

TESTIMONY of
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On
THE FEDERAL WORKFORCE: LEGISLATIVE PROPOSALS FOR CHANGE

Before the
SENATE GOVERNMENTAL AFFAIRS SUBCOMMITTEE ON
INTERNATIONAL SECURITY, PROLIFERATION AND FEDERAL SERVICES

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Mr. Chairman, I am testifying on behalf of the Senior Executives Association, a professional association representing the interests of career Senior Executives and those in equivalent pay systems. We appreciate this opportunity to submit our testimony to the Committee, which is to be commended for its concern for the future of the Federal work force. Both Senator Akaka and Senator Voinovich have our gratitude for their commitment to human capital issues and determination to develop viable solutions to the coming crisis.

We believe it is critical that the Congress and the Administration consider and respond to the full range of human capital issues and reject continuation of piecemeal approaches. These agency and occupation-based "fixes" are fragmenting the civil service, creating a crazy quilt of personnel and pay systems across the government without addressing fundamental issues affecting the workforce.

At the executive level in particular, pay compression has clearly contributed to the pressure for separate systems. In addition, however, we have heard over and over from agency officials of the need for additional executive positions, to be independent of the OPM allocation process. During the Clinton administration, the career Senior Executive Service was downsized by almost 20% (from 7387 positions in 1993 to 5971 positions in 2000). We believe that the top ranks were thinned unnecessarily - the ratio of Senior Executive positions to the rest of the Federal work force, after all, is slight - and that the number of positions in the executive corps should be increased to enable agencies to meet their missions. Further, the use of existing flexibilities and authorities is limited by both a lack of funding and a lack of any effective mechanism for agencies to share successful approaches which utilize such authorities. Therefore, the pressure for "designer" systems will continue unabated and new authorities will continue to proliferate unless and until the underlying problems are addressed through a coherent, government-wide solution which provides over-arching principles, flexibility within limits, and some bottom line of uniformity.

As you know, while the retirement eligibility of the full Federal workforce is high, projections for anticipated retirements of career Senior Executives are even higher. In 2000, the General Accounting Office projected that, by fiscal year 2005, fully 70% of all Senior Executives will be eligible to retire, and OPM estimated that, of the 6000 career SES members, about 45% would retire during f.y.99 through f.y.05.

At this time in our country's history, especially, it behooves us to ensure that we 1) retain as many of these highly capable, experienced and accomplished executives as possible, and 2) develop and have in place the necessary talent to succeed those who do retire. Yet, right now we are driving these executives out - and discouraging those middle managers on the executive track - because of a failure to address the pay compression which has reached critical proportions within the corps and which has been a strong contributor to the piecemeal "fixes" referred to earlier.

SEA welcomes the provision (Sec. 302) of S. 1603 which would raise the cap on total annual compensation for Senior Executives and their equivalents. As the section-by-section analysis notes, however, this is a technical change that would enable Senior Executives to promptly receive awards and bonuses, but which would not, in and of itself, affect their compensation.

Our comments on S. 1603 follow.

Title I. Chief Human Capital Officers

The Association supports the creation of these positions. Clearly, such positions have become the preferred method for ensuring agency and departmental focus on particular functions, witness the creation of Chief Financial Officer and Chief Information Officer positions. While some have criticized the concept of the Chief Human Capital Officer (CHCO) as representing a "super personnel officer," we differ and believe that creation of this position recognizes the importance of human capital and will provide a focal point to ensure adequate attention to this critical resource.

We do, however, disagree with leaving open to agencies the option to designate political appointees to hold these

positions. Rather, we believe that these should be career Senior Executive Service positions. That is so because this function, human resources, is so integral to the maintenance of the merit system and requires continuity of leadership. The designation of a political appointee as CHCO makes far more likely an ever-changing emphasis in the approach to human capital issues, particularly with the relatively short tenures of appointees.

Title II. Section 205. Streamlined Critical Pay Authority

While the Association does not object to shifting the oversight for critical pay positions from OMB to OPM, we are in strong opposition to any substantial expansion of the use of this authority throughout the Federal government. Our reasons are as follows.

First, reliance on this authority continues the piecemeal attack on the pay compression problem, which is most severe in the SES ranks. Pay compression has reached such critical proportions that it threatens to destroy the Senior Executive Service.

After being frozen five of the last nine years, the pay cap has filtered down through the ranks of the SES and approximately 70% of all career executives receive the same pay. ES-4, ES-5, and ES-6 (the top three ranks) are now all capped at Executive Level III (the statutory maximum for their base plus locality pay) in all 32 localities. Likewise, ES-3 is now capped in 15 localities. In Houston and San Francisco, even ES-2 is capped and receives the same pay as the top of the SES.

This situation is unfair and would be unthinkable in any private sector corporation, yet it is tolerated by both the Administration and Congress. It must be rectified with a legislative solution. The bills, H.R. 1824 and S. 1129 (sponsored by Representative Davis and Senator Warner, respectively), are at least a beginning. They would raise the statutory maximum for both base pay and locality pay for the SES and equivalent executive systems, such as Senior Level and Senior Technical.

To understand the human impact of this problem, we urge the Committee to review In Their Own Words: The Impact of Executive Pay Compression, a sobering compilation by SEA of statements by career executives throughout government. One Internal Revenue Service executive's words sum up the problem:

"I love and believe in the mission of government and the importance of having bright, caring and responsible people serving that mission. As an executive nearing retirement eligibility and feeling very burned out by pay stagnation and the compromises it has forced on those I love, I am trying desperately to do the succession planning my office will need to manage in the years to come. I never thought that I would be considering leaving on (my retirement) eligibility (date), but now I project I will. I feel I have no choice if I am to provide adequately for my family. I have never been so disheartened at the possibilities - my best and brightest repeatedly advise me that they see no future for themselves in government despite their love for it and commitment to it."

Extending critical pay positions throughout government does nothing to address this problem. To the contrary, it removes any impetus which does exist for addressing pay compression by focusing on bringing higher priced talent in from outside government to deal with the particular problem(s) of the day. Thus, on the one hand, we will continue to drive experienced, talented executives out of government by our refusal to address pay compression and, on the other hand, we will recruit higher paid executives from outside government. We fail to see any justification for this solution and urge, instead, addressing the overall executive pay problem.

It is important to note that the current system, in fact, encourages early or immediate retirement by eligible Senior Executives. From 1994 to 2001, the average annual COLA adjustment on retirement annuities was 2.5 percent, higher than the average SES pay increase of 1 percent over that same time frame.

To understand how government executives compare with their private sector peers, SEA contracted with the Hay Group from 1993 to 1996 to conduct annual studies comparing compensation of SES positions with that of comparable positions in private industry. A sample of SES positions was selected (across a range of agencies, SES pay rates, and functions) from Hay's data bases of SES evaluated positions. Using Hay's job content evaluation points, SES positions were compared to their precise counterparts which Hay had evaluated in a wide variety of industrial organizations and service industries, as well as in some nonprofit organizations and local governments.

Results from the 1996 study, Comparative Analysis of SES Base Salary, Total Annual Cash Compensation, Benefits and Total Remuneration, were as follows: Average SES total cash compensation (including bonuses) ranged from 42% to 68% of that of average industry total cash compensation for jobs of the same difficulty. Put another way, SES total compensation for these positions would have to be increased by a range of from 46% to 137% to attain comparability with private industry.

Six years later, we find ourselves in the peculiar position of opposing any substantial use of an authority which places a premium on executives from the private sector - but leaves Federal executives to languish with no relief. One would have thought that the many critical contributions made by these executives on and since September 11 would have been worth more.

We wish to stress, however, that the Association has never argued that Federal executive compensation should be equal to that of the private sector. All career executives recognize that there is a price to be paid for public service. At present, however, that price is too high and represents an unreasonable sacrifice. Rather, there should be a reasonable relationship between the two sectors. If, for example, there were a "discount" of 20% for Federal service, using the 1996 Hay study results, SES pay, instead of being capped at \$ 133,700, would have a minimum floor of \$ 156,200.

This leads inevitably to the second reason we oppose expanded use of critical pay authority and that is the inevitable impact of such proposals on morale. We have been too quick to dismiss morale questions, yet can we honestly expect that career executives would not feel resentment working side by side with (or, worse yet, supervising) those executives brought in under critical pay authority, who make more than they do? The message we send to federally "grown" executives is that they are worth less than those hired from outside government, that they have erred in devoting their careers to public service. Further, as more and more executives are covered by FERS, and not the "golden handcuffs" of CSRS, there is less incentive to remain in government in such conditions as exist at present.

Recently, some have suggested that addressing executive pay compression must be linked to dealing with performance issues. While SEA has no argument with holding executives to a high performance standard, SES pay compression was not caused by poor performance in the SES ranks, and to imply that the pay problem can only be fixed if we are willing to first address performance is a non sequitur and is unjust.

Third, there is a paradox upon which we are compelled to comment. Ever since the establishment of the Senior Executive Service by the Civil Service Reform Act of 1978, OPM and others have regularly bemoaned the failure of the SES to produce a corps of generalist executives - and have regularly suggested the removal from the SES of executives with technical or professional skills and competencies. Yet use of the critical pay authority rewards exactly such executives, PROVIDED they are recruited from the private sector. What are Senior Executives to make of this? At the least, they are damned if they do, and damned if they don't.

Fourth, substantial use of critical pay authority has been "tested" in only one agency, the Internal Revenue Service. While IRS leadership is enthusiastic about the authority, we believe the results are not entirely positive.

The information which follows is drawn from a report, "Is the IRS Using its Critical Pay Authority Wisely?" by Tax Analysts. We are not aware that any of the factual material presented in this report has been challenged by the agency. - It is extremely doubtful that the additional pay afforded by the authority was compelling for a good number of the hires. Nearly 40% either have a pension (approximately 8 had reached mandatory retirement age with their prior employers) or received a substantial severance package before coming to the IRS. While the additional pay in and of itself may not have been compelling, however, apparently it served as an attraction of another sort. One IRS official has noted that many executives hired under the critical pay authority viewed as important the status afforded by the fact that their pay was equivalent to that of the Vice President.

For those who took a pay cut, public service - and their chance to leave a mark on the agency - could reasonably be assumed to have been a sufficiently substantial lure (and from all the evidence to date, September 11 has only heightened the desire of many to perform public service). Indeed, apparently it is not unusual, for example, for private attorneys to "take time off from their lucrative law firm partnerships to spend a few years at the Chief Counsel's office" because this can be a valuable investment in their careers. This continues to be true in the absence of authority to offer critical pay positions in that office.

Some of those hired under the authority received substantial raises. Thus, it has been difficult to determine the correlation between the prior salaries of the critical pay hires and their current pay and, indeed, why these individuals were not hired as non-career, limited term Senior Executives.

- Only nine of the positions targeted for critical pay are or will be directly involved in the technology modernization area, the ostensible category for which the authority was granted. Six of those hired have communications backgrounds, presumably not a skill in short supply in Washington.

- Of the nine persons who have resigned from critical pay positions, five had technology modernization positions. "The top IRS career people in the modernization area.....since 1997, have reported to three different chief information officers....In between CIOs, the careerists were in charge of modernization." The question raised by the Tax Analyst piece, understandably, was "how many knowledge-sharing opportunities exist if most critical pay hires don't stay around long enough to understand how the IRS works?"

- Twenty three of the current and former critical pay hires make more than the Secretary of the Treasury. The Chief of Criminal Investigation is paid substantially more than any other law enforcement person in the government, including the head of the FBI, the Under Secretary of the Treasury for enforcement, and the heads of the criminal and tax divisions at the Department of Justice. Since the Federal government is the repository of the best law enforcement professionals in the world, the need for such a critical pay position defies logic.

- Even internally, within the IRS, it is difficult to understand on what basis the quite extraordinary legal talent could be lured to the Chief Counsel's office without critical pay, while it was viewed as necessary to offer private sector attorneys critical pay positions in other IRS operating areas. Can any reasonable person argue that the private sector has a greater knowledge of Federal tax law?

While we recognize that the Commissioner has exercised his authority to identify the critical needs for IRS personnel, we also believe that the authority has not been an unequivocal success. Until this experience receives careful study, and some assessment is made of whether it, in fact, resulted in increased effectiveness of the agency, we are unwilling to support any substantial use in other agencies.

Indeed, two circumstances have made the IRS a singular example of use of such authority. First, the critical pay authority was granted IRS as part of the IRS Restructuring and Reform Act, which required substantial changes at the agency. Such circumstances are few and far between. Hal G. Rainey, author of [A Weapon in the War for Talent: Using Special Authorities to Recruit Crucial Personnel](#), recommends that special hiring authorities (for executives and professionals) should be implemented only as part of a "broader strategy for transformation of an agency" and with fairly stringent implementation steps.

Second, the Commissioner is the only political appointee in the agency, a very different circumstance than exists in other agencies. Thus, one might view the critical pay positions as having created a corps of non-career Senior Executives in the agency, albeit at higher pay than that of career SES. Nonetheless, other agencies and departments enjoy a substantial number of appointed positions, which can be used (and presumably are used) to bring in an outside-government perspective.

Fourth, the belief that merely recruiting an individual from the private sector - who ostensibly is skilled at maximizing profits - will result in a superior performance in government is fallacious. We note there had been no lack of private sector executives consulting with the IRS on IT modernization over the years. In fact, it can be argued that the biggest failures in government have often come as a result of advice from expert consultants or work by contractors. Private sector expertise is not a magical panacea for whatever ills exist in government. The private sector itself has harbored at least as many failures as government.

Finally, during an American University forum held to consider the Rainey report, an IRS official in attendance noted that the critical pay authority is so flexible that it could easily be subject to cronyism and other abuse. Although that official did not suggest that had been the case at IRS (and neither do we so suggest), the Association is concerned about precisely that possibility. At a minimum we recommend that OPM set strict criteria for granting use of the critical pay authority.

On other provisions of S. 1603, SEA has comments and suggested technical amendments as follows:

Section 204 calls for a phased retirement study and later, requires the Office of Personnel Management to provide statutory recommendations on the development of a government-wide phased retirement authority. With the impending retirement of so many career executives, we cannot stress enough that this authority should be extended throughout government to aid in succession planning. Government-wide phased retirement for career members of the Senior Executive Service (SES) and for Senior Level and Senior Technical personnel would allow agencies the flexibility to re-employ, on a full- or part-time basis, senior managers and technical personnel who would experience no reduction in annuity. This would ensure an adequate transition period between the employee's retirement and the hiring of a permanent replacement.

Members of the SES and SLs and STs are highly experienced executives and technical experts who possess historical knowledge of their agencies' operations and procedures and have demonstrated the ability to lead their agencies' programs. As noted previously, by the year 2005, 71 percent of current SES employees will be eligible to retire, and 45 percent are expected to retire. Thus, over the next four years, the Federal government can expect to lose up to one-half of its career executives and Senior Level and Senior Technical employees through retirement. The loss of such a significant number of the government's career leadership is a serious problem for many agencies, since they rely on their institutional memories and capabilities to satisfy their mission requirements.

Phased retirement has worked in the past. Concern about the loss of such employees prompted the IRS to seek relief from the Office of Personnel Management by requesting a waiver from the retirement offset restrictions so that the IRS could re-employ annuitants with unusually high technical qualifications to support critical mission requirements. In addition, the

Department of Defense sought and received statutory relief to the retirement offset for the re-employment of regular military officers to the civil service. In light of the impending retirement boom, other agencies need the same flexibility. Although SEA supports this provision, we raise the concern that it addresses future, but not imminent, needs. Because retirements are happening now, aids for succession planning need to be available now. Therefore, individual agencies will likely need phased retirement authority long before the phased retirement study is completed and OPM has submitted recommendations for implementation government-wide. In light of this potential need, SEA requests that nothing in this provision be construed to prevent OPM from approving agency's requests on a case-by-case basis, as OPM did for the IRS, pending the outcome of OPM's study.

SEA supports Section 206, the provision calling for expedited approval for SES positions. However, because it can be difficult to convene Qualification Review Boards (QRBs) during holiday periods, SEA recommends amending the bill to give OPM 25 working days to make a decision after receipt of the request, as opposed to the 30 days currently specified. Although the QRB process has been cited by some agencies as contributing to substantial delays in hiring Senior Executives, on average, the agency staffing process to fill an SES position takes 188 calendar days, whereas, on average, the QRB process (from the date OPM receives the case to the final QRB decision) takes 17 days. Irrespective of the length of the process, however, it is critical that we maintain independent QRBs, administered by OPM, to provide a counter-check to any possible politicization of the SES.

The Association supports Section 302, repeal of recertification requirements of Senior Executives. To our knowledge, virtually all agencies agree that recertification has proved to be of little value in removing unsuccessful executives and is really little more than an exercise in paperwork. While recertification was intended to be an effective process for dealing with the problem of non-performers, experience has shown that it has not been a significant help in addressing this concern.

SEA supports Section 401, the provision that makes employee training a priority. Requiring a separate line item on training in agencies' budgets goes far to ensure that agencies will focus on devoting resources to this important component of managing human capital. Too often, employees' needs in this area go unmet, and this causes the agency and its programs to suffer. Attention to training of all types and for employees at all levels allows for an influx of ideas, methods, and skills needed to more effectively run programs, thus reinvigorating the agency. SEA specifically would note that executives, in particular, suffer from a lack of resources devoted to training. When funds are scarce, executives often use limited training budgets for subordinate employees rather than earmarking funds for their own more expensive training. Because executives need to keep on top of current ideas and practices in running agencies, including being trained in the latest technologies, the void left by inadequate training resources reverberates throughout the agency.

SEA also supports Section 402 relating to accrual of leave for newly hired Federal employees with qualified experience. This annual leave provision is clearly intended to resolve the problem of outside candidates entering government at the executive level with no immediately available leave. We are aware that this has presented problems with regard to some outside hires. Providing an 8-hour annual leave accrual for all SES appointees is of greatest benefit to outside candidates (including political appointees to non-career SES positions), since those promoted to the SES from within would undoubtedly already be at that level of leave accrual.