

# The Advisor

## Region Legal Service Office Southeast



### CDR Nell Evans, CNRSE SJA and Director, Command Services

Summer is closing in upon us. For those of us in the Southeast this means sun, surf...and picnics, dunk tanks, golf tournaments, concerts, and air shows (just to name a few). Solicitation and fundraising for By Our Own / For Our Own (BOOFOO) groups as well as non-federal entities (NFE) can put a damper on these "summer fun" activities. SJA's should be on the lookout for activities that violate the JER - shaping these events on the front end can save a lot of headaches on the backend. Be on the lookout for our legal guidance on Air Shows (coming soon).



Stay safe and keep cool in the coming months!

#### Highlights:

- Physical Evaluation Board vs. Misconduct
- OGE 450s
- Traditional and Roth TSPs Explained

### Ethically Safe Driving: Official Use of Government Vehicles

LT Elan Ghazal, Staff Judge Advocate, Naval Air Station Key West

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Government passenger motor vehicles (GOVs) are a great resource for personnel. They reduce the work-related wear and tear on one's privately owned vehicle (POV) and provide a utility when other means of transportation are unavailable. It is important to identify, however, the scope of permissible use for the GOV.

GOVs may only be used for official purposes. Providing a GOV solely or even principally to enhance the comfort or convenience of a government employee is prohibited. Factors to be considered in determining if a use is "official" include whether the use is essential to successful completion of a DoD function, activity, or operation, as well as consistent with the purpose for which the motor vehicle was acquired. Questions about whether a particular use is "official" must be resolved in favor of strict compliance with the laws and regulations.

Different rules apply when the GOV is used on TDY vice one's home port. On TDY, the GOV may be driven between lodging and duty sites if public or commercial transportation is inadequate. The GOV may also be used for subsistence, comfort, and health transportation purposes if public transportation is unavailable or impractical. Leisure activities, however, will not meet the "official use" standard. Trips for the purposes of entertainment or recreation are not authorized.

In contrast to TDY, the GOV may not be used for home-to-work (HTW) travel at one's home port, unless specifically authorized in writing by SECNAV (This authority is not delegable and is limited to an initial period of 15 days, renewable for up to 90-day increments as long as required by the circumstances. In OCONUS environments, the unified combatant commander has limited discretion when public/private transportation is unsafe or unavailable). SECNAV may authorize HTW when (1) essential due to highly unusual circumstances presenting a clear and present danger; (2) an emergency exists; (3) other compelling operational considerations make HTW essential to conduct business; (4) essential for safe/efficient performance of intelligence, protective services, or law enforcement; or (5) required to perform field work. (Continued on page 4)

## Physical Evaluation Boards vs. Misconduct and Administrative Discharge Proceedings

*LT Regina Davis-Niles, Assistant Station Judge Advocate, Naval Station Mayport*

When active duty Navy and Marine Corps personnel incur a condition, illness or serious injury that limits their ability to perform their assigned duties, a Primary Care Manager refers the servicemember's medical record to the Medical Evaluation Board (MEB). There are several medical conditions and physical defects that might cause a Primary Care Manager to refer a servicemember to a MEB. Enclosure 8 of Secretary of the Navy Instruction (SECNAVINST) 1850.4E provides a non-exclusive list of conditions and defects that usually warrant referral to a MEB. It is important to note, however, that just because a service member may have one of the listed conditions or defects does not automatically mean they are unfit for service or warrant separation or retirement.



After a case has been referred to the MEB, the board reviews the servicemember's medical record to determine if the member should be referred to the Integrated Disability Evaluation System (IDES). The IDES process consists of a fitness determination made by the Physical Evaluation Board (PEB) and an overall disability evaluation made by the Department of Veterans Affairs (VA). If the servicemember is ultimately found unfit for continued naval service by the PEB, the member will also receive a disability rating from the VA. The medical evaluation and separation process can be very complex and when the issue of administrative separation processing is factored in, knowing how to navigate both processes becomes crucial. Here are a few practice tips and reminders when determining what type of separation procedure is appropriate for a service member.

### Role of the Physical Evaluation Board

In accordance with SECNAVINST 1850.4E, the PEB acts on behalf of the Secretary of the Navy in determining whether a servicemember is fit to continue naval service or entitled to benefits. The Informal PEB (IPEB) reviews a servicemember's record and then notifies the member in writing of the preliminary findings as to fitness to continue naval service. If the member is found unfit, the IPEB's findings will include the disability ratings that the VA assigned to the member's case. These findings determine the degree of disability and entitlement to military retirement or severance pay and/or VA compensation and other benefits. The PEB

also provides an opinion regarding the combat-relatedness for federal income tax purposes of any disability found.

Upon notification that their case is being reviewed by the PEB, the service member is assigned a Physical Evaluation Board Liaison Officer (PEBLO). The PEBLO's role is to counsel the servicemember during the PEB process to ensure they understand the significance of the action being taken in their case and the options available to them. If the servicemember disagrees with the records-only finding of the PEB, they can exercise their right to a hearing, or Formal PEB. The Formal PEB gives the servicemember the opportunity to appear in person before the board, which then makes a final determination. In some instances, the member may appeal his or her disability rating to the VA prior to separation.

### What if the Servicemember is Involved in Misconduct?

At any time during the PEB process, circumstances may arise that create a basis for non-judicial punishment, administrative separation or even court-martial of the servicemember. In such situations, courts-martial and processing for administrative discharge for misconduct take precedence over processing for medical reasons. Enclosure 3 of SECNAVINST 1850.4E states that if a case is already before the PEB and involuntary separation for misconduct or disciplinary proceedings are initiated, the medical board process will be suspended and monitored by the PEB. If the disciplinary or administrative action taken does not have the potential to result in a punitive discharge or administrative discharge under other than honorable conditions (OTH), the PEB will continue to process the case.

Conversely, in cases where a servicemember meets criteria for non-misconduct bases for separation, such as physical fitness assessment (PFA) failure or alcohol rehabilitation failure, the administrative separation processing should be suspended until the PEB process is complete, including any appellate proceedings. For example, if a member is referred to the PEB and then fails his third PFA in four years (triggering mandatory processing for separation), the administrative separation process will be postponed until the final outcome of the PEB is reached. If the member is not separated as a result of the medical process, administrative separation procedures can then be initiated. Alternatively, if a servicemember is in the PEB process and gets arrested for driving under the influence of alcohol (DUI), the PEB should be placed on hold, pending the outcome of any disciplinary and administrative separation proceedings.

Determination by a PEB that a servicemember is fit for continued naval service does not prevent subsequent non-medical administrative action, including separation. However, a member found fit by the PEB may not be involuntarily administratively separated or denied reenlistment due to unsuitability for deployment or worldwide assignability based on the same medical condition that the PEB considered.

Mr. Christopher Perone is the Navy Region Southeast disability attorney at NAS Jacksonville. He is available to assist commands and servicemembers with the MEB and PEB processes. Mr. Perone can be reached at 904-542-9101 or [christopher.perone@med.navy.mil](mailto:christopher.perone@med.navy.mil). Although SECNAVINST 1850.4E is a behemoth of a document, it is the primary resource SJAs and legal officers should reference for medical board processing questions. For further questions please contact a Command Services attorney.

## UPDATE: Accommodation of Religious Practices

LT Elan Ghazal, Staff Judge Advocate, Naval Air Station Key West

### What's New?

On January 22, 2014, the Department of Defense (DoD) released a revision to its instruction governing accommodations for religious practices (DoD Instruction 1300.17 of 10 FEB 2009, with change 1 of 22 JAN 14). This revision will be used to guide our service specific policy changes. This update is intended to provide greater clarity in balancing freedom of religion and mission accomplishment.

The primary change deals with the approval authority for religious apparel, grooming, and appearance accommodations. Though previously approved by the commanding officer, the authority now rests with the Secretary of the Navy (SECNAV). The elevation is intended to ensure uniformity and consistency in policy decision-making and execution.

### Policy

The guiding policy is to accommodate sailors' expression of sincerely held beliefs unless it could have an adverse impact on military readiness, unit cohesion, good order, discipline, health, safety, or any other military requirement. Religious accommodation from a military policy, practice, or duty that substantially burdens a sailor's exercise of religion may be denied only when the military policy, practice, or duty: (a) furthers a compelling government interest, and (b) is the least restrictive means for furthering that interest.



### The Commanding Officer's Role

Commanding officers can approve requests for accommodation that do not require a waiver of Navy policies regarding the wearing of the uniform, wearing of religious apparel, grooming, appearance, or body art standards. Examples include requests for time to participate in a religious observance or to obtain food to meeting a sailor's religious dietary necessities. Requests that do require a departure from Navy policies will require SECNAV approval. SECNAV has not delegated this authority.

In evaluating whether to grant a sailor's request for a religious accommodation, commanding officers should consider the following factors:

- The importance of military requirements in terms of mission accomplishment, including military readiness, unit cohesion, good order, discipline, health, and safety.
- The religious importance of the accommodation to the requester.
- The cumulative impact of repeated accommodations of a similar nature.
- Alternative means available to meet the requested accommodation.
- Previous treatment of the same or similar requests, including of similar requests made for other than religious reasons.
- Whether a waiver of Navy policy is required to approve the request.

In the event a request for an accommodation is not approved and tensions remain between Navy requirements and an individual sailor's religious practices, administrative actions may be appropriate. The commanding officer may consider assignment, reassignment, reclassification, or separation. The needs of the Navy must dictate which course is best.



### Compliance

Sailors seeking a religious accommodation must keep in mind they have a duty to comply with Navy policies and practices, unless and until their request is approved. When an approved accommodation is received, it may contain specific limitations. Approval for an accommodation may not apply for a sailor's entire military service commitment. A new assignment, permanent change of station (PCS), deployment, or other significant changes in circumstances may require a renewed request. Accommodations will be evaluated based on the Navy's needs in the location and for the particular duties of the requesting sailor at the time of the request.

### Conclusion

Chaplains and judge advocates are available to advise commanding officers presented with a religious accommodation request. The policy goal is to balance a sailor's right to the freedom of religion with the compelling interests of the naval service. While some requests may be handled at the local level, departures from Navy policies must be routed to SECNAV for approval. In all cases, sailors must abide by Navy policies until they receive an approved accommodation, and even then they must strictly follow the limitations identified in their waiver.

## Citizenship—the Application Process for Servicemembers, Dependents, and Family Members

*LT Jeffrey S. Marden, Staff Judge Advocate, Naval Air Station, Joint Reserve Base, New Orleans*

Is a member of your command seeking to become an American citizen or gain citizenship status for their dependents or family members? This article summarizes the process and resources available for citizen applicants.



To join the military, if you are not an American citizen, in most cases you must be a “Lawful Permanent Resident” (LPR) of the United States. The next step is citizenship, a status which allows you to vote, use a greater range of social services, more easily sponsor relatives, and obtain a security clearance. To gain citizenship status, one must go through the “naturalization” process. For most people, naturalization requires at least three years of continuous residence in the United States. However, one of the many benefits of military service is expedited naturalization. Since the United States is currently in a designated period of armed conflict, non-citizen servicemembers may submit their application for citizenship after just one day of military service.

To apply, the applicant must fill out forms N-400 and N-426, available from [www.uscis.gov](http://www.uscis.gov), and submit them to their command immigration representative. They must also provide a photocopy of their permanent resident card, two color photographs, and a fingerprint card. In the United States, fingerprints must be taken at a United States Customs and Immigration Services (USCIS) Application Support Center; overseas, base security or NCIS may assist with taking them on form FD-258. The command representative will submit these documents to USCIS for processing. The applicant then schedules an interview with USCIS. During the interview, the applicant must demonstrate good moral character, loyalty to the United States, basic ability to read and write in English, and knowledge of the fundamentals of American government. Once the application is approved, the final step is a naturalization ceremony, and then the applicant is a citizen.

What about LPR status and citizenship for a servicemember’s wife, children and extended family? An LPR may sponsor their spouse and unmarried children for immigration into the United States as permanent residents by filing form I-130, Petition for Alien Relative. A citizen may sponsor their spouse, children, parents, siblings, and/or fiancé(e). Once a dependent or relative has been granted LPR status, they too can start the naturalization process. Dependents accompanying servicemembers on overseas orders qualify for an exception from the requirement for continuous residence in the United States, allowing them to accumulate time creditable towards naturalization while overseas. Some spouses accompanying a servicemember overseas will also qualify for expedited naturalization, allowing them to forgo this waiting period altogether.

The immigration and naturalization processes can be complicated, and it’s important to pay close attention to detail when reading the instructions and filling out forms. Applications are most commonly put on hold or denied because the applicant did not fill out a form completely, mailed it to the wrong address, included the wrong payment amount, or did not notify USCIS of a change of address. To get started on naturalization, review the resources available at [www.uscis.gov](http://www.uscis.gov). If you have questions, your command immigration representative and nearest Region Legal Service Office Southeast Legal Assistance Office are available to help, as is the USCIS military help line at 1-877-CIS-4MIL (1-877-247-4645).

Department of Homeland Security  
 U.S. Citizenship and Immigration Services

OMB No. 1615-0052, Expires 03/31/2013  
**N-400 Application  
 for Naturalization**

Print clearly or type your answers using CAPITAL letters. Failure to print clearly may delay your application. Use black ink.

**Part 1. Your Name (Person applying for naturalization)**

Write your USCIS A-Number here:  
A

**A. Your current legal name.**

Family Name (Last Name)

Given Name (First Name)  Full Middle Name (if applicable)

**B. Your name exactly as it appears on your Permanent Resident Card.**

Family Name (Last Name)

Given Name (First Name)  Full Middle Name (if applicable)

**C. If you have ever used other names, provide them below.**

Family Name (Last Name)	Given Name (First Name)	Middle Name

**D. Name change (optional)**

Read the instructions before you decide whether to change your name.

1. Would you like to legally change your name?    Yes  No

2. If "Yes," print the new name you would like to use. Do not use initials or abbreviations when writing your new name.

Family Name (Last Name)

Given Name (First Name)  Full Middle Name

**Part 2. Information About Your Eligibility (Check only one)**

For USCIS Use Only

I am at least 18 years old AND

A.  I have been a lawful permanent resident of the United States for at least five years.

B.  I have been a lawful permanent resident of the United States for at least three years, and I have been married to and living with the same U.S. citizen for the last three years, and my spouse has been a U.S. citizen for the last three years.

C.  I am applying on the basis of qualifying military service.

D.  Other (Explain)

Bar Code	Date Stamp

Remarks

Action Block

Form N-400 (Rev. 05/22/12) Y

## Lease Advice to Ensure SCRA Protections for Dependent Spouses

LT Jessica H. Bunkers, Legal Assistance Attorney, Naval Air Station Pensacola

The Servicemembers' Civil Relief Act (SCRA) extends protection to dependents of servicemembers when "the dependent's ability to comply with a lease, contract, bailment, or other obligation is materially affected by reason of the servicemember's military service" (50 U.S.C. § 538). However, with the often complicated living arrangements of military families, this language creates a gray area regarding residential leases.

In order for the protection against early residential lease termination fees to apply, SCRA requires that the "lease is executed by or on behalf of a person who..." received the military orders that led to the lease termination. Disputes with landlords regarding the application of this SCRA provision may arise in cases where the servicemember's name is not on the lease. For example, a dependent spouse may go house hunting alone prior to a PCS move and execute a lease without the servicemember's signature. Another common scenario is a dependent spouse signing a new lease in his or her name while the servicemember is deployed. In these or related situations, the dependent may have trouble when they try to utilize the SCRA to break the lease early WITH the servicemember's military orders but WITHOUT the servicemember's name on the lease document.

In many cases, landlords allow tenants to break the lease without penalty under the general spirit of the SCRA protection. However, not all landlords are as generous and may try to enforce early termination fees when the servicemembers did not sign the lease. Ideally, to minimize hassle down the road, servicemembers should make sure they sign their residential lease agreement. If the servicemember is unable to do this, due to deployment or other geographic limitations, the dependent spouse should use a power of attorney to get the servicemember's name on the lease. This is true even if the servicemember will not actually be living at the leased residence (as is the case with geo-bachelors).

To prevent a financial loss or a trip to small claims court, legal assistance attorneys can offer more specifically tailored advice to individual servicemembers. Like many legal assistance issues, education is one of the best ways to head off these types of situations. When servicemembers are preparing to PCS, remind them that they AND their dependents have rights under the SCRA! Pre-deployment and command INDOC briefs present great opportunities to put this information out. In this case, as with most legal assistance issues, knowledge is power for our Sailors. Legal may be available to provide briefs to your command. For more information, contact your local Legal Assistance office.

### Ethically Safe Driving *(continued)*

#### Examples of permissible use include:

- Official business (e.g., making rounds of area work sites, attending a meeting, officially speaking or participating in a ceremony or event).
- Traveling from place of duty to after-hours official functions. GOV must return to place of duty.
- Transporting the employee's guest with the employee, at no increased cost, to an official function (special rules apply for contractors. Please contact a judge advocate for advice).
- Going to the dry cleaners, barber, drugstore, local restaurant, exercise activity (gym or run), or other place required for the traveler's subsistence, health, or comfort while TDY.

#### Examples of impermissible use include:

- Transportation to, from, or between any location for the purpose of conducting personal business or other personal activities by military or civilian personnel, their family members, or others.
- Going to a private social function (e.g., hail and farewell, private dinner party).
- Attending a widely attended gathering, which one does in a personal capacity.
- Transporting employees not authorized HTW from home to an official function or from the official function to home (impermissible even when the travel distance is less than from work to the official function).
- Doing personal errands/business (such as, going to the bank).
- Going to entertainment/recreational facilities (other than gyms and other exercise facilities) is prohibited while on TDY. Examples of such prohibited facilities include movie theaters, sporting events, and other similar facilities.

The consequences for unauthorized use of the GOV are severe. If an employee willfully uses or authorizes the use of the GOV for other than official purposes, or violates the HTW prohibition (willful violation not required), the employee shall be suspended without pay for at least one month and may be summarily removed from office. For military personnel punishment may be imposed under articles 92 or 121 of the UCMJ, failure to obey an order and larceny respectively, or adverse administrative action may be taken.

Examples of corrective action taken when personnel violate the official use restriction include:

- *Mattos v. Department of Army* (Fed. Cir. Oct 8, 1993). A 30-day suspension for using the GOV to stop at McDonalds when returning from meeting when employee knew such use was unauthorized.
- *Devine v. Nutt* (Fed. Cir. 1983). A 30-day suspension for using the GOV while on patrol to drive by the employee's residence to pick up beer for delivery to the command center.

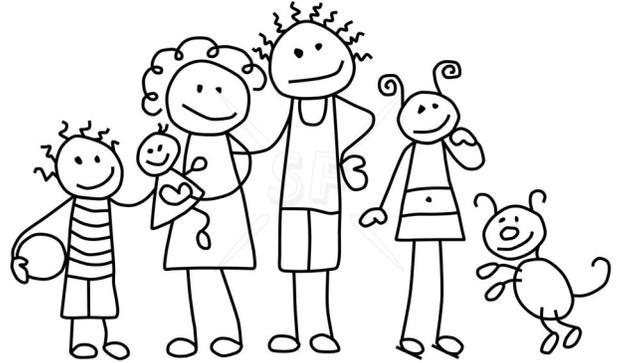
So next time you get in the GOV, make sure to check your mirrors, buckle up, and do not exceed the "official use" limits. As always, when in doubt, please contact your Command Services judge advocate or Navy Office of General Counsel attorney for guidance.

## Skirting Responsibilities: Not Just a Family Matter

*LN2(EXW) Jonathan Gueret, Command Services, Naval Air Station Joint Reserve Base New Orleans*

A common issue confronted by the legal community is the lack of financial support provided by servicemembers to their spouses and children. Thankfully, there are administrative courses of action to ensure that servicemembers support their families, and failure to do so can have severe consequences on a servicemember's career.

It is Navy policy, pursuant to MILPERSMAN 1754-030, that "the Navy will not act as a haven for personnel who disregard or evade obligations to their legal family members." Failure to adequately support family members can result in disciplinary or administrative action ranging from NJP and fitness report or evaluation comments to separation, if such failure brings discredit upon the Naval Service.



Ideally, support obligations should be clearly articulated by a court order or separation agreement. However, in situations where the amount of support has not been established, the MILPERSMAN provides a guide to assist in determining how much support is appropriate. The suggested support payments are based on the number of family members the servicemember is required to support. For example, a member supporting two children should provide 1/4 of his or her gross pay; a spouse and one child should receive 1/2 of the member's gross pay. Gross pay includes basic pay and BAH, but excludes other pay such as BAS, hazardous duty pay, and sea duty pay. Also, any financial support the servicemember is already providing (e.g., rent, car insurance, cell phone, groceries) should be considered and deducted from the amount the member is advised to pay.

<b>Number of family members and amount of support to be provided in the absence of a mutual agreement or court order:</b>	
Spouse only	1/3 gross pay
Spouse and one minor child	1/2 gross pay
Spouse and two or more children	3/5 gross pay
One minor child	1/6 gross pay
Two minor children	1/4 gross pay
Three minor children	1/3 gross pay

MILPERSMAN 1975-030

If a servicemember feels they should not be required to financially support their spouse (due to abandonment or adultery, etc.), he or she may submit a waiver request to the Director of Dependency Claims, Navy Military Pay Operations and DFAS. The request must include a recommendation or comments of the member's commanding officer. The requirement to support children cannot be waived.

If a command receives a complaint alleging that a servicemember is not providing adequate support for their family, the member should be interviewed and informed of the Navy's policy on support of family members. If, after being advised of their obligations, the member fails to take satisfactory action to support their family, they may be subject to administrative and disciplinary action that could ultimately result in separation due to misconduct.

There are special requirements if the subject of a non-support complaint is an officer; see MILPERSMAN 1754-030 and consult a Command Services attorney.

## OGE 450 Confidential Financial Disclosure: A Primer

*LT Elizabeth Retter, Staff Judge Advocate, Naval Air Station Meridian*

Around December, designated personnel start receiving requests to complete their annual ethics training and OGE filing requirements. But what are those requirements? Why do we have them? And who is required to file?

Financial disclosure under the Ethics in Government Act (EIGA), like many ethics regulations, is a tool used to identify and prevent conflicts of interest. It is intended to help maintain public confidence in the DoD. Public filing requirements (OGE Form 278) are set forth in 5 C.F.R. § 2634.201-805. Confidential filing requirements (OGE Form 450) are described in 5 C.F.R. § 2634.901-909. Additionally, financial disclosure requirements are set forth in Joint Ethics Regulation, DoDI 5500.07-R, Chapter 7.

Most of the forms collected by your local Staff Judge Advocate's office are the confidential OGE Forms 450. The information they contain is protected by the Privacy Act of 1974 and is not releasable. The OGE Form 450 allows the filer to declare (for themselves and their dependents):

- 1) Non-investment income in excess of \$200 from any one source over the reporting period;
- 2) Assets and investment income, including real estate (excluding personal residence), pensions and annuities (excluding Thrift Savings Plans), mutual funds, stocks, bonds, and securities;
- 3) Gifts and reimbursements aggregating in more than \$350 from any one source;
- 4) Liabilities over \$10,000 owed to any creditor at any time during the reporting period;
- 5) Agreements and arrangements for future employment, continuation of payments by a former employer and continued participation in an employee welfare or benefits plan; and
- 6) Outside positions with non-Federal organizations held during the reporting period.

### Who must file the confidential OGE Form 450?

- 1) COs, XOs, Heads & Deputy Heads of
- 2) Navy: shore installations with more than 500 employees
- 3) Army, Air Force, Marines: all bases, installations, and air wing activities
- 4) Special Government employees (see §2634.901 and JER 7-300)
- 5) Military and Civilian Employees: GS-15 and below (or comparable pay level), or military personnel below O-7, when the Agency concludes they "**participate personally and substantially**" through **decision or exercise of significant judgment**, and **without substantial supervision**, in taking official action for:
  - a) Contracting or procurement;
  - b) Administering grants, subsidies, or licenses;
  - c) Regulating or auditing any non-Federal entity; or
  - d) Other activities in which the final decision may have a direct and substantial economic impact on the interest of any non-Federal entity

Each employee's supervisor determines whether his/her position requires filing. By October 3 of each year, the directors of personnel offices must provide their DoD Component Designated Agency Ethics Officials (DAEOs) – i.e., our Region JAG – a list of the names of DoD employees who are required to file an annual OGE Form 450. Supervisors are also required to notify their DAEO immediately upon the appointment of a new filer to a covered position.

### Exceptions: Who is NOT required to file?

DoD employees who are not employed in contracting or procurement positions and who have decision-making responsibilities regarding expenditures of less than \$2,500 per purchase and less than \$20,000 cumulatively per year.

### Timeline of reporting requirements:

An individual who was employed in any qualifying position at least 61 days during the preceding reporting period must submit an OGE Form 450 to his Ethics Counselor by February 15 of each year. "**New Entrants**" (new employees, transfers, personnel whose duties change so that they now qualify for filing, and personnel who are promoted to a qualifying position) **must file within 30 days of appointment** to the position. Extension for filing reports must be for "good cause" and cannot exceed 90 days. Extensions beyond 45 days must be granted in writing. Reports are retained for 6 years.

Yes, there is a training requirement: Annual ethics training for OGE Form 450 filers may be satisfied by completing the Ethics Training at <https://donogc.navy.mil/ethics>. A certificate of completion must be attached to all OGE Forms 450. See 5 CFR 2638.706 and JER 11-302.

What if the employee has previously filed the OGE Form 450?

In lieu of the OGE Form 450, the OGE Optional Form 450A may be used when an employee has a previous OGE Form 450 on file and can certify that he/she has nothing new to report this year. (*Continued on page 8*)

## OGE 450 Confidential Financial Disclosure (continued)

### Common errors to avoid:

- Real estate in which the filer resides (personal residence) is not required to be reported;
- All of the underlying investments in assets such as IRAs, annuities, investment life insurance, and trust holdings must be reported;
- Sector mutual funds are required to be reported; diversified mutual funds are not; and
- Income or investments derived from the Federal Government are not required to be disclosed (ex: Thrift Savings Plans, savings bonds, and treasury bills).

Supervisors must conduct an initial review of employees' OGE Form 450 for completeness and actual or apparent conflicts of interest. Failure to file the OGE Form 450 can result in administrative penalties including reassignment and removal.

### OGE 450 Failure:

An army officer was convicted of making false statements in his confidential financial disclosure report (failure to report an outside position and the income from that position), and for stealing government property. The employee put in an order at the department print shop, certifying that a series of posters were for official business. The posters were actually for the employee's side business. Additionally, the employee purchased a conference table, for which his own business got a \$400 credit toward a conference table of its own. The employee was sentenced to 2 years of probation, 6 months house arrest, a fine of \$25,000, and was ordered to pay \$1,600 in restitution. *OGE Encyclopedia of Ethical Failures (July 2013)*.

Bottom line: make sure everyone who qualifies as a filer correctly files the right form, on time, and discloses all applicable information. Maintain a filer list (by name/position), conduct annual review of covered positions, utilize action officers (AO) for processing, and follow up.

## Keeping More of Your Money:

*LT Chao Pan, Staff Judge Advocate, Naval Air Station Joint Reserve Base New Orleans*

The Thrift Savings Plan (TSP) is a defined-contribution plan available to civilian and military employees of the United States government, similar to the 401(k) plans found in the private sector and 403(b) plans found in educational institutions and public school districts. TSP recently rolled out a new "Roth" option for civilian and military members. This article will explain the differences between the Roth TSP and traditional TSP options, and how the TSP interacts with other retirement plans, such as individual retirement arrangements (IRAs).

The fundamental difference between the Roth TSP and the traditional TSP is that contributions to a Roth TSP are taxed as income in the tax year in which the contributions were earned and are generally not taxed upon withdrawal at retirement, while contributions to a traditional TSP are not taxed in the tax year in which the contributions were earned (they are deductible), but are taxed upon withdrawal at retirement. Both Roth and traditional TSP contributions can only be made as a deduction from current pay and are limited to a total of \$17,500 per year across all accounts (\$23,000 if over 50).<sup>1</sup>

**BLUF:** The higher your current income, the higher the marginal income tax bracket you are likely to be in. The higher your current marginal income tax bracket, the more advantageous the Roth TSP.

### WHICH ONE IS RIGHT FOR ME?

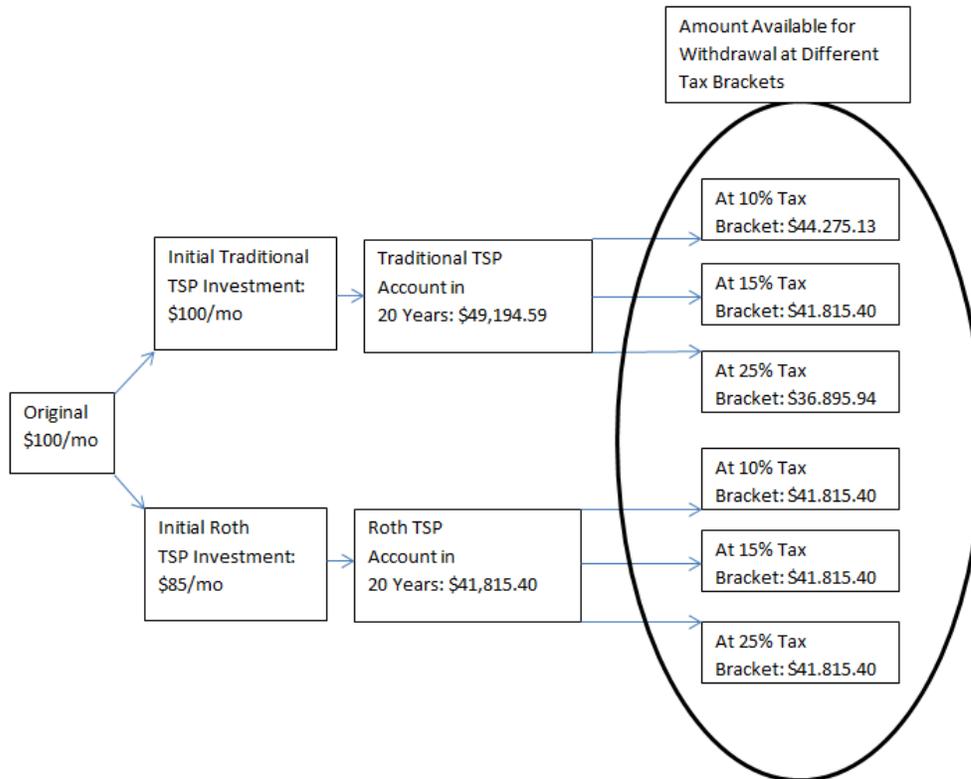
Ultimately, the main reason to prefer one account over another is an investor's marginal tax rate at the time of contribution and at the time of withdrawal (retirement). Let's use the following example:<sup>2</sup>

Petty Officer Second Class Jones is single, has no children, and is stationed in Jacksonville, FL. His home for tax purposes is in a state without any income taxes (Florida would qualify). PO2 Jones has served in the Navy for 8 years, which means that his monthly income (base pay + basic allowance for housing (BAH) + basic allowance for sustenance (BAS)) before taxes is approximately \$4,300. Since a lot of this income is exempt from income taxes, he is likely to be in the 15% marginal tax rate. PO2 Jones decides to start saving for retirement and commits to putting \$100 per month into a TSP account for ten years. PO2 Jones expects that he will start withdrawing this money in 20 years.<sup>3</sup>

If he contributes this to his traditional TSP account, it will not be taxed immediately but will grow and compound over the next 20 years. Assuming that his account grows an average of 7% per year, this would result in him having \$49,194.59 in this account at that time. If he contributes to his Roth TSP account, the \$100 is immediately taxed at his 15% marginal tax rate, meaning only \$85 goes into his Roth TSP account to grow over the next 20 years (15% of \$100 is \$15; \$100 - \$15 = \$85). If this grows at the same 7% growth rate, PO2 Jones will have \$41,815.40 in his Roth TSP account after 20 years.



After 20 years, then-PO2 Jones may be 1) in a lower marginal tax bracket (let's say 10%), 2) the same marginal tax bracket (15%), or 3) a higher marginal tax bracket (let's say 25%). For his Roth TSP, it does not matter which marginal tax bracket he ends up in because the entirety of the \$41,815.40 is available to him. For his traditional TSP, however, he must pay income taxes at his marginal tax rate: 1) at the 10% rate, he would receive \$44,275.13 (10% of \$49,194.59 is \$4,919.46; \$49,194.59 - \$4,919.46 = \$44,275.13); 2) at the 15% rate, he would receive \$41,815.40 (15% of \$49,194.59 is \$7,379.19; \$49,194.59 - \$7,379.19 = \$41,815.40); 3) at the 25% rate, he would receive \$36,895.94 (25% of \$49,194.59 is \$12,298.65; \$49,194.59 - \$12,298.65 = \$36,895.94)



What is “right” for PO2 Jones comes down to what tax bracket PO2 Jones is currently in and how that compares to what he thinks his tax bracket will be when he retires and starts withdrawing funds from his accounts. If he believes that he will be in a higher tax bracket, then the Roth TSP is better, but if he believes that he will be in a lower tax bracket, the Traditional TSP will be better for him. If he does not know how his tax bracket will change, he can contribute to both a Traditional TSP and a Roth TSP. As PO2 Jones progresses in his career and eventually becomes CPO Jones, SCPO Jones, and MCPO Jones, his income will increase and he will move to higher tax brackets. What was a good choice for PO2 Jones may not be a good choice for MCPO Jones.

**CONTRIBUTION LIMITS**

For the TSP, contributions can usually only be made as a deduction from current pay. In total, an individual can only contribute \$17,500 per year into a TSP account for tax year 2013 (\$23,000 if the individual is at least age 50). This limit generally applies across TSP, 401(k), and 403(b) accounts. For example, an individual under 50 can contribute \$10,000 towards his Roth TSP and \$7,500 towards his 401(k) in the same tax year (assuming he has a second job that allows it), but cannot contribute \$17,500 towards his Roth TSP and \$17,500 towards his 401(k). This limit does not include any employer match.

**A SMALL NOTE ABOUT IRAS**

With all this talk of TSP, it is important to note that there is a difference between the TSP and IRAs. While both come in traditional and Roth flavors, it is important to keep in mind that these are separate accounts. IRAs can be opened in many locations (brokerages, mutual fund companies, etc.) while TSP is centrally-run. The annual contribution limit for an IRAs is currently \$5,500, or \$6,500 if the individual is age 50 or older. This limit is in addition to the limits above for TSP/401(k)/403(b). This means that an individual under age 50 can contribute both \$17,500 to his Traditional TSP account and \$5,500 to his Roth IRA in the same tax year.

## Recent Courts-Martial Sentences in Navy Region Southeast

- At a General Court-Martial in Mayport, Florida, an E-4 was tried for aggravated sexual assault. On 11 December 2013, the military judge returned a verdict of not guilty
- At a General Court-Martial in Jacksonville, Florida, an E-4 pleaded guilty to misuse of a government computer, indecent communications to a minor, and solicitation, distribution and possession of child pornography. On 12 December 2013, the military judge sentenced him to be discharged with a Dishonorable Discharge, forfeit all pay and allowances, reduction in rank to paygrade E-1, a fine of \$5,000, and confinement for 30 months.
- At a General Court-Martial in Mayport, Florida, an E-4 pleaded guilty to rape. On 19 December 2013, the military judge sentenced him to be discharged with a Dishonorable Discharge, reduction in rank to paygrade E-1, and confinement for 4 years.
- At a General Court-Martial in Jacksonville, Florida, an E-3 pleaded guilty to abusive sexual contact. On 13 January 2014, the military judge sentenced him to be discharged with a Dishonorable Discharge, reduction in rank to paygrade E-1, and confinement for 20 months.
- At a Special Court-Martial in Pensacola, Florida, an E-6 pleaded guilty to assault. On 17 December 2013, the military judge sentenced him to reprimand, forfeit \$500.00 per month for 3 months, and restriction for 60 days.
- At a Special Court-Martial in Pensacola, Florida, an E-7 pleaded guilty to assault consummated by a battery and fraternization. On 18 December 2013, the military judge sentenced him to a reprimand, reduction in rank to paygrade E-6, and confinement for 75 days.
- At a Special Court-Martial in Jacksonville, Florida, an E-4 pleaded guilty to attempting to contribute to the delinquency of a minor. On 30 December 2013, the military judge sentenced him to forfeit \$500 per month for 3 months, reduction in rank to E-2, a fine of \$1,500, confinement for 30 days, and confinement for an additional 30 days in the event of non-payment of the fine.
- At a Special Court-Martial in Pensacola, Florida, an E-4 pleaded guilty to assault consummated by a battery. On 31 January 2014, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rank to paygrade E-2, and restriction for 45 days.

## The Advisor Puzzler—From This Issue

N L F I N A N C I A L R C W T  
 O E U I C H D O O O X E R S V  
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ACCOMODATION  
 CONFIDENTIAL  
 DISABILITY  
 ETHICS  
 EVALUATION  
 FINANCIAL  
 MISCONDUCT  
 OFFICIAL  
 OGE  
 RELIGION  
 SCRA  
 TRADITIONAL  
 VEHICLE

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