NAAUSA NEWS

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Statement from NAAUSA President Steve Cook
NAAUSA Is More Than a One-Issue Association

In May, I sent a letter to the U.S. Sentencing Commission expressing NAAUSA's strong opposition to retroactive application of the Fair Sentencing Act guideline amendments ("crack sentencing amendments".) The NAAUSA letter was sent to all delegates, and some delegates expressed the opinion that NAAUSA "should not take positions on controversial political issues but, instead, should stick to a core mission: improving the work life quality of our members and seeking fair compensation for their labors."

This is an issue on which our members have had differing views since we started the organization in 1992. There are three different possible positions, and we have members who hold each.

The first position is that NAAUSA should only advocate for work life issues, such as pay and benefits. Those who hold this view note that taking positions on public policy issues will sometimes put us at odds with those who might help us on work life issues.

The second position is that we should only be engaged in public policy issues, like the model code of professional responsibility, amendments to the Federal Rules of Criminal Procedure, legislative issues (from the Patriot Act to the FSA,) etc. Those who hold this position point out that we are a professional association, not a union. As a professional association, they argue, we have a responsibility to use our collective and unique expertise for the betterment of the federal civil and criminal justice system and, in fact, the country and that pursuing our personal interests cheapens our association.

The third position is that we should pursue both work life and public policy issues. Those who advocate this position do so for a number of reasons. To begin with, pursuing improved benefits, they

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Cuts to Federal Pay, Benefits and DOJ Looming

There is good news and not-so-good news for AUSAs coming out of the debt ceiling and budget legislation that was signed into law on August 2. The new law—the Budget Control Act of 2011—will require spending cuts throughout much of the federal government over the next decade, in exchange for raising the debt ceiling for the next two years.

Federal employees did not suffer any hits to their pay or benefits as a direct result of the new law. But pain and anxiety could lie ahead because of other parts of the new law. The law creates a special House-Senate super-committee tasked with finding up to $1.5 trillion in additional savings. That committee could include in its recommendations any of the numerous ideas for freezing pay and reducing federal benefits that have been in circulation for many months.

Under the law, if the super-committee fails to reach agreement on a recommended package of potential cuts and revenue increases, or the Congress fails to adopt its recommended package, then a process of automatic spending cuts would be triggered, similar to the kinds of cuts Congress used in 1985 and 1997 to create budget savings.

The new budget law will impact future DOJ and U.S. Attorney Office spending, though the magnitude of the cuts is difficult to predict at this point. It will be up to Congress in the months ahead to decide through the budget and appropriations processes on Capitol Hill where additional savings will come from. The budget law keeps spending cuts relatively modest over the next two years, about $25 billion in 2012 and $47 billion in 2013, before making much deeper reductions in the following eight years.

The DOJ funding bill recently approved by the House Appropriations Committee provides about $4 million less funding for US Attorney Offices than last year, $1.930 billion, and about $65 million less than the President requested in his budget. The Senate will begin to craft its appropriations bill for DOJ and

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argue, is not inconsistent with the role of a professional association: A fair pay-benefit package attracts a quality work force which serves the public interest.

Similarly, participating in public policy debates serves to strengthen, not weaken, NAAUSA's relationship with leaders in Congress and its public profile. No one (least of all no one in Congress) expects everyone to agree on everything. Taking principled positions on important issues of our time is what is expected of professional associations and, in short, gives an organization credibility and visibility.

Over the last fifteen years, the Board has repeatedly struggled with this debate and almost every time, concluded that the third approach best serves the members. In fact, our views and endorsement have been sought by prominent members of both parties including, recently, Senators Leahy and Hatch—the same Senators who have taken the lead advancing our retirement legislation.

Moreover, since there are three legitimate approaches, and since the issue is a recurring one, we recently surveyed members requesting their views. While a minority of members held the first view (only pursue work life issues) and an even smaller minority, the second view (only pursue public policy issues), a strong majority (slightly over 80 percent) responded saying we should pursue a combination of issues.

Applying this approach, we are pursuing a host of work life issues, embracing security issues (including secure parking), Department reimbursement for bar dues (which is statutorily authorized), improving gym membership or access in federal fitness facilities, removal of the statutory pay cap, and, of course, an equitable retirement.

As you know, the environment on Capitol Hill is not now conducive to improving the pay and benefits of federal employees, but NAAUSA is involved in a number of federal employee groups that are working to make sure that federal employees, including AUSAs, do not disproportionately bear most of the sacrifices needed to bring the nation's deficit under control. And NAAUSA is working with our friends on Capitol Hill to keep any reductions to the budgets for the U.S. Attorneys Offices to a minimum by reminding Congress that AUSAs collect twice as much money as the annual budget for all USAOs.

With regard to public policy and good-government issues, we have proceeded with caution and have been nonpartisan. On every occasion, we have carefully reviewed each issue on the merits. For example, when Mr. Holder was nominated by the President to become the Attorney General, NAAUSA (having dealt with him when he was DAG) sent a letter to the Senate endorsing him. When Senator Leahy asked us to endorse recent fraud legislation that would provide more prosecutorial tools to AUSAS, we did. Similarly, when we were asked to weigh in on the logjam of judicial nominees, we sent a letter urging an up or down vote for President Obama's nominees.

Finally, although we did not weigh in on the debate over the Fair Sentencing Act itself (even though Senator Hatch asked for our views and would have welcomed our endorsement of compromise legislation), at the urging of members, we did weigh in (siding with the Fraternal Order of Police and prominent members of Congress) to oppose the proposal to apply crack reduction guidelines retroactively and reopen cases and reduce the sentences of thousands of prisoners, some sentenced 20 years ago.

None, or virtually none, of these issues has had the unanimous agreement of all of the members. In fact, regrettably, two members quit when we endorsed Mr. Holder for Attorney General. No group this large or geographically diverse, especially no group of lawyers, will ever fully agree on every issue of significance. Still, to remain meaningful, we have to be able to pursue the best interests and views of all AUSA's the group and we have to interact with Congress and DOJ on more than issues of personal interest. That is why we have elected delegates, a Board of Directors, and officers who review and consider issues and act on our behalf. The issues were presented and acted upon. In each case, the action we took was what the majority believed to be appropriate.

This leads me to my final point. Elections for delegates, directors and officers will be held beginning in the fall. I encourage all members to consider running for delegate in their office, and considering running for the Board.

Prosecutorial Discovery Compliance Confirmed by Study

NAAUSA is monitoring changes to Federal Rule of Criminal Procedure Rule 16, which governs discovery and inspection of evidence in federal criminal cases. During a retreat of the NAAUSA Board last fall, The Board discussed expanding NAAUSA advocacy in opposition to any change in Rule 16, especially in response to the deliberations of the federal judiciary's Advisory Committee on Criminal Rules, which continues to consider whether Rule 16 should be amended to incorporate the government's constitutional obligation to provide exculpatory and impeachment evidence to the defense or, instead, to create a broader disclosure obligation. The Department of Justice also has consistently opposed any proposed amendment to Rule 16.

Earlier this spring, the Federal Judicial Center (FJC,) the research arm of the federal judiciary, issued a comprehensive report that studied the operation of judicial districts with local rules or standing orders that require more expansive disclosure than required by the current Rule 16 and those districts without the more expansive rules. The core of the FJC report was a survey of about 600 federal district and magistrate judges, 85 of the 93 U.S. Attorneys' Offices, and more than 5000 criminal defense lawyers and federal public defenders.

The FJC survey paints a positive picture of federal prosecutorial compliance with Rule 16 and depicts an evenly divided federal judiciary over the need to revise the rule. Here are the major findings:

- Judges reported high levels of satisfaction with the overall compliance by federal prosecutors and defense attorneys with their disclosure obligations. Eighty-eight percent of judges replied that federal prosecutors usually or always follow a consistent approach to disclosure.
- Judges were evenly split regarding whether Rule 16 should be amended; judges in districts with local rules and/or orders that require broader disclosure of exculpatory and impeachment material than what is required by Rule 16 indicated greater support for amending Rule 16 compared to judges in traditional Rule 16 districts.
- Judges reported higher levels of comprehension of disclosure obligations by federal prosecutors than by defense attorneys. Specifically, over 94% of judges expressed the view that federal prosecutors usually or always understand their disclosure obligations. Only 78% of judges thought the same of defense attorneys.
- Over 60% of the judges reported having no cases during the past five years in which they had concluded that a federal prosecutor or defense attorney had failed to comply with disclosure obligations.
- Judges reported that the two most frequent disclosure violations *committed by federal prosecutors* were the *failure to disclose on time* and the *scope of their disclosure* (the failure to turn over material or information that should have been turned over to the defense). *Failure to disclose at all* was the most frequent violation identified by defense attorneys.
- Judges reported that the two most frequent disclosure violations *committed by defense attorneys* were the *failure to disclose on time* and *failure to disclose at all*. *Failure to disclose at all* was the most frequent violation identified by U.S. Attorneys' Offices.
- The two most frequently reported remedies imposed for disclosure violations attributed to the government or to the defense were: (1) ordering immediate disclosure of the questionable material or information; and (2) ordering a continuance to give the requesting party an opportunity to review the material.
- Overall, judges reported rarely holding an attorney in contempt, and seldom reporting an attorney's conduct to the Department of Justice's Office of Professional Responsibility (OPR), bar counsel, or some other disciplinary body.
- The timing of disclosure was the issue most frequently addressed in the judges and attorneys' suggestions for reforming Rule 16.

The Federal Judicial Center study may be found here: http://1.usa.gov/oxCo3Q

NAAUSA Fights for AUSAs on Multiple Fronts

Over the past several months, NAAUSA continued to push hard in its advocacy for AUSAs, their work life, and improved law enforcement. NAAUSA has promoted the interests of AUSAs on Capitol Hill and at the Justice Department. Here are the highlights:

Pay and Benefit Cuts. NAAUSA aggressively opposed potentially brutal pay and benefit cuts to AUSAs and the federal workforce as part of spending cuts in the debt ceiling deal. NAAUSA is doing all it can do, in a coalition with other federal employee organizations, to assure that federal employees do not bear the majority of deficit-cutting sacrifice. Cuts are coming, it's only a question of how large. Without these advocacy efforts, however, the outcome would certainly be worse. This negative legislative environment has forestalled any progress on improving AUSA retirement benefits.

U.S. Attorney Office Funding. Significant budget cuts for the Department of Justice and US Attorney Offices over the coming years could flow from the debt

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Freedom of speech for Federal employees? Not so much

by Debra Roth, Shaw, Bransford & Roth

There is a trend in employment law worth noting: how is the law keeping pace with the repercussions to employees that use WEB 2.0 technologies to bad mouth their employers through blogging, tweeting, and other social media such as LinkedIn and Facebook? Does it matter that employees use these technologies to badmouth their employers to their friends and family, on their personal time using personal equipment? For the most part, the reaction of most private sector employers has been simply to terminate employees when the employer learns it's been badmouthed. And for employees in the private sector, most of whom have no legal right to their jobs, they have been left with no legal recourse. But the tide in private sector employment law may be changing as employees use the court systems to protest job actions based on their social media speech, and some courts seem to be trending towards protecting such speech from adverse employment actions.

But what about public sector employees? And in particular federal employees, whose employer is the federal government—the entity to which the First Amendment surely should apply? Well, federal employees have over time attempted to challenge adverse job actions on First Amendment grounds, and regularly failed. And if I were to predict how free speech challenges to job actions will trend when the employee speech occurs on social media, I'd predict no change. Federal employees likely will have no success. Here's why.

Almost 30 years ago, the U.S. Supreme Court recognized that public employees, like all citizens, enjoy a constitutionally protected interest in freedom of speech. Connick v. Myers,461 U.S. 138, 142 (1983). However, according to the Court, public employee free speech rights must be balanced against the need of government agencies to exercise "wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First Amendment." Id. at 146. For most non-probationary federal employees who have had an adverse job action taken against him or her (suspensions of 15 days or more, demotions and removals), they have a right to appeal such job action to the Merit Systems Protection Board (MSPB), an independent agency, who will be the adjudicator of whether the action should be sustained or reversed.

For employees who faced a job action because of something he or she said, according to MSPB case law, it will determine whether a public employee's speech is protected by the First Amendment, using the test established in Pickering v. Board of Education, 391 U.S. 563 (1968). That test requires balancing the interests of the employee, as a citizen, in commenting on matters of public concern, against the interests of the government, as an employer, in promoting the efficiency of the public services it performs through its employees. Pickering, at 568. Thus, the MSPB will determine 1) whether the speech addressed a matter of public concern, and if so, 2) whether the agency's interests in promoting the efficiency of the service outweighs the employee's interest as a citizen. Ledeaux v. Veterans Administration, 29 M.S.P.R. 440, 444-445 (1985); Smith v. Department of Transportation, 106 M.S.P.R. 59, 78-80 (2007).

For purposes of brevity, let's just say that most federal employees who protest an adverse employment action alleging a violation of a First Amendment right lose on the first element – whether the speech at issue involves a public concern. Matters of purely personal concern to the employee and his or her personal situation are simply not protected. Indeed the MSPB, has long held that employee speech that lacks a public dimension and is seen as subversive to good order, efficiency, or discipline in the workplace, is more likely to be unprotected speech. Curry v. Department of Navy, 13 M.S.P.R. 327 331 (1982).

In considering this first element, attempts by the employee to make a matter (not of a personal nature) public and the employee's motivation in speaking are considered. Smith, 106 M.S.P.R. at 79. For example, speech regarding racial relations or discriminatory practices by a public employer could be of public concern and protected, except where the complaint of discrimination is personal to the employee and limited to the employee's own situation. Id.

For example, a federal employee who attempted to challenge his removal on charges that he made false, slanderous and defamatory statements against his supervisor, when the employee filed criminal assault and battery charges against him in state court and made the same type of statements on a worker's compensation claim form, was unsuccessful in defending such disciplinary charges when he claimed a First Amendment right to make such statements – even though he actually believed his supervisor had pushed him. In sustaining the agency's removal action of the employee for the making of such statements, the MSPB found: 1) that those statements were clearly about a personal concern; and 2) that the speech "undoubtedly affected his and [his supervisor's] ability to perform, harmed their working relationship, and disrupted the office routine, thereby affecting the agency's ability to carry out its mission." Ledeaux, 29 M.S.P.R. at 445. Thus, the employee lost on both prongs of the Pickering test.

When reviewing MSPB case law, and various court decisions involving state and local public employees, it's hard to imagine speech made by a federal employee that, even if it is in the nature of a public concern, would not be outweighed by the agency's interest in promoting the efficiency of the service. Indeed, there's a recent lawsuit filed by a terminated Border Patrol Agent that may again try to tip the balance in favor of the employee. My prediction, however, is that the employee will be unsuccessful on the second Pickering prong.

This civil action, Bryan Gonzalez v. Victor M. Manjarrez, Jr., (W.D. Tex.) involves a former Border Patrol agent who

was terminated for statements he made to a colleague during his probationary period. As Gonzalez, a probationary employee, had no MSPB appeal rights, he challenged his termination action by suing his supervisor personally in a Bivens action claiming the decision to terminate him for his speech violated his First Amendment rights. According to the complaint, while patrolling the border between the U.S. and Mexico, Gonzalez pulled his vehicle along side that of a co-worker also on patrol and began talking during a break. They began discussing the drug related violence in Mexico. Gonzalez remarked that legalizing drugs would end the drug war and related violence. He also stated that the drug problems in the U.S. were due to American demand for drugs, supplied by Mexico. In response to a question from his colleague asking why Mexicans try to enter the U.S. and "steal job," Gonzalez replied that this was due to the lack of jobs in Mexico, and noted that he was Mexican with dual U.S. citizenship. The colleague repeated Gonzalez's remarks to another co-worker, who then reported Gonzalez to internal affairs, which lead to his removal. The termination letter stated in part that Gonzalez held "personal views that were contrary to the core characteristics of Border Patrol Agents, which are patriotism, dedication, and esprit de corps." The lawsuit goes on to allege that Gonzalez's statements were not made pursuant to his official duties, were on a matter of public concern, and were not disruptive and did not interfere with the agency's efficiency.

Gonzalez may succeed on the first Pickering prong. But even so, courts have been so consistently reluctant to tip the balance in favor of a public employee when the speech at issue is critical of or contrary to the actions of the employer. The judicial concern is the effect of the speech on the efficiency of the agency to carry out its mission. Here, Gonzalez's statements were directly related to the core functions of his job, and when made to his colleagues resulted in them reporting him.

Of course Gonzalez's speech was made the old-fashion way – verbally to another person – and at work. Notwithstanding the verbal nature of speech, his lawsuit highlights that employee speech remains a concern for the federal employer. With the ever-increasing use of social media by employees to badmouth employers, it will be curious to watch the evolution of this phenomenon in the public sector. Will the federal employer aggressively discipline its employees for critical statements and attempt to determine the identities of the anonymous bloggers? Will federal employees retreat over time from using social media to engage in negative speech? Will the concern of courts about how employee speech affects the good order of the workplace be neutralized by society's acceptance of social media sites? Stay tuned. But as of now, the law has been quite stable for almost 30 years – favoring the public employer.

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by Andrea King, LexisNexis Account Manager to the Department of Justice

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other parts of the government when it returns in early September. A continuing resolution at the end of September could bring on additional budget tensions, though it is likely that Congress ultimately will wrap most of the 12 funding bills for the government into one massive package at some point. NAAUSA lobbied aggressively and successfully to increase the USAOs budget in the past and will continue to push for the best funding figure possible for the USAOs in its lobbying efforts on Capitol Hill.

How agencies will deal with the budget cuts remains to be resolved. A range of personnel scenarios could play out, involving furloughs and RIFs. VERAs (voluntary early retirement actions) and VSIPS (voluntary separation incentive payments) could be used by agencies, with OPM's advance approval, as situations warrant. It is too early to tell how each agency will manage the cuts. Hiring freezes certainly will be the first action that agencies will take, if they are not already in place.

The budget savings required could add another year of freezes on federal pay, as well as increased employee contributions to retirement programs, both by current and future-hired employees, though future employees could be hit far more. In fact, on the day the debt bill was signed, Senators Orrin Hatch (R-UT), and Tom Coburn (R-OK), introduced legislation, S. 1476, to extend the current two-year pay freeze for three more years and restrict performance and recruitment bonuses for that same period.

Increases to employee contributions to retirement would likely be phased-in over time. The hits could also require greater employee contributions for health insurance. A change in the measure to calculate cost-of-living adjustments to federal and military pensions and Social Security could cause COLAs to be about 0.25 of a percentage point lower than those calculated by the price index now used. Elimination of carryover unused sick leave and imposition of a 30-day cap on accumulated annual leave also have been proposed. NAAUSA will continue to work to minimize these cuts through its advocacy efforts on Capitol Hill, in combination with other federal employee groups.

Congress will be making trillions of dollars of cuts to government programs. Hundreds of millions of dollars will be spent by AARP, Wall Street firms, oil and gas companies and other well-funded groups to lobby hard against any proposed cuts that affect them. Unless federal employees join together and make their voices heard, they could easily bear the most severe cuts. NAAUSA's influence in minimizing the impact of cuts affecting AUSAs, including budget cuts, depends on how many AUSAs are members of NAAUSA.

NAAUSA is a member of the Federal-Postal Coalition and the Coalition for Effective Change, two coalitions of associations of federal and postal employees and retirees who are working to minimize the size of budget cuts to the federal workforce.

10 Biggest Mistakes Federal Employees Make When Planning for Retirement (and How to Avoid Them)

By Edward A. Zurndorfer, Certified Financial Planner, reprinted from Federal News Radio and www.myfederalretirement.com

This article discusses the 10 biggest mistakes that many employees make during their years in federal service prior to retirement. It is hoped that this discussion will assist all employees—especially those employees in mid-career or those who are relatively new to the federal government—to not overlook these tasks and therefore be able to achieve the goal of retiring when they want to. The following list is not in any particular order of importance or priority.

(Reasons one through five were published in the Jan/Feb 2011 issue of the *NAAUSA News*.)

Mistake #6: Failure to consider the TSP as a "long-term" investment plan and properly investing as such in the TSP funds.

The TSP is a retirement savings plan that allows participants to contribute some of their pre-taxed salary for the purpose of growing the monies in these accounts on a tax-deferred basis. Any earnings—this includes interest, dividends and capital gains—are not taxed until withdrawn. As such, TSP participants must think long-term with respect to which TSP funds they want to invest their contributions. Long-term is defined as the period throughout which an employee contributes to the TSP until the time the TSP participant or the beneficiary no longer needs his or her TSP account. A TSP participant should not define "long-term" as the time the participant contributes to the TSP and the day of retirement. A TSP account must continue to grow after an employee's retirement date. As past investment performance has shown, long-term growth will most likely be accomplished when most of one's TSP account is invested in the stock (C, S, and I) funds or in the Life Cycle (L) funds that are invested mostly in the stock funds (the L2030, L2040 and L2050 funds) and not in the bond funds (F and G funds) or in the L income fund. TSP participants are also cautioned not to "time" the stock market and constantly move TSP funds around in order to achieve long-term goals and to "preserve" one's TSP account in stock market downturns. But as any investor is warned, TSP investors should heed that past investment returns are no guarantee of future performance.

Mistake #7: Failure to plan for "incapacity" while employed and when retired.

While federal employees accrue sick leave hours each pay period that can be used in the event an employee becomes ill or is injured and is unable to come to work, few employees purchase long-term disability income insurance that will replace—in most cases tax-free—as much as 60 percent of an employee's gross salary in the event the employee suffers a long-term disability. The federal government's sick leave program should be considered as a short-term disability income insurance program. Most Executive Branch agencies do not offer long term disability income insurance to their employees. The federal government offers long-term care (LTC) insurance to its employees and retirees. Most episodes of LTC occur on average when an individual is in his or her 70's or 80's. Individuals are encouraged to buy LTC insurance when they are young and healthy enough to qualify as well as be able to pay reasonable LTC insurance premiums. Many insurance professionals recommend buying disability income insurance when employees starts their profession careers—usually when a professional is in his or her 20's or early 30's—and buying LTC insurance towards the end of their working careers when they are in their late 50's or early 60's.

Mistake #8: Failure to have a proper and up-to-date estate plan.

As part of their overall estate plan, employees to name beneficiaries for their bank and brokerage accounts, life insurance policies, TSP accounts and IRAs, and have prepared important estate-related documents. A proper estate plan, established by consulting and working with a qualified estate attorney, includes a Will or Living Trust, a durable power of attorney, an advanced health care directive (health care power of attorney) and Living Will.

Mistake #9: Failure to plan properly for retirement—in terms of income, housing and lifestyle changes—for themselves as well as for family members, especially spouses.

Retirement should be considered as another "life event" that can have significant effects on the income, housing needs and lifestyle of the retiree and immediate family members. Not properly planning for these changes could be devastating.

Mistake #10: Failure to attend a mid-career and retirement seminar.

Many federal agencies offer to their employees two to three day mid-career and retirement planning seminars. These seminars, conducted by federal employee benefits experts, teach attendees what employees should expect in income and lifestyle changes once they retire from federal service. Among the topics usually discussed are retirement eligibility requirements, how the CSRS and FERS annuities are calculated, the best days of the month and the time of the year to retire, survivor benefits, what happens in the event an employee dies in service, how to invest in the TSP, what to expect to receive in Social Security benefits, how federal pensions are taxed by the federal government and the state governments, estate planning for soon-to-be retirees, and lifestyle changes during retirement. Many employees attend these seminars very late in their careers. They subsequently discover that they have made errors or omitted certain tasks that should have been dealt with earlier in their careers.

In Brief

Administration Limits Performance Awards for 2011 and 2012

In a June 10 memorandum to federal agencies, the Office of Personnel Management directed agencies to limit performance awards for SES and scientific and professional employees to no more than five percent of total salaries. OPM also limited bonuses to other federal employees to just one percent of an agency's total salaries. There is no specific limit on the amount of an individual's award and there is no cap of the percentage of employees receiving awards or the number of individual awards granted.

Legislation Calls for Seriously Tax Delinquent Federal Employees/ Contractors to be Fired

In late June, the House Committee on Oversight and Government Reform approved legislation, H.R. 828, the Federal Employee Tax Accountability Act of 2011, that would prevent seriously tax-delinquent federal employees and contractors from working for the federal government or continuing to work for the federal government. A companion bill, S. 828 has been introduced in the Senate.

The bill defines "seriously delinquent tax debt" as an outstanding tax debt for which a notice of lien has been filed in public records. The bill exempts a tax debt: (1) that is being paid in a timely manner under an approved installment payment agreement or an offer-in-compromise; (2) for which a collection due process hearing has been requested or pending; (3) for which a levy has been issued or agreed to by an applicant for employment; or (4) that is determined to be an economic hardship to the taxpayer. The bill grants federal employees or applicants 60 days to demonstrate that their tax debts are exempt from classification as a seriously delinquent tax debt under this Act

The bill requires each federal agency to: (1) ensure that applicants for employment certify that they do not have a seriously delinquent tax debt; (2) review public records to determine if a notice of lien has been filed against an employee or applicant; and (3) restrict access to and use of information obtained under this Act.

The bill authorizes an agency, if a tax lien against a federal employee or applicant is discovered in any public record, to: (1) request such employee or applicant to execute and submit a form authorizing the Secretary of the Treasury to disclose to an agency head information describing whether the employee or applicant has a seriously delinquent tax debt; and (2) contact the Secretary to request tax information about a seriously delinquent tax debt of an employee or applicant.

No Locality Pay Changes for 2012

Because of the federal pay freeze, there will be no increases in locality pay in 2012. In addition, there will be no changes in or additions to any of the designated geographic areas.

Per-diem Reimbursement Rates Available on iPhone and Blackberry

On August 4, the General Services Administration announced that federal employees can get per diem reimbursement rates on a free mobile application: "Per Diem." The application provides information on per-diem rates based on city and state or zip code in the U.S. and U.S. territories. The application is available at iTunes stores or BlackBerry App World.

OPM Launches One-Stop Gateway to Federal Government Recruitment Resources

The Office of Personnel Management has launched USAJOBSRecruit.gov, a one-stop gateway to recruitment resources throughout the federal government. The USAJOBSRecruit site includes information, resources and multi-media learning tools to ensure guidance is readily available to HR professionals, recruiters and hiring officials and the Federal Service Ambassadors Program for federal employees interested in promoting careers with the federal government.

GSA Plans to Keep Mileage Reimbursement Rate at 51 Cents a Mile

In June, the IRS changed the reimbursement rates from 51 cents per mile to 55.5 cents for taxpayers who use their personal vehicles on the job. GSA has decided not to increase the mileage reimbursement rate for federal employees.

Agencies Have Reduced the Time to Hire a New Employee

In May 2010, President Obama directed agencies to implement changes that would allow them to hire faster. Among the changes made to meet the President's directive was the elimination of essays on knowledge, skills and abilities (KSAs) and replacing them with resumes and cover letters. Also changed has been the length of job announcements, reduced from 35 pages in some cases to three to five pages. The goal is for agencies to hire an employee in 80 days from start to finish. In a May, 2011 report, the Office of Personnel Management reported that the average time to hire had been reduced from 160 to 105 days.

Legislation Introduced to Require Supervisor Training

Legislation has been introduced in the House (H.R. 1492) and Senate (S 790), that expands requirements relating to specific training programs for federal agency supervisors by requiring the head of each federal agency to establish: (1) a program to train supervisors in carrying out their duties, including mentoring and motivating employees, fostering a employee-friendly work environment, and effectively managing employees with unacceptable performance ratings; (2) a program to train supervisors on prohibited personnel practices. employee collective bargaining and union participation rights, and the procedures and processes used to enforce employee rights; and (3) a program under which experienced supervisors mentor new supervisors.

The bills require: (1) the Director of the Office of Personnel Management to issue guidance to federal agencies on competencies supervisors are expected to meet in order to effectively manage, and be accountable for managing, the performance of employees; and (2) each agency to assess the performance of its supervisors and the overall capacity of its supervisors, based on such guidance.

AUSA's Favor Expansion of Telework and Greater Access to Fitness Centers, NAAUSA Survey Shows

In February, NAAUSA conducted a survey of approximately 1,200 AUSAs on AUSA attitudes regarding telework and maintenance of health and fitness programs. The survey showed that there is significant interest among AUSAs in telework. In particular, the survey found that:

- Sixty-two percent of AUSAs surveyed are interested in teleworking.
- More than three-fourths of AUSAs have access to the DOJ intranet outside the office, but only about ten percent of AUSAs are currently permitted to telework.
- Seventy-six percent of AUSAs do not believe they needed to be in the office all the time to perform their jobs, and therefore may be eligible for telework.
- One-half of AUSAs desire to telework one day a week; forty percent would prefer to telework two days a week.

Based on the survey results, NAAUSA wrote to EOUSA and recommended that telework be selectively implemented to make AUSAs more productive, achieve cost-savings and advance the Department's mission.

Flexible Work Schedules

- Fifty-three percent of AUSAs prefer a flexible work schedule to telework and 43 percent of AUSAs reported that their offices had telework or flexible work schedules.
- Fifty-six percent of AUSAs who responded to the survey indicated that there were no telework or flexible work schedules in their office, or didn't know if their office had any policies.

AUSAs may not be aware that USAP 3-4.620.001 establishes procedures for the Department of Justice Flexible Work Options Program, which implements DOJ Order 1200.1 and encourages components to use flexible work options. The USAP recognizes the following flexible work options:

Compressed Work Schedule: Completing a full-time, 80-hour, pay period in fewer than 10 work days. Included are:

- "5/4/9." The ten-work-day pay period is completed in nine work days: eight nine-hour days and one eight-hour day.
- "4/10." The ten-work-day pay period is completed in eight work days: eight ten-hour days.
- Flexible Work Schedule: A change in the Basic Workweek with starting times ranging from 7:00 a.m. to 9:30 a.m. and ending 8.5 hours later with a half-hour uncompensated lunch period.
- Job Sharing: Two or more Part-Time employees sharing one Full-Time position.
- Telecommuting: Working from a satellite location, home, a telecommuting center, or other remote site.
- Work Schedule:
  Full-Time: 80 hours per pay period.
  Part-Time: normally, 32 to 64 hours per pay period.
  Intermittent: no fixed work schedule.

Fitness and Health Center Policy

The NAAUSA survey also identified AUSA attitudes about the maintenance of health and fitness and the accessibility of fitness and health centers to AUSAs. In particular, the survey found that:

- A significant number of AUSAs (86 percent) would like to have access to a fitness facility on a regular basis.
- Nearly half of AUSAs said that there was a government-agency-owned health and fitness center in or near the building in which they worked.

In a letter to EOUSA, NAAUSA recognized that budget constraints prohibit most USAOs from purchasing and maintaining their own facilities. However, in some locations, other agencies maintain facilities and it would be possible for USAO employees to use those facilities. At present, however, EOUSA policy undermines such cooperative efforts.

Although the Department is authorized by law to provide funding for health and fitness programs (5 U.S.C. § 7901 provides that "The head of each agency of the Government of the United States may establish, within the limits of appropriations available, a health service program to promote and maintain the physical and mental fitness of employees under his jurisdiction."), EOUSA policy prohibits U.S. Attorneys from exercising discretion to contribute even minimally to facilities maintained by other agencies (including the U. S. Marshals Service and FBI). What that means is obvious: other agencies can (and some do) allow USAO employees to use their health and fitness facilities, that use benefits the Department, but the Department will not give U. S. Attorney's discretion to spend even relatively nominal sums to contribute (for example by purchasing a piece of equipment) to the operation of the facilities.

NAAUSA believes granting U. S. Attorneys discretion to spend a few thousand dollars per year for exercise equipment, which could be provided to a facility operated by another agency, would encourage greater cooperation and facilitate access to those fitness facilities. This, in turn, will promote a healthier and more productive AUSA work force.

NAAUSA Website Changes

AUSAs can now purchase NAAUSA logo products on-line at http://www.naausa.org/products.php and pay by credit card. T-shirts and coffee mugs are available to purchase. There is also a "Members Only" page under development which will include information on AUSA pay, benefits and other worklife information.

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ceiling deal that Congress and the President crafted in August. Under the budget agreement, government spending cuts will begin to kick-in in FY 2013, though lower funding is already in the picture for FY 2012. The FY 2012 funding bill for the Department of Justice recently approved by the House Appropriations Committee provides about $4 million less in funding for the USAOs than the current year—at $1.930 billion—and about $65 million less than the President requested in his budget. The Senate will craft its DOJ funding bill in September. NAAUSA is continuing to push for the best funding figure possible for the USAOs in its lobbying efforts on Capitol Hill.

Telework. NAAUSA has worked for the creation of new telework opportunities for AUSAs, as DOJ and EOUSA begin to implement the new telework law. This is an emerging issue, with broad implications for AUSA work-life flexibility, government cost-savings and productivity. NAAUSA surveyed 1200 AUSAs on their views on telework this spring and shared the results with EOUSA. (The results reported on page 10.) Over the coming months, NAAUSA will work with EOUSA to assure that telework opportunities are made available to AUSAs where that best makes sense.

Fitness Centers. NAAUSA is also fighting for improved AUSA access to fitness centers. NAAUSA's goal is to ensure greater access by AUSAs to fitness facilities, especially USMS and other government facilities, in or near USAOs. NAAUSA has encouraged EOUSA to use the statutory discretion it has to authorize USAOs to spend modest funds for the health and fitness of AUSAs, especially in collaboration with shared use of USMS fitness facilities. NAAUSA wants to know more about where there are problems USAOs and where best practices have emerged.

Prosecutorial Tools. NAAUSA also has supported legislation that assures that AUSAs have the tools they need. NAAUSA provided support for extension of the Patriot Act earlier this spring, encouraging House and Senate lawmakers to authorize the continuation of important investigative powers to search records and conduct roving wiretaps in pursuit of terrorists. The President recently signed a four-year extension.

Crack Cocaine Sentencing. NAAUSA also has opposed retroactive application of crack cocaine sentencing amendments in comments filed with the Sentencing Commission, because of the negative impact that retroactivity will cause in reopening thousands of cases and undermining confidence in the federal criminal justice system.

NAAUSA NEWS

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