equal Employment Opportunity Commission or a prohibited personnel practice to the Office of Special Counsel. A career appointee being removed from the SES is entitled to an informal hearing before an official designated by the Merit Systems Protection Board.

Subject to the one-year prohibition in 5 U.S.C. 5382(c) on reducing a senior executive’s rate of basic pay (see § 534.406(b)), an authorized agency official may reduce a senior executive’s rate of basic pay for performance and/or disciplinary reasons. Such a reduction in pay for a career senior executive may not exceed 10 percent. Any pay reduction may be appealed to the head of the agency. The agency head’s decision is final and non-reviewable.

No employee may suffer a reduction in pay by reason of a transfer from an agency where pay is allowable up to the Level II rate to one where pay is subject to the Level III rate cap or as a result of a decision to suspend certification of the applicable performance appraisal system.

**Break in Service**—Upon reappointment to the SES following a break in SES service, an agency may set the rate of basic pay of a former senior executive at any rate within the SES rate range if the break was more than 30 days. If the break was 30 days or less the senior executive’s rate of basic pay must be at least equivalent to the executive’s former rate.

**Twelve-Month Rule**—Generally, an authorized agency official may increase or reduce the rate of basic pay of a senior executive not more than once in any 12-month period. The setting of pay upon initial appointment or reappointment to the SES and adjusting an SES rate of basic pay are considered pay adjustments for this purpose. However, under Title 5 § 534.404(c)(4), an authorized agency official may approve an increase in a senior executive’s rate of basic pay more than once during a 12-month period where the head of an agency or designee determines that an additional increase is warranted (1) for exceptionally meritorious accomplishment, (2) for a senior executive who is reassigned to a position with substantially greater scope and responsibility, (3) for a senior executive who is critical to the mission of the agency and who would be likely to leave the agency in the absence of a pay increase, or (4) to align a senior executive with the agency’s senior executive appraisal and pay adjustment cycle (for example, in the case of a senior executive who was appointed to an SES position within the past 12 months or a senior executive who was transferred to an SES position from an agency with a different senior executive appraisal and pay adjustment cycle within the past 12 months).

**Awards and Bonuses**

Federal agencies use various awards and bonuses to reward members of the SES for outstanding performance and to recruit, retain, and relocate employees:

- **Performance Awards**—Agencies may award a lump-sum payment of between 5 percent and 20 percent of basic pay to career members (but not to political members) of the SES to recognize their excellent performance over a one-year period. The total amount awarded cannot exceed 10 percent of the total base pay for the agency’s career SES members for the prior year.
- **Awards for Special Acts**—An agency or the President may reward members of the SES for special acts, suggestions, or inventions that improve the functioning of the federal government. Those awards range from $10,000 to $25,000.
- **Rank Awards**—The President may make two types of awards to career members of the SES who demonstrate consistently excellent performance over an extended period. The Distinguished Executive award provides a lump-sum payment of 35 percent of the recipient’s base pay. No more than 1 percent of SES members may receive that award. The Meritorious Executive award, given to no more than 5 percent of SES members, provides a lump-sum payment of 20 percent of the recipient’s base pay.
Recruitment, Relocation, and Retention Payments—Senior executives are eligible for recruitment, relocation and retention payments under generally the same terms as other federal employees. See Recruitment, Relocation and Retention Payments in Chapter 1, Section 5.

Note: Due to budgetary restrictions, limits have been placed on these awards in recent years; see June 11 and November 1, 2013 memos to agencies at www.chcoc.gov/transmittal.

Other Policies

Sabbatical—Agency heads may grant sabbaticals to SES career members for three to 11 months during any 10-year period to encourage study or uncompensated work experience that will contribute to the individual’s development and effectiveness. While on sabbatical, SES members continue to receive salary and leave benefits, and agencies may authorize travel and living expenses.

Leave—SES members earn 13 days of sick leave per year. They earn annual leave at the rate of 26 days per year regardless of their years of service, under 5 U.S.C. 6303, carried out at 5 CFR 630. (This authority extends to parallel executive cadres in certain law enforcement and intelligence agencies, as well as to certain other high-level employees; see Annual Leave Accrual and Accumulation in Chapter 5, Section 1.) Also, compared with most federal employees, SES members can carry over higher amounts of unused annual leave to a new leave year. See SES Members: Annual Leave Rules in Chapter 5, Section 1.

Presidential Appointments—SES members who accept Presidential appointments may choose to retain some, all or none of the SES provisions related to basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement. This includes retaining a higher aggregate limitation on pay, equal to the Vice President’s salary, that applies to the SES members in agencies with certified performance appraisal systems. That election will remain in effect for no less than one year, unless the appointee leaves the position sooner.

Post-Employment Restrictions—Under 18 U.S.C. 207(c) as carried out in 5 CFR 730, an SES member whose basic pay is at least 86.5 percent of the rate for level II of the Executive Schedule is subject to certain post-employment restrictions that are more strict than those generally applying to federal employees. See Post-Employment Restrictions in Chapter 10, Section 5.

RIF Procedures—Special rules apply to SES members in reductions-in-force. See SES RIF Procedures in Chapter 9, Section 1.

Executive Development

Agencies are required to establish development programs for executives, managers, and supervisors, as well as candidates for those positions, and to regularly update those programs. These executive development programs must be designed in accordance with an agency’s strategic plan, foster a corporate perspective of government, and provide for initial training, continuing learning experiences, and systematic development of candidates for advancement to higher-level management positions.

There are many ways to provide developmental opportunities, such as the Candidate Development Program, formal and informal training experiences, seminars, forums, participation on task forces, interagency details, sabbaticals, assignments outside the federal sector, and mobility assignments.

Many of these programs are geared toward developing the qualifications deemed necessary for senior executives. See Executive Core Qualifications in Section 3 in this chapter.

A February 18, 2011, memo to agencies from the Office of Personnel Management and Office of Management and Budget (at www.opm.gov/ses/OMB_OPM_SESMemo.pdf) put renewed emphasis on career development through steps such as a government-wide leadership development approach, networking opportunities, and rotational assignments for senior managers with potential to move into the executive ranks.

Candidate Development Program—This program, www.opm.gov/policy-data-oversight/training-and-development/leadership-development, is designed to create pools of qualified executives for SES positions on a centralized basis, complementing agency-
based programs. Application periods, announced by OPM, are limited and eligibility rules may vary from one to the next; the program typically is available only to those in high General Schedule grades. The length of the programs also may vary, typically between 12 and 24 months.

Those applying to the program undergo an assessment/selection process, which includes an initial screening of qualifications and evaluation of written narratives describing key accomplishments, followed by an assessment center review and a structured interview. Applicants apply for occupational specialties identified by the employing agency and are required to submit extensive documentation to demonstrate their qualifications, including a resume, occupational questionnaire, accomplishment record, and other information.

Once selected, candidates participate in a developmental program, which may include: classroom training sessions; developmental assignments; on-the-job learning; leadership forums; mentoring; coaching; field experiences; reading assignments, and Web-based learning. Following satisfactory completion of such a program and Qualifications Review Board certification of their executive qualifications, graduates are eligible for career appointment to the SES without further competition. However, an appointment is not guaranteed.

Rules at 5 CFR 432 require agencies to obtain prior OPM approval and re-approval every five years of their own SES candidate development programs. The rules also required that developmental assignments include at least one assignment of 90 continuous days outside the scope of the candidate’s position of record and include roles at the executive level where the candidate is held responsible for achieving organizational or agency results during the assignment.

Post-Selection Programs—A September 30, 2011, memo to agencies (at www.chcoc.gov/transmittals) provides guidance on agency “onboarding” programs to integrate newly hired SES members. Such programs may address both short-term and longer-term strategies on subjects ranging from operational matters to issues of agency culture.

Applying for SES Positions

There are two methods for entry into the career SES: application for a specific agency position and application for inclusion in an SES candidate development program (see above). SES vacancies are online at www.usajobs.opm.gov and through Federal Job Information Touch Screen kiosks located at OPM offices and in certain federal buildings throughout the country. Individuals interested in applying to join the SES should familiarize themselves with the executive core qualifications (see Section 3 in this chapter) and the Guide to Senior Executive Service Qualifications (at www.opm.gov/policy-data-oversight/senior-executive-service/reference-materials).

OPM does not maintain registers of eligible candidates for the SES. Instead, agencies oversee the merit staffing process required for career entry. They determine position qualification requirements, advertise career vacancies at least throughout the government, and make selections for their SES positions. Vacancies must be advertised for at least 14 calendar days and must be open to all federal employees in the civil service. Agencies may fill positions with former SES members eligible for reinstatement, by reassigning or transferring a current SES member, or by appointing a candidate development program graduate. Before an initial career appointment to the SES can be made, the candidate’s executive qualifications must be approved by an independent Qualifications Review Board. Those are OPM-administered independent boards of senior executives that assess the executive core qualifications of candidates and who must certify that a candidate has the broad leadership skills to be successful in a variety of SES positions.