

# Let Us Never Forget



**LET US NEVER  
FORGET THE  
FEDERAL  
EMPLOYEES WHO  
LOST THEIR LIVES  
IN THE TERROR  
ATTACKS OF  
SEPTEMBER 11, 2001**

Visit the WIFLE Website to view:

<http://www.wifle.org/miscellaneous-articles/never-forget-911.htm>



## September 2018

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## **WIFLE Half Marathon and 10K Race – September 16, 2018**

Come out and join WIFLE for one of the best fall half Marathons in the Washington, DC area!

The WIFLE Half Marathon will be held Sunday, September 16, 2018, 7:30am at Burke Lake Park in Fairfax Station, VA.

In addition to the Half Marathon, this year WIFLE has added a 10K race, in which runners will complete the loop around Burke Lake with the half marathoners.

Also, for those who can't be at the race site, sign up for the Virtual Marathon.

Go to [wifle.org](http://wifle.org) for all the details. Sign up for the Half Marathon, the 10K race, or the Virtual Marathon soon!

All proceeds benefit the WIFLE Scholarship Fund.



## DON'T MISS A BEAT

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### **FEDagent WEEKLY E-REPORT**

FEDagent® ([www.FEDagent.com](http://www.FEDagent.com)) is a free weekly E-Report providing up-to-date news for 1811 Special Agents and other federal employees engaged in the mission of federal law enforcement and homeland security.

Each week readers will find the following unfiltered, unbiased features in an easy-to-read, straightforward format:

**Top News** – Get the significant news stories pertaining to federal law enforcement and homeland security.

**The Takedown** – Learn about the a recent, significant bust made by federal law enforcement. Topics range from border and national security to fugitives and drugs.

**Case Law Update** – Find comprehensive summaries of recent court decisions written by an attorney in clear, jargon-free language. Topics include the never-ending developments in search and seizure law, federal sentencing guidelines, and the law of governmental immunity.

FEDagent is published by the law firm (and WIFLE partner/sponsor) Shaw Bransford & Roth P.C. FEDagent.com has been online since 2002 and is proud to be known as the first and only electronic report exclusively serving the federal law enforcement community.



## Your Federal Benefits Explained

by Sandra K. Harman  
President, Harman & Associates, Inc.

### **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) SUGGESTS WAYS TO BOOST WOMEN IN PUBLIC SAFETY JOBS**

The following is the summary of a recent EEOC report on the low rate of women in public safety jobs in the federal government and contains recommendations on recruiting and hiring practices to help boost that representation.

#### **Workplace Demographics**

Office of Personnel Management (OPM) FedScope data allowed the EEOC to analyze the gender breakdown of public safety and law enforcement jobs by each agency and by each occupation group/code. Agencies with low participation rates should consider analyzing their current recruitment and hiring processes. They also may consider adopting processes from agencies with more gender diversity, particularly if those agencies recruit for similar types of public safety or law enforcement work. Among agencies included in the study, Customs and Border Protection (CBP), in the Department of Homeland Security (DHS), has the lowest female participation rate. CBP had no women serving in the position of Customs and Border Protection Interdiction, and women comprised only 5% of Border Patrol Agents. The EEOC hopes that the recommendations below may help DHS in their recent, significant hiring efforts.

On the positive side to be emulated is the Department of Interior's Fish and Wildlife Service, which has in its Park Ranger occupation 66% women-the highest female participation rate among public safety agencies. This rate is high compared to other agencies that employ Park Rangers, such as the Department of the Army, which has a 25% female participation rate. The Department of Interior's Fish and Wildlife Service success may be attributed to the many outreach initiatives that it implemented to engage, inspire, and provide career pathways for youth and young adults. These outreach initiatives include the Student Conservation Association, the Youth Conservation Corps, and Youth Engaged 4 Change.

#### **Workplace Climates**

An agency's self-assessment should include more than a review of workforce demographics. The results of climate assessment surveys also are part of a comprehensive evaluation because workplace climate may play a role in the success of an agency's gender diversity efforts for public safety occupations. One tool for analyzing workplace climate among federal agencies is OPM's Federal Employee Viewpoint Survey (FEVS), questions 34 and 38 of which concern employee views on agency success at promoting a diverse workforce and the agency's tolerance for prohibited personnel practices, respectively. [Full Article](#)



## Don't let the flu get you down

It's never fun to be sick, but the flu is more serious than the common cold. It can be dangerous — especially for older people, children under 4, and pregnant women. Protect yourself and the people you care about with these simple tips.

### Get your flu shot

It's your best defense. The vaccination can't give you the flu — but it can help protect you against this year's most common strains and prevent spreading the flu to others. Don't get the flu — get the flu shot!

### Boost immunity with healthy habits

Simple things that support overall health can also help you fight the flu. Wash your hands often and keep hand sanitizer handy. Make sure to get enough sleep, eat lots of fruits and veggies, and drink plenty of water.

### Keep your germs to yourself

If you do get the flu do yourself and your coworkers a favor and stay home. You need rest, fluids, and time to recover — and going to work sick can make symptoms worse and spread the illness around your workplace.

## READY TO WIN YOUR FIGHT AGAINST THE FLU?

Visit [kp.org/flu](http://kp.org/flu) and follow us @kpthrive.

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## **CAREGIVING: THE FLTCIP OFFERS SUPPORT WHEN YOU NEED IT MOST**

No matter your stage of life, it's always a good idea to have a long-range health plan in place. One thing to keep in mind is coverage for any potential long term care needs.

Long term care is personal care and other related services provided on an extended basis to people who need help with specific everyday activities (called activities of daily living) or who need supervision due to a severe cognitive impairment, such as Alzheimer's disease. The need for long term care can strike at any time in life due to chronic illness, injury, disability, or the aging process. And most long term care is provided at home and not in facilities. This type of care is expensive, and is generally not covered by traditional types of insurance plans or Medicare.

### **Who will provide care?**

The need for long term care can be a significant change for someone who is accustomed to independent living. This experience can be overwhelming, not only for you—but for your loved ones too. The demands of caregiving can be stressful, and often take a toll on a caregiver's health and well-being.

A caregiver can be your family member, friend, or neighbor. About 80 percent of care at home is provided by unpaid caregivers.<sup>1</sup> Caregiving responsibilities can include homemaking and hands-on care with daily activities, such as bathing, dressing, or feeding.

Taking care of a loved one is a time-consuming commitment. Even if a family member or friend can find the time to take care of you, it often comes at a tremendous financial and emotional cost. Caregiving can cost the average caregiver in lost wages and, often times, a caregiver's own health can deteriorate. Caregivers report having difficulty finding time for one's self, managing emotional and physical strain, and balancing work and family responsibilities.<sup>2</sup>

### **The FLTCIP can help**

Applying for insurance coverage under the Federal Long Term Care Insurance Program (FLTCIP)—designed specifically for the federal family—may be a smart choice for you. The FLTCIP is designed to reimburse for qualified long term care services and can lessen or eliminate an individual's reliance on a loved one to provide hands-on care. As you assess the FLTCIP's value, consider these important [benefits](#):

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The FLTCIP offers comprehensive insurance coverage for long term care services in a variety of settings—at home or in a facility, such as an assisted living facility, an adult daycare, or a nursing center—and your choice of caregiver.

If home care is your preference, the stay-at-home benefit includes a range of services that support care in your home, helping you maintain your quality of life in familiar surroundings.

Informal care provided by friends and family members is covered up to 500 days, as long as they do not live in your home at the time you become eligible for benefits.

The program's care coordination services offer enrollees **and their qualified relatives** information about long term care resources, such as local care providers and relevant community programs, as well as valuable support to your family and friends.

## **Start planning today**

To determine if the FLTCIP is right for you, visit [LTCFEDS.com](http://LTCFEDS.com) to access a suite of online planning tools.

For personalized assistance, call **1-800-LTC-FEDS** (1-800-582-3337) TTY 1-800-843-3557 to speak with a program consultant. They are available to answer any questions you may have and can walk you step-by-step through the plan design and application process.

Note: Certain medical conditions, or combinations of conditions, will prevent some people from being approved for coverage. You need to apply to find out if you qualify for coverage under the FLTCIP.

## **More about the FLTCIP**

Established by an act of Congress in 2000 and overseen by the U.S. Office of Personnel Management (OPM), the FLTCIP is designed to meet the specific needs of the Federal family. The long term care insurance under the FLTCIP provides industry-leading benefits and offers flexible options that allow enrollees to tailor coverage to meet their needs.

The FLTCIP is sponsored by the U.S. Office of Personnel Management, insured by John Hancock Life & Health Insurance Company, and administered by Long Term Care Partners, LLC.

1. U.S. Department of Health and Human Services. "Who Will Provide Your Care?," [longtermcare.acl.gov/the-basics](http://longtermcare.acl.gov/the-basics) (accessed February 2018).

2. National Alliance for Caregiving. "Caregiving in the U.S. 2015," [caregiving.org/caregiving2015](http://caregiving.org/caregiving2015) (accessed February 2018).



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## FEDERAL EMPLOYEE PROGRAM ADMINISTRATOR

### **HERE'S WHAT THE 2019 CONGRESSIONAL SPENDING BILLS MEAN FOR FEDERAL EMPLOYEES**

*Written by: Starr Wright USA*

*Published: September 2018*

So far in 2019, the House of Representatives has passed two 2019 appropriations bills at the halfway point of an attempt to pass the needed 12 annual spending bills to fund the federal government for the next fiscal years.

In what may raise the immediate interest of many federal employees, the proposed spending package so far in the House does not include the mention of a pay raise for federal workers in 2019.

Federal pay rates automatically go up each year by a certain percentage under a formula that was established by the Federal Employees Comparability Act (FECA). That is, unless Congress or the President take action to implement an alternative plan, making the FECA pay raise percentages virtually irrelevant. Instead, Congress or the President can take action to implement a different plan, and FECA is typically ignored while the powers choose to exercise their authority.

In the past, some appropriations bills in Congress have determined the amount of any pay raise, however, in recent years, Congress has left the decision on a pay raise up to the President. Past decisions included not having any federal pay raise, including one stretch of a pay freeze extending from 2011 through 2013.

While it is unclear what the future holds, President Trump has proposed a pay freeze for 2019.

The latest action in the House makes some believe that the decision will be left up to the President, and since he has not proposed any raise for 2019, it is expected that no federal pay raise will come next year. Of course, there are a few other factors in play here.

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According to FedSmith, the Senate Appropriations Committee approved a 1.9% pay raise for the 2019 Financial Services and General Government appropriations bill. However, the full Senate has not yet passed its versions of the bills, with action likely to be taken in the near future. So far, the Senate and House appropriations actions are in conflict.

The Senate is on track to provide a pay raise in 2019, while the House action does not provide any room for a pay raise.

The final Senate bill provides for a pay raise and the House bill does not. But the issue will be resolved through a conference committee, making the outcome even more unpredictable. Federal employees will surely be on the edge of their seats to see the outcome of these bills, but some believe that the current conflict has increased the odds that there will be a raise in 2019.

*Starr Wright USA is an insurance company specializing in insurance solutions for federal employees and federal contractors. For more information, visit [WrightUSA.com](http://WrightUSA.com).*



**Peter J. Jeffrey, Esq., Member**  
**The Jeffrey Law Group, PLLC**  
**The Federal Employee's Law Firm®**

## **Executive Order 13839 Strips Agencies of Any Authority to Settle Grievances, Complaints, or Appeals with “Clean Records”**

*By Peter J. Jeffrey, Esq., Member, The Jeffrey Law Group, PLLC,  
The Federal Employee's Law Firm*

Prior to the issuance of Executive Order (E.O.) 13839, “clean record agreements” were very common in settlements of federal sector employee terminations. Those agreements generally required, in part, that an agency expunge any records of effectuated adverse action (e.g., termination) from the employee’s official personnel folder (OPF) and replace those records with an SF-50 reflecting the employee’s voluntary resignation for personal reasons. The agency would then be further obligated to give only a neutral reference to

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prospective new employers.

Likewise, the U.S. Merit Systems Protection Board (MSPB) and the Federal Circuit Court of Appeals had upheld a broad policy of nondisclosure on the part of the agency with regard to those clean record agreements. Generally, the agency could not disclose anything about the rescinded adverse action to prospective employers, and could only represent the information that was reflected on the official, “clean” SF-50. In addition, the MSPB had held that a clean record agreement includes an implied provision requiring the agency not to disclose information to third parties even if such provision is not expressly stated. *See Doe v. Dep’t of the Army*, 116 MSPR 160 (2011).

Nevertheless, that broad rule of nondisclosure was subject to an important public policy exception. Specifically, where there existed a public interest in disclosure that outweighed the employee’s interest in enforcement of the settlement agreement, then the agency could disclose that information. *See Gizzarelli v. Dep’t of the Army*, 90 MSPR 269 (2001). That public policy exception also applied to background investigations for security clearances and *Giglio* reviews. *See Cunningham v. OPM*, 110 MSPR 398 (2009); *see also Davis v. Dep’t of the Treasury*, 306 Fed. Appx. 596, 599 (Fed. Cir. 2009). However, misconduct or performance-based issues were not covered by this public policy exception. *See Cunningham v. OPM*, 110 MSPR 398 (2009).

Executive Order (E.O.) 13839 goes well beyond that long established public policy exception, and has stripped agencies of any authority to settle complaints, grievances, or appeals of adverse actions with “clean record agreements.” As expressly stated in Section 5, of E.O. 13839:

Agencies shall not agree to erase, remove, alter, or withhold from another agency any information about a civilian employee's performance or conduct in that employee's official personnel records, including an employee's Official Personnel Folder and Employee Performance File, as part of, or as a condition to, resolving a formal or informal complaint by the employee or settling an administrative challenge to an adverse personnel action.

E.O. 13839 (Jun. 1, 2018). In practical terms, if a federal employee is terminated, she must litigate that removal now to the end of the MSPB or EEOC process and have that adjudicative body find in her favor in order to have that removal expunged from her official personnel record. Moreover, a retirement eligible federal employee runs the risk of losing continuation of Federal Employee Health Benefits (FEHP) into retirement if she waits for the agency to render a decision on a proposed removal. If the agency sustains that proposed removal, E.O. 13839 bars the agency from agreeing to rescind that removal and allow the employee to retroactively retire on an immediate annuity.

Now more than ever, federal employees must reply to any proposed adverse action no matter how minor the penalty. Moreover, the only time an agency has the authority to negotiate alternative charges, penalties, or “clean records” is at the proposal stage. Once an agency has rendered its decision on a proposed adverse action, you must be prepared to live with the consequences or litigate the matter to a final decision.

*The information contained in this article is of a general nature and is subject to change; it is not meant to serve as legal advice in any particular situation. For specific legal advice, the authors recommend you consult a licensed attorney who is knowledgeable about the area of law in question.*

## EXCELSIOR COLLEGE OFFERS DEGREE PROGRAMS TO

## WIFLE MEMBERS



Excelsior College has made college degrees accessible to working adults for more than 45 years. Since WIFLE is a partner organization with Excelsior College, its members have the opportunity to complete a degree through Excelsior's high-quality academic programs with discounted tuition and fees for partner employees, flexible learning model, and generous credit-transfer policy, <http://www.excelsior.edu/web/partners/women-in-federal-law-enforcement>.

Excelsior's degree programs in criminal justice and public service are designed to help WIFLE members obtain a new position or advance their career.

### **Criminal Justice**

The criminal justice degree programs are particularly geared toward adults with professional military or law enforcement experience. The programs will provide you with solid foundations in the practices and procedures of criminal justice as you learn from highly qualified faculty who teach across the country.

Excelsior offers associate, bachelor's, and master's degrees in criminal justice. Students in the bachelor's program can choose to focus on one of the following concentrations: criminal justice administration, homeland security, investigative forensics, and law enforcement and public safety. In the master's program, students can focus their work on general study or choose a concentration in justice administration, or homeland security and emergency management.

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The MPA will prepare you to support public and nonprofit agencies with skills applying civil employment regulations, overseeing collective bargaining, administering contract provisions, creating partnership agreements, and maintaining relations with executive, legislative, and judicial offices. Students in the MPA program can choose general study or a concentration in mediation and arbitration.

Visit [www.excelsior.edu/programs/public-service](http://www.excelsior.edu/programs/public-service) to learn more about the criminal justice and public service programs at Excelsior College.

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## **HINDSIGHT**

The U.S. Forest Service has reported that an estimated 1 million acres have burned in California wildfires this year. With atrocities such as this, investigations will follow and allegations will be made. Each decision will be scrutinized, with 20/20 hindsight, to determine if something else could or should have been done to hinder the damage and if the right decisions were made at the time. Agencies will come under fire as well as those individuals involved in making those pressured minute to minute decisions.

As law enforcement officers, you are keenly aware of how these folks will be scrutinized by people who cannot possibly recreate the pressure, dynamics or unique aspects of the situation while seeing it through a 20/20 lens. Fellow officers have been accused by subjects of violating constitutional rights, and have faced allegations by special interest groups, and even coworkers, that actions were excessive. It is important you are equipped with the right tools to contain the allegation you may be facing based on the situation and conditions at the time they were unfolding. These fires should be a reminder to you of how critical quality legal representation is when facing a serious allegation or interview. It is essential that you have the necessary safeguards in place to protect your career and ambitions from collateral damage at the first hint of an allegation.

For information on your specific exposures, how professional liability insurance protects you, or why FEDS Protection is recommended by the leading law enforcement associations, visit us at [www.fedsprotection.com](http://www.fedsprotection.com) or call us at 866-955-FEDS. FEDS Protection must be in place prior to knowledge of an incident that could result in a claim - or coverage will not apply.

## **Mark Your Calendar NOW**

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