



The Foreign Service and a New Worldwide Compensation System

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Summary

At a time when increasing numbers of Foreign Service personnel are going to posts of greater hardship and danger, an 18.5% pay differential that currently exists between service in Washington, DC, and service abroad is impacting morale and assignment considerations. Provisions implementing a new compensation system to address this issue were developed and supported by the George W. Bush administration, the American Foreign Service Association (AFSA), and the bipartisan leadership of both the House Committee on International Relations (HIRC) and the Senate Committee on Foreign Relations (SFRC). These provisions, which were to be part of the Department of State Authorities Act of 2006 (P.L. 109-472; H.R. 6060), were dropped from the final version of the bill because of House Republican Leadership concerns over the five-year cost of implementing the new compensation system.

The Bush administration, AFSA, and the leadership of both HIRC and the SFRC were in discussion and negotiations for more than a year before developing the consensus compensation provisions. These provisions, the Foreign Service Compensation Reform proposal, would institute a new worldwide, performance-based system for the Foreign Service that would be tied to Washington, DC, salary rates. The compromise language addressed two outstanding issues—the morale-impacting pay disparity, and the institution of a performance-based pay system that the Administration believed would improve the Service. The Administration, once again, requested enactment of a new worldwide, performance-based, compensation system in its fiscal year 2008 budget request.

The concepts behind the agreed upon Foreign Service compensation system have wide support. However, support is not unanimous. Some members of the Foreign Service are concerned about the elimination of automatic pay increases that are inherent to the proposed performance-based system. Others question the Administration's intent with regard to the rights of labor. Further, House Republican Leadership expressed concerns regarding the reaction of some of the more fiscally conservatives Members to the more than \$500 million five-year cost that is associated with the full implementation of this new compensation system.

This report discusses (1) the background leading to a proposal to change the compensation system from both an Administration and Foreign Service perspective, (2) the current Foreign Service (FS) System as established in the Foreign Service Act of 1980 and why the Foreign Service views its personnel system as already a performance-based system, (3) the 109th Congress agreements on this legislation, (4) major issues that remained to be resolved in arriving at the agreement, (5) continuing concerns, and (6) cost estimates.

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Most Recent Legislative Developments

In its FY2008 Budget Request, the Administration requested the 110th Congress to enact a new performance-based compensation system for the Foreign Service.

By the close of the 109th Congress, the Administration, the American Foreign Service Association (AFSA), which is the recognized bargaining agent for the members of the Foreign Service, and the leadership of House Committee on International Relations (HIRC) and the Senate Committee on Foreign Relations (SFRC) agreed on provisions establishing a new Foreign Service compensation system. They unsuccessfully tried to bring this language to the floor of the House for consideration.

The provisions would allow the Administration to establish a new Foreign Service performance-based compensation schedule for those at the upper mid-level rank of FS-01 and below. The new compensation system would also eliminate an 18.59% higher pay level that Foreign Service personnel receive for being posted in the Washington, DC, area than for being posted abroad. The pay disparity was resolved in 2005 for the Senior Foreign Service when its compensation system was converted to a performance-based system and all in the Senior Service began being paid at the Washington, DC, level regardless of their posting.

Secretary of State Rice wrote to the House leadership on November 30, 2006, supporting the proposed Foreign Service Compensation Reform proposal, and stated that it was the intent of the Administration to fund the new system out of its FY 2007 budget request and out year estimates.

The House Republican Leadership, however, omitted the provisions from the final bill providing certain State Department authorities, H.R. 6060, the day before it was to be considered by the full House. The Leadership expressed concerns over whether the bill could get the necessary votes under a Suspension of Rules procedure because of costs involved. Thus on December 8, H.R. 6060 passed the House of Representatives without the new Foreign Service performance-based compensation provisions.

Introduction

The 110th Congress may choose to decide if and how to address an issue that both the Department of State and the American Foreign Service Association (AFSA) consider to be a high priority personnel issue for the Foreign Service—the elimination of a 18.59 % pay disparity between service in the continental United States and service abroad. The Administration, in its February 2007 Budget Request to the Congress for FY 2008, urged the enactment of legislation creating a new compensation system for the Foreign Service, and the appropriation of \$34.5 million needed to implement the first phase of the new compensation system.

During the 109th Congress, Republican and Democratic leadership of both the House Committee on International Relations and the Senate Committee on Foreign Relations worked to resolve this issue by developing the Foreign Service Compensation Reform proposal. This proposal would (1) place the Foreign Service compensation system on a pay-for-performance basis, and (2) eliminate the current pay disparity by creating a new worldwide pay structure at the Washington, DC, salary

level. However, reportedly due to cost concerns among the House Republican leadership,¹ this proposal was not included in the final version of H.R. 6060, which was passed by the House and Senate, and enacted as P.L. 109-472.

The Foreign Service personnel and compensation system is separate and quite different from the federal government's General Service (GS) system. The current Foreign Service system was created under the authorities provided by the Foreign Service Act of 1980 (P.L. 96-465). There are about 13,000 Foreign Service Officers and Specialists with two-thirds of them serving abroad at over 250 posts and missions at any one time. The remaining third is generally posted in Washington, DC. Typically, members of the Foreign Service spend two-thirds of their careers abroad serving at a post from one to three years, and then are assigned elsewhere in the world. In terms of levels or rank within the Foreign Service, it is divided into two categories. The Senior Foreign Service (SFS) is divided into 5 pay categories and, like the Civil Service Senior Executive Service (SES), requires a presidential appointment into the senior service. The regular Foreign Service is divided into nine ranks or classes with the FS-01 level the highest. Most Foreign Service Officers enter the Foreign Service at the 05 or 06 levels, and generally serve for four to five years before being tenured and commissioned as Foreign Service Officers. The personnel system is basically an "up-or-out" system that reviews the members of the Foreign Service annually and has both Time-in-Class (TIC) and Time-in-Service (TIS) limitations that require promotions within certain time frames or the person is separated from the Service. Because of this system, most members of the Foreign Service leave the service after a full and distinguished career in their mid-50s at an 01 or 02 rank.

With the creation of locality pay adjustments for federal employees in 1990, a pay gap began for the Foreign Service depending upon whether one was posted in Washington, DC, or abroad because locality pay adjustments were not available for positions abroad. Each year the gap increased and by 2007, an individual's salary was 18.59% higher if he/she served in Washington as opposed to serving abroad. Proponents of revision to the Foreign Service system indicated that the gap impacts morale and the assignments procedure, and diminishes the intent of adjustments such as the hardship and danger pay differentials. They point out that if a person were to go to a 15% hardship post from a Washington assignment, he or she would still experience nearly a 3.6% decrease in salary. The elimination of this difference is a major issue for the members of the Foreign Service and its union, the American Foreign Service Association.

The Bush Administration, however, opposes any changes in the Foreign Service compensation system unless it is linked to performance, and part of an overall review of Foreign Service personnel modernization. The Administration states its belief that the current civil service system is ineffective and needs to be tied to a market-sensitive, performance-based system. Thus for the Administration, any changes for Foreign Service also would have to include a performance-based pay system.

The 109th Congress's HIRC and SFRC leadership developed provisions addressing both the Foreign Service and the Administration's views. These provisions, which were designated as the Foreign Service Compensation Reform proposal, were supported by the Administration and AFSA. On November 30, 2006, Secretary of State Rice wrote the House Leadership expressing

¹ J. Anthony Holmes (Amb.), "President's Views—Sisyphus Chained: Overseas Locality Pay Sacrificed to 'Budget Reality'," *The Foreign Service Journal*, January 2007, p. 5.

her support for these provisions and urging prompt consideration and passage by the House of Representatives.²

For the Administration to support a legislative proposal overhauling the Foreign Service pay structure, the proposal needed to eliminate automatic pay increases and base all salary adjustments on performance. AFSA also sought certain basic assurances in order to support the move to a new pay-for-performance/global rate of pay system. These assurances included a sufficiency of funds to implement and sustain the new system, maintenance of the traditional role of the selection boards, and the traditional relationship between the Foreign Service's recognized bargaining agent and management. Ultimately AFSA needed to believe that the move to a pay-for-performance system from one that included automatic salary increases would be in the best interests of the members of the Foreign Service.

The 109th Congress Foreign Service Compensation Reform proposal had the support of the Administration, the Foreign Service union, and broad support on Capitol Hill. That support, however, was not unanimous. There were some members of the Foreign Service, as well as some Members and staff, concerned about the loss of the current system's automatic increases in salary with the elimination of both the step increases and the tie to the annual Employment Cost Index (ECI) adjustment. There were others who question the Administration's intent, considering the difficulty between labor and the Administration at the Departments of Defense and of Homeland Security as the Administration attempts to institute a new performance-based personnel structure at these two departments.

Some of Members and congressional staff who are concerned about the proposed performance-based system state that congressional dynamics have changed with the 2006 election. They believe the elimination of the pay disparity between service in Washington and abroad is reasonable. However, they state that the elimination of the pay disparity does not need to be linked to a pay-for-performance system.

Why Change the Compensation System?

The Foreign Service Perspective: To Eliminate a Major Pay Disparity

The top legislative issue for members of the Foreign Service and AFSA is elimination of the pay disparity that exists between service in Washington, DC, where most Foreign Service personnel are domestically assigned, and service abroad.³

The Federal Pay Comparability Act of 1990 excludes federal employees posted outside the continental United States from receiving locality pay adjustments.⁴ Locality pay is designed to

² Secretary of State Condoleezza Rice, letter to the Honorable J. Dennis Hastert, Speaker of the House of Representatives, Washington, Nov. 30, 2006.

³ J. Anthony Holmes (Amb). "President's Views—Overseas Comparability Pay: Defining Issue and Litmus Test," *The Foreign Service Journal*, November 2005, p. 5.

⁴ 5 U.S.C. 5304(c)(4)(B), *Locality-based Comparability Pay* states: "Comparability payments shall not be payable for service performed in any position which may not, under subsection (f)(1)(A), be included within a pay locality." ⁵ (continued...)

create pay comparability between federal employees and non-federal workers doing the same levels of work within a specific geographic locality in the continental United States.⁵ Because there is no basis for comparison of Foreign Service personnel posted abroad to non-federal workers in the United States, those in the Foreign Service, who spend about two-thirds of their careers posted abroad, receive less salary while serving abroad than their colleagues in Washington, DC. This pay difference affects both morale and decisions Foreign Service personnel make when applying for assignments.

Supporters of changing the pay system argue that by FY2006 this difference resulted in more than a 17% pay disparity and “created an increasing pay disincentive to overseas service.”⁶ However, this Foreign Service pay difference exists only for those at the 01 level and below. In 2005, the pay difference was eliminated for those in the Senior Foreign Service as they went to a pay-for-performance system. At that time, all members of the Senior Foreign Service were brought to the Washington, DC, salary levels regardless of where they were posted.⁷ AFSA reportedly estimated in 2005 that a member of the Foreign Service who had been hired in 1995 and served a standard 27-year career, leaving at the 01 level, would lose \$444,162 in pay and retirement benefits over the course of that career when compared to a similar individual in the Civil Service who served only in Washington, DC.⁸

Surveying its members in August 2005, AFSA reported that “getting overseas comparability pay (OCP, a.k.a. ‘locality pay’) for nonsenior FS personnel posted overseas is overwhelmingly our members’ highest priority.”⁹

A 2006 Government Accountability Office (GAO) study discussing obstacles to attracting mid-level officers to hardship posts also noted the impact of the pay disparity as a deterrent to bidding for hardship assignments:

...officers and State personnel we interviewed both at hardship posts and in Washington, D.C. consistently cited the lack of locality pay as a deterrent to bidding at hardship positions. In 2002, we reported that the differences in the statutes governing domestic locality pay and differential pay for overseas service had created a gap in compensation penalizing overseas employees. This gap grows every year, as domestic locality pay rates increase, creating an ever-increasing financial disincentive for overseas employees to bid on hardship posts. After accounting for domestic locality pay for Washington, D.C., a 25 percent hardship post differential is eroded to approximately 8 percent. As estimated in our 2002 report, differential pay incentives for the 15 percent differential hardship posts are now less than the

(...continued)

U.S.C. 5304(f)(1)(A) excludes any position area outside the continental United States as a pay district.

⁵ 5 U.S.C. 5304(d)(1)(A) *Locality-based Comparability Pay* states: “compares the rates of pay under the General Schedule...with the rates of pay generally paid to non-Federal workers for the same levels of work within each pay locality, as determined on the basis of appropriate surveys that shall be conducted by the Bureau of Labor Statistics.”

⁶ U.S. Department of State. “Foreign Service Modernization Transition: \$32,000,000,” *The Budget in Brief Fiscal Year 2007*, February 2006, p. 28.

⁷ Sec. 402(a), “Salaries of Senior Foreign Service members,” of P.L. 96-465, the Foreign Service Act of 1980 (22 U.S.C. 3962(a)).

⁸ Stephen Barr, “Effort Renewed to Bridge ‘Locality Pay’ Gap for Foreign Service Officers,” *Washington Post*, March 14, 2005, p. B2.

⁹ J. Anthony Holmes (Amb). “President’s Views—Overseas Comparability Pay: Defining Issue and Litmus Test,” *op. cit.*

locality pay for Washington, D.C., which is currently 17 percent and can be expected to soon surpass the 20 percent differential hardship posts.¹⁰

On July 20, 2005, the House of Representatives passed H.R. 2601, the Foreign Relations Authorization Act 2006 and 2007.¹¹ Section 305 of H.R. 2601 created an Overseas Comparability Pay Adjustment for those at O1 levels and below posted abroad that, over a three year period, would become equal to, and then be maintained at the Washington, DC, locality pay level.

The Administration opposed the proposed pay adjustment system for the Foreign Service in H.R. 2601, and for the first time stated under what conditions it would consider any Foreign Service pay adjustment. The Administration said, “Adjustments to overseas compensation levels should be linked to performance and considered as part of an overall review of Foreign Service personnel modernization.”¹²

The Administration Perspective: To Move Another Element of the Federal Service to a Full Pay-for-Performance Personnel System

The Bush Administration contends that the current GS pay framework is a “failure.” It maintains that the “one size fits all” approach of the GS pay schedule can mask dramatic disparities in the market value of different federal jobs, and uses on-the-job longevity as a substitute for performance.¹³ The Administration proposes repealing the current GS Schedule by 2010, and replacing it with “a system of occupational pay groups, pay bands within those groups and pay for performance across the federal government. The new system would be a pay-for-performance system.”¹⁴

At the request of the Administration, Congress developed new structures for civilians working for the Departments of Defense (DOD)¹⁵ and Homeland Security (DHS).¹⁶ These personnel systems, which are currently being challenged in the courts by federal employee unions,¹⁷ would cover nearly one-half of all non-uniformed federal employees if fully implemented.

The Administration sought to change the entire Civil Service system through its 2005 draft legislative request, the “Working for America Act (WFAA),” and also the separate request for the Foreign Service system. During much of the fall of 2005, discussions within the Administration regarding a new Foreign Service personnel modernization system took place. In February 2006,

¹⁰ U.S. Government Accountability Office. “Department of State: Staffing and Foreign Language Shortfalls Persist Despite Initiatives to Address Gaps”, GAO-06-894, August 2006, p. 22.

¹¹ H.R. 2601 was not enacted by the 109th Congress because of the lack of action on the part of the Senate to pass similar authorizing legislation.

¹² Executive Office of the President, Office of Management and Budget. “Statement of Administration Policy—H.R. 2601 - Foreign Relations Authorization Act, Fiscal Years 2006-2007—House,” July 20, 2005, p. 2.

¹³ David McGlinche, “Bush administration developing government wide personnel reform bill,” *GovEXEC.Com*, National Journal Group, July 7, 2005.

¹⁴ *Ibid.*

¹⁵ See Title XI, “Civilian Personnel Matters—Subtitle A: Department of Defense National Security Personnel System” in P.L. 108-136, the National Defense Authorization Act for Fiscal Year 2004.

¹⁶ See Title VIII Subtitle E, “Human Resources Management,” in P.L. 107-296 Homeland Security Act of 2002.

¹⁷ Stephen Barr, “Homeland Security Department Ends Litigation on Workplace Rules,” *Washington Post*, September 27, 2006, p. D4.

Secretary of State Rice said, “the President has requested funding to modernize the Foreign Service pay system and in so doing address the problem of the ever-growing overseas pay gap for FS 01s and below.”¹⁸ The Department of State’s *Budget in Brief for Fiscal Year 2007* elaborated on the funding request, explaining that this was “the first step of transition to a performance-based pay system and global rate of pay for Foreign Service personnel grade FS-01 and below.”¹⁹

A Merging of Interests into Legislation

On July 28, 2006, after months of discussions among the Office of Management and Budget (OMB), the Office of Personnel Management (OPM), various Departments and agencies with Foreign Service personnel, AFSA, and Members and congressional staff, an agreed-upon legislative text was developed that served as the basis of the Administration’s request to the Congress for a new Foreign Service compensation system. This text, in large measure, served as the basis of discussion in developing the Foreign Service pay-for-performance/compensation sections in the House bill, H.R. 6060 as reported, and S. 3925 in the Senate.

In arriving at this merging of views, the draft bill submitted by the Administration addressed the concerns of both the Administration and AFSA, the Foreign Service’s union. For the Administration with its desire for a performance-base system, the proposal contained a new personnel/compensation system that maintains the current nine classes with the 01 level as the highest, but within those classes there are no intervening steps. The Secretary of State determines which basic salary rate within a salary class would be paid to the members of that class, but the Secretary’s determination would take into consideration several factors, some of which are negotiated with AFSA. The draft stated that salary adjustments would be based on performance, and that individuals found to be performing below the standards of their class would receive no salary adjustment.

The following issues were advocated by AFSA:

- the role of the Selection Boards in determining performance and promotion recommendations to the Secretary is incorporated into the legislation.
- the current requirement that the Selection Board recommendations be followed in the order that they are presented is also maintained. The Secretary continues to have the authority to withhold action temporarily on the recommendations of the Selection Boards, but to do so would be under transparent procedures negotiated in advance with AFSA.
- the role of the Foreign Service’s union is recognized and is consistent with current procedures.
- assurances that a sufficient pool of funds will be allocated to implement a pay-for-performance system, and
- an assurance that in April 2008, a new Foreign Service worldwide compensation schedule shall become effective with pay at the Washington, DC, level.

¹⁸ Secretary of State Rice. “Foreign Service Pay-For-Performance and Transition to a Global Pay Scale,” *Unclassified State ALDAC Cable 028491*, February 2006.

¹⁹ United States Department of State. *Budget in Brief*, *op. cit.*

However, a key question for the Department of State and the Foreign Service was whether the proposal would avoid the labor-management problems affecting DOD and DHS. Currently the full implementation of the personnel systems for DOD and DHS is being contested by actions in the courts as federal employee unions seek to block the pay-for-performance system and the associated labor-management rules, contending that they do not provide for adequate employee protection and collective bargaining rights.²⁰ Because the Foreign Service would forgo an automatic 3% in-grade step increase plus the annual ECI and locality pay adjustments and accept performance based adjustments with unknown percentages of increases, AFSA sought assurances that the system would be fair to its employees. In this case, both labor and management concluded that the Administration/AFSA agreed upon proposal of July 28 was significantly different enough from the other pay-for-performance proposals, and the Foreign Service system was unique enough, that a conversion to a pay-for-performance system could be mutually beneficial.

The AFSA President, Ambassador J. Anthony Holmes, earlier explained his views regarding the general concept of tying a pay-for-performance system with an overseas comparability pay system stating:

Pay for performance is an unknown for most of us. From media reports of DOD/DHS efforts to convert their civil servants to a PFP system and the administration's Working for America Act targeting the rest of the Civil Service, one can easily view it as menacing, ideological, and anti-employee. But it is clear from State's own experience with the Senior FS conversion to PFP two years ago that it should be possible to make this work and have a win-win situation all around. The reality is that the present FS personnel system, with its rank-in-person, not in-job, annual evaluations, and competitive up-or-out system is inherently PFP already. So the changes in the system should be much less dramatic than many of our members fear.²¹

The Current Foreign Service Compensation System

The Foreign Service personnel and compensation systems are very different from the Civil Service system. As Ambassador Holmes stated, the Foreign Service system resembles more a pay-for-performance system than it does the Civil Service system. Proponents of the change to a new system believe it is important to understand these differences because the impact that a performance-based compensation system would have on the Foreign Service is less dramatic than many, especially those who are familiar with the Civil Service system, might anticipate. Further, the Senior Foreign Service (SFS) personnel system became performance-based in 2005 when the Senior Executive Service (SES) was changed. But unlike the SES,²² the experience for the SFS

²⁰ Stephen Barr, "Homeland Security Department Ends Litigation on Workplace Rules," *Washington Post*, *op. cit.*

²¹ J. Anthony Holmes (Amb). "President's Views: The Pay-for-Performance/OCP Trade-Off: Poisoned Chalice or Win-Win," *The Foreign Service Journal*, April 2006, p. 5.

²² Testimony of Carol A. Bonosaro, President of the Senior Executives Association before the Senate Homeland Security and Governmental Affairs Committee's Subcommittee on the Oversight of Government Management, the Federal Workforce and the District of Columbia, September 26, 2006. Carol Bonosaro stated that "(1) Many Senior Executives believe that de facto quotas are being enforced that are affecting final performance ratings; (2) Senior Executives see no clear, consistent correlation between ratings and pay adjustments or how bonuses are distributed; and (3) Senior Executives doing a good job at the fully successful or higher level often receive no salary adjustment.... 40 percent see the system as having a negative effect on morale."

has been viewed more positively because of the different nature of the existing, decades-old Foreign Service personnel system.

Similarities to the Civil Service System

- Like the Civil Service system, the Foreign Service system currently has both levels or ranks, and within these levels there are in-grade step adjustments that periodically allow an individual's salary to increase without getting a promotion.
- The members of the Foreign Service regularly receive an Employment Cost Index (ECI) adjustment equivalent to their Civil Service counterparts. Foreign Service personnel serving in a Locality Pay area also receive a Locality Pay adjustment equal to that which Civil Service personnel receive in the same locale.

Differences to the Civil Service

- Foreign Service (FS) personnel carry their rank in person and not in position as do members of the Civil Service. Thus a member of the Foreign Service may be an 02 Officer successfully holding an 01 position, but receives the salary of an 02 officer, and when evaluated for a promotion, may or may not receive a promotion to an 01 level.
- FS personnel have their performance reviewed annually for promotions regardless of the position they hold.
- FS personnel are judged for promotions by Selection Boards of their colleagues and not by their supervisors, and the performance determinations are based on Employee Evaluation Reports (EER). The factors used to judge performance are negotiated with AFSA about a year ahead of the reviewing cycle, and those involved are supposed to be aware of the criteria upon which they will be judged. AFSA is present when management briefs the Selection Boards on the criteria and expectations are explained.
- Selection Boards make their recommendations for promotions to the Secretary, and, by law, the Secretary must follow those recommendations in the order presented. The Secretary can temporarily withhold the recommendations of a Selection Board under negotiated procedure but the final decision is left to a Selection Board for action.²³
- The FS is an up-or-out system with promotions required in terms of both "Time-in-Class" (TIC) and "Time-in-Service" (TIS). If an individual exceeds these limits, the individual is separated/retired from the Service. In general, because of this system, an individual is separated/retired from the Service when they are in their mid-50s as an 01 or 02 rank.
- Selection Boards are required to identify and designate those individuals who are ranked at the bottom 5% of their class. If an individual is "low ranked" twice in a

²³ Sec. 605, "Implementation of Selection Board Recommendations," P.L. 96-465, the Foreign Service Act of 1980 (22 U.S.C. 4005).

five-year period, and the employee had different rating officials in these two years of “low ranking,” that individual is referred to a Performance Standards Review Board for possible separation from the Service.²⁴ Beyond the low ranking procedure, however, the Selection Board also can refer others directly to the Performance Standards Review Board to be considered for separation from the Service.

The Foreign Service Compensation Reform Proposal

The Administration’s draft bill served as the basis for the bills H.R. 6060 as approved by HIRC and S. 3925 as introduced in the Senate during the 109th Congress. Both bills contained many similar ideas such as maintaining the nine classes but not having any intervening steps within those classes, or requiring that all salary adjustments be made on the basis of performance.

Important differences also existed between the two bills. However, on November 28, 2006, SFRC and HIRC leadership agreed to final language, the Foreign Service Compensation Reform proposal, and it was hoped that the proposal could be brought before the House and Senate under expedited procedures.

On November 30, 2006, Secretary of State Rice wrote to the House and Senate leadership expressing the Administration’s support for the provisions in the Foreign Service Compensation Reform title, and requesting prompt consideration and passage. She also stated that the Administration intends to fund this initiative within its FY 2007 budget request and out year estimates.

Foreign Service Compensation Reform: A Possible Alternative for the 110th Congress

If the 110th Congress chooses to address the elimination of the Foreign Service “service in Washington/service abroad” pay disparity, one possible approach would be to reintroduce the agreed upon authorization language of the Foreign Service Compensation Reform proposal. Such language would authorize the following:

- The President establishes, reviews on an annual basis, and periodically adjusts a new worldwide Foreign Service schedule consisting of nine classes with no intervening steps within each class. The annual review shall include consideration of pertinent economic measures, including changes in the Economic Cost Index (ECI). The new system becomes effective April 2008.
- The Secretary determines, on at least an annual basis, the size of any salary adjustment, expressed as a percentage or otherwise, which shall be paid to members of a salary class. The Secretary’s determination takes into account several factors, some of which are negotiated with AFSA as the recognized bargaining agent for the FS.

²⁴ Sec. 231(b), “Expedited Separation Out,” P.L. 105-277, the Foreign Relations Authorization Act of 1998 and 1999 (112 Stat. 2681-826).

- All subsequent salary adjustments are based on performance. If an individual is performing below his or her class, that individual receives no salary adjustment for that year.
- Selection Boards make recommendations to the Secretary regarding performance-based salary adjustments. As with promotions, AFSA negotiates the standards to be used by the Selection Boards in its performance determinations. Also, as in the case of promotion recommendations, the Secretary must follow the recommendations of the Selection Board, except in those cases and through procedures previously negotiated with AFSA.
- After conversion to the new system, members of the Foreign Service will not be eligible for the January ECI adjustment, locality pay, or the non-foreign area salary allowances.
- Each year, the Secretary must allocate funds to ensure that, in the aggregate, a minimum funding pool is available for performance-based adjustments that would not disadvantage employees due to the conversion to the new system. The funds to be allocated would be equal to or greater than the sum of an amount that would be required if the within grade step increase system still existed, plus amounts that would cover adjustments for an ECI increase that would be provided to the Civil Service under 5 U.S.C. 5303, and funds that would cover locality pay adjustments if the Foreign Service were still covered under 5 U.S.C. 5304.
- For those members of the Foreign Service posted in areas where locality pay is higher than the Washington, DC level or are receiving a non-foreign area allowance, the Secretary may establish a special transition rule to prevent those personnel from suffering a salary decrease. Once that person is rotated out of that assignment, however, the compensation level for that post will be set at the worldwide scale.
- A one year transition compensation system is established which maintains the current nine levels and 14 steps. Pay is tied to the January ECI increase and to locality pay adjustments as appropriate. Beginning in April 2007, those members of the Foreign Service who are posted in non-locality pay, non-foreign area allowance areas would receive a 9% pay increase (unless the President sets a lower level) in their salary levels.
- Management has as “Management Rights” certain authorities regarding performance pay provisions for members of the Senior Foreign Service, within-grade salary adjustments for those ranked 01 and below, salary adjustment for those not yet reviewed, and the allocation of funds for the pay-for-performance system. Designated as “Management Rights,” these authorities are not subject to negotiation with labor.²⁵
- The new system adds authorities to existing “Management Rights,” but it also recognizes the ability of management and labor to negotiate the procedures that management officials observe in exercising their rights, and an appropriate

²⁵ Sec. 1005(a) “Management Rights” in the *Foreign Service Act of 1980*, P.L. 96-465 (22 U.S.C. 4105(a)).

process to consider the situation of those adversely affected by management determinations.²⁶

- The list of issues excluded from the definition of “grievance” is amended and the provisions clarify that judgments with respect to pay determinations, within-grade pay adjustments, and the allocation determined to meet performance pay requirements are not subject to grievances.²⁷

The Resolution of House and Senate Differences

As the Foreign Service Compensation Reform proposal was being developed in the closing days of the 109th Congress, important differences between H.R. 6060 and S. 3925 were resolved for Republican and Democratic leaders on both HIRC and SFRC, the Administration, and AFSA to agree to common language. These compromises were made under a deadline in order to move the legislation to the floor before adjournment. If the Foreign Service compensation issue is addressed in the 110th Congress, some issues could be reopened for discussion.

Sole and Exclusive Discretion of the Secretary

The key difference between the HIRC-reported version of H.R. 6060 and S. 3925 was that H.R. 6060 provided the Secretary sole and exclusive discretion in making certain determinations, such as which basic salary rate within a band of rates of pay members of the Foreign Service would receive. S. 3925 did not include that discretionary authority.

Initially, the Administration insisted upon the phrase “in the Secretary’s sole and exclusive discretion.” Many who are concerned about employee rights questioned whether the phrase should be included in the legislation. They were concerned that it could be interpreted as curtailing traditional bargaining rights to negotiate procedures for the pay for performance system and appropriate arrangements for employees adversely impacted by the change to such a system. Those Members and Congressional staff asserted that it is contradictory to use the phrase “sole and exclusive” and then put limitations on the exercise of that discretion. They were concerned that in the end, “the Secretary’s sole and exclusive discretion” would have greater standing than the limitations if an issue had to be resolved in court.

The Foreign Service Compensation Reform provisions did not include the phrase “in the Secretary’s sole and exclusive discretion.” Instead, existing “Management Rights” authorities under the Foreign Service Act of 1980 were expanded to include certain salary adjustments and the allocation of funds to cover these adjustments. The existing provisions regarding “Management Rights” also continued providing for labor and management to negotiate procedures in making within grade salary adjustment determinations, and appropriate arrangements for those adversely affected by management decisions. These provisions further clarified that those areas reserved as “Management Rights” were not subject to a grievance.

²⁶ Sec. 1005 (b) “Management Rights” in the *Foreign Service Act of 1980*, P.L. 96-465 (22 U.S.C. 4105(b)).

²⁷ Sec. 1101(b) “Definition of Grievance,” in the *Foreign Service Act of 1980*, P.L. 96-465 (22 U.S.C. 4131(b)).

Frequency of the President's Review of the Foreign Service Schedule

H.R. 6060 as reported, and S. 3925 as introduced, required the President to establish and periodically adjust a new worldwide Foreign Service schedule. There was no agreed upon language in the bills as to how often the President would make adjustments.

The salary range of the class created by the President would establish a floor and ceiling for a person in a particular class. The concern was that the ceiling for that class could end up below what would be an inflation-adjusted level if the class ranges were not adjusted by the President frequently enough.

The provisions in the Foreign Service Compensation Reform proposal provided that the President establish, review on an annual basis, and periodically adjust a new worldwide Foreign Service schedule consisting of nine classes with no intervening steps within each class. The annual review would include consideration of pertinent economic measures, including changes in the Economic Cost Index.

Area of Continuing Concern Regarding the Legislative Proposal

Impact of the Loss of Automatic Pay Adjustments

Some members of the Foreign Service expressed concern that due to the lack of automatic increases in the new system because of the elimination of both the step adjustments and the ties to the ECI and Locality Pay increases, the Foreign Service compensation system could fall behind the Civil Service. The Foreign Service Compensation Reform proposal stated that the Secretary would annually allocate sufficient funds so that “employees, in the aggregate, are not disadvantaged in terms of the overall amount of pay available as a result of conversion to the new foreign service performance-based compensation system....”²⁸ Some were concerned that on an individual basis, without the automatic 3% step increase and the ECI adjustment, among other things, an individual could fall behind what he or she would have been receiving under a system that was tied to those automatic adjustments. Those supporting the performance-based system argued that the automatic increases were part of the problem of the old system that did not recognize performance.

Anticipated Cost

In its February 2008 budget submission, the Administration requested \$34.5 million to begin implementing the new system. During the 109th Congress with the lower budget request of \$32 million and the pre-January 2007 salary adjustment, the Congressional Budget Office (CBO) estimated that the costs resulting from the new Foreign Service Compensation System then being proposed would “cost about \$32 million in 2007, \$99 million in 2008, and an average of \$141 million a year over the 2009-2011 period, assuming appropriation of the necessary funds.”²⁹ The

²⁸ Representative Christopher Smith’s Sec. 101(d)(2) of the draft substitute amendment to bill, H.R. 6060, November 28, 2006 (1:16 P.M.) version, Washington, DC.

²⁹ U.S. Congress, House Committee on International Relations, “The Department of State Authorization Act of 2006,” Report to accompany H.R. 6060, 109th Cong. 2nd Sess., H.Rept. 109-706, September 29, 2006, p. 7.

estimate total, at that time, was \$554 million over five years. CBO's cost estimate would be higher for the 110th Congress to implement a similar program.

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