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TOP NEWS STORIES

IRS BUDGET CUTS RESULTING IN UNEVEN PERFORMANCE, GAO TELLS LAWMAKERS

Absorbing budget cuts has resulted in significant staffing declines and “uneven performance” at the Internal Revenue Service (IRS), the Government Accountability Office (GAO) told lawmakers with oversight of the agency in a [briefing](#).

GAO examined IRS funding, staffing, and [performance](#) trends from fiscal years 2009 to 2014 to produce their congressional briefing. The briefing was intended to help describe actions the IRS took to absorb approximately \$900 million in budget cuts since fiscal year 2010 and cites opportunities for operational improvements.

The GAO briefing documents the agency’s drop in appropriations to below fiscal 2009 levels, as well as a reduction in FTEs of 8,000 since 2009.

GAO found that “performance in enforcement and taxpayer service has decreased or fluctuated,” yet more taxpayers were utilizing electronic filing, and telephone service performance levels increased in 2014 due to lower demand, although phone wait times have increased since 2009.

GAO’s briefing also stated that reductions to IRS’s budget are greater than projected savings. GAO found the agency reduced or eliminated services as a result of budget cuts, and also delayed two major IT projects due to lack of funding and technical issues.

Additionally, the briefing stated that the agency has reduced training costs by 83 percent and training-related travel costs by 87 percent by limited employee travel and training to only mission-critical projects. GAO found that “from fiscal years 2009 through 2013, per-employee spending dropped from \$1,450 per full-time equivalent to less than \$250.”

DHS SAYS FEDERAL WEBSITES SAFE FROM HEARTBLEED SECURITY VULNERABILITY, OFFERS TIPS FOR EMPLOYEE PERSONAL SECURITY

Two weeks ago a cybersecurity industry report alerting the public about the “[Heartbleed](#)” security vulnerability was published, indicating email, website, and other services may have vulnerabilities that could affect security of logins and personal information online.

The report [prompted](#) the Department of Homeland Security’s (DHS) U.S.-Computer Emergency Readiness Team (US-CERT) to publish [an alert](#) online with suggested tips for the public to mitigate their risk.

DHS National Cybersecurity and Communications Integration Center (NCCIC) Director Larry Zelvin also [posted a blog](#) outlining the response to the threat and ways members of the public can protect their own personal cybersecurity and online information.

Those recommendations include changing passwords after security vulnerabilities on affected sites has been fully addressed, closely monitoring email, bank, social media, and other online accounts, and to ensure websites that have been visited that require personal information, like logon credentials, are secure with an HTTPS identifier in the address bar.

Mashable has a [complete list](#) of websites and services affected by Heartbleed, as well as [more tips](#) on protecting yourself from the bug.

GSA UNVEILS NEW MANAGED MOBILITY TOOLS, RESOURCES

Last week the General Services Administration (GSA) unveiled new tools and resources designed to help agencies reduce costs of their mobility programs.

The launch of [GSA's Mobile Lifecycle & Expense Management \(ML&EM\)](#) component of [GSA's Managed Mobility Program](#) was highlighted by Mary Davie, Assistant Commissioner of GSA's FAS Office of Integrated Technology Services, in a [blog post](#).

"ML&EM solutions can reduce agency mobile costs, saving up to 25% during initial rollout and 8-10% savings thereafter. The larger an agency's mobile footprint, the higher expected efficiencies and cost savings, but value grows for any agency as its mobile strategy evolves and mobile usage trends up," Davie said in her post.

GSA worked with agency and industry partners to develop a set of common, comprehensive [requirements](#) for mobility programs, [identified potential sources](#) of service/supply, and developed a [user guide](#) for agencies to use in their procurement of mobility services.

Agencies using ML&EM have saved an average of 26 percent on total wireless spending, with one agency eliminating over 900 redundant accounts and saving \$200 million annually.

FROM THE HILL

CONGRESS ASKS GAO TO STUDY TRENDS IN FEDERAL EMPLOYEE MORALE

A trio of lawmakers has [requested](#) that the Government Accountability Office (GAO) study "recent trends in federal employee morale, including possible root causes and steps the federal government can take to improve engagement."

The request came from three of the top Democrats on the House Oversight and Government Reform Committee, including ranking member Elijah Cummings (MD-7), ranking member of the subcommittee on the federal workforce, U.S. Postal Service, and the Census, Stephen Lynch (MA-8), and ranking member of the subcommittee on government operations Gerry Connolly (VA-11).

In their letter to GAO the lawmakers cite recent results of the Federal Employee Viewpoint Survey (FEVS) and annual [Best Places to Work](#) reports by the Partnership for Public Service that satisfaction of federal employees on a variety of categories, including with pay, training and development opportunities, and rewards and advancement opportunities, have declined. They also ask for an update on the President's management agenda, which includes a people and culture pillar.

The representatives ask GAO to study:

- Recent trends in federal employee morale and engagement based on FEVS and other available data broken out by grade level, position, and other demographic attributes.
- The possible root causes underlying the trends in federal employee morale and engagement.
- The impact of federal employee morale and engagement on recruitment and retention, employee performance and productivity, and achievement of agency mission.
- How, if at all, are agencies acting on the results of their FEVS engagement measures, including incorporating key drivers of engagement into daily management practices.
- To what extent the Office of Personnel Management (OPM) is providing tools and other resources to help agencies improve employee engagement and whether agencies find OPM's assistance helpful.
- Lessons learned from agencies that have significantly improved employee engagement, especially as such improvements relate to improved individual and organizational performance.
- What efforts are being undertaken to implement the President's fiscal year 2015 management initiative, and what the initial results of that initiative are.

In justifying their request for the study, the lawmakers wrote, "stakeholders, including federal employee organizations, have noted that federal workers have become increasingly dissatisfied with their employment, and that this may be compromising the federal government's ability to serve the American people."

CASE LAW UPDATE

MSPB FINDS NO DUE PROCESS VIOLATION WHERE EMPLOYEE RESPONDED TO UNCHARGED MISCONDUCT

A U.S. Immigration and Customs Enforcement ("ICE") employee was investigated by ICE's Office of Professional Responsibility ("OPR") after her ex-husband alleged she had misused the Treasury Enforcement Communications System ("TECS") for personal gain. In January 2010, the agency proposed to remove the employee based on four separate charges, including misuse of TECS, failure to declare income, lack of candor, and failure to cooperate, but did not allege in the proposal notice that she had shared the information she obtained from TECS with her ex-husband or any other "unauthorized" individuals. The employee responded to the proposal orally and in writing, but the agency ultimately sustained all four charges and directed the employee's removal effective June 18, 2010. On appeal to the MSPB, an MSPB administrative judge found that the employee failed to establish a claim of harmful procedural error and affirmed the removal, but on review, the full Board vacated the decision because the administrative judge had not addressed the employee's argument that the deciding official had relied improperly upon uncharged and unsubstantiated misconduct (sharing information from TECS with her ex-husband) as an aggravating factor in his penalty determination. On remand, the administrative judge concluded that the employee had not been denied due process because the information on which the deciding official relied in finding that the employee had shared TECS information was not new and material. On April 18, 2014, the Board affirmed that decision and sustained the removal action.

The Board commenced their analysis by citing to *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 538 (1985), a U.S. Supreme Court case which outlined the essential requirements of due process, "notice and an opportunity to respond." As the Supreme Court stated in that case, the "public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story." The Board cited this case alongside *Stone v. Federal Deposit Insurance Corporation*, 179 F.3d 1368, 1376 (Fed. Cir. 1999), which states that "the employee's response is essential not only to the issue of whether the allegations are true, but also with regard to whether the level of penalty to be imposed is appropriate."

In *Lopes v. Department of the Navy*, 116 M.S.P.R. 470 (2011), the Board applied the Federal Circuit Court of Appeals' decision in *Stone* (which concerned ex parte communication) to establish that the ultimate inquiry in cases where a deciding official considers additional, uncharged, and unsubstantiated material not listed in the

proposal is whether the additional material “was substantial and so likely to cause prejudice that no employee can fairly be required to be subjected to a deprivation of property absent an opportunity to respond.”

According to *Lopes*, when a deciding official considers either ex parte or uncharged information not mentioned in the proposal, the employee is no longer on notice of portions of the evidence relied upon by the agency in imposing the penalty, which would work a violation of the constitution. The Board also observed that the agency can only consider the reasons specified in the notice of proposed action and any answer of the employee when making a final decision on an adverse action.

In this case, the Board concluded that, without question, the deciding official based his penalty determination, in part, on an aggravating factor (the disclosure of TECS information to the employee’s ex-husband) not cited in the proposal notice. While the proposal notice and decision letter contained no charge or specification alleging that the employee had shared TECS information, the deciding official did mention sharing information with unauthorized individuals on the “*Douglas* Factors checklist” when he wrote “[r]unning records checks for personal reasons and sharing information with unauthorized individuals seriously undermines the public trust.” Also, the Board remarked that the deciding official, testifying at a hearing in this case that “even though the allegation of the [employee’s] unauthorized disclosure was not substantiated” he had concluded that the employee did share information and found it to be an aggravating factor.

After contemplating whether the deciding official’s consideration of the employee’s allegedly unauthorized disclosure was a due process violation, the Board concluded that it was not. The Board found that the employee’s due process rights were preserved by her opportunity to respond, memorialized by her actual responses: a 31-page written reply, a one-and-a-half hour oral presentation, and a voicemail message to the deciding official supplementing her written and oral replies. Specifically, the employee said in her written reply: “I never shared TECS information with [my ex-husband] or anyone else,” and “I did not make TECS inquiries for personal or financial gain nor did I disseminate any TECS information to [my ex-husband] or anyone else.” Because the employee had the opportunity, and did, respond to the uncharged and unsubstantiated allegations, the Board found that the agency’s consideration of her allegedly unauthorized disclosure (supplemented by her response) did not deprive her of due process.

The Board, noting the administrative judge’s finding that the deciding official was credible when he testified that that he would have removed the employee based on either the lack of candor or the failure to cooperate charges alone, regardless of his consideration of the employee’s alleged sharing of TECS information, found that the information (that the employee allegedly shared TECS information with her ex-husband) was not material to the penalty determination.

For the above stated reasons, the Board affirmed the administrative judge’s remand initial decision and sustained the agency’s removal action against the employee.

[You can read the full case, *Wilson v. Department of Homeland Security*, here.](#)

This case law update was written by [Conor D. Dirks](#), associate attorney, [Shaw Bransford & Roth, PC](#).

For thirty years, Shaw Bransford & Roth P.C. has provided superior representation on a wide range of federal employment law issues, from representing federal employees nationwide in administrative investigations, disciplinary and performance actions, and Bivens lawsuits, to handling security clearance adjudications and employment discrimination cases.

EDUCATE YOURSELF
GOVSEC 2014

[GovSec 2014](#), the nation's premier homeland security conference, is right around the corner. The only event that brings together everything you need to be ready when it counts. This year's conference runs from May 13-15 at the Walter E. Washington Convention Center in Washington, DC.

Highlighted on this year's agenda will be [Thomas Donilon](#), former National Security Advisor and [Avi Dichter](#), a former director of the Israel Security Agency. Also featured will be a panel of local, state and federal officials who were actively involved in last year's response to the Boston Marathon bombing, including identifying the suspects and capturing Dzhokhar Tsarnaev.

The GovSec keynotes, as well as its wide-ranging expo, are free for all, but registration is required. For a reasonable fee, GovSec also offers [half-day workshops](#) on May 12, and a [full conference agenda](#) on May 13 and 14, with tracks focusing on counter- and anti-terrorism; critical infrastructure and secured cities; cybercrime and cyberterrorism; campus security and life safety, and law enforcement strategies and tactics.

For more information or to register for GovSec [click here](#).

GEICO'S GOOD STUFF JOIN THE PUBLIC SERVICE RECOGNITION WEEK THUNDERCLAP

GEICO's Good Stuff is a column series highlighting great stuff happening in the federal community.

Today, public servants are more vital to our nation's health than ever. They are on the front lines guarding our national security, shoring up the economy, caring for veterans and providing essential services to the American people.

That's why during [Public Service Recognition Week](#) (May 4-10), we urge you to take a moment to reflect on the importance of these unsung heroes and thank the men and women who serve our nation as federal, state, county, and local government employees.

Join the Public Employees Roundtable on May 4 in giving your support and thanks to our dedicated public servants who give so much to our community and country. Help spread the word by signing up to promote a message of thanks on social media using [Thunderclap](#).

Thunderclap is a tool that can be used to crowd-source social reach, providing a way for messages to be heard by saying something together. It enables organizations to amplify the reach of their messages by tapping into the power of the crowd.

We hope FEDmanager readers with social media accounts will join in participating in this Thunderclap campaign <https://www.thunderclap.it/projects/10880-honor-our-public-servants>. The best part about Thunderclap is you can follow the link, sign up to participate, and not worry about remembering to post a message on social media on a particular day. Thunderclap does all the work for you once you sign up to participate.

More information on *Public Service Recognition Week*, including events and ways to celebrate, can be found at <http://publicservicerecognitionweek.org/>. You can also join the conversation online using tags #PSRW and #Proud2ServeUSA.

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HEARD INSIDE THE BELTWAY

Two-out-of-three voters (67%) view the federal government today as a special interest group that looks out primarily for its own interests. Just 17% disagree, while 15% are undecided.

Results from a [Rasmussen Reports survey](#) released last week

WEEKLY LEADERSHIP REFLECTION

Good leadership consists of showing average people how to do the work of superior people.

John D. Rockefeller