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FORM NO. 241
1 FEB 55

REPLACES FORM 36-8
WHICH MAY BE USED.

(47)

General Counsel

84-01392

OLL 84-2039/1
24 May 1984

MEMORANDUM FOR: DD/PERS/SP

VC/ALD/OGC

FROM:

[Redacted]

Legislation Division
Office of Legislative Liaison

SUBJECT:

OPM Draft Bill to Establish Special Rates of
Pay for Certain Federal Employees

1. Attached for your review and comment is an Office of Personnel Management (OPM) draft bill to expand the authority to establish special pay rates for certain Federal employees. The Office of Management and Budget has requested the views of our Agency on this draft bill by 13 June 1984.

2. This OPM draft bill would amend 5 U.S.C. §5303 to expand current special pay rate authority for employees paid under the General Schedule, and other statutory pay schedules. At present, special pay rates may be used only when the recruitment or retention problem is attributable to higher pay in the private sector. Under the OPM amendment, special pay rates could be used when the staffing problem is attributable to such factors as the undesirable geographic location or working conditions of a job. The OPM amendment also would permit special rates of up to 60 percent above the minimum rate of the regular rate range. Under current law, the special pay rates are limited to 30 percent above the regular rate range.

3. While the Agency is not covered by the statutory pay schedules amended by the OPM draft bill and consequently would not benefit directly from this proposal, the OPM draft bill is helpful nonetheless because it recognizes the difficulty of recruiting and retaining employees based on undesirable geographic location and/or working conditions. Consequently, I believe that the Agency should state its support for the OPM draft bill. In so doing, the Agency should also emphasize that the rationale for the OPM draft bill applies with equal, if not greater, force to recruitment and retention at the CIA. I have attached for your review a first draft of a letter making this point.

4. Please review the attached OPM draft bill and draft Agency response and provide me with your comments.

[Redacted]

Attachments

cc:

[Redacted]

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Central Intelligence Agency



Washington, D.C. 20505

Mr. James M. Frey
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This is in response to your request for the views of the Central Intelligence Agency (CIA) on an Office of Personnel Management (OPM) draft bill to amend the authority to establish special rates of pay for certain Federal employees. The Central Intelligence Agency supports the purpose of this draft bill.

The OPM bill would amend 5 U.S.C. §5303 to expand the current special pay rate authority to permit the use of this authority when staffing problems are attributable not only to higher private sector pay but also to the undesirable geographic location and/or working conditions of a job. The OPM amendment would also increase the permissible range of special pay rates to a maximum of 60 percent of the regular rate range.

Although the CIA is not covered by the special pay authority amended by the OPM draft bill and consequently would not directly benefit from its enactment, the CIA supports the purpose of this bill. This bill recognizes that undesirable geographic location or working conditions of a job can hinder the recruitment and retention of personnel. Indeed, CIA believes that these, and related, factors play an even more significant role in recruitment and retention of the young, highly motivated, top-quality personnel needed at the CIA. While this legislation does not redress CIA's needs in this area, it is gratifying, nonetheless, to see legislation of this type.

We appreciate the opportunity to comment upon this draft legislation.

Sincerely,



United States
**Office of
Personnel Management**

Washington, D.C. 20415

In Reply Refer To:

Your Reference

MAY 11 1981

Honorable David A. Stockman
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Stockman:

The Office of Personnel Management has prepared the enclosed legislative proposal, "To amend title 5, United States Code, to expand the authority to establish special rates of pay for certain Federal employees, and for other purposes."

This proposal would broaden the current authority for special rates of pay when the Government experiences difficulty in recruiting or retaining well-qualified employees due to higher pay rates in private enterprise. The proposal would allow such special rates in a greater variety of circumstances and would increase the available rate range for such special rates when necessary.

We request your advice as to whether there would be any objection from the standpoint of the Administration's program to the submission of this proposal to the Congress.

Sincerely,



Donald J. Devine
Director

Enclosure



United States
**Office of
Personnel Management**

Washington, D.C. 20415

In Reply, Refer To

Your Reference

Honorable George Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

The Office of Personnel Management submits herewith a legislative proposal, "To amend title 5, United States Code, to expand the authority to establish special rates of pay for certain Federal employees, and for other purposes."

This proposal would broaden the current authority in section 5303 of title 5, United States Code, for setting special rates of pay to resolve recruitment or retention problems for employees paid under the General Schedule and certain other white-collar pay systems.

The current special pay rate authority is too limited in the circumstances in which special pay rates may be authorized, and too restrictive in the amount above the regular rates that the special rates may be set. Owing to these limits, the Government has sometimes been unable to adequately address significant recruitment and retention problems for much-needed occupations.

The current authority may be used only when the recruitment or retention problem is attributable to higher pay in the private sector for the job in question. However, many significant staffing problems are caused not by pay but by such factors as the geographic location or working conditions of the jobs involved. The proposal would allow special rates to be established in any situation where they are needed and proper to resolve a significant staffing problem. Under the revised authority, OPM would still have to review and approve individual requests from Federal agencies for special rates, and would continue to require that the agencies have made an adequate effort to recruit well-qualified candidates and have given adequate attention to working conditions and other factors that may be harming recruitment or retention.

The proposal would also expand the pay setting flexibility of the current law by making available a wider range of permissible rates for special rates situations. Under current law, special rates can only exceed the regular General Schedule rates by 30 percent. Under the proposal, special rates could go as much as 60 percent above the regular rates if necessary to deal with a particularly severe recruitment or retention problem.

Honorable George Bush

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Expansion of the current special rate authority in these respects will enable the Government to be more responsive to the wide variety of staffing problems, and more flexible in setting needed special pay rates. The Office of Personnel Management believes that enactment of this proposal would better equip the Government to recruit and retain well-qualified employees in especially hard-to-fill and much-needed occupations.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this proposal.

A similar letter is being sent to the Speaker of the House of Representatives.

Sincerely,

Donald J. Devine
Director

STATEMENT OF PURPOSE AND JUSTIFICATION

To accompany a draft bill

"To amend title 5, United States Code, to expand the authority to establish special rates of pay for certain Federal employees, and for other purposes."

This proposal would broaden the current authority to establish special rates of pay when necessary to resolve recruitment or retention problems for employees paid under the General Schedule or certain other white-collar pay systems.

The current special pay rate authority is too limited in the circumstances in which special pay rates may be authorized, and is also too restrictive in the amount above the regular rates that the special rates may be fixed. Owing to these limits, the Government has sometimes been unable to adequately address very significant recruitment and retention problems. The proposal would expand the authority in both of these respects, in order to make it more responsive to the variety of staffing problems, and more flexible in setting needed pay rates.

The current authority may be used only when the recruitment or retention problem is attributable to higher pay in the private sector. However, many significant Federal staffing problems are not caused by higher pay of private sector employees but by the geographic location or working conditions of the job involved.

Under the revision, special rates would be able to be authorized in any situation in which they are needed and proper to remedy a significant recruitment or retention problem, not only in instances where private sector pay competition is the cause of the staffing problem. Thus, the revised authority could be applied where the staffing problem is attributable to such factors as the relatively undesirable location or working conditions of the job. OPM would still have to review and approve individual requests for special rates and would continue to require that the agency have made an adequate effort to recruit well-qualified candidates and have given adequate attention to working conditions and other factors that affect recruitment or retention. As is now the case, OPM would carefully limit the special rates approved to occupations and areas where their use is absolutely necessary.

Currently, the special pay rate authority allows the minimum of the special rate range to be fixed no higher than the maximum rate (step 10) of the regular rate range. In effect, this allows the special rates to be fixed no more than 30 percent above the the regular rates. For some especially hard-to-fill occupations and in some geographic areas, the current special pay rate flexibility is not great enough to allow the Government to effectively recruit and retain well-qualified employees. The proposal would expand the special rate authority to make available an

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additional width of the rate range for necessary special rates. Thus, the minimum rate of the special rate range could be fixed no higher than about 60 percent above the minimum rate of the regular rate range. Of course, this expanded flexibility would be used only to the extent necessary.

With these changes, the Government will be much better equipped to recruit and retain well-qualified employees in especially hard-to-fill and much-needed occupations.

A BILL

To amend title 5, United States Code, to expand the authority to establish special rates of pay for certain Federal employees, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 5303 of title 5, United States Code, is amended--

(1) in subsection (a)--

(A) by striking out "pay rates in private enterprise for one or more occupations in one or more areas or locations are so substantially above the pay rates of statutory pay schedules as to handicap significantly the";

(B) by inserting before the word "he" the following, "is significantly handicapped,";

(C) by striking out "for the areas" and inserting in lieu thereof ", as appropriate, for one or more areas";

(D) by inserting after "level" at the end of the second sentence the following: "by more than the amount by which that maximum rate of pay exceeds the minimum rate of pay for that grade or level"; and

(2) by adding at the end thereof the following new subsection:

"(e) No rate of basic pay established under this section may exceed the rate of basic pay that is payable for level II of the Executive Schedule."

(b) Section 5308 of title 5, United States Code, is amended by striking out "Pay" and inserting in lieu thereof the following: "Except as provided by section 5303 of this title, pay".

(c) Section 5373 of title 5, United States Code, is amended--

(1) by striking out "or" after paragraph (3);

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(2) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; or"; and

(3) by adding after paragraph (4) the following new paragraph:
“(5) section 5303 of this title.”.

Sec 2. The amendments made by this Act shall take effect on the date of enactment of this Act.

SECTION-BY-SECTION ANALYSIS

To accompany a draft bill

"To amend title 5, United States Code, to expand the authority to establish special rates of pay for certain Federal employees, and for other purposes."

The first section of the bill consists of amendments to title 5, United States Code.

Subsection (a) amends section 5303 of title 5, United States Code, which allows the President to establish special rates of pay for certain white-collar Federal employees when private sector pay for an occupation is so substantially above the Government's pay rates that the Government's recruitment or retention of well-qualified individuals in the occupation is significantly handicapped. The revision broadens the authority to allow special rates where the cause of the significant recruitment or retention problem is other than pay differences, so that, for example, such causative factors as working conditions and geographic location could be considered. In addition, the amendments increase the pay range available for fixing needed special rates. The current authority limits the special rate minimum to no more than the maximum, step 10, of the regular rate range. The revision provides an additional width of the rate range, so that the special rate minimum may exceed regular step 10 by as much as that step exceeds regular step 1. A new subsection is also added to section 5303 to limit any special rate authorized to not more than the rate of basic pay for level II of the Executive Schedule.

Subsection (b) amends section 5308 of title 5 to conform with the new provision limiting special rates to the rate for level II of the Executive Schedule.

Subsection (c) amends section 5373 of title 5, United States Code, concerning the limitation on pay fixed by administrative action, to conform with the new provision limiting special rates to the rate for level II of the Executive Schedule.

Section 2 provides that the amendments made by this Act shall take effect upon enactment.