

STATEMENT OF
THE HONORABLE HOWARD C. WEIZMANN
DEPUTY DIRECTOR
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

on

DOMESTIC PARTNER BENEFITS FOR FEDERAL EMPLOYEES

September 24, 2008

Chairman Lieberman, Ranking Member Collins, and Members of the Committee:

Thank you for the opportunity to come here today to provide technical comments on S. 2521 which, if enacted, would provide Federal benefits to same sex domestic partners of Federal employees.

The Federal Government offers a competitive and comprehensive package of employer-sponsored benefits for Federal employees and their families. Federal employees may elect insurance coverage under the Federal Employees Health Benefits Program (FEHB), the Federal Employees Dental and Vision Insurance Program, the Federal Employees' Group Life Insurance Program, and the Federal Long Term Care Insurance Program, including benefits for family members. In addition, Federal employees are eligible for employer-sponsored retirement and leave benefits. In pursuit of our mission to ensure the Federal government has an effective civilian workforce, the Office of Personnel Management (OPM) has primary responsibility with respect to the administration of these benefit programs as incorporated in Title 5 of the United States Code.

Mr. Chairman, as you know, your bill, S. 2521, would provide benefits for same sex domestic partners of employees like the benefits currently available to married employees. The bill defines domestic partner as "an adult unmarried person living with another adult unmarried person of the same sex in a committed, intimate relationship." The bill includes coverage under Title 5 insurance benefit programs, retirement and disability benefits, the Family and Medical Leave Act, and the Federal Worker's Compensation Act, among others.

Background

As background, domestic partners of Federal employees are not included as eligible family members under Title 5 for any of these Federal programs. Therefore, same sex domestic partners are not entitled to benefits. Opposite sex domestic partners are similarly not entitled to these benefits.

Same-sex marriages are not recognized for benefit entitlement purposes under any of the Federal benefit programs. Public Law 104-199, the Defense of Marriage Act, signed September 21, 1996, created a new section 7 to Title 1 of the United States Code, providing that in the interpretation of any law enacted by the Congress, “the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.” This definition applies in “any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States.”

Technical Comments

As for the bill, itself, we have reviewed the language of S. 2521 and have the following technical comments. First, benefits programs described in Title 5 refer to coverage for both Federal employees and Federal annuitants, however, a strict interpretation of the bill, as currently drafted, raises questions as to whether benefits would be available to same sex domestic partners once an employee retires.

Second, the bill provides that affidavits pertaining to the eligibility of domestic partners for Federal benefits be filed with OPM. Human resource functions are conducted at each of the Federal agencies, including benefits enrollment and payroll deductions, on behalf of agency employees. OPM does not serve as a central clearinghouse for all Federal employees and therefore would not be have the records nor resources to collect and maintain such affidavits.

Third, OPM has concerns with the administration of benefits for a domestic partnership. Currently, spousal benefits are based on the documentation of a state-sanctioned marriage. The bill under consideration would provide benefits to those in domestic partnerships or relationships which are certified by affidavit. OPM believes this process could lead to fraud and abuse in the programs we administer. Spouse equity benefit determinations frequently rely on state court orders awarding annuity and insurance benefits coverage. There is no analogous provision in the proposed legislation. For example, the bill specifically provides that in the event “a domestic partnership dissolves by method other than death of the employee or domestic partner of the employee, the former domestic partner shall be entitled to benefits available to, and shall be subject to obligations imposed upon, a former spouse.” This provision lacks the specificity needed to determine eligibility and amount of benefits for a separated domestic partner.

OPM also notes that the estimated cost of including these additional beneficiaries to the current system of active and retired Federal employees would increase outlays. We

estimate the FEHB Program (government) costs would be \$41 million for 2010 and approximately \$670 million for 2010 through 2019. We also estimate the cost of the legislation for survivor benefits would increase the total present value of benefits by about \$50 million (\$37 million for non-Postal and \$13 million for Postal). Retirement costs for this group would initially decrease because their retiree annuities would be reduced to provide for the survivor annuity, while few survivor benefits would be paid to domestic partners initially.

Conclusion

This concludes my statement and I would be happy to answer any questions you may have.