

# Alert!

Chapter 52  
National Treasury  
Employees Union

July, 2004

## Civil Service Reform Measure Advances

*FedWeek, June 30, 2004*

The House Government Reform Committee has approved a measure to expand agency use of certain monetary incentives for employees while also allowing employees to receive compensatory time off for travel during off-duty hours and making certain other reforms. The bill (S-129), which already has cleared the Senate, was altered somewhat during committee voting to make it conform to the Senate version. That could ease passage of the measure, which likely will be the most substantial civil service bill to move through Congress this year. Several provisions were dropped, including one that would have made FERS annuities begin immediately on retirement rather than a month later.

The major provision of the bill expands the use of recruitment or retention payments, which currently can be up to 25 percent of the annual rate of basic pay. Retention allowances would become retention bonuses and the bill raises the limit on both recruitment and retention bonuses to 50 percent of salary and makes them subject to an employment agreement, not to exceed four years. The maximum bonus over four years would be an amount equal to the employee's annual pay at the start of the service period. The measure also would allow retention bonuses if the agency determines that an employee would likely leave for a different federal position--not just for an outside job as under current policy--in the absence of a bonus. The bonuses could be paid as an initial lump sum, in installments, or as a final lump sum upon the completion of the service period, or in a combination of these forms of payment.

The provision of the bill allowing compensatory time off for travel outside normal duty hours would change current policy that states that such time is not considered to be hours of employment unless the travel involves the performance of work, is carried out under arduous conditions, or results from an event that could not be scheduled or controlled administratively. Employees receiving compensatory time off for travel would not be entitled to payment for unused compensatory time earned under the provision. The bill also: revises a provision of CSRS retirement law that has the effect of discouraging employees from switching to part-time work later in their careers; expands the use of "critical pay" authority, which allows higher than normal pay in positions that require a very high level of expertise in a scientific, technical, or administrative field and are crucial to the accomplishment of an agency's mission; requires agencies to put more emphasis on training; and improves annual leave benefits for those hired in mid-career.

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## **Scramble Coming on Spending Bills**

*FedWeek, June 30, 2004*

With just weeks left before recessing until early September, Congress is hoping to act soon on key spending bills for the upcoming fiscal year, including the Transportation-Treasury-General Government bill that most commonly carries any changes in government-wide policies as well as serving as the vehicle for the upcoming year's federal pay raise. The House hopes to pass all 13 of the basic appropriations bills before the August recess as individual measures. The measures then might be bundled into one or more larger bills for Senate consideration. The Transportation-Treasury bill has not even seen subcommittee action yet, but an attempt is expected there to set the January 2005 federal pay raise at 3.5 percent--rather than the 1.5 percent the Bush administration recommended--in the name of maintaining parity with increases for military personnel.

## **Agencies Pressured on Telecommuting**

*FedWeek, June 30, 2004*

Agencies covered by the Commerce-Justice-State appropriations bill would have to show that all of their employees who are deemed eligible to telecommute have the option of doing so, under a provision of that bill drafted in the House. The prime sponsor is Rep. Frank Wolf, R-Va., who is one of the leading advocates in Congress of allowing federal employees to work from home or from telecommuting centers. Under his language--which may be a precursor to similar language for other agencies--the affected agencies would face budget cuts if they did not make telecommuting available to all eligible employees. In addition to the Commerce, Justice and State Departments, large agencies covered by the bill include the Securities and Exchange Commission and Small Business Administration. Wolf previously sponsored government-wide language requiring agencies to designate positions eligible for telecommuting, but studies show that only small percentages of federal employees telework even part time.

## **Agencies May Face Stiff Penalties if They Don't Move Towards Telecommuting**

*FedManager, June 29, 2004*

Some federal agencies may soon face stiff penalties if they continue to drag their feet in allowing eligible employees to telecommute. Rep. Frank Wolf (R-Virginia), chairman of the Commerce-Justice-State Appropriations subcommittee and a strong advocate of telecommuting, attached a provision to a spending bill approved by the House Appropriations Committee last week that would withhold \$5 million from the agencies' budgets until they ensure that all their eligible workers are permitted to telecommute. The \$5 million penalty would apply to the Departments of Commerce, Justice, and State.

The provision would also require the federal judiciary, the Small Business Administration, and the Securities and Exchange Commission to prove that eligible members of their workforce are permitted to telecommute, and mandate that departments and agencies designate a "Telework Coordinator" to oversee the implementation and operation of telecommuting programs within each department. The departments and agencies would then be obligated to provide the Appropriations Committee with quarterly reports on the number of employees telecommuting.

"The benefits of telecommuting far outweigh any potential downside that managers attempt to cite," Wolf said. "Survey after survey shows that telecommuters are extremely productive. Telecommuters have higher morale, have less stress from fighting traffic every day and take fewer sick days. With all the advances in technology today, there is just no reason to strap yourself in a metal box every morning only to drive to an office where you sit in front of a computer all day," Wolf continued. "Off-the-shelf technology even allows for face-to-face meetings via video conferencing. So not being able to talk to - or see - co-workers on a regular basis is no longer an issue."

Wolf included a mandate in the FY 2000 transportation appropriations bill requiring all federal agencies to have in place by 2005 telecommuting programs which allow every eligible employee to work away from the office at least one day a week. A recent report by the Office of Personnel Management showed that only 6 percent of federal employees work from home or a telework center at least once a week. The report covered 74 agencies with more than 1.7 million employees.

## **Kelley Calls on Congress to Prod Agencies To Boost Implementation of Telework Programs**

**Washington, D.C.**—Despite a congressional mandate to sharply boost the use of telework among federal agencies, this important program lags because of a failure of managerial commitment and leadership to the idea, the head of the largest independent union of federal employees said today.

In testimony submitted to the House Government Reform Committee, President Colleen M. Kelley of the National Treasury Employees Union (NTEU) called on Congress to use its authority "to prod agencies to better comply" with the mandate to allow telework.

Often referred to as flexiplace, telework programs allow employees to work off-site, either at home or in a designated telework center, on various schedules including full- and part-time, as well as project-based. Four years ago, Congress approved legislation

requiring executive agencies to establish policies for employee telework eligibility, and to ensure the removal of barriers to the full and successful implementation of such programs. Kelley called the progress to date "mixed."

NTEU believes that "honest and meaningful collaboration with employee representatives can resolve any reservations about telework," she said. "What is needed is leadership, openness and a sense of innovation from managers and agencies. Where that does not exist, Congress must use its authority to see it is created."

The NTEU leader praised committee chairman Rep. Tom Davis (R-VA) and Rep. Frank Wolf (R-VA) for their leadership in bringing telework to the forefront as an issue of importance not only to federal workers, but to their agencies and taxpayers as well.

She pointed to two agencies—the Internal Revenue Service (IRS) and the Trademark division of the Patent and Trademark Office (PTO)—where NTEU and the agency have collaboratively established effective telework programs that can serve as a model for other agencies.

At the same time, President Kelley pointed to NTEU-represented agencies where the program is failing to meet expectations, including at the Securities & Exchange Commission (SEC); the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); and the Office of the Comptroller of the Currency (OCC).

These programs are lagging, she said, because of an institutional bias against them and a failure of agency leadership to recognize and acknowledge the clear value of telework to all parties. In the context of telework, there are legitimate needs by both employees and managers but these can be balanced to create an effective telework program, she said, if there is a "true and honest partnership and collaboration between management and employee representatives."

## Olson's Midyear Report Highlights Key Taxpayer-Rights Issues

*Tax Notes, July 2, 2004 AUTHOR: Allen Kenney, Tax Analysts*

National Taxpayer Advocate Nina Olson released her midyear report July 1, calling on Congress and the **IRS** to temper the tax collector's enforcement mindset with assurances of protections for taxpayer rights.

Olson warns that a failure to protect taxpayer rights in a time of vigilant enforcement could send the **IRS** back down the same path that led it to the **IRS** Restructuring and Reform Act of 1998. "Aggressive enforcement action requires aggressive protection of taxpayer rights," Olson writes. "Otherwise, the [tax] system fails."

Preceding the reforms, Olson wrote, the tax system suffered a death of "a thousand cuts" -- a business-oriented mentality that lacked an equal commitment to taxpayer rights. As a

result, the public came to view the **IRS** as being more concerned with enforcement results than with helping taxpayers to be compliant. In the report, Olson lays out specific ways for the **IRS** to ensure that concerns for taxpayer rights pervade every aspect of its daily operations.

The report appears especially focused on the role of Olson's office and Taxpayer Advocate Service (TAS) in tax administration. Olson encourages the **IRS** to use TAS as a "safety valve," to balance the perceived perpetual swing between enforcement and service in the tax collector's policy.

"The Taxpayer Advocate Service enables the **IRS** to design procedures and systems that will work fairly well for most taxpayers most of the time, although they may not work well for a few taxpayers some of the time," the report says. "It is TAS's job to remind the **IRS** to maintain respect for taxpayer rights and provide quality service while enforcing the tax laws."

Olson says the Service should follow the advice in her 2002 annual report and implement a tool to analyze the impact of new programs on taxpayer rights. Her Taxpayer Rights Impact Statement (TRIS) would provide a TAS assessment of a proposed **IRS** program concerning taxpayer rights. The TRIS would examine questions such as:

- o Does this policy call for one group of taxpayers to be treated differently from others?
- o Does the program sufficiently protect the confidentiality of taxpayer and tax return information?
- o Does the program incorporate a safety valve, whereby employees and managers have the discretion to identify and address cases presenting specific facts and circumstances?
- o Has the **IRS** developed quality measures that drive the appropriate **IRS** employee actions and behaviors, or do they encourage or reward inappropriate behavior or behavior that is likely to create either specific or systemic problems?

TAS plans to have the TRIS complete by the end of fiscal year 2004 and begin using it in fiscal year 2005, according to the report.

Noting that the Service will bring on thousands of new employees in the next few years as part of its enforcement initiative, Olson also suggests the **IRS** take the steps necessary to ensure that new hires receive adequate training. **That includes grounding them in the fundamentals of tax administration, because "blind obedience and rote responses are inconsistent with taxpayer rights," Olson says.**

The report announces that TAS will undertake a study of the tax collector's training program in 2005. The study's objectives will include examinations of "how the Service inculcates in its employees the principles of flexibility and judgment toward the taxpayers they serve" and "the impact of training on ensuring consistent application and interpretation of tax law."

Olson also asks the Service to use TAS to help stem the tide of noncompliance. The report says that not knowing about TAS may be a compliance stumbling block for much of the population, and it calls the office the "best-kept secret" in the **IRS**.

Olson points out that a recent study shows that roughly 1.5 million taxpayers across the country qualify for TAS assistance at any given time. However, 43 percent of that group are intimidated by the **IRS**, making them less likely to reach out for help. As a result, TAS has designed a public awareness strategy designed to inform taxpayers most likely to have significant hardships of TAS's existence. Also, the agency is developing a mandatory TAS education campaign for **IRS** employees.

The report also identifies areas of particular TAS focus for fiscal year 2005. One area is the **IRS's** offer in compromise (OIC) program. Olson says the Service can improve the efficiency of the program without sacrificing taxpayer rights or the quality of its decisions, and she pledges that TAS will help the **IRS's** Small Business/Self-Employed Division do so.

Her report says the **IRS** has had problems administering the OIC program in the past, because of an "underlying uneasiness about permitting a taxpayer to be relieved of a legally due tax debt." The concern is that a liberal use of OICs will launch a tidal wave of taxpayers renouncing their tax obligations. Consequently, according to Olson, **IRS** personnel tend to treat OICs as a matter of inventory management, rather than problem solving.

"Ideally, the barriers to submitting an offer for consideration should be minimal, and the **IRS** should realistically evaluate each offer based upon its unique facts, looking for ways to accept reasonable offers rather than for ways to reject or return them," the report says. "Taxpayers who are attempting to fulfill their obligations via the OIC process, notwithstanding their financial difficulties, deserve a better OIC program that is designed to accept all reasonable offers."

The report outlines Olson's primary concerns with the **IRS's** electronic filing initiative as well. First, e-filing should be available to all taxpayers at no cost. That could be done by putting a tax return template on the **IRS's** Web site, according to Olson. The free template would help the **IRS** achieve its goal of having 80 percent of all returns filed electronically by 2007.

The report also calls for electronic tags on all Free File returns. The report argues that the Service now has no way of knowing if a taxpayer is filing electronically because of Free File. Also, the **IRS** can't tell if a taxpayer has filed electronically before and shifted to Free File to avoid fees. Tagging the returns would enable the **IRS** to develop more effective advertising to boost Free File participation.

The report recommends that the **IRS's** Office of Appeals streamline and improve the overall collections due process hearing process. Olson believes Appeals should improve its communications with taxpayers, noting that those who deal with the office frequently express confusion with the hearing process.

# National Taxpayer Advocate Releases Report to Congress, Cites Need for Aggressive Protection of Taxpayer Rights

IRS NEWS RELEASE: IR-2004-88, 07/06/2004

WASHINGTON — National Taxpayer Advocate Nina E. Olson has delivered a report to Congress that calls for enhanced protection of taxpayer rights by tax administrators and improvements in the offer-in-compromise, collection due process and tax e-filing programs.

The report, which is required by law, sets out the objectives of the Office of the Taxpayer Advocate for the upcoming fiscal year and provides substantive analysis of issues as well as statistical information.

“This year’s Objectives Report focuses on the protection of taxpayer rights as a mandatory component of tax administration,” said Olson. “Aggressive enforcement of taxpayer rights assures taxpayers that the IRS’ aggressive enforcement of the tax laws will be balanced and fair.”

The report identifies three measures to bolster the protection of taxpayer rights:

1. Preparation of a Taxpayer Rights Impact Statement for New IRS Enforcement Initiatives. The IRS often implements new procedures, guidelines or requirements that further its enforcement or administrative goals but may place a significant burden on the time, rights or privacy of taxpayers. In 1998, Congress strengthened the Office of the Taxpayer Advocate and created the Taxpayer Advocate Service (TAS) to act as a safety valve when institutional tendencies within the IRS do not adequately take account of taxpayer rights. Beginning immediately, the report states that the Office of the Taxpayer Advocate will prepare a Taxpayer Rights Impact Statement (TRIS) on major initiatives to help the IRS incorporate an awareness of taxpayer rights into its program planning and implementation. If requested, the TRIS will be prepared prior to program finalization and implementation. If the IRS does not request a TRIS prior to program implementation, TAS will analyze the program on its own accord, if and when appropriate.

2. Improved IRS Employee Training. Over the next few years, the IRS will be hiring thousands of new employees as part of its initiatives to strengthen its enforcement of the tax laws. For these employees to pursue tax non-compliance aggressively, yet fully respect taxpayer rights, the report states that they require training in the foundational, technical and behavioral aspects of tax administration, including training in the importance of customer service and respect for taxpayer rights. During FY 2005, the Office of the Taxpayer Advocate will study key aspects of the IRS training program for new employees and make recommendations consistent with its objectives.

3. Increased Awareness of TAS. Other functions of IRS generally are and should remain the first point of contact for taxpayers needing assistance with their problems, but taxpayers must be better informed that TAS is available as a safety valve when regular IRS procedures fail, the report says. A recent study commissioned by the IRS indicates that approximately 1.5 million taxpayers at any given time meet the statutory “significant hardship” test and thereby qualify for TAS assistance. As part of IRS employee training, employees should be educated about existing guidelines for referring cases to TAS, the report recommends. In addition, the study found that approximately 43 percent of

taxpayers who qualify for TAS assistance at any given time report that they feel intimidated by the IRS. They therefore are unlikely to call the IRS to obtain assistance and are in danger of becoming habitually noncompliant. The Office of the Taxpayer Advocate has developed an outreach strategy to inform this taxpayer population about TAS and its ability to assist these taxpayers in resolving their tax problems.

The report also focuses on the following IRS programs:

- Offers in Compromise. An offer in compromise is a collection alternative under which the IRS accepts payment for less than the amount owing, typically due to a taxpayer's inability to pay the full tax debt or other special circumstances. The objective of the program is to bring closure to the case, enable the IRS to collect the agreed amount, and give the taxpayer a "fresh start." Although a 1998 House-Senate conference report stated that "the IRS should be flexible in finding ways to work with taxpayers who are sincerely trying to meet their obligations [and] should make it easier for taxpayers to enter into offer-in-compromise agreements," the Advocate's report concludes that the procedural requirements for obtaining full consideration of an offer are excessive and that too many offers are rejected.

- Collection Due Process. In 1998, Congress gave taxpayers subject to liens or levies the right to obtain an independent review of their cases to ensure that the IRS collection action achieves the appropriate balance between the government's and the taxpayer's interests, and that the IRS has adhered to any applicable legal and administrative requirements. However, many taxpayers and their representatives find the process confusing and frustrating, the report says, and they are often unclear about fundamental items such as what a CDP hearing is, when the process starts and is completed, and what the hearing is meant to achieve. During FY 2005, the Office of the Taxpayer Advocate will work with the Office of Appeals to try to improve communications with affected taxpayers and program implementation.

- Electronic Filing of Tax Returns. Congress and the IRS have set goals of substantially increasing the numbers of taxpayers who file their returns electronically. However, while taxpayers may file paper returns without incurring any return preparation and filing costs (except a postage stamp), taxpayers who file electronically generally must pay to purchase a commercial software or Internet-based product and must pay separately to file their returns. The IRS has an agreement with private software companies that, by its terms, ensures that free e-filing service are provided to at least 60 percent of taxpayers. However, the report calls on the IRS to make a template available on its website that would allow all taxpayers to file their returns electronically without incurring costs. The template would provide taxpayers with the ability to fill in the lines on the Internet-based return, just as with a paper return, but would not contain the added features built into commercial software products and thus would not be intended to compete with private industry.

The Taxpayer Advocate Service, an independent function within the IRS, helps individuals solve ongoing tax problems with the IRS and recommends changes to mitigate taxpayer problems. The Taxpayer Advocate Service, with a workforce of more than 2,100 employees, is available to assist both individuals and businesses. At least one taxpayer advocate's office is located in each state.

You may qualify for the assistance of a taxpayer advocate if:

- You are facing a significant hardship due to an action taken by IRS;
- Your case has gone through all established systems without being resolved;
- You are on the second attempt to resolve a problem; or
- You have not been contacted by the date promised.

To request the assistance of a taxpayer advocate, call 1-877-777-4778 (a toll-free call). The National Taxpayer Advocate's Fiscal Year 2005 Objectives Report to Congress is available on the IRS Web site at [www.irs.gov/advocate](http://www.irs.gov/advocate).

## **The Hatch Act**

In 1939, the enactment of The Hatch Act was hailed as a critical step toward cleaning up government and ending political patronage. Its goal was to ensure a qualified, stable work force free from coercion and the constant threat of job loss for no reason. Since that time, the federal workplace has changed a great deal and in 1993, The Hatch Act was reformed to reflect these changes. The law officially changed on February 3, 1994. Listed below you will find the guidelines for activities allowed and prohibited under the current Hatch Act law. If you are ever concerned about the legality of an activity, please contact NTEU's Legislative Office. You can call (202) 572-5500 or write to the NTEU Legislative Office at: NTEU Legislation Department, 1750 H Street NW, Washington, DC 20006.

### **Hatch Act DO's and DONT's**

#### **Employees May:**

- Register and vote as they choose;
- Assist in voter registration drives;
- Express opinions about all candidates and issues, privately and publicly;
- Run for election to a non-partisan office;
- Contribute money to political organizations or attend a political fund raising function;
- Sign petitions, including nominating petitions;
- Wear political badges, buttons (except in government buildings);
- Run for office within party organizations and affiliate groups;
- Attend political conventions, rallies and meetings as an elected representative of a partisan organization;
- Take an active part in political management of campaigns;
- Solicit contributions to the political action committee of the organization to which both employees belong provided that the contributor is not a subordinate employee;
- Spouses and other members of an employees' family may engage in all forms of partisan political activities.

## Employees May Not:

- Be candidates for public office in partisan politics;
- Use their official position to influence or coerce colleagues and election results;
- Wear political buttons in government buildings;
- Collect, solicit, receive, handle, disburse or account for contributions from the general public;
- Wear a government uniform or government insignia while engaged in political activities;
- Sell tickets to a political fund raising function to the general public.

## NTEU Takes Sharp Issue with Proposed Revisions To Mandatory Guidelines for Federal Drug-Testing Programs

**Washington, D.C.**—The nation's largest independent union of federal workers today sharply criticized proposed new options in federal drug-testing as scientifically questionable and riddled with the potential to produce false positive results that would have "serious repercussions" for the federal workforce and the nation.

"Hard-working federal employees—only a miniscule percentage of whom have ever tested positive for drugs—deserve better than this from their employer," said President Colleen M. Kelley of the National Treasury Employees Union (NTEU). "The taxpayer, as well, deserves better."

President Kelley's attack on the proposed use of new tests for federal workplace drug testing programs—right now, only urine samples are used—came in comments submitted in response to draft regulations published earlier this year in the *Federal Register* by the Substance Abuse and Mental Health Services Administration (SAMHSA), an agency of the Department of Health and Human Services (HHS). A number of scientific studies have raised serious questions about the validity of the additional testing mechanisms SAMHSA has proposed imposing on the federal workforce.

Kelley was particularly critical of SAMHSA's proposed revisions in several key areas—their lack of scientific validity; reliance on insufficiently tested technology; and the abdication to federal agencies by SAMHSA of its oversight role in seeing that agencies comply with drug-testing standards. Kelley urged the agency to reconsider its proposed revisions.

NTEU took issue with the proposed guidelines on the use of saliva testing, emphasizing that it is an "insufficiently studied method," as well as with the agency proposal to allow "point-of-collection testing (POCT)." SAMHSA itself has said that POCT "offers a particular challenge" to federal agencies.

The union went one step further, charging that, under POCT, SAMHSA would have "improperly abdicated its mandated oversight role" to federal agencies by giving them the responsibility for ensuring compliance with drug-testing standards. "Those agencies are not equipped to exercise that responsibility," NTEU said.

NTEU also criticized the proposed use of the so-called “sweat patch” to test for drug use, calling it “not sufficiently reliable. Until the technology has been refined to the point that SAMHSA is able to declare with greater certainty that environmental contamination is not possible...it must not approve its use,” NTEU said.

Moreover, the union’s comments attacked hair testing for pre-employment, random, return-to-duty and follow-up testing, noting that “SAMHSA is wrong” in its claims that current tests can distinguish between the hair of a drug user and that of someone who has been exposed to drugs in the air.

Studies establish that environmental contamination is a particular problem when hair is tested for drugs, the union said. NTEU said hair testing is “inappropriate” in large part because it is “well established” that dark-colored hair incorporates environmental contamination more rapidly than light-colored hair. Thus, persons with dark hair are “especially likely to receive false positive results.” The union said it “objects most strenuously” to use of a test “with such an inherent racial bias.”



## THE FUNDS – TSP Rates of Return

Rates of Return were updated on **July 1, 2004**.

	<b>G Fund</b>	<b>F Fund</b>	<b>C Fund</b>	<b>S Fund</b>	<b>I Fund</b>
June 2004	0.38%	0.60%	1.86%	2.72%	2.89%
Last 12 Months* (7/1/2003 - 6/30/2004)	4.29%	0.30%	18.97%	29.35%	32.45%

\* The G, F, C, S, and I Fund returns for the last 12 months assume unchanging balances (time-weighting) from month to month, and assume that earnings are compounded on a monthly basis

## TOM’S HUMOR PAGE

An auto mechanic received a repair order that said to check for a clunking noise when the car went around corners. The mechanic took the car out for a test drive and made several turns, each time hearing a loud clunk. Back at the shop, he returned the car to the service manager with this note: “Removed bowling ball from trunk”.



**Chapter 52 Alert!**, all the news that is fit to be copied!

This **Chapter 52 Alert!** along with all other **Alerts!** since January 2001, can be found on our Chapter Web Page at <http://www.nteu52.org/> You can e-mail any Chapter officer, staff member or steward from this site.

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Send comments and/or articles to:  
8700 Tesoro Dr. Stop 1700SANC  
San Antonio, Texas 78217  
fax 210-841-2044, attention Alert!  
Editor/Compiler Mick Eskew

