

Calendar No. 691

111TH CONGRESS }
2d Session

SENATE

{ REPORT
111-364

FEDERAL SUPERVISOR TRAINING ACT
OF 2010

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 674

TO AMEND CHAPTER 41 OF TITLE 5, UNITED STATES CODE, TO
PROVIDE FOR THE ESTABLISHMENT AND AUTHORIZATION OF
FUNDING FOR CERTAIN TRAINING PROGRAMS FOR SUPER-
VISORS OF FEDERAL EMPLOYEES



DECEMBER 14, 2010.—Ordered to be printed

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Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 674]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 674) to amend chapters 41 and 43 of title 5, United States Code, to provide for the establishment and authorization of funding for certain training and mentoring programs for supervisors of federal employees, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

I. PURPOSE AND SUMMARY

S. 674, the Federal Supervisor Training Act of 2010, requires federal agencies to increase the amount and improve the quality of the training provided to their supervisory employees. Under the bill, supervisors must receive training within one year of their assuming that role, and once every three years thereafter, on such essential supervisory skills as mentoring and motivating employees, managing employees with unacceptable performance, and protecting employee rights. The bill also requires agencies to assess the performance and overall capacity of supervisors. By thus improving the quality of supervision, the bill aims to strengthen the overall efficiency and effectiveness of the federal government.

II. BACKGROUND AND NEED FOR LEGISLATION

Properly trained supervisors are essential for an effective federal workforce

Given the many challenges currently facing the country, the need for an effective federal workforce has never been more pressing. Properly trained supervisors are critical to the ability of the federal

government to provide essential services to the American people. Because of their close contact and frequent interaction with employees, first-level supervisors can have a more significant impact on employee performance than most high-level officials.¹

Supervisors must have and use a wide variety of skills to motivate and lead effectively. A successful supervisor must possess both the interpersonal and the technical skills necessary to motivate employees, effectively communicate with staff, articulate an agency's objectives and goals, and hold employees accountable for their work product. The successful supervisor must also be able to promote teamwork, serve as a mentor to employees and more-recently appointed supervisors, and solve work-related conflicts between employees that can threaten an agency's ability to complete its mission.²

Research has shown that supervisory proficiency is one of the most important predictors of an agency's performance and that the most effective way to improve such performance is to improve the quality of first-level supervision within the agency.³ The Merit Systems Protection Board (MSPB) recently reported its findings that improving the skills of supervisors would be the quickest way to strengthen the federal workforce and improve agency performance:

If the Federal Government is to provide its citizens with the services and information they need, it is essential to set a high priority on improving first level supervision. The fastest and most direct way to strengthen Federal workforce performance is to improve the supervision employees receive . . . [S]low, steady, carefully planned investments in first-level supervision can accrete over time and yield enormous positive returns in the workforce performance.⁴

Conversely, ineffective supervision can be costly and can severely damage employee work performance and morale and agency pro-

¹ See John Crum, Director, Policy and Evaluation, U.S. Merit System Protection Board, "Improving the Performance of Federal Supervisors," Issues of Merit Newsletter, April 2010, at p. 2 ("Because they have direct and regular contact with employees, first-level supervisors can have a stronger impact on employee performance and productivity than anyone else in the management chain.")

² Written statement of Marilee Fitzgerald, Director of Workforce Issues and International Programs, U.S. Department of Defense, submitted for the record of the hearing entitled "Developing Federal Employees and Supervisors: Mentoring, Internships, and Training in the Federal Government" before this Committee's Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, 111th Congress, 2nd Session, S. Hrg. 111-594, April 29, 2010 (hereinafter referred to as "Developing Federal Employees and Supervisors Hearing"), at pp. 47-50 of the printed hearing record (discussing the need to develop supervisors who can address performance issues, develop employees, manage conflicts, among other skills), <http://www.gpo.gov/fdsys/pkg/CHRG-111shrg57331/pdf/CHRG-111shrg57331.pdf>. See also oral testimony of Colleen Kelley, National President, National Treasury Employees Union, at the Developing Federal Employees and Supervisors Hearing (explaining that effective leaders must have the skills needed to properly manage and lead employees, in addition to the necessary technical skills), at p. 27 of the printed hearing record.

³ U.S. Merit Systems Protection Board, *A Call to Action: Improving First-Level Supervision of Federal Employees*, May 2010, at p. 1 (citing Gene Brewer, "In the eye of the storm: Frontline supervisors and federal agency performance," *Journal of Public Administration Research and Theory*, 2005, vol. 15, at pp. 505-527). See also National Academy of Public Administration, *First Line Supervisors in Federal Service: Selection, Development, and Management*, Management Concepts, Vienna, VA, 2003; M. Buckingham and C. Coffman, *First, Break All the Rules: What the World's Greatest Managers Do Differently*, Simon and Schuster, New York, 1999; James Fuller, *Performance Management with Bottom-line Results*, presentation at the conference on "Aligning Performance Management with Business Strategy and Goals," sponsored by the International Quality and Productivity Center, San Francisco, February 2003.

⁴ U.S. Merit Systems Protection Board, *A Call to Action: Improving First-Level Supervision of Federal Employees*, note 3 above, at pp. 5-6.

ductivity and efficiency. As the National Academy of Public Administration (NAPA) explained,

It is difficult to quantify the precise cost of supervisory deficiencies, but even a small deficiency could result in the loss of billions of dollars. Data indicates that this problem involves more than “a small percentage” and real costs could be considerably larger. Without solid programs for identifying, developing and managing first-level supervisors, agencies pay an enormous price.⁵

Specifically, NAPA reported that poor supervision harms productivity by resulting in a decrease in employee job performance, high employee turnover rates, and an increase in costly workplace disputes, such as employee grievances and complaints.

The need to cultivate effective federal supervisors is even more pressing as a result of the retirement wave expected to hit the government within the next five years. OPM estimated that by 2014, approximately 53 percent of permanent full-time federal employees will be eligible to retire, and approximately 57 percent of that group—or more than 30 percent of all permanent full-time employees—will actually retire.⁶ Because supervisors tend to be older and have more years of service than non-supervisors, supervisors are likely to retire at faster rates than non-supervisors. In light of these impending retirements, and because it often takes years to develop the specialized expertise and institutional knowledge required to be fully effective as a supervisor, the Committee believes that developing a new generation of federal supervisors is a pressing need.

Current supervisory training in the federal government is inadequate

Despite the vital importance of properly trained supervisors and the connection between supervisory skills and agency effectiveness, research has shown that the federal government is failing to provide adequate training in how to supervise effectively. Studies conducted since 1978 by OPM, the MSPB, the Government Accountability Office, and NAPA all conclude that most federal agencies do a poor job of developing supervisors.⁷

In 2001, OPM interviewed a large number of first-level supervisors to assess how they were being selected, developed, and evaluated, and OPM reported that agencies—

- Overemphasized technical expertise and failed to adequately assess leadership competencies⁸ when selecting supervisors;
- Gave low priority to supervisor development;
- Did not sufficiently stress the ability to achieve work goals in appraising the performance of supervisors;

⁵National Academy of Public Administration, *First Line Supervisors in Federal Service: Selection, Development, and Management*, note 3 above, at p. 4.

⁶U.S. Office of Personnel Management, *An Analysis of Federal Employee Retirement Data: Predicting Future Retirements and Examining Factors Relevant to Retiring from the Federal Service*, March 2008, at pp. 4, 6.

⁷For a list of studies, see U.S. Merit Systems Protection Board, *A Call to Action: Improving First-Level Supervision of Federal Employees*, note 3 above, Appendix C.

⁸The term “competencies” means measurable or observable knowledge, skills, and abilities needed to do a job.

- Ignored or provided little constructive feedback to poor-performing supervisors, while failing to provide adequate recognition or rewards to effective supervisors;
- Did not make full use of the supervisory probationary period to identify those supervisors who do not demonstrate the needed leadership competencies; and
- Needed to assist supervisors to develop “people skills,” such as communication, coaching, dealing with poor performers, and resolving conflicts.⁹

OPM concluded that its findings “should serve as a wake-up call for agencies to take immediate action to address a serious problem that has the potential to worsen” and that “agencies must make the selection and development of first-level supervisors a top human resource management priority.”¹⁰ It offered this bleak assessment: “if agencies do not pay more attention to this important issue, their ability to carry out their mission could be threatened.”¹¹

An organization representing federal supervisors recently used similar terms in explaining the need for improved supervisory training. In a letter to members of this Committee’s Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia (OGM Subcommittee), the Government Managers Coalition stated:

A federal supervisor, whether in the General Schedule or the Senior Executive Service, is tasked with a multitude of responsibilities. Often supervisory employees are promoted based on their technical skills in a certain area, not their management capabilities. However, upon reaching a supervisory position, these employees must work within their issue area and take on the added responsibility of managing complex personnel systems, conducting performance reviews, and dealing with personnel issues, such as adverse action claims. *Unfortunately, most employees do not receive initial or ongoing training in the areas critical to effective management.*¹² [Emphasis added.]

Often, individuals selected to be first-level supervisors have a great deal of expertise in the subject matter of the work they will supervise, but little experience or training in how to effectively serve as a supervisor. On this issue, OPM concluded in its 2001 report that “supervisors often bring technical knowledge to the job, but not necessarily the broad array of interpersonal and management skills that are needed to lead people. Unprepared or untrained leaders can damage employee morale and lower productivity.”¹³ The MSPB concluded that supervisors who build on their technical expertise with effective managing and communication skills are more likely to earn employees’ trust and respect.¹⁴ To

⁹U.S. Office of Personnel Management, *Supervisors in the Federal Government: A Wake-Up Call*, January 2001, at pp. 6–22.

¹⁰*Id.* at p. 2.

¹¹*Id.* at p. 4.

¹²Letter from the Government Managers Coalition to members of the OGM Subcommittee, April 28, 2010.

¹³U.S. Office of Personnel Management, *Supervisors in the Federal Government: A Wake-Up Call*, note 8 above, at p. 1.

¹⁴U.S. Merit Systems Protection Board, *Accomplishing Our Mission, Results of the Merit Principles Survey 2005*, February 2007, at p. 42.

overcome this tendency to appoint and promote supervisors who are technical experts but lack leadership and management skills, agencies will need to establish better processes for evaluating supervisory capacity based on the competencies that effective supervisors actually need.

Additionally, federal supervisors may not receive training on the legal requirements they must follow, including employee collective bargaining rights and prohibited personnel practices. It is important that supervisors understand their rights and responsibilities with respect to the employees they supervise. The Committee believes that training supervisors on these topics will lead to improved communications between management and labor and ultimately will reduce the high costs associated with workplace disputes. This point was stressed by Colleen Kelly, President of the National Treasury Employees Union, who testified before the OGM Subcommittee that:

Labor relations training in the federal government is critical to the operations of an agency. In order to better achieve an agency's mission, it is necessary to have management and labor talking to each other as equal partners, and problem-solvers, with full knowledge of collective bargaining and prohibited practices. Unfortunately, that does not come naturally to some managers. The provisions in the Supervisor Training Act explicitly call for training on collective bargaining and union participation rights, and the procedures to enforce employee rights. . . . This could lead to more communications, problem-solving and workplace agreements during an early stage.¹⁵

The Federal Supervisor Training Act will address supervisor training shortfalls

On March 24, 2009, to address the weaknesses in supervisory training in the federal government, Senator Akaka introduced S. 674, the Federal Supervisor Training Act. This legislation builds on supervisor training requirements under the Federal Workforce Flexibility Act of 2004, which this Committee reported on January 27, 2004, and which was enacted on October 30, 2004.¹⁶ Codified at 5 U.S.C. 4121, these provisions direct every agency, in consultation with OPM, to establish an employee training program that develops supervisors for the agency, and to establish a program to provide additional training to supervisors in three key areas—dealing effectively with poor performers, mentoring employees and improving their performance, and conducting performance appraisals.¹⁷ The OPM Director published regulations to implement these provisions on December 10, 2009. The regulations require agencies to provide supervisory training within one year of an employee's

¹⁵ Response of Colleen Kelley, National President, National Treasury Employees Union, to Post-Hearing Questions from Senator Akaka for the Record of the Developing Federal Employees and Supervisors Hearing, note 2 above, at pp. 125–26 of the printed hearing record.

¹⁶ S. 129, 108th Congress, enacted as Public Law 108–411.

¹⁷ P.L. 108–411, § 201(b)(1), Oct. 30, 2004 (codified at 5 U.S.C. § 4121). The Federal Workforce Flexibility Act of 2003 was introduced by Senator Voinovich as S. 129 and reported favorably by this Committee, S. Rep. No. 108–223 (Jan. 27, 2004). Title 5 U.S.C. § 4121, as enacted by P.L. 108–411, uses the term “manager” to refer to individuals exercising either managerial or supervisory functions; but S. 674 defines the term “supervisor” to have that same meaning; and, to avoid confusion, the term “supervisor”, rather than the term “manager,” is used in this report when referring to the requirements enacted by P.L. 108–411.

initial appointment to a supervisory position and also to provide follow-up training at least once every three years thereafter. Nancy Kichak, the Associate Director for the Human Resources Policy Division of OPM, testified before the OGM Subcommittee that OPM is currently developing guidance to assist agencies to implement this regulation and expects to publish the guidance by the end of 2010.¹⁸

The Committee is encouraged by OPM's recent advances in supervisory training. However, the Committee has concluded that the type of comprehensive changes that observers agree are needed cannot be fully implemented and permanently sustained throughout the federal government without the type of statutory changes required by S. 674. The Committee is confident that enactment of this legislation would strengthen existing efforts to increase the quality of supervisory training in the federal government and make them lasting.

S. 674 would expand upon current statutory and regulatory requirements by adding a number of important additional provisions. To establish a framework for supervisor selection, training, and evaluation, the bill would require the Director of OPM to issue guidance to agencies on the competencies that supervisors have to meet in order to effectively manage employees' performance. Based on this OPM guidance and on any additional competencies that an agency might see as necessary for its own supervisors, each agency would be required to assess the performance of each of its supervisors, and assess the overall capacity of the supervisors at the agency.

With respect to supervisor training, the bill would revise current statutory requirements by clarifying the subjects that supervisory training must cover and by spelling out additional topics related to the protection of employee rights. Agencies would be required to provide training to supervisors on techniques and strategies for—*(i)* developing and discussing performance goals and objectives with employees, discussing progress, and conducting performance appraisals; *(ii)* mentoring and motivating employees and improving their performance; *(iii)* fostering a fair and merit-based work environment; *(iv)* effectively managing poor performers; *(v)* addressing reports of a hostile work environment, reprisal, or harassment; *(vi)* respecting employees' whistleblower, collective bargaining, and other rights; *(vii)* meeting the supervisor competencies developed by OPM and the employing agency; and *(viii)* otherwise carrying out the duties of a supervisor. The legislation would require agencies to establish mentoring programs under which existing supervisors transfer knowledge and provide advice to newly appointed supervisors.

The bill would require agencies to provide supervisor training within one year after individuals become supervisors and every three years thereafter. Under procedures established and administered by OPM, agency heads would be able to extend the one-year period, and OPM would be required to report annually to this Committee and to the House Committee on Oversight and Government Reform on the number of extensions granted and the number of su-

¹⁸ Written Statement of Nancy Kichak, Associate Director for Human Resources Policy Division, Office of Personnel Management, at the Developing Federal Employees and Supervisors Hearing, note 2 above, at p. 5 of the printed hearing record.

supervisors who completed initial training within one year of appointment without extension.

The bill defines the term “supervisor” to include an individual who hires, directs, assigns, promotes, or otherwise exercises authority over employees, or who formulates, determines, or influences the policies of an agency. Those team leaders who work collaboratively with other team members to facilitate the effective and efficient completion of their tasks, and who coordinate with supervisors on behalf of the team, but who do not exercise authority over other team members, are not included as “supervisors” under the legislation.¹⁹

Under the bill, agencies must establish supervisor training programs that are interactive. Such programs should, to the extent practicable, involve in-class training by a live instructor, but may also include computer-based training. This requirement reflects the Committee’s recognition that live instruction may not always be a sufficiently cost-effective method of training supervisors, especially in the current economic climate.

Indeed, many of the topics that S. 674 requires supervisors to be trained in, including employee collective bargaining rights and workplace discrimination law, can be appropriately addressed through computer-based training. In light of the benefits of in-person training, however, agencies are encouraged to provide instructor-based training “to the extent practicable as determined by the head of the agency.”²⁰

The increased training under this bill will require some additional spending on training.²¹ However, as NAPA observed, “While there are costs involved in starting and maintaining programs to strengthen the performance of supervisors, they pale in comparison to the price paid for inaction.”²² Similarly, a recent Partnership for Public Service report explained that the case for enhanced leadership development training for supervisors can be made at several levels, including “the business level,” and that the “quantitative and qualitative work that has been done and the opinions of those most closely associated with these programs point to a highly favorable return on investment.”²³

Companies in the private sector have found that investing in the growth of leaders can lead to a more productive workforce. Dr.

¹⁹ See U.S. Office of Personnel Management, Performance Management, Policy, “Team Leader Guide Sees Performance Management Role,” originally published in August 1998, <http://www.opm.gov/perform/articles/202.asp>; id., Archive, “Team Leadership in the New Workplace,” originally published in April 1995, <http://www.opm.gov/perform/articles/081.asp#Definition>.

²⁰ The National Defense Authorization Act for Fiscal Year 2010, which was signed into law on October 29, 2009, as P.L. 111–84, required DoD to establish a program under which DoD supervisors must be trained at least once every three years on the same topics as those required under S. 674. This enactment also requires DoD to establish a program under which experienced supervisors serve as mentors to newly appointed supervisors, similar to the program under S. 674. Marilee Fitzgerald, the Director of Workforce Issues and International Programs at DoD, testified before the OGM Subcommittee on April 29, 2010, that DoD was in the process of designing the supervisor training program required by the FY 2010 NDAA and planned a phased implementation of the program beginning in the fall of 2010. Submitted statement of Marilee Fitzgerald, Director of Workforce Issues and International Programs, Department of Defense, at the Developing Federal Employees and Supervisors Hearing, note 2 above at pp. 50–53 of the printed hearing record.

²¹ The Congressional Budget Office (CBO) has estimated that S. 674 would cost the agencies \$70 million over the FY 2011–2015 period. CBO, Cost Estimate, S. 674, Federal Supervisor Training Act of 2010 (July 21, 2010), reproduced in section V, below, of this report.

²² See National Academy of Public Administration, *First Line Supervisors in Federal Service: Selection, Development, and Management*, note 3 above, at p. 4.

²³ James Thompson, *Training Supervisors to be Leaders: A Missing Element in Efforts to Improve Federal Performance*, Partnership for Public Service, Washington, DC, 2007, p. 19.

Laura K. Mattimore, the Director of Leadership and Development at the Proctor & Gamble Company (P&G), testified before the Subcommittee that:

We realized early on that our employees are our strongest competitive advantage, and every day we work to increase and develop that advantage. To tap the full potential of our employees, we developed a rigorous and disciplined approach to leadership development in every business, in every region, and at every level of the company. . . . The P&G leadership team in place today is an ideal example of how P&G develops leaders. . . . These men and women have been preparing for the responsibilities they have today since they joined P&G two or even three decades ago. . . . When it was time for them to move into the company's most senior management positions, they were ready.²⁴

Moreover, tangible savings may result from training that equips supervisors with the skills to address workplace conflicts before they escalate into legal complaints. In particular, educating supervisors on employee collective bargaining, whistleblower, non-discrimination and other workplace rights should lead to fewer workplace disputes and, consequently, a reduction in the high costs associated with the filing of unfair labor practices, equal employment opportunity complaints, and arbitrations.

Finally, as Bob McDonald, the Chief Executive Officer of Proctor & Gamble has stated, there are ethical, as well as practical, reasons why improved supervisory training is warranted:

The most important way we improve the lives of employees is to invest in their growth and success. We hold ourselves accountable . . . not only for attracting top talent but also for providing the experiences, coaching, training and relationships that ensure people grow to their full potential as leaders. This pays enormous dividends because when people develop the skills to lead, and are then inspired . . . to do great things, P&G is able to be a force for good in the world. It's a powerful, virtuous cycle.²⁵

In summary, the Committee has determined that, to ensure essential improvements in the training of federal supervisors are sustained under any future administration, the necessary management framework and requirements must be established in statute, as S. 674 would do.

III. LEGISLATIVE HISTORY

Senator Daniel K. Akaka introduced S. 674 on March 24, 2009. The bill was referred to the Committee on Homeland Security and Governmental Affairs and was further referred to the OGM Subcommittee on April 29, 2009.

The bill is similar to S. 967, the Federal Supervisor Training Act of 2007, introduced by Senator Akaka in the 110th Congress, and

²⁴ Written Statement of Laura K. Mattimore, Ph.D., Director of Leadership and Development, Proctor & Gamble, submitted for the record of the Developing Federal Employees and Supervisors Hearing, note 2 above, at pp. 80–81 of the printed record.

²⁵ *Id.* at p. 80 (quoting Bob McDonald, Chief Executive Officer of Proctor & Gamble).

to S. 3584, the Federal Supervisor Training Act of 2006, introduced by Senator Akaka during the 109th Congress.

On April 29, 2010, the OGM Subcommittee held a hearing to consider this bill and the need to improve the development of federal supervisors and employees entitled, “Developing Federal Employees and Supervisors: Mentoring, Internships, and Training in the Federal Government.” Presenting testimony were Ms. Nancy Kichak, Associate Director for the Human Resources Policy Division, OPM; Ms. Marilee Fitzgerald, Director of Workforce Issues and International Programs, DoD; Ms. Colleen M. Kelley, National President, National Treasury Employees Union; Mr. J. David Cox, National Secretary-Treasurer, American Federation of Government Employees; Mr. John Palguta, Vice President for Policy, Partnership for Public Service; and Laura K. Mattimore, PhD, Director of Leadership Development, Proctor and Gamble.

On June 23, 2010, the OGM Subcommittee polled the bill out favorably, and on June 24, 2010, the Committee considered the bill. Senator Akaka offered an amendment which removed the requirement that initial training be “interactive instructor-based,” allowed OPM to establish a procedure under which agency heads may extend the time period under which new supervisors must receive initial training, allowed agencies to assess supervisors based on competencies established by OPM, and made several technical changes to the bill. These changes were made in accordance with recommendations from OPM and were intended to reduce the cost of the bill. The Committee adopted the amendment and ordered the bill reported favorably, as amended, by a voice vote. Members present were Senators Lieberman, Levin, Akaka, Carper, Pryor, Kaufman, Collins, Coburn, and McCain.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that the legislation in S. 674 may be cited as the “Federal Supervisor Training Act of 2010.”

Section 2. Mandatory training programs for supervisors

5 U.S.C. § 4121, entitled “Specific training programs,” already requires agencies, in consultation with OPM, to establish training programs for supervisors. Section 2 of the bill amends § 4121 to make these required training programs more robust.

Subsection (a)(1) defines the term “supervisor” for purposes of 5 U.S.C. § 4121(a) to include individuals who are defined as supervisors and management officials under 5 U.S.C. § 7103(a)(10) and (11), as well as any other federal employees as specified by OPM.

Subsection (a)(2) amends 5 U.S.C. § 4121(b) to require agencies, in establishing training programs, to do so under operating competencies prescribed by OPM.

Subsection (a)(3) amends 5 U.S.C. § 4121(b) to replace the current supervisory training requirements with new minimum requirements under which agencies must establish—

- Training for supervisors in—(i) developing and discussing goals and objectives with employees, communicating and discussing progress relative to performance goals and objectives, and conducting performance appraisals; (ii) mentoring and motivating em-

ployees and improving employee performance and productivity; (iii) fostering a work environment characterized by fairness, respect, equal opportunity, and attention paid to the merit of employees' work; (iv) effectively managing employees with unacceptable performance; (v) addressing reports of a hostile work environment, reprisal, or harassment of, or by, another supervisor or employee; (vi) meeting supervisor competencies established by OPM or by an employing agency; and (vii) otherwise carrying out the duties or responsibilities of a supervisor.

- Training for supervisors on the rights and protections afforded federal employees against prohibited personnel practices under 5 U.S.C. § 2302, and particularly under the non-discrimination and whistleblower-protection provisions in subsections (b)(1) and (8) of that section; employee collective bargaining and union participation rights; and the procedures and processes used to enforce employee rights.

Agencies must establish such training programs that are interactive. Agencies may include computer-based training, but should, to the extent practicable as determined by the agency head, make the training instructor-based.

This subsection also requires agencies to establish mentoring programs under which experienced supervisors transfer knowledge and advice to new supervisors and point out strengths and areas for development.

Individuals must complete each program not later than one year after they are appointed to be supervisors. OPM may establish and administer procedures allowing agencies to extend this period for individual supervisors. After their initial training, supervisors must receive follow-up training at least once every three years. Supervisors can receive credit toward the training requirements for similar training previously completed. Each agency shall measure the effectiveness of the new training programs.

OPM must prescribe regulations to carry out this section, including measures that agencies will use to assess effectiveness of agency supervisory training.

Subsection (b) requires OPM to submit an annual report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives on the number of extensions granted to the requirement that individuals receive training within one year after they become supervisors, and the number of individuals who have completed training within one year of becoming supervisors.

Subsection (c) requires OPM to prescribe the regulations required under subsection (a), to carry out the new mandatory supervisory training requirements, within one year after the date of enactment.

Subsection (d) provides that the amendments made by the bill will take effect one year after the date of enactment and will apply to individuals appointed to the position of a supervisor on or after that effective date, and to individuals employed as supervisors on the effective date. Individuals employed as supervisors on the effective date are required to complete training within three years after the effective date, and once every three years thereafter.

Section 3. Management competencies

Subsection (a) adds a new section 5 U.S.C. § 4305, entitled “Management competencies,” and redesignates the current section 4305 as section 4306. Under the new section 4305:

- The term “supervisor” is defined for purposes of the section to include individuals defined as supervisors and management officials under 5 U.S.C. § 7103(a)(10) and (11), and any other federal employees as defined by OPM.

- OPM is required to issue guidance to the agencies on competencies supervisors are expected to meet to effectively manage employee performance.

- Agencies must assess the performance of supervisors and the overall capacity of supervisors based on the guidance issued by OPM, or on additional competencies developed by the supervisors’ employing agencies.

- Agencies must submit a report to OPM on their progress implementing this section, including measures used to assess program effectiveness, annually or on any basis OPM requests.

Subsection (b) makes technical and conforming amendments to the table of sections for 5 U.S.C. chapter 43.

V. ESTIMATED COST OF LEGISLATION

JULY 21, 2010.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 674, the Federal Supervisor Training Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 674—Federal Supervisor Training Act of 2010

S. 674 would amend current law to require training for federal employees who supervise other employees. The legislation would direct the Office of Personnel Management (OPM) to issue guidelines to agencies on standards that supervisors are expected to meet and would require agencies to review their training programs and report on their effectiveness to OPM.

Under the legislation, agencies would be required to set new performance standards and train new supervisors within 12 months after such employees assume supervisory duties. In addition, all current supervisors would need to receive training within three years following enactment of the legislation; supervisors would receive “refresher” training every three years thereafter. The training would include working with supervisors to develop employee goals and objectives, mentoring programs, and informing managers about prohibited personnel practices and employee rights. Most of the provisions of S. 674 would codify and expand current practices of the federal government. The National Defense Authorization Act of 2010, the Federal Workforce Training Act of 2004, and recent OPM

regulations require some training for federal supervisors either for specific agencies or all agencies governmentwide. However CBO expects that some agencies would likely have to undertake additional training and meet new reporting requirements.

Based on information from OPM and selected agencies and subject to the availability of appropriated funds, CBO estimates that implementing S. 674 would cost agencies \$70 million over the 2011–2015 period to meet those additional training and reporting requirements. S. 674 also could affect direct spending by agencies not funded through annual appropriations, such as the Tennessee Valley Authority and the Bonneville Power Administration; therefore, pay-as-you-go procedures would apply. CBO estimates, however, that any net increase in spending for training programs by those agencies would not be significant. Enacting S. 674 would not affect revenues.

S. 674 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VI. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact. The Congressional Budget Office states that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

VII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italics* and existing law, in which no change is proposed, is shown in *roman*):

TITLE 5, UNITED STATES CODE: GOVERNMENT ORGANIZATION AND EMPLOYEES

PART III—EMPLOYEES

CHAPTER 41—TRAINING

SEC. 4121. SPECIFIC TRAINING PROGRAMS

(a) In this section, the term “supervisor” means—

- (1) A supervisor as defined under section 7103(a)(10);*
- (2) A management official as defined under section 7103(a)(11); and*
- (3) Any other employee as the Director of the Office of Personnel Management may by regulation prescribe.*

(b) *Under operating competencies prescribed by, and in consultation with, [In consultation with] the Office of Personnel Management, the head of each agency shall establish—*

(1) a comprehensive management succession program to provide training to employees to develop managers for the agency; and

[(2) a program to provide training to managers on actions, options, and strategies a manager may use in—

[(A) relating to employees with unacceptable performance;

[(B) mentoring employees and improving employee performance and productivity; and

[(C) conducting employee performance appraisals.]

(2)(A) *a program to provide training to supervisors on actions, options, and strategies a supervisor may use in—*

(i) *developing and discussing relevant goals and objectives together with the employee, communicating and discussing progress relative to performance goals and objectives and conducting performance appraisals;*

(ii) *mentoring and motivating employees and improving employee performance and productivity;*

(iii) *fostering a work environment characterized by fairness, respect, equal opportunity, and attention paid to the merit of the work of employees;*

(iv) *effectively managing employees with unacceptable performance;*

(v) *addressing reports of a hostile work environment, reprisal, or harassment of, or by, another supervisor or employee;*

(vi) *meeting supervisor competencies established by the Office of Personnel Management or the employing agency of the supervisor; and*

(vii) *otherwise carrying out the duties or responsibilities of a supervisor;*

(B) *a program to provide training to supervisors on the prohibited personnel practices under section 2302 (particularly with respect to such practices described under subsection (b)(1) and (8) of that section), employee collective bargaining and union participation rights, and the procedure and processes used to enforce employee rights; and*

(C) *a program under which experienced supervisors mentor new supervisors by—*

(i) *transferring knowledge and advice in areas such as communication, critical thinking, responsibility, flexibility, motivating employees, teamwork, leadership, and professional development; and*

(ii) *pointing out strengths and areas for development.*

(c) *Training in programs established under subsection (b)(2)(A) and (B) shall be—*

(1) *interactive training which may include computer-based training; and*

(2) *to the extent practicable as determined by the head of the agency, training that is instructor-based.*

(d)(1)(A) *Not later than 1 year after the date on which an individual is appointed to the position of supervisor, that individual*

shall be required to have completed each program established under subsection (b)(2).

(B) The Director of the Office of Personnel Management may establish and administer procedures under which the head of an agency may extend the 1-year period described under subparagraph (A) with respect to an individual.

(2) After completion of a program under subsection (b)(2) (A) and (B), each supervisor shall be required to complete a program under subsection (b)(2) (A) and (B) at least once every 3 years.

(3) Each program established under subsection (b)(2) shall include provisions under which credit shall be given for periods of similar training previously completed.

(4) Each agency shall measure the effectiveness of training programs established under subsection (b)(2).

(e) Notwithstanding section 4118(c), the Director of the Office of Personnel Management shall prescribe regulations to carry out this section, including the monitoring of agency compliance with this section. Regulations prescribed under this subsection shall include measures by which to assess the effectiveness of agency supervisor training programs.

CHAPTER 43—PERFORMANCE APPRAISAL

SUBCHAPTER 1—GENERAL PROVISIONS

Sec.

4301. Definitions

* * * * *

4305. [Regulations.] Management Competencies.

4306. Regulations.

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SEC. 4304. RESPONSIBILITIES OF THE OFFICE OF PERSONNEL MANAGEMENT.

* * * * *

(b) * * *

* * * * *

(3) if the Office determines that system does not meet the requirements of this subchapter (including regulations prescribed under section [4305] 4306, the Office shall direct the agency to implement an appropriate system or to correct operations under the system and any such agency shall take any action so required.

SEC. 4305. MANAGEMENT COMPETENCIES.

(a) In this section, the term “supervisor” means—

(1) A supervisor as defined under section 7103(a)(10);

(2) A management official as defined under section 7103(a)(11); and

(3) Any other employee as the Director of the Office of Personnel Management may by regulation prescribe.

(b) The Director of the Office of Personnel Management shall issue guidance to agencies on competencies supervisors are expected to meet in order to effectively manage, and be accountable for managing, the performance of employees.

(c) Based on guidance issued under subsection (b) and on any additional competencies developed by an agency, each agency shall as

sess the performance of the supervisors and the overall capacity of the supervisors in that agency.

(d) Every year, or on any basis requested by the Director of the Office of Personnel Management, each agency shall submit a report to the Office of Personnel Management on the progress of the agency in implementing this section, including measures used to assess program effectiveness.

