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Personnel Management Flexibility for the Internal Revenue Service: P.L. 105-206

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ABSTRACT

This report analyzes the personnel management flexibility provisions of P.L. 105-206, a law restructuring and reforming the Internal Revenue Service. Among the issues discussed are performance management, staffing, demonstration projects, critical pay authority, position classification, voluntary separation incentive payments, termination of employment for misconduct, and employee training. This report will be updated as necessary. For more from CRS, see CRS Report 97-984E.

Personnel Management Flexibility for the Internal Revenue Service: P.L. 105-206

Summary

Legislation authorizing personnel flexibilities for the Internal Revenue Service (IRS) has been enacted by the 105th Congress. The Internal Revenue Service Restructuring and Reform Act, H.R. 2676, passed the House of Representatives on November 5, 1997, and the Senate on May 7, 1998. The House agreed to the conference report accompanying the legislation on June 25, 1998, and the Senate agreed to the conference report on July 9, 1998. President William Clinton signed the bill on July 22, 1998, and it became P.L. 105-206. The legislation is based on the report of the National Commission on Restructuring the IRS, which recommended that the IRS and the Department of the Treasury be given more flexibility to hire qualified personnel needed to implement modernization. Both the House and Senate versions drew on two sets of identical bills, H.R. 2292/S. 1096 and H.R. 2428/S. 1174, which had been introduced earlier, for a number of their provisions. Congressional action occurred following a series of hearings. Those which included discussion of the personnel flexibility provisions were conducted by the Senate Committees on Finance and Governmental Affairs and the House Subcommittee on Government Management, Information, and Technology.

The IRS Commissioner testified in favor of additional flexibilities, including those on compensation and workforce restructuring. Former IRS Commissioners and representatives of finance-related professional organizations also testified, and, while generally supportive of the personnel flexibilities, encouraged the committee to review proposed provisions on union authority, performance-based pay, and hiring, among others. The Office of Management and Budget, Office of Personnel Management (OPM), and General Accounting Office likewise testified in support of personnel flexibilities, but emphasized that OPM oversight should be maintained.

The American Bar Association favored hiring and pay flexibilities to attract private sector individuals into government. The American Institute of Certified Public Accountants suggested that some positions now reserved for career civil servants should be open to professional appointees. The National Academy of Public Administration emphasized that the oversight processes of the Merit Systems Protection Board, Office of Special Counsel, and OPM should be retained and that all employees below the IRS Commissioner should be selected on a non-political and non-partisan basis and strictly on the basis of merit and qualifications. The National Treasury Employees Union supported the legislation.

P.L. 105-206 provides personnel flexibilities relating to performance management, staffing, and demonstration projects which test personnel management policies or procedures. It also includes provisions which were in the Senate-passed, but not the House-passed bill, including those on critical pay authority, recruitment, retention, and relocation incentives (and relocation expenses, added in the conference committee), performance awards for senior executives, limited appointments to career reserved Senior Executive Service positions, details, classification and pay, voluntary separation incentive payments, termination of employees for misconduct, evaluation of IRS employees, and employee training.

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Introduction

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The IRS Commissioner testified in favor of additional flexibilities, including those on compensation and workforce restructuring. Former IRS Commissioners and representatives of finance-related professional organizations also testified, and, while generally supportive of the personnel flexibilities, encouraged the committee to review proposed provisions on union authority, performance-based pay, and hiring, among others. The Office of Management and Budget, Office of Personnel Management (OPM), and General Accounting Office likewise testified in support of personnel flexibilities, but emphasized that OPM oversight should be maintained.

The American Bar Association favored hiring and pay flexibilities to attract private sector individuals into government. The American Institute of Certified Public Accountants suggested that some positions now reserved for career civil

¹ See: U.S. Congress, National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS* (Washington: June 25, 1997); U.S. Library of Congress, Congressional Research Service, *Restructuring the Internal Revenue Service in the 105th Congress: the conference report*, CRS Rept. 97-984E, by Sylvia Morrison (Washington: updated July 10, 1998), 5p.; and Ferris, Nancy, "Oversight Overkill," *Government Executive*, vol. 30, May 1998, pp. 35-39.

servants should be open to professional appointees. The National Academy of Public Administration emphasized that the oversight processes of the Merit Systems Protection Board, Office of Special Counsel, and OPM should be retained and that all employees below the IRS Commissioner should be selected on a non-political and non-partisan basis and strictly on the basis of merit and qualifications. The National Treasury Employees Union supported the legislation.

Background

The Internal Revenue Service Restructuring and Reform Act, H.R. 2676, passed the House of Representatives, amended, by a 426-4 vote (Roll No. 577) on November 5, 1997. Earlier, the bill, which had been introduced by Representative Bill Archer, Chairman of the Ways and Means Committee, on October 21, 1997, was reported from the Ways and Means Committee on October 31, 1997 (H. Rept. 105-364 Part I). It was discharged from the Government Reform and Oversight and Rules Committees on the same day. Title I, Subtitle B, Section 111 of H.R. 2676 authorized personnel flexibilities for the IRS, to be effective upon enactment of the act, by amending Part III of title 5, United States Code, to add a new subpart, chapter 93.

The House Ways and Means Committee report accompanying H.R. 2676 stated that the bill “builds on the Commission’s report and recommendations and the provisions of H.R. 2292.” In discussing the need for personnel flexibilities, the committee report noted that existing personnel rules and procedures on hiring, evaluating, promoting, and firing employees are subject to extensive regulation. Further, according to the committee, the risk-averse nature of the IRS provides minimal incentive for managers or front-line employees to achieve the agency’s mission, and stifles creativity, innovation, and quick problem resolution. The committee stated its intention that the personnel flexibilities lead to increased accountability by IRS managers and employees and to increased focus on IRS mission, goals, and objectives.²

The Senate passed its version of H.R. 2676, amended, by a 97 to 0 vote (Vote No. 126) on May 7, 1998. This action followed Finance Committee mark-up of the bill on March 31, 1998, during which Senator William Roth's amendment in the nature of a substitute, as amended was adopted, and reporting of the bill (S. Rept. 105-174), as amended, on April 22, 1998. Title I, Subtitle C, Sections 1201 to 1205 authorized personnel flexibilities for the IRS by amending Part III of title 5, United States Code, to add a new subpart, chapter 95. The flexibilities are effective upon enactment of the act, except for the provisions on employee training, which are effective no later than 90 days after enactment. According to the report accompanying the bill, the personnel flexibilities are needed because:

² U.S. House Committee on Ways and Means, *Internal Revenue Service Restructuring and Reform Act of 1997*, Report to Accompany H.R. 2676, H. Rept. 105-364 Part 1, 105th Cong., 1st Sess., (Washington: GPO, Oct. 31, 1997), pp. 45-46. (Hereafter referred to as *Ways and Means Committee Report*.)

The Committee believes that as part of restructuring the IRS, the Commissioner should have the ability to bring in experts and the flexibility to revitalize the current IRS workforce. The current hiring practices often inhibit the ability of the Commissioner to change the IRS' institutional culture. Commissioner Rossotti has indicated that in order to maximize efforts to transform the IRS into an efficient, modern and responsive agency, the ability to recruit and retain a top-notch leadership and technical team is critical. The Committee believes the IRS needs the flexibility to recruit employees from the private sector, to redesign its salary and incentive structures to reward employees who meet their objectives, and to hold non-performers accountable. Personnel and pay flexibilities are necessary prerequisites for larger fundamental changes in the IRS. The Committee wants to support the Commissioner's initiatives to reposition the current IRS workforce as part of implementing a new organization designed around the needs of taxpayers.³

When Senate consideration of the committee amendment, in the nature of a substitute for H.R. 2676, began on May 4, 1998, Senator William Roth, Chairman of the Finance Committee, spoke of giving the Commissioner "the tools necessary to bring the IRS into the next century." According to Senator Roth, "One of the problems is that the Commissioner does not have the kind of authority that is necessary to eliminate those managers who contaminate the culture of the agency. And the Commissioner does not have sufficient authority to hire those who will work toward making the kinds of changes that are necessary. This legislation gives the Commissioner the tools he needs to hire top-flight managers who are experts in their field."⁴

Among the tools provided to the Commissioner, said Senator Roth, are "the wherewithal to transform the agency's workforce by providing bonuses and other incentives, and to sufficiently discipline employees whose inappropriate actions are a plague on the agency." Another change in personnel law emphasized by Senator Roth was the legislation's prohibition on "the use of enforcement statistics to evaluate any IRS employee, not merely front line collection employees and their supervisors." Senator Roth identified the use of enforcement statistics as "one of the most troubling issues raised in our September hearings," noted that the IRS Chief Inspector had substantiated the Finance Committee's findings about their use, and said that their continued use "mocks Congress" and "demonstrates that the IRS believes it is above the law."⁵

Senator Richard Bryan also emphasized the improper use of enforcement statistics and referred to their use as a "so-called quota system." According to him, "in the district in Nevada, such quotas were in fact being used, although they were not described as quotas. From all appearances, those who are part of the evaluating process could, in my judgment, have reached no other conclusion but that their

³ U.S. Senate Committee on Finance, *Internal Revenue Service Restructuring and Reform Act of 1998*, Report to Accompany H.R. 2676, S. Rept. 105-174, 105th Cong., 1st Sess., (Washington: GPO, Apr. 22, 1998), pp. 34-35. (Hereafter referred to as *Finance Committee Report*.)

⁴ *Congressional Record*, daily edition, vol. 144, May 4, 1998, pp. S4182-S4183.

⁵ *Ibid.*, p. S4183.

performance would be judged by the amount of money that would be extracted from each taxpayer who came to the office by reason of some conflict or disagreement as to the amount of revenue that the taxpayer owed." Saying that this "is inherently wrong and unfair," Senator Bryan said that "the IRS revenue officer looks at the taxpayer not as a consumer, one who has a problem that needs to be addressed, but basically as an individual that the revenue agent must collect a certain amount of taxes from in order to be evaluated positively by his or her superiors for purposes of tenure or promotion within the system."⁶

Senator Daniel Moynihan, Ranking Member on the Finance Committee, noted the various personnel flexibilities in the bill. Focusing on the critical pay authority, he said that it is "[i]n recognition of the great disparity between the salary structures in Government and those in the private sector on parallel activities," and "provides a streamlined process by which the Commissioner can appoint up to 40 individuals designated critical technical and professional positions for up to 4-year terms at an annual compensation equivalent to the pay of the Vice President, currently \$175,400." Further explaining the provision, he said that, "The Commissioner can go out and find this person to do this particular job and make it a 4-year appointment. Persons who obviously are in the private sector will come into Government at not too large a sacrifice, and for most it would be a considerable one. I do not want to use the word "sacrifice"-lachrymose, perhaps-just a large reduction in income for the kinds of persons that will be sought after, but not so large that they cannot manage the transition."⁷

The conference committee report (H. Rept. 105-599) accompanying H.R. 2676 was filed on June 24, 1998.⁸ The next day, the House agreed to the conference report by a 402-8 vote (Roll No. 273), exactly one year after the National Commission on Restructuring the IRS issued its report to Congress. The Senate agreed to the conference report by a 96-2 vote (Roll. No. 189) on July 9, 1998. President William Clinton, when signing the bill on July 22, 1998, said it would help the IRS to build for the 21st. Century. It became P.L. 105-206 (112 Stat. 685).

In remarks during the House consideration of the conference report, Representative Rob Portman, co-chairman of the National Commission, noted the following with regard to the personnel flexibilities provisions:

Very importantly, the legislation also reforms the IRS management structure to increase accountability and performance. It gives the IRS Commissioner new personnel flexibilities to drive change through the agency, such as the ability to bring in experts from the private sector at a high level in the IRS, the ability to reward IRS employees for taxpayer service, and fire employees who provide

⁶ *Ibid.*, p. S4189.

⁷ *Ibid.*, p. S4185.

⁸ U.S. House *Internal Revenue Service Restructuring and Reform Act of 1998*, Conference Report to Accompany H.R. 2676, H. Rept. 105-599, 105th Cong., 2d Sess., (Washington: GPO, June 24, 1998), 368p. (Hereafter referred to as *Conference Report*.)

inferior service. It also increases the accountability of IRS employees and managers in the collection area to stop the tactics of intimidation.⁹

Senate discussion of the conference report covered two days, July 8 and 9, 1998, and 61 pages of the *Congressional Record*. Senators addressed their intent with regard to the provisions on personnel flexibilities in H.R. 2676. These remarks are excerpted below.

Senator William Roth:

The second principle incorporated in this legislation is to hold IRS employees accountable for their actions and to reward those who treat the taxpayer fairly. One of the problems we discovered in our hearings is that the Commissioner did not have the kind of authority that is necessary to streamline management and remove managers who contaminate the culture of the agency. Additionally, we found that the Commissioner does not have sufficient authority to hire those who will work toward making the kinds of changes that are necessary. This legislation changes that. It provides the Commissioner the tools he needs to hire top-flight managers who are experts in their field. It gives the Commissioner the wherewithal to transform the agency's work force by providing bonuses and other incentives, and to sufficiently discipline employees whose inappropriate actions harm the image and effectiveness of the agency. ... As I have said before, an environment that allows employees guilty of these kinds of behaviors to continue to work within the system is not acceptable to me, the Finance Committee, or to the American people. We have heard enough excuses. The time has come for change. And this legislation allows needed changes to take place.¹⁰

Senator Daniel Moynihan:

An ongoing problem is how to attract top executives to a government activity which has its counterpart in the private sector where compensation—if I may use that term—is often very high, if not indeed exorbitant, because the amounts of money involved are very large. So to recognize the disparity between government and private sector salary structures, the conference agreement adopted the Senate provision authorizing the appointment by the Commissioner of up to 40 persons to critical positions for 4-year terms with an annual compensation equivalent to the pay of the Vice President of the United States; that is to say, currently \$175,400. These will be persons chosen for their particular skills. They will be there for a 4-year period. They will be departing the private sector for an interval of public service at something approaching the salaries they normally enjoy. Other provisions will permit the establishment of a new performance management system focused on individual accountability, and allow for the creation of an incentive award system bringing the IRS into contemporary management modes—out of the model of the civil service that was developed a century ago when we set up the Civil Service Commission, again

⁹ *Congressional Record*, daily edition, vol. 144, June 25, 1998, p. H5354.

¹⁰ *Congressional Record*, daily edition, vol. 144, July 8, 1998, pp. S7622-S7623.

establishing grades for employees with salaries that were low, but careers that were guaranteed for life.¹¹

Senator Phil Gramm:

The third and, I believe, final major section of the bill has to do with the flexibility of the Internal Revenue Service hiring people. Under our current system, basically, you have to be in the Internal Revenue Service for 25 years to have a major supervisory, decision-making post. One of the things we have done in this bill is waive a number of the general procedures under civil service. We are allowing the Internal Revenue Service to go outside the system and bring in private expertise-some on a permanent basis, some on a temporary basis-and in the process, we are bringing in new people with private experience, many of whom will go back into the private sector. The net result, I believe, will be a more efficient and basically a more balanced Internal Revenue Service.¹²

Senator Richard Bryan:

I believe the power that we invest in the new Commissioner to make changes at the top level of management will also have some far-reaching consequences. It is clear that those who are steeped in this corporate culture, this deeply ingrained practice that I and others who have spoken on this issue have described, simply are unable to make that change, that the frame of mind that allows that to continue has been such a part of the daily operational conduct of the agency that in some instances at the top level individuals simply have to be replaced. ... So the powers that we give him to make those kinds of changes, which no previous Commissioner has had, I think will help to send a very powerful message at the top that this is not business as usual and that we want not only a more efficient and a more responsive agency, but we want an agency that eliminates the kinds of abuses that were provided during the course of the hearings.¹³

Senator Bob Graham:

A second aspect of the old IRS was its evaluation of employees based on how much money was collected. This is analogous to a police department which requires its officers to issue so many parking tickets or speeding tickets per day. It changes the priorities, it changes the perspective, it changes the public respect of the organization. I am pleased that the new IRS will evaluate employees based on how they deal with taxpayers as well as on their collection efforts.¹⁴

Senator Max Baucus:

The bill creates much more personnel flexibility, making it easier for the new Commissioner, ... giving him flexibility to reward employees doing well. I think this flexibility will help the IRS attract competent people, people who are technically competent and management experts. You get what you pay for. If

¹¹ *Ibid.*, p. S7625.

¹² *Ibid.*, p. S7629.

¹³ *Ibid.*, p. S7635.

¹⁴ *Ibid.*, pp. S7641-S7642.

you want to get good people, you have to be able to pay them well and you have to give them the wherewithal to do the job right. There has not been sufficient flexibility to this point in the IRS.¹⁵

Senator Michael Enzi:

In requiring the IRS to collect allegations and document cases of employee misconduct and report this misconduct to Congress every year, the IRS reform bill requires the IRS to investigate itself and answer to Congress for any misconduct of IRS employees.¹⁶

Senator Lauch Faircloth:

My message to the unions and to the union representative and the rest of the IRS personnel and bureaucracy is this: Do not oppose IRS reform, but accept and take it and get going with making it the law of the land. The Congress and the American people have spoken, and this agency is going to be cleaned up with or without your acquiescence. If you try to undermine these reforms, there will be more legislation and stricter legislation in future sessions of the Congress. In summary, let me say to the IRS personnel and its representatives and the entire IRS bureaucracy that Congress is very closely observing the actions of the IRS in how it deals with the American people. Do not oppose us, support us, and we will have a great revenue collection service. Do not go back to the old ways, but move into the new law and do it with enthusiasm.¹⁷

Senator Connie Mack:

Congress cannot let up on the IRS. We must follow through on the misconduct exposed by the bright spotlight of our oversight hearings. I am calling on Commissioner Rossotti to testify again before the Finance Committee, prior to the end of this legislative session, to bring us up to date on the disciplinary actions taken as a result of our hearings. ... We cannot fall into the trap of thinking that things are fixed at the IRS just because this reform bill will soon become law. The Senate has an obligation to continue its vigilance over the actions of the IRS, to follow through on the abuses that have been exposed and root out those that perpetuate. Experience has shown conclusively that the IRS cannot be trusted to police itself. ... Let no defender of the status quo at the Service be mistaken on this point: This is the beginning, not the end, of our reform efforts.¹⁸

Senator Pete Domenici:

¹⁵ *Ibid.*, p. S7644.

¹⁶ *Ibid.*, p. S7648.

¹⁷ *Ibid.*, p. S7649.

¹⁸ *Ibid.*, p. S7666-S7667.

The bill requires the IRS to place a priority on employee training and adequately fund employee training programs.¹⁹

Senator Fred Thompson:

The conference agreement also grants significant new personnel authorities to the IRS. These new authorities are intended to help Commissioner Rossotti bring in high-quality private sector professional, administrative and technical personnel to address the many management problems facing the agency. These authorities break new ground in terms of federal personnel pay and management policies. By granting these authorities to the IRS, Congress will have high expectations that the reform agenda is indeed carried through.²⁰

Several Senators, in their remarks on the conference agreement, spoke against the IRS practice of using a quota system to determine performance ratings and promotions for employees, which P.L. 105-206 prohibits,²¹ and mentioned the law's requirement that the IRS terminate employees who violate the law, and report employee misconduct to Congress.²²

Both the House and Senate versions of H.R. 2676 drew on two sets of identical bills, H.R. 2292/S. 1096 and H.R. 2428/S. 1174, which had been introduced earlier, for a number of their provisions. H.R. 2292, introduced by Representatives Rob Portman and Benjamin Cardin on July 30, 1997, was referred to the House Committee on Ways and Means and, in addition, to the Committees on Government Reform and Oversight, the Budget, and Rules. In his statement upon introducing the bill, Representative Portman said that, "We strengthen the ability of the commissioner to make real changes at the IRS by providing the hiring flexibility to recruit high-quality executives."²³ S. 1096, introduced by Senators Robert Kerrey and Charles Grassley on July 31, 1997, was referred to the Senate Committee on Finance. Representative Portman and Senator Kerrey were co-chairmen of the National Commission on Restructuring the IRS. Senator Grassley was also a member of the commission. Title I, Subtitle B, Section 111 of the bills would have

¹⁹ *Congressional Record*, daily edition, vol. 144, July 9, 1998, p. S7719.

²⁰ *Ibid.*, p. S7721.

²¹ *Congressional Record*, daily edition, vol. 144, July 8, 1998. See: Senator Reid at p. S7633, Senator Bryan at p. S7635, Senator Enzi at p. S7648, Senator Kyl at p. S7658, Senator Leahy at p. S7664, Senator Snowe at p. S7665, Senator Mack at p. S7666, and Senator Kerry at p. S7667.

²² *Ibid.* See: Senator Roth at pp. S7622-S7623, Senator Gramm at pp. S7629-S7630, Senator Kerrey at p. S7631, Senator Reid at p. S7633, Senator Grassley at p. S7646, and Senator Snowe at p. S7665. *Congressional Record*, daily edition, vol. 144, July 9, 1998. See: Senator Domenici at p. S7718, Senator Dodd at p. S7722, and Senator Kohl at p. S7722.

²³ Hon. Rob Portman, Introduction of H.R. 2292-The Internal Revenue Service Restructuring and Reform Act of 1997, *Congressional Record*, daily edition, vol. 143, Aug. 1, 1997, p. E1606.

authorized personnel flexibilities for the IRS by amending part III of title 5, *United States Code*, to add a new subpart I, chapter 93.

H.R. 2428, introduced by Representatives Charles Rangel, William Coyne, Steny Hoyer, Henry Waxman, and Robert Matsui on September 8, 1997, was referred to the House Committees on Ways and Means and Government Reform and Oversight. Representatives Coyne and Matsui were members of the National Commission on Restructuring the IRS. Representative Rangel, Ranking Member on the Ways and Means Committee, in introducing the bill, stated that it, “provides the Treasury Department and the IRS with the ability to put together and hire at the IRS one of the best management teams in the country. Highly skilled, top talent would be able to join the IRS at pay levels commensurate with experience and expertise. Performance-based incentive pay arrangements and new demonstration management systems could be set up at the IRS, as ways to insure that management goals are met, to hold employees accountable, and to reward quality service.”²⁴ S. 1174, introduced by Senator Daniel Moynihan, by request, on September 12, 1997, was referred to the Senate Committee on Finance. Title III, Section 301 of the bills would have provided personnel flexibilities for the IRS by amending part III of title 5, United States Code, to add a new subpart I, chapter 95. Table 1 in the Appendix includes an overview of the various provisions in both sets of identical bills. (Generally, both sets of legislation would have provided personnel flexibilities relating to performance management, staffing, demonstration projects which test personnel management policies or procedures, classification and pay, and recruitment, retention, and relocation incentives. H.R. 2428/S. 1174 also included critical pay authority, performance awards for senior executives, and limited appointments to career reserved Senior Executive Service (SES) positions.)

P.L. 105-206 provides personnel flexibilities relating to performance management, staffing, and demonstration projects which test personnel management policies or procedures. It also includes provisions which were in the Senate-passed, but not the House-passed bill, including those on critical pay authority, recruitment, retention, and relocation incentives (and relocation expenses, added in the conference committee), performance awards for senior executives, limited appointments to career reserved SES positions, details, classification and pay, voluntary separation incentive payments, termination of employees for misconduct, evaluation of IRS employees, and employee training.

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"The conference agreement followed the Senate amendment with modifications," according to the conference committee report.²⁵ The provisions of P.L. 105-206 are discussed below.

²⁴ Remarks of Representative Charles Rangel on The Internal Revenue Service Improvement Act of 1997, *Congressional Record*, daily edition, vol. 143, Sept. 8, 1997, p. H6999. The remarks of Representative William Coyne appear on the same page.

²⁵ *Conference Report*, p. 233.

General Requirements for Personnel Flexibilities

Section 9501 of P.L. 105-206 provides that the personnel flexibilities shall be exercised in a manner consistent with 5 U.S.C. chapter 23 on merit system principles and prohibited personnel practices; provisions on veterans preference; and, except as otherwise specifically provided, 5 U.S.C. 5307 relating to the aggregate limitation on pay and 5 U.S.C. chapter 71 relating to labor-management relations. The flexibilities shall also be subject to 5 U.S.C. 1104(b) and (c) relating to delegation of authority for personnel management, as though such authorities were delegated to the Secretary of the Treasury. The Secretary shall provide OPM with any information that it requires in carrying out its responsibilities.

Employees within a unit to which a labor organization is accorded exclusive recognition shall not be subject to the exercise of any flexibility unless the IRS and the labor organization enter into a written agreement which specifically provides for the exercise. The flexibilities relate to streamlined demonstration project authority, the general workforce performance management system, classification and pay, and staffing. The written agreement may be imposed by the Federal Services Impasses Panel.

Section 9301 of H.R. 2676, as passed by the House, would have provided that the personnel flexibilities be exercised in a manner consistent with 5 U.S.C. chapter 23 on merit system principles and prohibited personnel practices and provisions on veterans preference (outside of those in chapter 93 of H.R. 2676). Employees within a unit to which a labor organization is accorded exclusive recognition would not have been subject to the exercise of any flexibility unless the IRS and the labor organization entered into a written agreement permitting such exercise. A written agreement need not have been a collective bargaining agreement and could not have been an agreement imposed by the Federal Services Impasses Panel. The written agreement could have addressed any of the flexibilities on performance management, staffing, and demonstration projects, and any matter proposed to be included in a demonstration project.

In its report accompanying H.R. 2676, the House Ways and Means Committee expressed its belief that IRS employees should be involved in the reinvention of the bureaucracies in which they work. The extent of this involvement was characterized by the committee: "Accordingly, the bill provides that the flexibilities provided to the IRS must be negotiated between the IRS and the employees' union. Such negotiations need not address all of the flexibilities provided under this provision. The written agreement should be a consensus document, but is not a contract that can be appealed to the federal services impasses panel, or otherwise create additional appeal rights."²⁶

According to the Internal Revenue Service, as of January 31, 1998, its workforce totaled 118,213. Of this total, 95,048 employees or 80.4% of the workforce were in the bargaining unit. Non-bargaining unit employees totaled 22,922 or 19.4% of the workforce. The IRS has 243 members of the SES who make

²⁶ *Ways and Means Committee Report*, p. 46.

up 0.2% of the workforce. Four of the personnel flexibilities apply to the SES and non-bargaining unit members as follows: pay authority for critical positions, streamlined critical pay authority, performance awards for the SES, and limited appointments to career reserved SES positions. The recruitment, retention, and relocation flexibility applies equally to all employees. Five flexibilities apply equally to bargaining unit and non-bargaining unit employees, but not to the SES. These flexibilities relate to streamlined demonstration project authority, voluntary separation incentives, and the general workforce systems on performance management, classification and pay, and staffing. The National Treasury Employees Union (NTEU), which represents IRS workers, essentially has veto rights over establishment of personnel flexibilities. If an impasse occurred between the IRS and NTEU, the flexibilities could not be implemented until the differences were resolved.²⁷

Flexibilities Relating to Performance Management

Performance Management System. Section 9508(a)(b) of P.L. 105-206 authorizes the Secretary of the Treasury, within one year after the date of enactment of this section, to establish a performance management system for the IRS in lieu of a system established under 5 U.S.C. 4302.²⁸ The system will maintain individual accountability by establishing one or more retention standards for each employee related to his/her work and expressed in terms of individual performance. The standards will be communicated to employees. Periodic determinations of whether each employee does or does not meet his/her established retention standards will be made. With respect to any employee whose performance does not meet established retention standards, actions, including denying basic pay increases, promotions, and credit for performance during a reduction in force, could be taken. One or more of the following actions could also be taken: reassignment, action under 5 U.S.C. chapter 43 on performance appraisal or 5 U.S.C. chapter 75 on adverse actions, and any other appropriate action to resolve the performance problem.

The performance system will provide for establishing goals or objectives for individual, group, or organizational performance (or any combination thereof) that are consistent with IRS performance planning procedures, including those established under the 1993 Government Performance and Results Act, Revenue Procedure 64-22 (as in effect on July 30, 1997), and taxpayer service surveys. The performance system will also provide for communicating goals or objectives to employees and will use such goals and objectives to make performance distinctions among employees or groups of employees. Performance assessments will be used as a basis for granting employee awards, adjusting an employee's basic pay rate, and taking other appropriate personnel action. Performance assessment means a determination of whether or not retention standards are met, and any additional performance determination made on the basis of performance goals and objectives. An

²⁷ Telephone conversation with the Office of Legislative Affairs, Internal Revenue Service, Feb. 25, 1998.

²⁸ As provided by the conference committee. Under the Senate-passed bill, the Secretary of the Treasury was authorized to establish a performance management system for all or part of the IRS in lieu of a system established under 5 U.S.C. 4302.

employee's performance will be considered "unacceptable" if it fails to meet a retention standard.

The Senate Finance Committee, in its report accompanying H.R. 2676, stated its intention "that in no event will performance measures be used which rank employees or groups of employees based on enforcement results, establish dollar goals for assessments or collections, or otherwise undermine fair treatment of taxpayers."²⁹

Section 9302(a) of H.R. 2676, as passed by the House, would have authorized the Commissioner of the IRS to establish a performance management system within one year after the act became law. The system would have covered all IRS employees except for members of the IRS Oversight Board, the IRS Commissioner, and the IRS chief counsel. The system would have maintained individual accountability by establishing performance standards that permit the accurate evaluation of each employee's performance on the basis of applicable individual and organizational performance requirements, taking into account individual contributions toward the attainment of any goals or objectives. It would have been communicated to an employee before being used to evaluate the employee's performance. The standards of performance would have included at least two standards, the lower of which would have denoted the retention standard and been equivalent to fully successful performance. The system would have provided for periodic performance evaluations to determine whether employees were meeting all applicable retention standards. The results of the employee's performance evaluation would have been used as a basis for adjustments in pay and other appropriate personnel actions.

The performance system would have provided for establishing goals or objectives for individual, group, or organizational performance (or any combination thereof) that were consistent with IRS performance planning procedures, including those established under the 1993 Government Performance and Results Act, the 1996 Information Technology Management Reform Act, Revenue Procedure 64-22 (as in effect on July 30, 1997), and taxpayer service surveys. The performance system would also have provided for communicating goals or objectives to employees and would have used such goals or objectives to make performance distinctions among employees or groups of employees. An employee's performance would have been considered 'unacceptable' if it failed to meet any retention standard.

The House Ways and Means Committee, in its report accompanying H.R. 2676, stated its expectation that the performance management system refocus the IRS personnel system on the agency's overall mission and on how each employee's performance relates to the mission. The committee encouraged the IRS to redesign its performance measures to more appropriately align employee behavior with organizational goals. The design of internal measures to "encourage behavior which makes it easier for taxpayers to interact with the IRS" was identified as a necessary and significant effort for the IRS. IRS is expected to develop taxpayer service

²⁹ *Finance Committee Report*, p. 37.

surveys to gauge the level of service that taxpayers actually receive. These surveys are to be used in evaluating organizational and group performance.

The committee indicated how performance measures cannot be used:

In no case should measures be used which rank employees or groups of employees based solely on enforcement results, establish dollar goals for assessments or collections, or otherwise undermine fair treatment of taxpayers. While any system of measures must reflect the efficiency and productivity of employees, the Committee expects that the IRS will establish a balanced system of measures that will ensure that taxpayer satisfaction is paramount throughout all IRS functions.³⁰

Awards. Section 9508(c) of P.L. 105-206 authorizes the Secretary of the Treasury to establish an awards program designed to provide incentives for and recognition of organizational, group, and individual achievements. It provides for awards to employees who, as individuals or members of a group, contribute to meeting performance goals and objectives by such means as superior individual or group accomplishment; a documented productivity gain; or sustained superior performance. A cash award could be granted without OPM approval.

The Senate Finance Committee, in its report accompanying H.R. 2676, stated that, "These awards will be based on performance under the new performance management system, and in no case will awards be made (or performance measured) based on tax enforcement results."³¹

Section 9302(b) of H.R. 2676, as passed by the House, would have provided that proposed awards for superior accomplishments of current and former IRS employees would have been considered approved if OPM did not disapprove the proposed award within 60 days after receiving the appropriate certification. In the case of an employee who reports directly to the Commissioner, a cash award up to 50% of the employee's annual basic pay rate may have been made if the Commissioner found the award to be warranted by his or her performance. The cash award would not have been part of basic pay, and may not have been based solely on tax enforcement results. Whether or not a covered employee was one who reports directly to the Commissioner shall have been determined under regulations prescribed by the Commissioner. In no event shall more than eight employees have been eligible for a cash award in any calendar year. Total compensation in a calendar year could not have equaled or exceeded the annual rate of compensation for the Vice-President of the United States (\$175,400, as of January 1998). An award could not have been made unless the IRS Commissioner certified to OPM that the award was warranted and if OPM approved, or did not disapprove, the proposed award within 60 days after the date on which it was certified.

The Commissioner may have authorized cash awards to employees based on documented financial savings achieved by a group or organization comprised of these

³⁰ *Ways and Means Committee Report*, p. 47.

³¹ *Finance Committee Report*, p. 37.

employees, if the payments were made pursuant to a plan that specified minimum levels of service and quality to be maintained while achieving financial savings, and conformed with OPM criteria. The cash award may have been paid from the fund or appropriation available to the activity that primarily benefitted or the various activities that benefitted. It may not have been based solely on tax enforcement results.

With regard to the awards for senior managers, the House Ways and Means Committee report accompanying H.R. 2676 stated that it did not expect all of the eligible pool to receive awards each year, or that the full 50% of salary amount would be appropriate, except in cases of extraordinary performance. The committee encouraged the IRS to establish awards programs based on savings that encourage employee input into reorganizing business processes leading to efficiency gains, and share with employees the resulting savings.³²

Notice/Appeal. The notice period for actions based on unacceptable performance or adverse actions may be 15 days under section 9508(d) of P.L. 105-206. Additionally, the law eliminates an IRS employee's right to appeal the denial of a periodic step increase to the Merit Systems Protection Board.³³ According to the House Ways and Means Committee report that accompanied H.R. 2676, employees can appeal denial of a step increase pursuant to internal agency procedures, including those in collective bargaining agreements or in the written agreements discussed under section 9301 of H.R. 2676 authorizing the use of personnel flexibilities.³⁴

Staffing Flexibilities

Eligibility to Compete for a Permanent Appointment in the Competitive Service. Section 9510(a) of P.L. 105-206 provides that an IRS employee may be selected for a permanent appointment in the competitive service in the IRS through internal competitive promotion procedures. The following conditions must be met: the employee has completed two years of current continuous service in the competitive service under a term appointment or any combination of term appointments; the term appointment or appointments were made under competitive procedures prescribed for permanent appointments; the employee's performance under the term appointment or appointments meets established retention standards, or, if not covered by a performance management system established under section 9508 of this bill, is rated at the fully successful level or higher (or equivalent thereof); and the vacancy announcement for the term appointment from which the conversion is made stated that there was a potential for subsequent conversion to a permanent appointment. An appointment may be made only to a position in the same line of work as a position to which the employee received a term appointment under competitive procedures.

³² *Ways and Means Committee Report*, p. 48.

³³ Section 9302(c) of H.R. 2676, as passed by the House, also included this provision.

³⁴ *Ways and Means Committee Report*, p. 48.

Section 9303(a)(1)(2) of H.R. 2676, as passed by the House, would have provided that no qualified veteran would have been denied the opportunity to compete for an announced vacant competitive service position within the IRS by reason of (i) not having acquired competitive status or (ii) not being an IRS employee. An individual would have been considered to have been a veteran if he or she: (i) was either a preference eligible, or an individual (other than a preference eligible) who had been separated from the armed forces under honorable conditions after at least three years of active service; and (ii) met the minimum qualification requirements for the position sought.

The House-passed version of H.R. 2676 also would have provided that no temporary employee would have been denied the opportunity to compete for an announced vacant competitive service position within the IRS by reason of not having acquired competitive status. An individual would have been considered to be a temporary employee if such individual: (i) was then currently serving as a temporary employee in the IRS; (ii) had completed at least two years of current continuous service in the competitive service under one or more term appointments, each of which was made under competitive procedures prescribed for permanent appointments; (iii) performance under each term appointment met all applicable retention standards; and (iv) met the minimum qualification requirements for the position sought. The Senate-passed bill did not include this provision.

Rating Systems. Section 9510(b) of P.L. 105-206 provides that the Secretary of the Treasury may establish category rating systems for evaluating applicants for IRS positions in the competitive service. Qualified candidates will be divided into two or more quality categories on the basis of relative degrees of merit, rather than assigned individual numerical ratings. Each applicant who meets the minimum qualification requirements for the position to be filled shall be assigned to an appropriate category based on an evaluation of his/her knowledge, skills, and abilities relative to those needed for successful performance in the job to be filled. Within each quality category, preference eligibles shall be listed ahead of other individuals. For other than scientific and professional positions at or higher than GS-9 (or equivalent), preference eligibles with a compensable service-connected disability of 10% or more, and who meet the minimum qualification standards, will be listed in the highest quality category. An appointing authority may select any applicant from the highest quality category. If fewer than three candidates have been assigned to the highest quality category, the individual may be selected from a merged category consisting of the highest and second highest quality categories. The appointing authority may not pass over a preference eligible in the same or a higher category from which the selection is made, unless the requirements of 5 U.S.C. 3317(b) or 3318(b) are satisfied.

Section 9303(b) of H.R. 2676, as passed by the House, would have provided the same, except that the authority for establishing category rating systems would have been granted to the IRS Commissioner. In no event may certification of a preference eligible have been discontinued by the IRS before the end of the six-month period beginning on the date of the employee's first certification.

Probationary Periods. Section 9510(d) of P.L. 105-206 provides that a probationary period of up to three years may be established by the Secretary of the

Treasury for any IRS position that requires a longer period for the incumbent to demonstrate complete proficiency. Section 9303(d) of the House-passed version would have granted authority to make the determination to the IRS Commissioner.

Provisions That Remain Applicable. Section 9510(e) of P.L. 105-206 provides that the Secretary of the Treasury is not exempted from any employment priority established under the direction of the President for the placement of surplus or displaced employees, or any obligation under a court order or decree relating to IRS or Department of the Treasury employment practices.³⁵

Flexibilities Relating to Demonstration Projects

Section 9507 of P.L. 105-206 provides that the exercise of any of the personnel flexibilities shall not affect the Secretary of the Treasury's authority to implement a demonstration project for the IRS, subject to 5 U.S.C. chapter 47. In applying current law to an IRS demonstration project, 5 U.S.C. 4703 is amended to provide that a plan be developed for the demonstration project which describes the project's purpose, the employees to be covered, the project itself, its anticipated outcomes, and the method for evaluating it. The plan will not be submitted to a public hearing. The notice period for informing employees likely to be affected by the plan and each house of Congress will be 30 days, and a final version of the plan will also be provided to each house of Congress. No demonstration project may waive the current law provisions on family and medical leave or on insurance and annuities. Current law limiting the size and duration of a demonstration project will not apply. Based on an evaluation of the demonstration project's results and its impact on improving public management, OPM and the Secretary of the Treasury may waive the termination date of a demonstration project. At least 90 days before the waiver, OPM will publish notice of its intention to waive the termination date in the *Federal Register* and inform both houses of Congress in writing.

Section 9304 of H.R. 2676, as passed by the House, would have authorized the IRS Commissioner to conduct one or more demonstration projects to improve personnel management; provide increased individual accountability; eliminate obstacles to the removal of or imposition of any disciplinary action to poor performers, subject to the requirements of due process; expedite appeals from adverse actions or performance-based actions; and promote pay based on performance. Except as provided under special rules, described below, each demonstration project would have complied with 5 U.S.C. 4703, which covers such projects.

The special rules would have provided that, for any IRS demonstration project, the IRS Commissioner would have exercised the authority provided to OPM under 5 U.S.C. 4703. Several of the provisions under this section would not have applied to IRS demonstration projects. These provisions were:

- 5 U.S.C. 4703(b)(3)-(6) which provide that, before conducting or entering into any agreement or contract to conduct a demonstration project, OPM shall (3)

³⁵ Section 9303(e) of H.R. 2676, as passed by the House, also included this provision.

submit the plan to public hearing; (4) provide notification of the proposed project, at least 180 days in advance of its effective date to employees likely to be affected and to Congress; (5) obtain approval from each agency involved of the plan's final version; (6) provide Congress with a report at least 90 days in advance of the project's effective date, setting forth the final version of the plan as approved; and

- 5 U.S.C. 4703(d),(e),(f),(g) which provide that, (d) each demonstration project shall involve not more than 5,000 individuals other than those in control groups necessary to validate the project's results. Each demonstration project shall terminate before the end of a 5-year period. Except, the project may continue beyond that to the extent necessary to validate the project's results. Not more than ten active demonstration projects may be in effect at any time; (e) subject to the terms of any written agreement or contract between OPM and an agency, a demonstration project may be terminated by OPM or the agency if either determines that the project creates a substantial hardship on, or is not in the best interests of, the public, the federal government, employees, or eligibles; (f) employees within a unit for which a labor organization has exclusive recognition shall not be included within a demonstration project if the project would violate a collective bargaining agreement between the agency and the labor organization, unless there is another written agreement for the project between the agency and the labor organization permitting the inclusion. They also shall not be included, if the project is not covered by a collective bargaining agreement, until the agency has consulted or negotiated with the labor organization, as appropriate; (g) employees within any unit for which a labor organization does not have exclusive recognition shall not be included within a demonstration project unless the agency has consulted with the employees in the unit.

The House-passed legislation would have changed several of the current provisions at 5 U.S.C. 4703 for purposes of the IRS demonstration projects. The language at 5 U.S.C. 4703(c)(1), which provides that no demonstration project may waive any provision of 5 U.S.C. chapter 63 on leave or 5 U.S.C. title III subpart G on insurance and annuities, would have been amended to read that no demonstration project may waive 5 U.S.C. chapter 63 subchapter V on family and medical leave or 5 U.S.C. part III subpart G on insurance and annuities, or any regulations prescribed thereunder.

The 5 U.S.C. 4703(c)(2)(B)(ii) provision, which provides that no demonstration project may waive any provision of law implementing any provision of law referred to in 5 U.S.C. 2302(b)(1) on employment discrimination by providing any right or remedy available to any employee or applicant for employment in the civil service, would not have been applicable.

Finally, 5 U.S.C. 4703(c)(4), which provides that no demonstration project may waive any rule or regulation prescribed under any provision of law referred to in 5

U.S.C. 4703(c)(2)-(3),³⁶ would have been amended to provide that no demonstration project may waive any regulation prescribed under any provision of law referred to in 5 U.S.C. 4703(c)(2)(B)(i) or (3).³⁷ The legislation would have provided that 5 U.S.C. 4703(c)(4), which provides that no demonstration may waive any rule or regulation prescribed under any provision of law referred to in 5 U.S.C. 2302(b)(1), would not have been applicable. (A technical correction may have been in order to restore these rules or regulations.)

Additionally, H.R. 2676, as passed by the House, would have provided that no demonstration project may have:

- waived any law or regulation relating to preference eligibles as defined in 5 U.S.C. 2108 or chapter 73 subchapter II or III, or any regulations prescribed thereunder;
- permitted collective bargaining over pay or benefits, or required collective bargaining over any matter not required by 5 U.S.C. 7106 on management rights; or³⁸
- included a system for measuring performance that provided for only one level of performance at or above the fully successful level.

³⁶ The laws referred to in (1)-(3) are 5 U.S.C. chapter 63, 5 U.S.C. title III subpart G, 5 U.S.C. 2302(b)(1), 5 U.S.C. chapter 15 on political activity of certain state and local employees, and 5 U.S.C. chapter 73 subchapter III on political activities.

³⁷ These paragraphs provide that, no demonstration project may waive (2)(B)(i) any provision of law implementing any provision of law referred to in 5 U.S.C. 2302(b)(1) on employment discrimination by providing for equal employment opportunity through affirmative action; or on (3) any provision of 5 U.S.C. chapter 15 on political activity of certain state and local employees or 5 U.S.C. chapter 73 subchapter III on political activities.

³⁸ 5 U.S.C. 7106: “(a) Subject to subsection (b), nothing in 5 U.S.C. chapter 71 shall affect the authority of any management official of any agency-(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and (2) in accordance with applicable laws-(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees; (B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted; (C) with respect to filling positions, to make selections for appointments from-(i) among properly ranked and certified candidates for promotion; or (ii) any other appropriate source; and (D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating-(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work; (2) procedures which management officials of the agency will observe in exercising any authority under this section; or (3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.”

The Commissioner would have notified employees likely to have been affected by a proposed project at least 90 days in advance of the project's effective date. For each demonstration project, the Commissioner would have provided the Senate, the House of Representatives, and OPM with a report setting forth the final version of the plan at least 30 days in advance of a project's effective date. It would have included the information specified at 5 U.S.C. 4703(b)(1), including the purposes of the project, types and number of employees or eligibles to be included, methodology, duration, training to be provided, anticipated costs, methodology and criteria for evaluation, a description of any aspect lacking specific authority, and citations to any law, rule, or regulation which, if not waived, would prohibit the project from being conducted or any part of the project as proposed.

A demonstration project could have established alternative means of resolving any dispute within the jurisdiction of the Equal Employment Opportunity Commission, the Merit Systems Protection Board, the Federal Labor Relations Authority, or the Federal Services Impasses Panel. The IRS could have adopted any alternative dispute resolution procedure that a private entity may lawfully adopt.

The Commissioner would have consulted with the OPM Director in the development and implementation of each demonstration project, and submitted such reports to the Director as he or she required. The Director or the Commissioner could have terminated a demonstration project if either determined that it created a substantial hardship on, or was not in the best interests of, the public, the federal government, employees, or qualified applicants for IRS employment.

Each demonstration project would have terminated before the end of the five-year period beginning on the date on which it became effective. However, any such project could have continued for up to two more years beyond this period if the Commissioner, with the concurrence of the Director, determined the extension was necessary to validate the project's results. Not later than six months before the end of the five-year period and any extension period, the Commissioner would have submitted a legislative proposal to the Congress if he or she determined that the project should have been made permanent, in whole or in part.

In its report accompanying H.R. 2676, the House Ways and Means Committee stated its expectation that the IRS will use the more flexible demonstration project authority to increase individual accountability.³⁹

Each of the following provisions of P.L. 105-206 were included in the Senate-passed, but not the House-passed legislation.

Other Critical Pay Authority

Section 9502 of P.L. 105-206 provides that, when the Secretary of the Treasury seeks a grant of critical pay authority for one or more positions at the IRS, the Office of Management and Budget may fix the basic pay rate at any rate up to the Vice President's salary (\$175,400 as of January 1998). No allowance, differential, bonus,

³⁹ *Ways and Means Committee Report*, p. 49.

award, or similar cash payment may be paid to any employee receiving critical pay at a rate fixed by the provision immediately above if, or to the extent that, the employee's total annual compensation would exceed the maximum amount of total annual compensation for the Vice President (\$175,400).

Streamlined Critical Pay Authority

Section 9503 of P.L. 105-206 authorizes the Secretary of the Treasury to establish, fix the compensation of, and appoint individuals to, designated critical technical and professional positions in the IRS for ten years from its enactment. The positions will require expertise of an extremely high level in a technical or professional field and will be critical to the IRS's successful accomplishment of its mission. Exercise of the authority will be necessary to recruit or retain an individual exceptionally well qualified for the position. The number of critical positions may not exceed 40 at any one time. Designation of critical positions will be approved by the Secretary of the Treasury. The terms of such appointments may not exceed four years. Appointees to critical positions may not have been IRS employees prior to June 1, 1998.⁴⁰ Total annual compensation for critical positions may not exceed the highest total annual compensation payable to the Vice President (\$175,400, as of January 1998). Critical positions will be excluded from the collective bargaining unit. Individuals appointed to critical positions will not be employees for purposes of removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less.

Recruitment, Retention, and Relocation Incentives and Relocation Expenses

Section 9504 of P.L. 105-206 authorizes the Secretary of the Treasury, subject to approval by the Office of Personnel Management, to provide for variations from current law on recruitment, relocation, and retention incentives for ten years from its enactment. A provision on relocation expenses, added in the conference committee, provides that for a period of 10 years after the date of enactment of this section, the Secretary of the Treasury may pay from appropriations made to the Internal Revenue Service allowable relocation expenses under section 5724a for employees transferred or reemployed and allowable travel and transportation expenses under section 5723 for new appointees, for any new appointee appointed to a position for which pay is fixed under section 9502 or 9503 (critical pay authorities) after June 1, 1998.

Performance Awards for Senior Executives

Section 9505 of P.L. 105-206 provides that, for ten years after enactment, IRS senior executives with program management responsibility over significant IRS

⁴⁰ As provided by the conference committee. Under the Senate-passed bill, the provision provided that appointees to critical positions could not have been IRS employees immediately prior to appointment.

functions may be paid a performance bonus if the Secretary of the Treasury finds the award warranted by the executive's performance. The bonus will not be subject to the 5 U.S.C. 5384(b)(2) limitation on senior executive service performance awards of no less than 5% nor more than 20% of basic pay. The executive's performance will be evaluated by the Secretary on the basis of contributions toward the successful accomplishment of goals and objectives established by the 1993 Government Performance and Results Act, division E of the Clinger-Cohen Act of 1996, Revenue Procedure 64-22 (as in effect on July 30, 1997), taxpayer service surveys, and other performance metrics or plans established in consultation with the IRS Oversight Board. Any award that exceeds 20% of an executive's basic pay rate must be approved by the Secretary.

The Secretary of the Treasury will determine the aggregate amount of performance awards available to be paid in any fiscal year to career senior executives in the IRS, provided that the amount does not exceed 5% of the aggregate amount of basic pay paid to career senior executives in the IRS during the preceding fiscal year. IRS will not be included in the 5 U.S.C. 5384(b)(3) determination of the aggregate amount of performance awards payable to career senior executives in the Department of the Treasury other than the IRS. A performance bonus award may not be paid to an executive in a calendar year if, or to the extent that, the executive's total annual compensation will exceed the maximum amount of total annual compensation payable to the Vice President (\$175,400, as of January 1998).

The Senate Finance Committee, in its report accompanying H.R. 2676, stated its expectation "that the bonuses will not be available to more than 25 IRS senior executives annually."⁴¹

Limited Appointments to Career Reserved Senior Executive Service Positions

Section 9506 of P.L. 105-206 provides that, in applying 5 U.S.C. 3132, "career reserved position" in the IRS means a position which may be filled only by a career appointee, or a limited emergency appointee or a limited term appointee who, immediately upon entering the career-reserved position, was serving under a career or career-conditional appointment outside the Senior Executive Service (SES); or whose limited emergency or limited term appointment was approved in advance by OPM. The number of positions filled by such appointees may not exceed 10% of the total number of SES positions (currently 219) in the IRS. The term of an appointee may not exceed three years. An appointee may serve two such terms, or two such terms in addition to any unexpired term applicable at the time of appointment.

Workforce Classification and Pay Banding

Section 9509 of P.L. 105-206 authorizes the Secretary of the Treasury, subject to OPM criteria, to establish one or more broad-banded systems covering all or any portion of the IRS workforce. "Broad-banded system" means a system for grouping positions for pay, job evaluation, and other purposes that differs from the General

⁴¹ *Finance Committee Report*, p. 36.

Schedule classification system as a result of combining grades and related ranges of rates of pay in one or more occupational series. With OPM approval, a broad-banded system may either include or consist of positions that otherwise would be subject to classification for prevailing rate systems, or for senior-level positions. OPM may require the Secretary of the Treasury to submit information relating to broad-banded systems at the IRS. Except as otherwise provided, employees under a broad-banded system shall continue to be subject to the laws and regulations of the pay system that would otherwise apply to them.

OPM criteria shall, at a minimum: (A) ensure that the structure of any broad-banded system maintains the principle of equal pay for substantially equal work; (B) establish the minimum and maximum number of grades that may be combined into pay bands; (C) establish requirements for setting minimum and maximum rates of pay in a pay band; (D) establish requirements for adjusting the pay of an employee within a pay band; (E) establish requirements for setting the pay of a supervisory employee whose position is in a pay band or who supervises employees whose positions are in pay bands; and (F) establish requirements and methodologies for setting the pay of an employee upon conversion to a broad-banded system, initial appointment, change of position or type of appointment (including promotion, demotion, transfer, reassignment, reinstatement, placement in another pay band, or movement to a different geographic location), and movement between a broad-banded system and another pay system. With the approval of OPM and in accordance with his/her implementation plan, the Secretary of the Treasury may provide for variations from current law on grade and pay retention for IRS employees covered by a broad-banded system.

Details

Section 9510(c) of P.L. 105-206 provides that current law limiting details and renewals of details to 120 days will not apply to the IRS.

Voluntary Separation Incentive Payments

Section 1202 of P.L. 105-206 authorizes the IRS Commissioner to pay voluntary separation incentive payments (VSIP) to any employee to the extent necessary to carry out the plan to reorganize the IRS. "Employee" means an employee (as defined by 5 U.S.C. 2105) who is employed by the IRS and serving under an appointment without time limitation, and has been currently employed for a continuous period of at least three years. It does not include a reemployed annuitant; an employee having a disability on the basis of which the employee would be eligible for disability retirement; an employee who has received a specific notice of involuntary separation for misconduct or unacceptable performance; an employee, who upon completing an additional period of service, would qualify for a VSIP under the Federal Workforce Restructuring Act of 1994; an employee who has previously received any VSIP by the federal government and has not repaid the payment; an employee covered by statutory reemployment rights who is on transfer to another organization; or any employee who, during the 24-months preceding the separation date, has received a recruitment or relocation bonus, or who, within the 12-months preceding the separation date, received a retention allowance.

A voluntary separation incentive payment shall be paid in a lump sum after the employee's separation, shall be paid from appropriations or funds available for the payment of employee basic pay, and shall be equal to the lesser of (1) an amount equal to the amount of severance pay the employee would be entitled to receive, or (2) an amount determined by the agency head not to exceed \$25,000. A VSIP may be made to a qualifying employee who voluntarily separates (whether by retirement or resignation) before January 1, 2003, shall not be a basis for payment, and shall not be included in the computation, of any other type of government benefit, and shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled, based on any other separation.

In addition to any other payments which it is required to make, the IRS shall remit to OPM for deposit in the U.S. Treasury to the credit of the Civil Service Retirement and Disability Fund an amount equal to 15% of the final basic pay of each employee who is covered by the Civil Service Retirement System or the Federal Employees Retirement System, to whom a voluntary separation incentive has been paid. Final basic pay of an employee means the total amount of basic pay which would be payable for a year of service by the employee. It is computed using the employee's final rate of basic pay, with appropriate adjustment for other than full-time service.

An individual who has received a VSIP and accepts any employment for compensation with the federal government, or who works for any federal agency through a personal services contract, within five years after the separation date on which the payment is based, shall be required to pay the entire amount of the VSIP to the IRS. Payment must be made prior to the first day of employment.

Voluntary separations are not intended to necessarily reduce the total number of full-time equivalent (FTE) positions in the IRS. The IRS may redeploy or use the FTE positions vacated by voluntary separations to make other positions available to more critical locations or more critical occupations.

Termination of Employment for Misconduct

Section 1203 of P.L. 105-206 authorizes the IRS Commissioner to terminate any IRS employee if there is a final administrative or judicial determination that the employee committed any act or omission in performing his/her official duties. The termination shall be a removal for cause on charges of misconduct. The acts or omissions which would result in termination are the following.

- (1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets;⁴²

⁴² The word "willful" was added in the conference committee.

- (2) providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative;⁴³
- (3) with respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the violation of- (A) any right under the Constitution of the United States; or (B) any civil right established under- (i) title VI or VII of the Civil Rights Act of 1964; (ii) title IX of the Education Amendments of 1972; (iii) the Age Discrimination in Employment Act of 1967; (iv) the Age Discrimination Act of 1975; (v) section 501 or 504 of the Rehabilitation Act of 1973; or (vi) title I of the Americans with Disabilities Act of 1990;⁴⁴
- (4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative;⁴⁵
- (5) assault or battery on a taxpayer, taxpayer representative, or other IRS employee, but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery;⁴⁶
- (6) violations of the Internal Revenue Code of 1986, Department of the Treasury regulations, or IRS policies (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative, or other IRS employee;⁴⁷
- (7) willful misuse of the provisions of section 6103 of the Internal Revenue Code of 1986 for the purpose of concealing information from a congressional inquiry;
- (8) willful failure to file any return of tax required under the Internal Revenue Code of 1986 on or before the date prescribed therefor (including any extensions), unless such failure is due to reasonable cause and not to willful neglect;
- (9) willful understatement of federal tax liability, unless such understatement is due to reasonable cause and not to willful neglect, and

⁴³ The words "or taxpayer representative" were added in the conference committee.

⁴⁴ As provided by the conference committee. Under the Senate-passed bill, the provision read, "violation of the civil rights of a taxpayer or other employee of the IRS."

⁴⁵ As provided by the conference committee. Under the Senate-passed bill, the provision read, "falsifying or destroying documents to conceal mistakes made by the employee with respect to a matter involving a taxpayer."

⁴⁶ As provided by the conference committee. Under the Senate-passed bill, the provision read, "assault or battery on a taxpayer or other IRS employee."

⁴⁷ The words "taxpayer representative" were added in the conference committee.

- (10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

For purposes of title VI or VII of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975, references to a program or activity receiving Federal financial assistance or an education program or activity receiving Federal financial assistance shall include any program or activity conducted by the Internal Revenue Service for a taxpayer.⁴⁸

The acts or omissions numbered (8), (9), and (10) which would result in termination were contained in an amendment offered by Senator Phil Gramm which was agreed to by the Senate by voice vote on May 7, 1998. Senator Robert Kerrey, in commenting on the amendment, said that, "In general, this legislation is attempting to change the culture by saying here are some things that, if you do it, there are going to be severe penalties. . . . so that there is a new seriousness given to actions taken by the IRS."⁴⁹

The IRS Commissioner may take a personnel action other than termination for an act or omission. The exercise of this authority shall be at the sole discretion of the Commissioner and may not be delegated to any other officer. The Commissioner, in his sole discretion, may establish a procedure which will be used to determine whether an individual should be referred to the Commissioner for a determination on a personnel action. Any determination of the Commissioner may not be appealed in any administrative or judicial proceeding.

Basis for Evaluation of Internal Revenue Service Employees

Section 1204 of P.L. 105-206 provides that the IRS shall not use records of tax enforcement results to evaluate employees or to impose or suggest production quotas or goals with respect to such employees.⁵⁰ The IRS shall use the fair and equitable treatment of taxpayers by employees as one of the standards for evaluating employee performance. Each appropriate supervisor shall certify quarterly by letter to the IRS Commissioner whether or not tax enforcement results are being used in a manner prohibited by this section.⁵¹ This provision shall apply to evaluations conducted on or after the enactment date of this act. Section 6231 of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647; 102 Stat. 3734) is repealed.

⁴⁸ This provision was added by the conference committee.

⁴⁹ *Congressional Record*, daily edition, vol. 144, May 7, 1998, p. S4486.

⁵⁰ As provided by the conference committee. The Senate-passed bill provided that the IRS shall not use records of tax enforcement results to evaluate employees and their immediate supervisors, or to impose or suggest production quotas or goals for such individuals.

⁵¹ As provided by the conference committee. The Senate-passed bill provided that each appropriate supervisor shall certify quarterly by letter to the IRS Commissioner that tax enforcement results are not used in a prohibited manner.

Employee Training Program

Section 1205 of P.L. 105-206 requires the IRS Commissioner, not later than 180 days after enactment of the act, to implement an employee training program and submit an employee training plan to the Senate Committee on Finance and the House Committee on Ways and Means.⁵² The training plan shall:

- detail a comprehensive employee training program to ensure adequate customer service training;
- detail a schedule for training and the fiscal years during which the training will occur;
- detail the funding of the program and the relevant information to demonstrate the priority and commitment of resources to the plan;
- review the organizational design of customer service;
- provide for the implementation of a performance development system; and
- provide for at least 16 hours of conflict management training during fiscal year 1999 for employees conducting collection activities.

Provisions Unique to the House-Passed Bill, and Not in P.L. 105-206

Involuntary Reassignments and Removals of Career Appointees in the Senior Executive Service. Current law prohibiting involuntary reassignments and removals of career appointees in the Senior Executive Service (SES) would not have applied to the IRS under Section 9303(c) of H.R. 2676, as passed by the House.

The House Ways and Means Committee report that accompanied H.R. 2676 clarified this provision, which would have authorized the Commissioner to reassign or remove career appointees in the SES immediately upon taking office. “While the Committee does not intend for any Commissioner to make wholesale management changes without thorough evaluations, [it] believes that if the Commissioner is to be held accountable, then [he or she] must have the flexibility to recruit [his or her] own management team.”⁵³

Carol Bonosaro, President of the Senior Executives Association, said the Association opposed the proposed change. According to her, it has been suggested without anyone demonstrating that a problem exists or that the solution is going to impact positively, and that no IRS Commissioner has said that current law either

⁵² As provided by the conference committee. Under the Senate-passed bill, the implementation date was not later than 90 days after enactment.

⁵³ *Ways and Means Committee Report*, p. 49.

precluded them from solving a management problem or created a management problem. Further, Ms. Bonosaro said that, “unless a Commissioner has psychic powers it is difficult to imagine that he or she can determine the capabilities and merits of individual executives in the absence of some reasonable, albeit brief period to assess them.” She questioned how Congress would conduct oversight and how the executive workforce would be managed if the proposal were enacted, and viewed the proposal as “continuing a disturbing trend of pecking away at the SES statute.”⁵⁴

Senate Hearings

The personnel flexibilities provisions were discussed during hearings conducted by the Senate Finance Committee on January 28 and 29, 1998. Treasury Secretary Robert E. Rubin and Internal Revenue Service Commissioner Charles O. Rossotti testified on the first day. Both advocated personnel management reforms that would, in the words of the Secretary, “go further in improving managerial flexibility in selecting and managing personnel.”⁵⁵ Specifically, Commissioner Rossotti said that the IRS would be seeking “several additional flexibilities, particularly in the areas of compensation and workforce restructuring.” He said that the IRS would also seek reauthorization of the buyout authority as “Flexibility to reposition the current IRS workforce will be critical to implementing a new organization that is designed around the needs of the taxpayers.”⁵⁶

Several previous IRS Commissioners and representatives of finance-related professional organizations testified on the second day of the hearings. Donald Alexander, Commissioner from 1973 to 1977, said that “easing the present restrictive rules is a highly meritorious idea.” He noted, however, that “much of the proposed flexibility cannot be implemented without the Union’s consent,” something that “should be reconsidered.”⁵⁷

Sheldon Cohen, Commissioner from 1965 to 1969, addressed three issues in his testimony. As to staffing, he observed that, “The continuity of the career staff is important in accomplishing long term projects and providing a history of what works and what has failed.” He characterized as healthy, “introduc[ing] career officials from other agencies.” With regard to the union, he noted that the legislation seems to give it “extraordinary powers ... absolute veto ... when it comes to apply[ing] the employee flexibility rules to a unit where [it] has exclusive bargaining rights.” While advocating pay flexibility for top staff, he stated that, the IRS should never operate on a quota system for revenue agents or collections personnel.” According to him,

⁵⁴ Telephone conversation with CRS, Nov. 20, 1997.

⁵⁵ Statement of Robert E. Rubin, Secretary of the Treasury, before the Senate Finance Committee, Jan. 28, 1998, p. 2. (Unpublished)

⁵⁶ Statement of Charles O. Rossotti, Commissioner, Internal Revenue Service, before the Senate Finance Committee, Jan. 28, 1998, p. 8. (Unpublished)

⁵⁷ Statement of Donald C. Alexander before the Senate Finance Committee, Jan. 29, 1998, p. 4. (Unpublished)

“You want the staff to do the right thing, not necessarily the thing which brings in the most revenue.”⁵⁸

Said Fred Goldberg, Commissioner from 1989 to 1991: “Provide workforce flexibility to change the way the IRS does business, enable the IRS to recruit and retain those who measure up -- and get rid of those who don’t.” He also stated that the Commissioner should be given “the authority and tools to build his own senior management team, and hold those individuals accountable for performance.”⁵⁹

According to Margaret Milner Richardson, Commissioner from 1993 to 1997, “Without maximum personnel flexibilities so that the best qualified people can be recruited, trained, and retained, any new structure will fail.” She said that “a major shortcoming” in the legislation is that its “effectiveness will be limited by the fact that members of the union, probably seventy-five to eighty percent of the workforce, are exempt from the bill’s personnel flexibilities provisions.”⁶⁰

The president of the National Society of Accountants stated that “no IRS employee should receive a cash reward based on tax enforcement results.” He recommended redrafting of the cash awards criteria “to highlight the point that customer service should be considered as an important, positive factor with respect to any determination to make a cash award to an IRS employee.”⁶¹

“Granting the Commissioner greater discretion in recruiting, rewarding, and retaining the agency’s top managers is critical to ... ensuring that taxpayers deal only with IRS employees who are trained adequately and possess the skills and tools necessary to do their jobs well” said the national president of the Tax Executives Institute. He also observed that, “the last thing the IRS needs is massive turnover in senior management ranks whenever a new Commissioner is appointed.” He also advocated that the IRS “refine its performance measures to guard against real or perceived quotas” and “evaluati[ng] examination and collection personnel on the basis of increased production.”⁶²

A representative of the National Association of Enrolled Agents said that the proposals on posts of duty, employee details to other functions, compensation schemes, and bonus and award structures “could go a long way towards making the upper management of the Service more competitive and more motivated and help the

⁵⁸ Statement of Sheldon S. Cohen before the Senate Finance Committee, Jan. 29, 1998, pp. 5,7,10. (Unpublished)

⁵⁹ Statement of Fred T. Goldberg, Jr. before the Senate Finance Committee, Jan. 29, 1998, p. 4. (Unpublished)

⁶⁰ Statement of Margaret Milner Richardson before the Senate Finance Committee, Jan. 29, 1998, pp. 4, 10. (Unpublished)

⁶¹ Statement of Douglas C. Burnette before the Senate Finance Committee, Jan. 29, 1998, p. 6. (Unpublished)

⁶² Statement of Paul Cherecwich, Jr. before the Senate Finance Committee, Jan. 29, 1998, pp. 6,8. (Unpublished)

Service retain more of the truly excellent people they have working in their executive ranks.”⁶³

According to a representative of the American Institute of Certified Public Accountants, “The IRS has been a very closed organization, with its executive leadership consisting almost exclusively of IRS career employees.” Therefore, he advocated adding to the executive leadership “[p]eople with varied backgrounds and expertise.” He proposed that “Some positions now reserved for career civil service employees [should] be open for professional appointees, selected based on their professional and managerial competence rather than political affiliation.” These appointees would be placed “in positions managing program execution rather than solely in policy-making positions.” “To prevent [them] from dealing directly with specific taxpayer cases, no such appointments outside the National Office should be for positions below the Regional Commissioner level.” He also favored flexible compensation “to encourage qualified IRS career executives to remain with the IRS.”⁶⁴

The chair-elect of the section on taxation of the American Bar Association strongly endorsed personnel flexibilities. According to him, “Historically, civil service rules have tied the Commissioner’s hands, making it extremely difficult, if not impossible, for the Commissioner, to hire the best people from the private sector and pay them at appropriate levels.”⁶⁵

Managerial flexibility and accountability in reforming the IRS were discussed at the March 12, 1998, hearing conducted by the Senate Committee on Governmental Affairs. The IRS Commissioner and representatives of the Office of Management and Budget (OMB), Office of Personnel Management (OPM), and General Accounting Office (GAO) testified. The Commissioner is seeking flexibilities in addition to those provided in H.R. 2676. Specifically, these flexibilities are as follow.

- Streamlined authority for the Secretary of the Treasury to appoint and fix the compensation of up to 40 individuals at any one time to critical, technical, professional, and management positions at the IRS. The appointments would be made without regard to Title 5 United States Code provisions on competitive service or Senior Executive Service (SES) appointments. Total annual compensation could not exceed \$175,400, the Vice President's salary, and the term of appointment would not exceed four years. These positions would not be available to current IRS employees.

⁶³ Statement of Bryan E. Gates before the Senate Finance Committee, Jan. 29, 1998, p. 4. (Unpublished)

⁶⁴ Statement of Michael E. Mares before the Senate Finance Committee, Jan. 29, 1998, p. 5. (Unpublished)

⁶⁵ Statement of Stefan F. Tucker before the Senate Finance Committee, Jan. 29, 1998, p. 5. (Unpublished)

- Authority for OMB to approve requests for critical position pay which would exceed the current law cap of Executive Level I (\$151,800, as of January 1998) and could extend to \$175,400.
- Authority for the Secretary of the Treasury, with OPM approval, to provide recruitment, retention, and relocation incentives which could vary from the current law requirements that they not exceed 25% of base pay, that recruitment and relocation bonuses must be paid in a lump sum, and that a retention allowance may be paid only on a pay period basis.
- Authority to make no more than 20 additional limited emergency and term appointments to career reserved positions in the SES. OPM approval would be required when the individual is not being immediately appointed from a career or career-conditional position outside the SES.
- Authority for the Secretary of the Treasury to pay a performance bonus to senior IRS executives with program management responsibility over significant agency functions. The bonus could exceed the current law limitation of 20% of base pay and total annual compensation would be capped at \$175,400.
- Authority to grant voluntary separation incentive payments through December 31, 2002. This "would enable the IRS to free up full time equivalent positions that can be redeployed to critical locations or occupations."⁶⁶

The Acting Deputy Director for Management at OMB expressed support for the personnel flexibilities, but said that the agency would "want to ensure that OPM's governmentwide oversight of the civil service system, including any new flexibilities and tools, is maintained."⁶⁷ OPM's Associate Director for Merit Systems Oversight and Effectiveness likewise supported the personnel flexibilities, but emphasized that OPM's oversight roles for personnel demonstration projects and the civil service in general should be maintained. OPM also believes that the IRS should not be exempt from the current law moratorium on involuntary reassignments and removals from the SES. "The moratorium provides a get acquainted period for new political appointees to become familiar with the skills and expertise of their career executives. It is flexible enough to allow the agency head to appoint key staff in a new administration during this 120-day period."⁶⁸

The Associate Director for Federal Management and Workforce Issues at GAO testified in support of the personnel flexibilities and suggested that they be tested before being made permanent. According to GAO, whether the IRS is successful in

⁶⁶ Statement of Charles O. Rossotti, Commissioner, Internal Revenue Service, before the Senate Governmental Affairs Committee, Mar. 12, 1998, pp. 6-8. (Unpublished)

⁶⁷ Statement of G. Edward Deseve before the Senate Governmental Affairs Committee, Mar. 12, 1998, p. 2. (Unpublished)

⁶⁸ Statement of Carol J. Okin before the Senate Governmental Affairs Committee, Mar. 12, 1998, pp. 3-5. (Unpublished)

aligning its mission and goals with employee performance "will require a culture change in IRS driven by a long-term managerial commitment."⁶⁹

House Hearings

The House Subcommittee on Government Management, Information, and Technology conducted an oversight hearing on the IRS on April 15, 1998, during which the IRS Commissioner, the former Chief Financial Officer at IRS, and representatives of the GAO, the American Bar Association, the American Institute of Certified Public Accountants, and the National Academy of Public Administration testified. The Commissioner reiterated his earlier statements that he "must have the ability to recruit and retain a top-notch leadership and technical team."⁷⁰ Anthony Musick, former Chief Financial Officer at the IRS, discussed the GAO and Inspector General findings that the FY1997 financial statements for the IRS were reliable. A representative of the GAO testified on IRS' restructuring plans and "the critical importance of resolving IRS' financial management issues."⁷¹

The American Bar Association's representative said that the IRS Commissioner should be given hiring and pay flexibilities to attract "the best and the brightest" to government. According to him, "That cannot and will not happen unless flexibility in hiring is increased and unless the Commissioner is given the ability to pay such individuals at levels that will attract them away from high paying private sector jobs."⁷² A representative for the American Institute of Certified Public Accountants told the subcommittee that "The IRS has been a very closed organization, with its executive leadership consisting almost exclusively of IRS career employees. People with varied backgrounds and expertise need to be added to that leadership to provide the IRS with different insights and to help generate innovative approaches to the many challenges confronting the IRS." He said that "some positions now reserved for career civil service employees [should] be open for professional appointees ... [who would be] selected based on their professional and managerial competence rather than political affiliation ... appointed by the Commissioner with the approval of the [Oversight] Board ... [used] in positions managing program execution rather than solely in policy-making positions. To prevent such appointees from dealing directly with specific taxpayer cases, no such appointments outside the National Office should be for positions below the Regional Commissioner level."⁷³

⁶⁹ Statement of Michael Brostek before the Senate Governmental Affairs Committee, Mar. 12, 1998, pp. 5, 12. (Unpublished)

⁷⁰ Statement of Charles Rossotti before the House Subcommittee on Government Management, Information, and Technology, Apr. 15, 1998, p. 1. (Unpublished)

⁷¹ Statement of Gene Dodaro before the House Subcommittee on Government Management, Information, and Technology, Apr. 15, 1998, p. 18. (Unpublished)

⁷² Statement of Stefan Tucker before the House Subcommittee on Management, Information, and Technology, Apr. 15, 1998, p. 4. (Unpublished)

⁷³ Statement of Michael Mares before the House Subcommittee on Government Management, Information, and Technology, Apr. 15, 1998, pp. 4-5. (Unpublished)

According to the National Academy of Public Administration's (NAPA) representative, H.R. 2676 should be amended to "make clear that the organizations with responsibility for dealing with violations of merit principles through appellate and oversight processes under the 1978 civil service reform and earlier legislation (MSPB [Merit Systems Protection Board] and its Special Counsel, as well as the Office of Personnel Management) still retain this responsibility with respect to IRS." NAPA also suggested that the bill be amended to ensure that all employees below the Commissioner "(1) be selected on a non-political and non-partisan basis; and (2) be selected strictly on the basis of merit and qualifications."⁷⁴

Additional Views

The National Treasury Employees Union (NTEU) represents IRS employees. It "supports the personnel flexibilities section of H.R. 2676 [as] they will allow the IRS to experiment with a broad range of personnel matters outside the restrictions of government wide civil service laws in order to find more effective ways of accomplishing its mission." According to NTEU, "The bill uses current law on demonstration projects as a model, which will allow the IRS and its employee representatives to work collaboratively to bring about needed changes."⁷⁵

The Federal Managers Association (FMA), which represents the interests of the 200,000 managers in the federal government, "believes that the new IRS Commissioner needs to have adequate personnel flexibilities in order to make reforms work," but that the Merit System principles must be ensured. FMA is concerned about the veto authority given to the union. It "fear[s] that managers could end up being treated unfairly in a system where the union could veto any personnel changes as they apply to bargaining unit employees while managers would have no such veto power on changes that impact them."⁷⁶

⁷⁴ Statement of Thomas Stanton before the House Subcommittee on Government Management, Information, and Technology, Apr. 15, 1998, p. 9. (Unpublished)

⁷⁵ National Treasury Employees Union, Memorandum on Personnel Flexibilities of H.R. 2676, Feb. 20, 1998, 1p. Sent to CRS by facsimile.

⁷⁶ Letter to the Honorable William V. Roth, Jr., Chairman, Senate Finance Committee, Re: Internal Revenue Service Restructuring and Reform Act of 1997, H.R. 2676, from Michael B. Styles, National President, Federal Managers Association, Feb. 25, 1998, 2p.

Appendix

**Table 1. Overview of Personnel Flexibilities
in 105th Congress Legislation**

Provision	House- Passed H.R. 2676	P.L. 105- 206 ¹	H.R. 2292/ S.1096	H.R. 2428/ S. 1174
General Requirements	Sec. 9301	Sec. 1201: Sec. 9501	Sec. 9301	Sec. 9501
Flexibilities Relating to Performance Management				
Performance Management System	Sec. 9302(a)	Sec. 9508(a)(b)	Sec. 9302(a)	Sec. 9508(a)
Awards	Sec. 9302(b)	Sec. 9508(c)	Sec. 9302(b)	Sec. 9508(b)
Notice/Appeal	Sec. 9302(c)	Sec. 9508(d)	Sec. 9302(c)	Sec. 9508(c)
Staffing Flexibilities				
Permanent Competitive Service Appointment	Sec. 9303 (a)(1)(2)	Sec. 9510(a)	Sec. 9304(a)	Sec. 9510(a)
Rating Systems	Sec. 9303(b)	Sec. 9510(b)	Sec. 9304(b)	Sec. 9510(b)
Involuntary Reassignments/ Removals of Career Senior Executive Service	Sec. 9303(c)	N/A	Sec. 9304(d)	N/A
Probationary Periods	Sec. 9303(d)	Sec. 9510(d)	Sec. 9304(e)	Sec. 9510(d)
Provisions Remaining Applicable	Sec. 9303(e)	Sec. 9510(e)	Sec. 9304(f)	Sec. 9510(e)
Details	N/A	Sec. 9510(c)	Sec. 9304(c)	Sec. 9510(c)

Provision	House-Passed H.R. 2676	P.L. 105- 206¹	H.R. 2292/ S. 1096	H.R. 2428/ S. 1174
Other Flexibilities				
Flexibilities Relating to Demonstration Projects	Sec. 9304	Sec. 9507	Sec. 9305	Sec. 9507
Pay Authority for Critical Positions	N/A	Sec. 9502	N/A	Sec. 9502
Streamlined Critical Pay Authority	N/A	Sec. 9503	N/A	Sec. 9503
Recruitment, Retention, and Relocation Incentives and Relocation Expenses	N/A	Sec. 9504	Sec. 9303(e)	Sec. 9504
Performance Awards for Senior Executives	N/A	Sec. 9505	N/A	Sec. 9505
Limited Appointments to Career Reserved SES	N/A	Sec. 9506	N/A	Sec. 9506
General Workforce Classification and Pay	N/A	Sec. 9509	Sec. 9303 (a)-(d)	Sec. 9509
Voluntary Separation Incentive Payments	N/A	Sec. 1202	N/A	N/A
Termination of Employment for Misconduct	N/A	Sec. 1203	N/A	N/A
Basis for Evaluation of Internal Revenue Service Employees	N/A	Sec. 1204	N/A	N/A
Employee Training Program	N/A	Sec. 1205	N/A	N/A
1. The conference agreement on H.R. 2676 followed the Senate-passed version of the bill, with modifications, and H.R. 2676 was enacted as P.L. 105-206.				