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TOP NEWS STORIES

ANALYSIS FINDS FEDERAL EMPLOYEE BONUSES CUT IN HALF LAST YEAR

Sequestration and caps on award pools for employees combined to reduce bonus payments to federal employees by more than half last year, the [Asbury Park Press reports](#).

The [data](#), which cover three fourths of the civilian workforce (1.3 million employees), found that performance awards paid in 2013 totaled \$176.6 million versus \$332 million in fiscal year 2012 and \$439 million in 2011.

Since 2011, the Office of Management and Budget (OMB) has issued several guidance documents capping discretionary bonus pools. Such bonus pools are capped at one percent of agency aggregate agency salary for General Schedule employees and five percent of aggregate salaries for senior executives.

OMB has released other guidance documents instructing agencies to cease providing those performance awards and bonuses not required by law.

The total number of employees who received performance awards fell 57 percent from 2012 to 2013, dropping from 360,000 to around 155,000.

OMB RELEASES DETAILS OF SMARTER IT DELIVERY AGENDA, NEXT STEPS FOR PORTFOLIOSTAT

Last week Federal Chief Information Officer Steve VanRoekel announced new Office of Management and Budget (OMB) initiatives to reform information technology (IT) delivery in the government and to take PortfolioStat to the next level.

VanRoekel's announcement and the release of [OMB guidance on PortfolioStat](#) coincided with a Senate Homeland Security and Governmental Affairs Committee [hearing](#) on federal IT acquisition.

As part of the Smarter IT Delivery Agenda VanRoekel plans to expand the Digital Service group in his office to up to twenty-five (25) experts on two- to four-year term appointments to assist agencies in planning and executing IT projects.

The Digital Service model has been piloted in four agencies and now OMB is seeking to expand it, working with private sector organizations to allow experts to rotate to government on sabbaticals to assist with projects and then return to their own jobs.

The Fiscal Year 2014 PortfolioStat guidance ([OMB memo M-14-08](#)) "will continue to drive cost savings and efficiencies while evolving to focus on the effectiveness of high impact IT investments and the delivery of IT Services," said authors VanRoekel and OMB Deputy Director Beth Cobert.

Further reading: [Nextgov](#); [Federal News Radio](#); [Federal Computer Week](#); [Federal Computer Week](#)

OMB ISSUES FY2016 BUDGET GUIDANCE

On May 5 the Office of Management and Budget (OMB) issued [budget guidance](#) for fiscal year 2016 to agencies, with instructions to assist in crafting their budget submissions.

Agencies were instructed that their FY2016 submission “should reflect a [2 percent reduction](#) below the net discretionary total provided for your agency for FY 2016 in the FY 2015 Budget, for each of the defense and non-defense discretionary categories,” “unless the agency has been given explicit direction otherwise by OMB.”

Additionally, agencies were instructed to demonstrate, with supporting information, data and justification from strategic and performance reviews, which discretionary programs warrant [budgetary increases](#).

OMB Deputy Director Brian Deese says in the memo that “key goals for this year's budget process are to: (1) support agency efforts to use evidence, evaluation, and data as tools to improve program outcomes and (2) support agencies in scaling up new approaches that have been tested and shown to work.”

To facilitate those goals agencies were asked to include in their submissions overviews of agency progress and plans on significant accomplishments from the past year in building evidence or strengthening evidence-building capacity, as well as information about top priorities for the upcoming year.

Agencies were also asked to incorporate information about their plans to embed evaluation and improvement into new or existing programs, and updates on implementation status of [OMB memo M-14-06](#), "Guidance for Providing and Using Administrative Data for Statistical Purposes."

Agencies were also [reminded](#) to “include sufficient funding for ongoing Presidential priorities” in their submissions, and that they should also include information about how they planned to implement portions of the President’s Management Agenda.

To access the FY2016 budget guidance memo, M-14-07, [click here](#).

FROM THE HILL

FORMER IRS OFFICIAL LOIS LERNER HELD IN CONTEMPT OF CONGRESS

Last week the House of Representatives [approved resolutions](#) to hold former Internal Revenue Service (IRS) executive Lois Lerner in contempt of Congress.

Another resolution was approved to appoint a special prosecutor at the Justice Department to investigate last year’s “targeting scandal” and whether Lerner or other officials should be criminally prosecuted.

The House voted 231-187 on [H.Res. 574](#) to hold Ms. Lerner in contempt of Congress. Mostly a party-line vote, six Democrats joined Republicans in support of the resolution. Lerner is the sixth public official since 1982 to be held in contempt for refusal to testify before the Oversight and Government Reform Committee.

The House also voted 250-168 to support a second resolution ([H.Res. 565](#)), referred by the Ways and Means Committee, that would call upon Attorney General Eric H. Holder Jr. to appoint a special prosecutor to evaluate whether Lerner should face criminal charges on specific counts of misconduct related to the scandal. Twenty-six (26) Democrats supported the resolution to appoint a special DOJ prosecutor to investigate the IRS targeting scandal.

CASE LAW UPDATE

FEDERAL CIRCUIT COURT OF APPEALS DISMISSES WHISTLEBLOWER APPEALS

On May 3, 2010, a Department of Labor Immigration Program Analyst submitted an anonymous letter to the Government Accountability Office's ("GAO") FraudNet requesting an investigation into the operations of the Office of Foreign Labor Certification ("OFLC"). The letter made allegations of questionable hiring and compensation practices, as well as general misconduct and poor production standards. On April 4, 2011, almost a year later, the same employee wrote a second anonymous letter with similar allegations. On February 16, 2012, that employee was issued a proposed 10-day suspension based on an alleged physical altercation. The employee filed a complaint with the United States Office of Special Counsel ("OSC") seeking corrective action under the Whistleblower Protection Act ("WPA"). After exhausting the OSC process, the employee filed an Individual Right of Action ("IRA") appeal under the WPA.

While her appeal was pending, the agency decided to impose the proposed suspension effective April 12, 2012. On April 11, 2012, the employee resigned and sought corrective action with OSC again. When OSC did not pursue the claim, she filed a second IRA appeal with the MSPB. In the first appeal, the employee did not testify, but provided a written statement. Several witnesses called by the agency testified that they were unaware of the employee's protected disclosures, and the administrative judge concluded that the employee had failed to prove by preponderant evidence that her protected disclosures were a contributing factor in the suspension. The employee petitioned the full Board for review of both decisions (after the second appeal was dismissed on collateral estoppel grounds), but the Board affirmed the administrative judge's decision and, although it vacated the dismissal of the second appeal on collateral estoppel grounds, the Board also dismissed it for reasons of adjudicatory efficiency. The employee appealed to the United States Court of Appeals for the Federal Circuit. On April 11, 2014, the appeals court affirmed the Board's finding.

The appeals court began its analysis by noting that under *Johnson v. Merit Sys. Prot. Bd.*, 518 F.3d 905, 909 (Fed.Cir.2008), an employee must prove by a preponderance of the evidence that she made a protected disclosure, that she was subject to an adverse personnel action, and that the protected disclosure was a contributing factor in the adverse action. The appeals court then addressed the employee's challenges to the Board's findings. First, the employee argued that one of the agency's witnesses' testimony was not evaluated correctly because the witness had previously accused her of "taking away the contractor's job," and that this statement showed he knew about her protected disclosures to GAO FraudNet.

However, the appeals court observed, the witness denied ever stating that the employee was "taking away the contractor's job" at the hearing and the administrative judge found this testimony credible. The employee contended that she had not been given an opportunity to cross-examine the witness, but as the appeals court noted, she was present at the hearing and chose not to cross-examine him there. Therefore, the appeals court concluded, there was no reason to conclude that the administrative judge incorrectly decided the facts on this basis.

The employee also argued that the administrative judge failed to apply the correct legal standard for making credibility determinations when he found the agency's witness credible. The administrative judge, when the case was initially before the MSPB, found that there was no evidence contradicting the witnesses' testimony, that their testimony was not inherently improbable, that they testified in a "confident and forthright manner," and that there was no reason to question their testimony based on their opportunity and capacity to observe the events in question. The appeals court observed that the administrative judge also considered the employee's written statement, but that only a modicum of probative weight could be assigned to it since the employee was available to testify at the hearing but chose not to and there was "no evidence in the record corroborating her statements." Thus, the appeals court concluded, "neither the administrative judge nor the Board committed legal error in crediting the testimony of the hearing witnesses over [the employee's] out-of-court hearsay statement."

Finally, the employee argued that the administrative judge arbitrarily and capriciously used the doctrine of collateral estoppel to stop her from introducing new evidence in her second IRA appeal, which was dismissed. The appeals court stated that, as an initial matter, the fact that the Board vacated the administrative judge's dismissal for collateral estoppel meant that it was no longer in effect and therefore could not form the basis for her appeal. Although the employee did not argue that the Board made a legal error when it dismissed the second IRA appeal on the ground of adjudicatory efficiency, the appeals court concluded that it did not. The appeals court cited *Zgonc v. Department of Defense*, 103 M.S.P.R. 666, 669 (2006) as an example of a prior Board ruling that it is appropriate to dismiss a second appeal on the grounds of adjudicatory efficiency when it "raises claims already decided in an initial decision in an earlier appeal."

Therefore, the appeals court finally turned to the "only real question," whether the two appeals in fact raise the same claims. Both of the employee's appeals feature the same question: whether the employee's protected disclosures in her two anonymous letters to GAO FraudNet were "contributing factors" to the agency's personnels actions against her. The appeals court identified only one difference: the first appeal relates to the proposal of the ten-day suspension, while the second appeal relates to the actual imposition of the same suspension. Despite that one factual difference, the appeals court found that nothing in the record suggested that the agency's knowledge of the employee's protected disclosures changed in any way between the February 16, 2012 proposal of her suspension and the April 11, 2012 decision. Because there was no evidence to suggest the agency's knowledge changed, and there had already been a hearing in the first case, the appeals court found that the Board did not err in dismissing the second appeal for reasons of adjudicatory efficiency.

For the above stated reasons, the United States Court of Appeals for the Federal Circuit concluded that the Board correctly denied the employee's petition for review and affirmed the dismissal of both of her IRA appeals.

[You can read the full case, *Boyd v. Department of Labor*, 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.

DOLLARS & SENSE

LET'S TALK ABOUT DISABILITY RETIREMENT | PART ONE

Whether you are CSRS or FERS, there is an option to consider if you are unable to perform the duties of your position due to a mental or physical health condition. Whether this health issue was incurred on-the-job or not, if this health issue is affecting your ability to perform your job and is expected to last at least one year or longer, you would be a good candidate for disability retirement if your agency cannot accommodate your medical condition.

If OPM approves your application for disability retirement, you would qualify for an immediate annuity and if enrolled, you would be allowed to maintain your health & life insurance under the Federal Employees Health Benefits (FEHB) and the Federal Employees Group Life Insurance (FEGLI) programs, all of which could prove valuable to you once you are separated from your agency.

There isn't any minimum age requirement for disability retirement like there is for regular retirements, however there is a small service requirement that must be met to qualify, but this service requirement is

minimal. Under CSRS, you must have 5 years of creditable Federal civilian service. I'm certain that the CSRS folks reading this article have already met this requirement. Under FERS, it only takes 18 months of creditable Federal civilian service before someone with a health issue could be eligible for disability retirement. Now if you are injured on the job, you might also qualify for workers compensation. If this happens, I would consider applying for both workers compensation and disability retirement. Although you cannot receive both at the same time, you can apply for both and if approved for both, you could suspend your disability retirement and take the workers compensation until either you can return to Federal service, OR lose entitlement to workers compensation, OR grow tired of dealing with the Dept. of Labor, whichever occurs first. There are many differences between workers compensation and disability retirement... too numerous to explain in this brief article. For now, click [HERE](#) to begin your research for more information regarding this option if injured on the job.

Since it can take a while for OPM to approve a claim for disability retirement, if you begin to experience a health issue that may affect your ability to perform your job functions, I would recommend that you start communicating with your supervisor sooner than later. Together, you and your supervisor can contact your agency benefits office and begin reviewing your options.

Perhaps your agency or supervisor can accommodate your medical needs? This should certainly be considered as it plays a crucial role in whether or not OPM will approve your application for disability retirement. Can the work site or equipment/tools you use be modified? Can you do your job from home? Can your work schedule be adjusted? Can you be reassigned or retrained to a different position that accommodates your medical needs? Unfortunately, the needs & mission of the agency comes first... but if your agency cannot accommodate your needs, you're half-way there to being approved for a disability retirement. The remaining decision will weigh heavily upon your medical documentation.

But you certainly don't want to wait until after you exhaust all your sick and annual leave to start having these conversations about your options. You don't want to find yourself in a non-pay status while waiting for answers. Meanwhile, keep all of your medical documentation related to your injury or illness... and be prepared to provide copies to your agency when requested.

In Part 2 of this article next month, I'll discuss more details regarding the specifics of medical documentation required to be considered for disability retirement. This will play a crucial role in OPM's decision, so I wanted to dedicate more time to this in Part 2. I'll also briefly cover considerations if you are already eligible for a regular retirement when experiencing health issues as an employee.

Until then... stay in good health!

James Marshall is a federal retirement benefits specialist and the owner of Federal Retirement Planning LLC. For more information, please visit the [Federal Retirement Planning LLC website](#).

EDUCATE YOURSELF

THREE FEDERAL LEADERS WALK INTO THE EXCELLENCE IN GOVERNMENT CONFERENCE

And what you get is an inspiring Monday morning.

On Monday and Tuesday this week in Washington, D.C. federal leaders convened for the [Excellence in Government 2014 conference](#). The theme for this year's *Government Executive*-curated event was **The Agency of the Future**. FEDmanager was on-site for the [event](#) listening in on sessions and presentations.

The conference kicked off with a series of keynote speeches from former Federal Chief Technology Officer Aneesh Chopra, Office of Management and Budget (OMB) Deputy Director of Management Beth Cobert, and Agriculture Secretary Thomas Vilsack.

Chopra told the audience that "the keys to solving our biggest challenges sit within your hands" and that new tools, technologies, and data will help public servants address the nation's challenges. Yet to do that federal leaders will need be open to change and to innovation, including thinking about using federal data in different ways. Chopra cited a [CEB study "Overcoming Stall"](#) to demonstrate the inability of major corporations to innovate resulting in their decline. To avoid a similar decline resulting in a lack of relevancy, Chopra offered three areas to focus on:

- **Shift culture through engaging external experts.**
- **Promote a celebratory culture of you by rewarding front line employees.**
- **Leverage the power of force multiplication by tapping external stakeholders.**

The three above elements are part of an open innovation strategy that is embedded into the DNA of President Obama's [Management Agenda](#), said Chopra. He laid out four elements being promoted by the administration to affect a cultural change that facilitates innovation within agencies and government.

- **Democratize government data** by opening access to the public.
- **Collaborate with industry on technical standards.**
- **Issue challenges and prizes** to engage the public in solving challenges.
- **Launching lean (government) startups** such as the Presidential Innovation Fellows (PIF) program, which can try, test, and validate potential solutions at a low cost before scaling them to broader application.

Beth Cobert, OMB's Deputy Director for Management, described the administration's effort to expand pockets of excellence around the government, including ways to disseminate information about best practices, while also outlining progress on the president's [second term management agenda](#). The management agenda contains four pillars: effectiveness, efficiency, economy, and people and culture. Cobert said the management agenda serves as a living agenda, meaning that the themes would stay the same but that adjustments along the way would occur.

Agriculture Secretary Tom Vilsack, who opted not to read his prepared remarks, spoke freely and passionately in support of the federal workforce and the government. Quoting Theodore Roosevelt to audience members that "it is not the critic who counts," Vilsack said that focusing on ensuring good management of the government is the best way to silence the critics and provide the government an opportunity to cease being besieged constantly and instead highlight the extraordinary things it is able to accomplish.

Vilsack used his own agency, the USDA, to highlight that many citizens do not fully understand all the work being accomplished by the government, especially large cabinet agencies with many subcomponents. Yet he was proud that, despite a budget cut to 2% below sequester levels (making 7% cut total) last year, USDA was able to hit record marks for service delivery while also avoiding RIFs and other personnel actions. The groundwork for that success was laid in 2012 with the launch of Secretary Vilsack's [Blueprint for Stronger Service](#). Implementing the blueprint, including developing a pipeline for talent at the agency, training employees, adjusting offices and shedding excess space, co-locating employees and utilizing telework, have combined to save the agency over \$1 billion while improving agency performance.

With the agency on a positive management trajectory, Vilsack said the USDA can now focus more on telling their story about the work it accomplishes. He said that should be the goal for all public managers and leaders - to allow the true story of public service come through, about how the government can help citizens and the American people and make a positive impact in their lives and provide opportunity for prosperity.

Check for more coverage on FEDmanager's blog (www.fedmanager.com/blog).

GEICO'S GOOD STUFF

SHARED SERVICES FOR AGENCY FINANCIAL MANAGEMENT GAIN TRACTION

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

The Office of Management and Budget (OMB) and Treasury Department announced in a [blog post](#) "the designation of four shared service providers for financial management to provide core accounting and other services to Federal agencies."

The Departments of [Agriculture](#), Interior, Transportation, and Treasury were selected to "lead the administration's efforts to use [shared services](#) for future financial management systems modernizations across the government."

"As agencies migrate to the four providers, the government will achieve economies of scale and standardization. Using a financial management shared service provider will help agencies reduce the risk of new system implementations, allow for faster and less expensive technological innovation, provide long-term cost savings, and meet government-wide requirements and deadlines. As a result of these improvements, agencies will be able to focus more of their resources and leadership attention on mission-based programs," said OMB Deputy Director Beth Cobert and Treasury Fiscal Assistant Secretary Dick Gregg in the blog post.

The Department of Agriculture's National Finance Center (NFC), the Department of the Interior's Interior Business Center (IBC), the Department of Transportation's Enterprise Services Center (ESC), and Treasury's Administrative Resource Center (ARC) will [lead and support](#) the effort across agencies for financial systems modernization.

Panelists at last week's [Government Performance Summit](#) echoed the perspective of Cobert and Gregg, saying that leveraging shared services would allow agencies and employees to focus less on back-office functions like accounting and more time on program management and mission delivery.

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HEARD INSIDE THE BELTWAY

So much of what is helpful, necessary, and important in our lives is administered, handled, and taken care of by federal employees. They are our friends and our family members, and they are our neighbors. They are the reason we do not have to think twice about boarding an airplane, using a cellphone, visiting a national park, or checking our mailbox. It is important to thank them for their service.

Quote from OPM Director Katherine Archuleta's [May 8 op-ed](#) in the Washington Post "Federal employees deserve thanks for their service"

WEEKLY LEADERSHIP REFLECTION

People who enjoy meetings should not be in charge of anything.

Thomas Sowell