

Statement of  
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before the

Subcommittee on Civil Service and Agency Organization  
Committee on Government Reform  
U.S. House of Representatives

on

*“Esprit de Corps: Recruiting and Retaining America’s Best  
for the Federal Civil Service”*

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Madam Chair, I am Ronald P. Sanders, the Office of Personnel Management’s (OPM’s) Associate Director for Strategic Human Resources (HR) Policy, and I appreciate the opportunity to appear before you today to address the Federal Workforce Flexibility Act of 2004 (H.R. 1601, introduced in the Senate with certain differences as S. 129) and the Administrative Law Judges Pay Reform Act of 2004 (H.R. 3737).

As a general matter, Director James, on behalf of the Administration, strongly supports any measure that provides additional flexibility for Federal managers, and the legislation before the subcommittee today is no exception. H.R. 1601 and S. 129 provide an array of new tools to assist agencies in the strategic management of their human capital, many of which can be traced to the President’s proposed Managerial Flexibility Act, introduced early in his Administration. However, while we support the general objectives of these bills (and thank you Madam Chair for leading these provisions through the legislative process), we do suggest modifications to some

elements. In addition, there are some provisions that we do not support. We also oppose H.R. 3737, the Administrative Law Judges Pay Reform Act of 2004.

Madam Chair, I propose to discuss each of the specific component provisions of these bills, providing OPM's views on each. I will begin with those provisions that are common to both House and Senate bills and then address those that are unique to each. I will conclude with our views on H.R. 3737.

### **Provisions Common to H.R. 1601 and S. 129 (as reported)**

Both House and Senate versions of the Act provide Federal agencies additional flexibility in offering financial incentives to recruit, retain, or relocate top talent. First provided by the Congress in the early 1990s, these incentives have been extremely useful; however, they need to be "modernized" to reflect the needs of today's Federal Government. We believe that the proposed amendments would do just that, and as a consequence, we strongly support them.

By allowing agencies to pay larger incentives, and to provide them in different ways (for example, in lump sums or installment payments), the proposed legislation would materially improve our ability to compete for the best and brightest, one of Director James' top priorities. Except for its extension of these authorities to political appointees, we would prefer the House version of the bill, which simply replaces existing flexibilities with the new ones, without adding any new reporting requirements.

OPM strongly supports other provisions that are common to both House and Senate versions. Both bills would provide OPM with the responsibility for granting (and reporting) individual agency requests for "critical pay" (up to the rate for level I of the Executive Schedule, currently \$174,500) for their superstars; and while the authority itself is not new, streamlining its approval will make it more readily available to agencies that can make the business case for this flexibility. Similarly, by establishing a higher annual leave accrual rate for senior executives and

senior professionals, and by allowing agencies to credit non-Federal work experience to establish a higher annual leave accrual rate for new mid-career entrants, the legislation will make the Federal Government far more attractive to top external talent. These too have been high on Director James' list of priorities, and we appreciate your leadership in championing them in the Congress.

Both bills would also eliminate potentially anomalous annuity computations that disadvantage employees when part-time service is involved, especially at the end of an employee's Federal career. We support this correction; it will make part-time service a more useful (and attractive) tool in an agency's succession planning toolkit.

However, we do not believe it necessary at this time to require that agencies establish and appoint a Training Officer, especially since the Chief Human Capital Officers (CHCO) Act of 2002 is still relatively new. That Act required each major agency to appoint a CHCO as the single senior point of accountability for its human resources. According to that Act, training and development is one of the CHCO's principal responsibilities, and on the merits, we believe that this is exactly right--that is the only way to achieve an integrated approach to the strategic management of an agency's human capital. In this regard, we believe that it is premature to dilute the promise of this approach; Congress should wait until the CHCO Act has had a chance to firmly take root before modifying it.

### **Provisions Unique to H.R. 1601**

The House bill includes a number of very complicated technical provisions that would correct anomalies that have resulted from the implementation of locality pay under the Federal Employees Pay Comparability Act of 1990; these anomalies have to do with the complex interrelationship between locality pay and special pay rates, and the impact on pay retention when employees are covered by one or both. These provisions were in the President's original Managerial Flexibility Act, and we thank you for your leadership in continuing to champion them.

The House bill also includes streamlined personnel demonstration project authority.

Madam Chair, Director James believes that this authority is fine as far as it goes. It is based on a strategy for making incremental improvements in our civil service system that can be traced back to the late 1970s, and while we always appreciate more flexibility to deal with outmoded personnel rules, experience under that model has exposed some flaws. Now we also believe that a new model, first embodied in the Homeland Security Act (and since continued with DoD's National Security Personnel System), sets forth the principles and the process for "modernizing" our civil service system without compromising any of the core rights and protections that make it so great. Madam Chair, along with Director James, you have been one of the architects of this new approach, and we thank you for your leadership in that endeavor. We urge you to continue to work with us to explore making our civil service system the best in the world.

### **Provisions Unique to S. 129**

The Senate version of the bill would provide Federal employees with additional compensatory time off for each hour spent in a travel status away from their duty station. We do not support this proposal. At present, there are provisions in title 5, U.S. Code, and case law under the Fair Labor Standards Act that require compensation for Federal employees in a travel status, under certain conditions, and there is no compelling business case to provide an additional compensatory time off benefit to the mix. This is a benefit not typically found in the private sector (a recent survey of private employers found only 28 percent provide compensatory time off for travel). There is a reason for this--such a benefit has a significant cost, not directly, but in terms of lost productivity.

We also support the technical amendment in S. 129 that confirms the longstanding practice of interpreting the term "military service" as including service as a cadet or midshipman at the Air Force, Army, Coast Guard, and Navy service academies. This practice has been brought into question by appeals court decisions.

The Administration may have further views on this bill, which we will communicate to the

Congress separately.

### **Provisions of H.R. 3737**

Finally, let me address the stand-alone provisions of H.R. 3737, which would “reform” the pay system for administrative law judges (ALJs) by increasing their minimum and maximum pay rates. The statutory minimum and maximum rates of basic pay would be linked to the rates for level III of the Executive Schedule, instead of level IV. The maximum rate of locality-adjusted basic pay would be increased from the rate for level III of the Executive Schedule to the rate for level II, which is the rate payable to Federal District Court judges. We oppose this bill.

While the impetus behind this legislation is to provide ALJ “parity” with the new Senior Executive Service (SES) pay-for-performance system, comparisons between these two categories of employees are not appropriate. The SES system is performance-based; there are no more automatic or across-the-board pay increases. Moreover, it is no easy thing for an individual SES member to exceed level III of the Executive Schedule, much less reach level II. He or she must first work for an agency that has demonstrated that it can and will make “meaningful distinctions” in performance, as certified by OPM and the Office of Management and Budget, and then that SES member must demonstrate the very highest levels of performance in order to reach that upper limit.

We expect relatively few SES members will do so, but that is the nature of the new system. Those who perform, who set stretch goals and exceed them, who manage thousands of people and millions (sometimes billions) of dollars, who achieve results that the American people can be proud of--those are the ones who will reach level II, and with all due respect, it is patently unfair to them to give ALJs a “pass” to that level. By law, ALJs must remain independent of their employing agencies; they are exempt from any sort of evaluation based on performance, and thus, it would be inappropriate to link their pay levels to the new SES pay system. Moreover, there is no evidence of a recruiting or retention problem among

ALJs sufficient to warrant such extraordinary treatment. We sincerely value the contributions of the ALJ corps, but for the reasons set forth above, we must oppose H.R. 3737.

We recognize that some pay compression currently exists with respect to the top two ALJ levels, AL-1 and AL-2, where all receive the rate for level III of the Executive Schedule (currently \$144,600); however, such pay compression problems are not uncommon in the Federal environment in which pay limits often apply to highly compensated officials. Increasing maximum pay levels for ALJs will simply create other problems, including pay compression with respect to other categories of Federal officials with broader authority and more significant responsibilities. In the end, we are not persuaded that there is a strong strategic rationale for increasing pay levels for all ALJs.

Madam Chair, thank you for the opportunity to testify on these important matters; I would be happy to answer any questions you may have.