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BY THE U.S. GENERAL ACCOUNTING OFFICE

**Report To The Chairman  
Committee On Foreign Relations  
United States Senate**

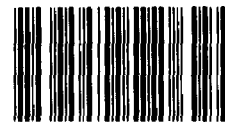
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**Foreign Service Act of 1980:  
Implementation Status, Progress,  
And Problems**

The act was passed to strengthen and improve the Foreign Service by consolidating various personnel authorities and adding new ones under one law. Seven executive departments and agencies are covered by the act.

Progress has been made in implementing new provisions, but more time and effort will be needed for completion. Problems have arisen in the areas of appointments, personnel conversions, compensation, management of the Service, labor-management relations, benefits and allowances, and promotion and retention.

To assist the Committee in its oversight as implementation continues, GAO identifies specific issue areas for examination.



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UNITED STATES GENERAL ACCOUNTING OFFICE  
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NATIONAL SECURITY AND  
INTERNATIONAL AFFAIRS DIVISION

B-210920

The Honorable Charles H. Percy  
Chairman, Committee on Foreign Relations  
United States Senate

Dear Mr. Chairman:

This report on the implementation of the Foreign Service Act of 1980 was undertaken in response to your request of October 18, 1982. In subsequent meetings with your office, we agreed to provide an informational status report addressing implementation problems and highlighting areas on which future congressional attention could be focused.

As arranged with your office, we are sending copies of this report to the departments, agencies, and organizations involved with the act's implementation. Copies will also be available to other interested parties who request them.

Sincerely yours,

A handwritten signature in cursive script that reads "Frank C. Conahan".

Frank C. Conahan  
Director



D I G E S T

The career Foreign Service was established to help the President and Secretary of State conduct the foreign affairs of the United States. Members of the Foreign Service help prepare and formulate U.S. foreign policy, represent U.S. interests abroad, and implement programs and activities promoting a wide range of U.S. foreign policy objectives.

In a letter dated October 18, 1982, the Chairman of the Senate Committee on Foreign Relations requested that GAO report on the implementation of the Foreign Service Act of 1980. To help the Committee carry out its oversight responsibilities, GAO performed a review to (1) determine the status of implementation and the extent of compliance by the foreign affairs agencies with the new provisions of the act; (2) identify implementation problems caused or not addressed by the act; and (3) highlight specific issue areas where the Committee may want to focus attention as it oversees the act's implementation and evaluates its effectiveness.

FOREIGN SERVICE ACT OF 1980:  
A COMPREHENSIVE PACKAGE

The act is viewed by both congressional and executive branch officials as a comprehensive package which seeks to respond to the special needs of the Foreign Service. (See pp. 1 and 2.)

The act's principal objective is to improve the operation and personnel administration of the Foreign Service system. The act provides authorizations necessary to attract, recruit, train, promote, and reward Foreign Service members. A major feature of the act is that it consolidates all Foreign Service personnel authorities under one law. Seven U.S. government departments and agencies are covered by the act and are collectively referred to as

foreign affairs agencies in the report. These are the Departments of State, Commerce, and Agriculture; the Agency for International Development; the United States Information Agency; the Arms Control and Disarmament Agency; and the Peace Corps.

Most provisions of the act became effective on February 15, 1981. When fully implemented, the act seeks to have the foreign affairs agencies operate under a common statutory framework and share administrative and personnel policies and operations to the maximum extent practical. (See pp. 2 and 3.)

STATUS OF IMPLEMENTATION OF  
10 MAJOR AREAS OF THE ACT

GAO categorized the new provisions of the act into 10 major areas: (1) Senior Foreign Service, (2) labor-management relations and Foreign Service grievances, (3) management of the Foreign Service, (4) pay and personnel, (5) worldwide assignment availability, (6) family-oriented provisions, (7) revised and new allowances for Foreign Service members, (8) new congressional reporting requirements, (9) promotion and retention, and (10) professional development. (See p. 7.)

Much had been accomplished by the foreign affairs agencies in implementing the new provisions in these areas, particularly those designed to improve the morale of Foreign Service members and their families and streamline the pay and personnel system.

Specifically, GAO found that:

--The establishment and conversion of senior officers to the Senior Foreign Service, similar to the Senior Executive Service of the Federal Civil Service, has essentially been completed, but some difficulties remain to be worked out. (See pp. 7 and 8.)

--Foreign Service unions are functioning; negotiations between officials from the foreign affairs agencies and the two unions are taking place, but both the agencies and the unions are dissatisfied with progress; and Foreign Service third party mechanisms for resolving questions of negotiability,

impasse disputes, and grievances are in place and are operating. (See pp. 9 to 14.)

--The Board of the Foreign Service and the Foreign Service Board of Examiners have been reestablished, and some coordination is taking place among the foreign affairs agency managers to promote compatibility in personnel policies. (See pp. 14 to 16.)

--A single Foreign Service pay schedule has been established, and the number of personnel categories has been reduced. (See pp. 16 and 17.)

--Uniform regulations have been issued in more than a dozen areas providing additional benefits and allowances for members and their families. (See pp. 20 to 22.)

--Congressional reporting requirements for ambassadorial nominations, operations of the Inspector General, affirmative action and professional development programs, and the implementation of the Foreign Service Act of 1980 are being met. (See pp. 22 to 28.)

#### SOME PROBLEMS REMAIN IN IMPLEMENTING THE NEW ACT

Implementation problems are arising in a number of areas. Some of the difficulties are attributable to execution of the act's new authorities, while others concern interpretation of the act's provisions. The foreign affairs agencies have experienced problems in such areas as appointments, personnel conversions, compensation, management of the Service, labor-management relations, benefits and allowances, and promotion and retention. (See p. 29.)

GAO found difficulties in the conversion of certain Foreign Service officers to the Senior Foreign Service. In 1981, the U.S. District Court held that some officers not converting to the Senior Foreign Service were eligible for immediate retirement annuities if they were forced to leave the Service at the end of a 3-year conversion period. In addition, the Department of State plans to reconvert some Foreign Service personnel to Civil Service

because of an inability to satisfy the worldwide assignment rotational requirements. (See pp. 30 to 32.)

The performance pay provisions of the act have been disputed among the foreign affairs agencies and unions causing some awards to be delayed and others not to be awarded. The administration of salary step increases to employees has also posed problems to the foreign affairs agencies, and officials are seeking to remedy the situation through a proposed legislative amendment. Additionally, some United States Information Agency and American Foreign Service Association officials are concerned that the Foreign Service rank-in-person system and assignment process could be jeopardized if the principles of the Equal Pay Act of 1963 are applied to the Foreign Service as the result of a decision in a pending court case. Officials in the State Department and AFGE do not share the extent of their concerns. (See pp. 34 to 39.)

Although the act seeks to promote maximum compatibility among the foreign affairs agencies and the development of uniform policies and procedures and the consolidation of personnel functions, maximum compatibility is a loosely held concept. Among the agencies, there exists no common definition nor have there been any attempts by officials to specify compatibility objectives or to develop a compatibility plan. Efforts to promote maximum compatibility have been addressed on an issue-by-issue basis and have centered on development of uniform regulations through joint negotiations. (See pp. 39 and 40.)

In the labor-management relations area, both union and foreign affairs agency officials are dissatisfied with the progress of joint negotiations and the development of uniform regulations. The negotiations involving officials from five foreign affairs agencies and two unions have often proved to be unwieldy and cumbersome. Also some officials in the foreign affairs agencies, the Office of Personnel Management, and the Office of Management and Budget disagree over whether to continue Senior Foreign Service membership in bargaining units represented by Foreign Service unions. (See pp. 40 to 43.)



Implementation of such benefits and allowances as the special incentive differential, family per diem while on extended temporary duty, and some health-related provisions are being delayed due to funding priorities and concern over their administration. The foreign affairs agencies and the Office of Management and Budget do not fully agree on how some of these remaining benefits and allowances should be structured. (See pp. 43 to 49.)

GAO also found concerns about the promotion and retention process, such as the Department of State's planned use of limited career extensions, the number of employees to receive an extension, and the number of senior surplus officers for whom no appropriate permanent positions are available. Stretch assignments, those assignments of Foreign Service members to positions graded differently from their personal ranks, have also been a concern. GAO found that reporting under the act does not present a complete picture of stretch assignment usage. (See pp. 49 to 54.)

The Department of State, in consultation with the other foreign affairs agencies, has submitted to Congress a package of amendments to the Foreign Service Act of 1980. State officials identified five of these amendments in need of immediate congressional coordination. Several amendments to the Foreign Service Act of 1980 have been enacted by the State Department's fiscal year 1983 continuing resolution and Authorization Act for fiscal years 1984 and 1985. (See pp. 54 to 60.)

#### GAO OBSERVATIONS AND AREAS FOR FUTURE COMMITTEE FOCUS

Given the complexity and scope of the act and the short time which has elapsed since it was enacted, GAO believes, on balance, the foreign affairs agencies, led by the Department of State, have made good progress in implementing a number of new provisions of the act and in generally complying with its overall objectives.

For certain areas, however, additional time and effort will be needed to fully implement the act. This is particularly true in the conduct of joint negotiations and the development and issuance of uniform regulations. (See pp. 60 and 61.)

As the Committee performs its oversight to ensure that the act is being implemented along desired lines, specific areas deserve Committee attention. (See pp. 61 to 64.) They include

- continuing Senior Foreign Service membership in bargaining units of Foreign Service unions,
- progress achieved under joint labor-management negotiations and the development of uniform regulations,
- efforts to promote greater compatibility among the foreign affairs agencies in the personnel systems and operations,
- disputes over the administration of performance pay awards to Senior Foreign Service members,
- possible implications to the Foreign Service personnel system and assignment process of a pending court case dealing with the Equal Pay Act of 1963, and
- use by the Department of State and other foreign affairs agencies of the limited career extension mechanism and foreign affairs agencies' reporting of stretch assignment usage.

#### AGENCY COMMENTS

Draft copies of the report were provided for comment to 14 agencies and organizations involved with the implementation of the act. The Departments of State and Agriculture, the United States Information Agency, the Agency for International Development, the Office of Management and Budget, the American Federation of Government Employees, and the American Foreign Service Association provided written comments. Their comments, copies of which have been included in the report as appendixes, have been incorporated where appropriate. Additionally, GAO received verbal comments and responses from the Office of Personnel Management, the Peace Corps, and Foreign Impasse Disputes Panel. Their comments are included in appropriate sections of

the report. GAO had not received any comments from the Department of Commerce, the Arms Control and Disarmament Agency, the Foreign Service Labor Relations Board, or the Foreign Service Grievance Board at the time the report was finalized.

Agency comments are addressed throughout the report as applicable. Agencies generally regarded the report as a comprehensive and balanced presentation of difficult subject matter. One point of contention is the issue of Senior Foreign Service membership in the bargaining units of the Foreign Service unions. The Department of State, the American Foreign Service Association, and the American Federation of Government Employees expressed strong opinions that such membership was appropriate. The Office of Management and Budget and the Office of Personnel Management support excluding the Senior Foreign Service from the bargaining units. Other organizations and agencies responding provided no specific comments on the issue. (See pp. 40 to 42.)



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### ABBREVIATIONS

AID	Agency for International Development
ACDA	Arms Control and Disarmament Agency
AFGE	American Federation of Government Employees
AFSA	American Foreign Service Association
FLRA	Federal Labor Relations Authority
FSGB	Foreign Service Grievance Board
FSIDP	Foreign Service Impasse Disputes Panel
FSLRB	Foreign Service Labor Relations Board
GAO	General Accounting Office
LCE	limited career extension
LWOP	leave without pay
OMB	Office of Management and Budget
OPM	Office of Personnel Management
SID	special incentive differential
USIA	United States Information Agency

## CHAPTER 1

### INTRODUCTION

In 1978, the Congress enacted the Civil Service Reform Act (Public Law 95-454) to improve the management of the nation's federal Civil Service. Two years later, to improve the management and effectiveness of the nation's Foreign Service, the Congress passed the Foreign Service Act of 1980 (Public Law 96-465), and on October 17, 1980, the President signed it into law. The Foreign Service of the United States was first established under the act of May 24, 1924 (commonly known as the Rogers Act) and was later continued by the Foreign Service Act of 1946. In passing the Foreign Service Act of 1980, the Congress placed emphasis on preserving and strengthening the best elements of the Foreign Service Act of 1946, while simplifying and rationalizing the many facets of the existing Foreign Service personnel system.

The Foreign Service was established to help the President and the Secretary of State conduct U.S. foreign affairs. It provides for a cadre of qualified personnel who can (1) serve the foreign affairs interests of the United States and (2) respond to the special challenges associated with international relations. Members of the service are asked to help prepare and formulate U.S. foreign policy, to represent U.S. interests in relation to foreign countries and international organizations, and to implement programs and activities promoting a wide range of U.S. foreign policy objectives.

#### THE FOREIGN SERVICE ACT OF 1980-- ITS PURPOSE AND NEW FEATURES

The Foreign Service Act of 1980 (hereafter referred to as the act) is viewed by both congressional and executive branch officials as a comprehensive package which goes a long way in responding to the special needs of the Foreign Service. Generally speaking, the act seeks to provide for (1) a career Foreign Service characterized by excellence and professionalism, representative of the American people, and operated on the basis of merit principles, (2) an equitable and efficient Foreign Service personnel system and a more effective management structure, (3) mitigation of many of the hardships, disruptions, and other conditions found in service abroad, and (4) the promotion of maximum compatibility in development of uniform personnel policies and procedures by those agencies authorized to use the act.

The act is intended to create a Foreign Service structure best able to meet the challenges and complexity of modern diplomacy. It is designed to provide all the authorizations necessary to attract, recruit, train, promote, and reward the members of the Foreign Service. The principal objective of the act is to improve the operations and personnel administration of the

Foreign Service system. A major accomplishment of the act is that it consolidates all Foreign Service personnel authorities under one law.

The following U.S. government agencies, referred to generally in this report as foreign affairs agencies, are covered by the act:

- Department of State,
- Department of Commerce,
- Department of Agriculture,
- Agency for International Development (AID),
- United States Information Agency (USIA),
- Arms Control and Disarmament Agency (ACDA), and
- Peace Corps.

The Departments of State, Commerce, and Agriculture; AID; and USIA are the primary users of the Foreign Service system. At Commerce, the Foreign Service system is used chiefly by the Foreign Commercial Service, while at Agriculture it is used primarily by the Foreign Agricultural Service. Because of its small size, ACDA does not use the Foreign Service system by directly hiring Foreign Service personnel, but instead employs Foreign Service members through temporary reimbursable details from other foreign affairs agencies. At the Peace Corps, many employees are employed using the Foreign Service system but are generally limited to 5-year noncareer appointments. About 14,000 Foreign Service employees from all the foreign affairs agencies are covered by the act.

Most of the act's provisions became effective on February 15, 1981. When fully implemented, the act contemplates that the five primary foreign affairs agencies, as well as ACDA and the Peace Corps for certain purposes, will operate under a common statutory framework and share administrative and personnel policies and operations to the maximum extent practical. However, in recognition of the different circumstances and missions found in each foreign affairs agency, the act provides that operational responsibility and authority for all functions, except for those specifically assigned to the Secretary of State, rest with the individual agency head.

While retaining many elements of the Foreign Service Act of 1946, the new act contains many new features, including:

- creation of a Senior Foreign Service incorporating features of the Senior Executive Service,



- changes in Foreign Service pay,
- reduction in the number of personnel categories,
- additional benefits and allowances for members and their families,
- a statutory basis for labor-management relations, and
- an expression that maximum compatibility is desired in personnel policies and operations among the foreign affairs agencies.

In addition, the act calls for a strict separation of the work force into Foreign Service and Civil Service components after 3 years. A purpose of this provision is to make the concept of worldwide availability and the requirement to serve overseas for Foreign Service members a reality. According to congressional committee reports, one of the basic problems giving rise to the legislation was the decline of Foreign Service members willing to serve overseas. Under the act, congressional expectation on this subject is clear--availability for worldwide assignment must be fully understood as a fundamental requirement for an individual to enter the Foreign Service and thereafter be promoted and retained.

The requirement to serve overseas is a major feature which separates the Foreign Service member from his or her counterpart in the Federal Civil Service. Other features which distinguish a career in the Foreign Service from one in the Civil Service include a rank-in-person as opposed to a rank-in-position system; the up or out principle of promotion and retention; and mandatory retirement in the Foreign Service at age 65.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

In a letter dated October 18, 1982, the Chairman of the Senate Committee on Foreign Relations asked that we report on the implementation and effectiveness of the Foreign Service Act of 1980. At the request of the Committee's office and to assist in preparing for oversight hearings scheduled for March 1983, our initial work focused on highlighting problems caused, or not addressed, by the law. We were also asked to examine any areas of the act where amendments were likely to be proposed by the Department of State. In March 1983, we furnished the Committee staff with a briefing document on these and other areas on which we believed congressional attention could be focused during oversight hearings.

This report provides the Committee with an overall status on the progress achieved by the foreign affairs agencies. This report also focuses on some of the more significant problems

experienced by the foreign affairs agencies in implementing a number of areas of the act and discusses specific areas on which the Committee may want to focus as it monitors future progress and seeks to evaluate the effectiveness of the act.

We sought to

- identify the new provisions, requirements, and features of the act;
- determine the status of implementation and the extent of compliance by the Department of State and other foreign affairs agencies with the new provisions;
- identify and highlight problems caused, or not addressed by, the act;
- determine generally the overall progress achieved by the Department and other agencies in implementing the act; and
- examine a package of amendments proposed by the Department.

We did not try to specifically evaluate (1) how well the act was meeting its objectives and the congressional intent or (2) how effectively it was being implemented and administered by the foreign affairs agencies. During a meeting with the Committee's office, it was determined that because a number of provisions were not scheduled for implementation until 1984 and beyond and a sufficient track record had yet to be established by the agencies, an effectiveness review of the act would be premature. Instead, we agreed to prepare an informational status report addressing implementation problems and highlighting areas on which future congressional attention could be focused. We have recently completed, however, a review of the operations of the Department of State's Office of Inspector General. In a report to the Chairman of the Subcommittee on Legislation and National Security, House Committee on Government Operations, we recommended to the Congress that legislative changes be made to increase the independence and effectiveness of the Office of the Inspector General.<sup>1</sup>

We performed our work in Washington, D.C., from December 1982 through May 1983 and met with officials from all the foreign affairs agencies and officials from the Foreign Service Grievance Board (FSGB), the Foreign Service Impasse Disputes

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<sup>1</sup>State Department's Office of Inspector General Should Be More Independent and Effective (GAO/AFMD-83-56, June 2, 1983).

Panel (FSIDP), and the Foreign Service Labor Relations Board (FSLRB). We also met with officials from the two labor unions covered by the act--the American Foreign Service Association (AFSA) for State and AID Foreign Service members and the American Federation of Government Employees Local 1812 (AFGE) for USIA Foreign Service members.

During our work, we reviewed the legislative history of the act, required reports to the Congress dealing with its implementation, ambassadorial nominations, affirmative action and professional development programs, and the activities of the Inspector General and the Board of Examiners. We also reviewed programming documents and regulations implementing some of the new provisions of the act and obtained views from officials from all the foreign affairs agencies on problems experienced in implementing it. In addition, we examined a package of amendments to the act prepared by the Department of State in conjunction with the other foreign affairs agencies. We discussed this package with officials from the primary foreign affairs agencies, the Office of Management and Budget (OMB), and the Office of Personnel Management (OPM). Our review was performed in accordance with generally accepted government auditing standards.

This report was provided for comment to 14 agencies and organizations involved with the act's implementation. The foreign affairs agencies and related organizations commenting on this report generally agreed with its contents. Written comments were provided by the Department of State, the Department of Agriculture, the Agency for International Development, the United States Information Agency, the Office of Management and Budget, the American Federation of Government Employees, and the American Foreign Service Association. Copies of their comments are included in the report as appendixes. Verbal comments or replies were received from the Office of Personnel Management, the Peace Corps, and the Foreign Impasse Disputes Panel. These are reflected in the report where appropriate. No comments were received from the Department of Commerce, the Arms Control and Disarmament Agency, the Foreign Service Labor Relations Board, or the Foreign Service Grievance Board.

Agency comments are addressed throughout the report as applicable. Agencies generally regarded the report as a comprehensive and balanced presentation of difficult subject matter. One point of contention is the issue of Senior Foreign Service membership in the bargaining units of the Foreign Service unions. The Department of State, AFSA, and AFGE expressed strong opinions that such membership was appropriate. OMB and OPM supported excluding the Senior Foreign Service from the bargaining units. Other organizations and agencies responding provided no specific comments on the issue. (See pp. 41 to 43).

## CHAPTER 2

### STATUS OF IMPLEMENTATION OF 10 MAJOR AREAS OF THE ACT

The Foreign Service Act of 1980 is a comprehensive law containing those authorities necessary to administer all aspects of the Foreign Service system. In reviewing all the new provisions of the act, we classified them into these 10 areas: (1) Senior Foreign Service, (2) labor-management relations and grievances, (3) management of the Foreign Service, (4) pay and personnel, (5) worldwide availability, (6) family-oriented provisions, (7) revised and new allowances for members, (8) new congressional reporting requirements, (9) promotion and retention, and (10) professional development.

This chapter briefly reports on the progress achieved by the foreign affairs agencies in implementing the new provisions in each area. It generally identifies the content and objective for each area, addresses specific congressional expectations with respect to the provisions, and describes what has been accomplished. It also identifies, where appropriate, remaining work to be completed before compliance with the act can be fully achieved.

#### SENIOR FOREIGN SERVICE

The act creates a new Senior Foreign Service comparable to the general and flag officer ranks of the armed services and the Senior Executive Service of the federal Civil Service. The Congress intended to create in the new Foreign Service structure a senior officer corps with strong policy formulation capabilities; outstanding executive leadership qualities; and highly developed functional, foreign language, and area expertise.

The establishment and conversion of senior officers to the Senior Foreign Service have essentially been completed. In September 1981, over 1,000 officers from the existing senior ranks of the Foreign Service in the 5 primary foreign affairs agencies became members of the Senior Foreign Service. Under the act, those senior officers who do not enter the Senior Foreign Service must retire at the end of a 3-year conversion period. According to State Department documents, more than 60 senior officers from all the foreign affairs agencies did not initially seek conversions into the Senior Foreign Service. Before the end of the conversion period in 1984, they will have to choose whether to retire or to apply for positions in the Senior Foreign Service.

Policies and procedures governing the establishment of the Senior Foreign Service have been developed and agreed to in negotiations by the management of all the foreign affairs agencies and the two bargaining units. These policies and procedures are contained in a uniform regulation and apply to the

Senior Foreign Service in all the foreign affairs agencies. Such areas as selection-out of members, time-in-class limits, limited career extensions, and performance (bonus) pay are addressed. These areas and how they are unique to the Foreign Service are discussed below.

#### Differences between the Senior Foreign Service and the Senior Executive Service

We identified a number of significant differences under the act. First, the Senior Foreign Service has time-in-class limitations, which govern length of service, and limited career extensions (LCEs), which permit an extension of a member's appointment whose time in class is about to expire. No similar mechanisms are found in the Senior Executive Service. Both mechanisms are intended to be used to promote the up-or-out nature of a Foreign Service career.

The Senior Foreign Service is composed of three classes: counselor, minister-counselor, and career minister. By regulation, each is subject to a time-in-class limit--7, 5, and 4 years, respectively. As an officer approaches the end of the limit, a selection board convenes and reviews the performance of the officer. If no promotion is offered, a determination is made either to (1) select out or retire the individual or (2) offer a limited career extension for 3 years. The LCE permits the officer to serve 3 more years before another career extension review takes place.

The limited career extension mechanism has not yet been used. The Department of State will be the first foreign affairs agency to use LCEs for its members of the Senior Foreign Service whose time-in-class limits expire in 1984. According to personnel officials, the other agencies will use extensions starting in 1985. The other agencies will begin to use them later because the Department of State had functioning time-in-class limits when the Foreign Service Act of 1980 was passed while the other agencies did not.

A second difference between the Senior Foreign Service and the Senior Executive Service deals with the number of non-career Senior Foreign Service members which is permitted in the Foreign Service system. The percentage of non-career members is limited to 5 percent of the total members of the Senior Foreign Service. A restriction of 10 percent applies to the Senior executive Service. A Department of State official informed us that as of September 30, 1983, only 25 officers were non-career Senior Foreign Service members subject to the 5-percent limit.

A third difference deals with the awards of performance pay. In the Foreign Service, decisions governing performance pay awards are based upon recommendations by selection boards.

In the Senior Executive Service, however, final decisions on performance pay awards may be made by agency management, even though selection boards are used. Since passage of the act, the awards of performance pay to Senior Foreign Service members have proved particularly troublesome. USIA took the lead in presenting a position that performance pay should be awarded according to a final decision made by agency heads and should not be made on the basis of binding recommendations by selection boards. As a result of this position, awards of Senior Foreign Service performance pay were delayed at USIA. Chapter 3 discusses this problem in detail.

Perhaps the most important difference between the Senior Foreign Service and the Senior Executive Service is the one that deals with membership in bargaining units represented by Foreign Service unions. All Senior Executive Service members are viewed as management officials and are consequently prevented from being part of bargaining units. Under the Foreign Service Act of 1980, however, Senior Foreign Service members are permitted to belong to bargaining units unless they occupy specific policy and personnel positions excluded by the act. In passing the act, the Congress recognized that this was a departure from standard practice both in the government and private sectors, but chose to continue the practice as it had existed before passage of the act because of agreement between foreign affairs management and union officials to do so and the need to provide a broad membership base for developing strong and stable unions. We were told by a Department of State official that management and the unions also favored this approach because many items subject to negotiation in the Foreign Service related to conditions of service and not to supervisor-subordinate relationships. Membership of the Senior Foreign Service in the bargaining units is an area where considerable disagreement now exists. Some problems experienced in this area are discussed in the following chapter.

#### LABOR-MANAGEMENT RELATIONS AND FOREIGN SERVICE GRIEVANCES

The Foreign Service Act of 1980 provides a statutory framework for conducting labor-management relations in the Foreign Service that differs from those of other federal agencies. It also creates a number of third party mechanisms designed to resolve negotiating problems and grievance cases.

Specifically, the act provides for

- establishing a single, worldwide bargaining unit for Foreign Service employees of each agency and the authority for joint negotiations to take place;

- including certain Foreign Service managers, supervisors, and Senior Foreign Service members in the bargaining unit;
- establishing a new Foreign Service Labor Relations Board, as an entity under the Federal Labor Relations Authority (FLRA), to handle Foreign Service cases and manage the labor-management provisions of the act;
- continuing the Foreign Service Impasse Disputes Panel as constituted under Executive Order 11636 but with the additional authority to make final and binding decisions on negotiation impasses; and
- continuing the Foreign Service Grievance Board but with the additional authority to include serving as the hearing mechanism in separation cases and acting as an appeal mechanism for resolving labor-management implementation problems.

Since passage of the act, Foreign Service unions have Senior Foreign Service membership; joint negotiations are taking place; and the third party mechanisms have been established and are involved in Foreign Service labor-management questions over negotiability, impasse disputes, and grievances. The discussion which follows provides a status of progress achieved.

#### Negotiations, unions, and membership

Under the exclusive bargaining unit concept provided for by the act, Foreign Service employees in three foreign affairs agencies are exclusively represented by unions. AFSA represents the employees of both State and AID, while AFGE represents the employees of USIA. The Foreign Service employees of both the Departments of Commerce and Agriculture have not formally selected union representation. However, both AFSA and AFGE purport to look out for the best interests of all Foreign Service employees.

AFSA, formerly a professional association for the diplomatic corps, has become a true union. Specially constituted standing committees in AFSA focus on those items of particular concern to State and AID employees. At one time, AFSA also represented USIA Foreign Service employees, but lost a representation election in 1976 to AFGE.

According to AFSA officials, overall AFSA membership totals are higher than ever. The following identifies AFSA membership as of April 1983.

### AFSA Membership as of April 1983

State	3,214
AID	1,161
USIA	154
Agriculture	8
Commerce	38
Retired	2,504
Associate	435
Honorary	<u>9</u>
Total	<u><u>7,523</u></u>

AFSA has enrolled 412 of 708, or about 58 percent, of the State Department's Senior Foreign Service officers eligible for union membership. AFSA officials said that about 45 percent of the AID eligible Senior Foreign Service officers belong to AFSA. USIA membership in the AFGE local, according to a union official, is just over 1,000. Furthermore, about half the eligible Senior Foreign Service officers in USIA belong to the union.

The Foreign Service Act of 1980 requires negotiations between representatives from the unions and management of the foreign affairs agencies with respect to the conditions of employment applicable to employees in the agencies. Negotiations carried out since passage of the act have been slow and often unwieldy. While only State, AID, and USIA have unions and need negotiate, representatives from Agriculture and Commerce usually attend the weekly negotiating sessions. Occasionally representatives from the Peace Corps and USIA's Bureau of Broadcasting (Voice of America) may also attend negotiating sessions.

Negotiations have been conducted on an issue-by-issue basis, with agreements by all the parties resulting in the issuance of uniform regulations that in some cases are valid for only 1 year. Topics to be negotiated are raised by both union and management. No overall collective-bargaining agreement was negotiated at the outset, although procedures for conducting the negotiations were. Both union and management officials have expressed dissatisfaction with the labor-management negotiating progress achieved to date. A number of officials suggested that several more years may be necessary before regulations in many areas can be developed, negotiated, and issued. In addition, the progress of negotiations has been slowed by the large number of unfair labor practices and impasses which have been filed. Chapter 3 discusses these and some of the other structural and operational problems which we believe have slowed negotiations.

#### Third Party Foreign Service mechanisms

The act established or continued three formal third party dispute resolution mechanisms for use by Foreign Service employees; these are FSLRB, FSIDP, and FSGR. All three organizations



are functioning to decide cases that have originated within the foreign affairs agencies. While the organizations resemble similar entities in the Civil Service, each structure also reflects unique characteristics of Foreign Service activities and approaches to labor-management relations practiced by the foreign affairs agencies and unions.

#### Foreign Service Labor Relations Board

Section 1007 of the act charges FSLRB with supervising elections and certifying exclusive bargaining agents; deciding negotiability of appeals and unfair labor practice complaints; resolving disputes over the effect, interpretation, or breach of a collective bargaining agreement; and taking other actions necessary to carry out the act's labor-management provisions. FSLRB has prescribed regulations concerning its functions and is operating within FLRA. FSLRB decisions are to be consistent with FLRA decisions, except in special circumstances. Administrative and staff support is provided to FSLRB by FLRA, and the chairman of FLRA also serves as chairman of FSLRB.

Since FSLRB was established, it has investigated over 36 allegations of unfair labor practices which have been filed, principally dealing with conducting the joint negotiations. As of August 31, 1983, seven unfair labor practices remained open.

#### Foreign Service Impasse Disputes Panel

Section 1010 of the act establishes FSIDP within the FLRA; it is modeled after the Federal Service Impasses Panel. FSIDP, like its counterpart in the Civil Service, resolves negotiation impasses between the foreign affairs agencies and the unions. A member of the Federal Service Impasses Panel also serves as a member of FSIDP. The staff of the Federal Service Impasses Panel also provides support to FSIDP. Although the authority and procedures of the two panels are similar in most respects, they differ on one matter. Unlike the Federal Service labor-management relations statute, the Foreign Service Act of 1980 does not require the parties to use the services of the Federal Mediation and Conciliation Service to negotiate to an impasse before requesting FSIDP services. FSIDP often provides mediation assistance to the parties, in addition to the other methods and procedures used to resolve impasses.

Three cases were submitted to FSIDP for resolution in fiscal year 1982, and all were closed. In fiscal year 1983 FSIDP received nine cases. Impasse cases pending at the end of the fiscal year 1983 involved performance pay and standby and on-call duty pay.

## Foreign Service Grievance Board

FSGB has been reconstituted under the revised statutory authority in the act. Its primary functions continue unchanged, but some new functions have been added, including serving as the hearing mechanism in separation cases and acting as appeal mechanism for resolving labor-management implementation disputes for collective bargaining agreements not otherwise settled under negotiated procedures.

The act's grievance provisions permit a grievant to select a representative of his or her choosing or to represent himself or herself at every stage of the proceedings, before both the agency and FSGB. If a grievant finds the agency's resolution unsatisfactory, he or she may file with FSGB. However, if the grievant is a member of a bargaining unit, the exclusive labor organization has a right to present its views before FSGB.

Procedures implementing the new provisions of the act relating to grievance processing in each foreign affairs agency have yet to be completed and are unresolved. FSGB has revised its own internal procedures for processing the individual grievances referred to it by Foreign Service members. These changes have been discussed with but not formally agreed to by the management of the foreign affairs agencies.

The chart below identifies the cases registered by FSGB since the Foreign Service Act of 1980 became effective.

### Foreign Service Grievances

<u>Year</u>	<u>State</u>	<u>USIA</u>	<u>AID</u>	<u>Commerce</u>	<u>Agriculture</u>	<u>Total</u>
1981	53	18	9	-	-	80
1982	91	7	16	1	-	115
1983	67	9	29	-	-	105

(through Sept.)

Only four institutional grievances have been registered since passage of the act. An institutional grievance is one where a union rather than an individual files a grievance. The first concerned a USIA Civil Service employee who had not been allowed time off to appear on behalf of a Foreign Service member in a grievance hearing. It was settled before actually going before FSGB. The second case involved AFGE use of USIA's telecommunications facilities to send union messages to posts abroad. USIA management denied further use to AFGE on the basis that there was scurrilous material in the cables. In its decision, FSGB decided the union had not improperly used the official channels but had used ill-advised language. The other two grievances were filed against AID and USIA management and involved the open assignments process.

Most individual grievances concern performance evaluation reports, although grievances over expenses involving the Iranian hostage situation, retirement annuities, and various allowances and benefits have also gone before FSGB. In November 1981, FSGB expanded its membership from 15 to 17. This action was intended to speed up the processing time for grievance cases, the number of which doubled since the act became effective.

#### MANAGEMENT OF THE FOREIGN SERVICE

A significant portion of the Foreign Service Act of 1980 deals with managing the Foreign Service personnel system and its structure. It requires that it be administered to ensure maximum compatibility among foreign affairs agencies. The act encourages agencies to develop uniform policies and procedures and to consolidate personnel functions, as well as continues the existing statutory directive for compatibility between the Foreign Service and the Civil Service to the extent practicable.

While the act provides for certain functions which only the Secretary of State may perform, e.g., issuance of uniform regulations, administration of the Foreign Service Retirement and Disability System, and designation of posts as diplomatic or consular, it also makes clear that the authority of the heads of the foreign affairs agencies to administer the Foreign Service personnel system is in no way diminished.

In addition, the act continues the Board of Examiners and the Board of the Foreign Service as originally mandated in the Foreign Service Act of 1946. The operation of the Board of Examiners basically remains unchanged. However, the act calls for the Board of the Foreign Service to advise the Secretary of State on matters relating to the service, such as promoting maximum compatibility among the foreign affairs agencies and between the Foreign Service and Civil Service.

Agency officials pointed to a number of areas which they felt promoted compatibility of procedures and operations among the foreign affairs agencies. They include the (1) conduct of negotiations and the development of uniform regulations, (2) use of informal working groups composed of members from the foreign affairs agencies to develop common policies and draft regulations, (3) development of interagency agreements, and (4) the use of such organizations as the Board of Examiners and the Board of the Foreign Service.

The conduct of weekly negotiations involving representatives from the unions and foreign affairs agencies and the resulting uniform regulations agreed to by these parties are viewed in themselves as devices to promote maximum compatibility. Since passage of the act, as of September 1983, 14 uniform regulations have been negotiated and issued.

Also many officials said that a great deal of interagency coordination and consultation takes place among the agencies through such mechanisms as the Personnel Directors Committee, various groups established to prepare draft regulations, and the development of interagency agreements. In early 1982, the Director General of the Foreign Service set up an interagency committee of personnel directors from each foreign affairs agency. In 1982, four meetings were held, while in 1983 only two meetings were held. Working groups have also been convened to develop common policies and draft regulations on such topics as appointment and tenuring procedures, grievance regulations, and the special incentive differential (SID). We were told by officials from all the foreign affairs agencies that informal communication and coordination among the agencies occurred frequently and that the Department of State had effectively kept the lines of communication open.

Interagency agreements have also been cited as promoting greater compatibility. We found two examples where this had been accomplished. The first involved a five-agency agreement, reached on June 10, 1981, to establish a common tracking and reporting mechanism in order to ensure that the Foreign Service system as a whole did not exceed the allowable 5 percent of the members of the Senior Foreign Service having non-career status. The agencies have also developed an Interagency Foreign National Personnel Policy Coordinating Committee to facilitate the development of a sound personnel system for foreign nationals.

As another example of compatibility and uniform procedures, the Board of Examiners for the Foreign Service supervises the administration of a joint written and oral examination process for junior officer candidates of the Department of State and USIA. The Board also supervises compatible examination procedures for mid-level officer candidates of State, USIA, Agriculture, and Commerce.

On May 21, 1982, Executive Order No. 12363 established a new Board of the Foreign Service. Functions formerly carried out by the Board of the Foreign Service in the areas of separation proceedings and labor-management disputes were transferred by the Foreign Service Act of 1980 to FSGB and FSIDP. Board officials see its new role in two major areas: (1) providing the Secretary of State with the views and comments of the development, trends, and problems in the Foreign Service and (2) developing as much compatibility among the foreign affairs agencies as possible.

Procedures governing Board operations were approved by the Board members on December 9, 1982. Meetings are to be held each quarter, though special meetings may be held from time to time as circumstances warrant. The Board has held seven meetings since passage of the act: July 1 and December 9, 1982, and

January 20, April 7, June 30, September 15, and December 15, 1983. Senior officials from the following agencies are represented on the Board: State, USIA, AID, Agriculture, Commerce, the Office of Personnel Management, the Office of Management and Budget, the Department of Labor, and the Equal Employment Opportunity Commission.

Topics discussed by the members at the seven meetings include the status of the implementation of the act, the administration's proposals to change the Civil Service retirement system, performance pay, the special incentive differential, Senior Foreign Service membership in bargaining units, the role of families in the Foreign Service, and proposed amendments to the act. According to the minutes of the Board meetings, the Board has as yet not taken a position on any issue and has not forwarded in written form its views to the Secretary of State on any issue.

#### PAY AND PERSONNEL

The Foreign Service Act of 1980 simplified and rationalized about a dozen personnel categories previously existing in the Foreign Service personnel system and established a single Foreign Service salary schedule comparable to that of the Civil Service. The act reduced to three the number of Foreign Service personnel categories--the Senior Foreign Service, Foreign Service specialists, and Foreign Service generalists. Conversions taking place under the act include

- senior officers available for worldwide service to the Senior Foreign Service,
- Foreign Service Reserve officers and Foreign Service Staff Corps members available for worldwide assignment to the new Foreign Service specialist category,
- Foreign Service officers and Foreign Service Information officers available for worldwide assignment to the Foreign Service generalist category,
- Civil Service members available for worldwide assignment to either the Foreign Service specialist or generalist categories, and
- Foreign Service Reserve officers and Foreign Service Staff Corps members not available for worldwide assignment to the Civil Service.

Beginning the first pay period in October 1980, all existing Foreign Service members, other than senior officers, were paid at new salary levels using a single new Foreign Service schedule. New pay grades and categories that replaced old

pay grades and categories became effective on February 15, 1981. With the establishment of new pay grades and new personnel categories, the Foreign Service began a 3-year conversion process. Not every foreign affairs agency was subject to all the conversions.

On September 28, 1981, the foreign affairs agencies formally converted 1,007 senior officers to the new Senior Foreign Service. Since then, additional senior officers have either been converted, promoted into, or retired from the Senior Foreign Service. Most conversions into the Senior Foreign Service were completed by the end of 1982 when membership totaled 1,215. Over 60 eligible senior officers in State, USIA, and AID initially declined conversion; however, they are expected either to apply for Senior Foreign Service appointments or separate from the Foreign Service before the end of 1984.

Those Foreign Service members designated to be available for worldwide assignment below the Senior Foreign Service level were converted to the new Foreign Service status by June 15, 1981, as required by the act. Most of the existing Foreign Service members in State, USIA, and AID were converted from their old categories to the new worldwide available specialist and generalist categories.

Foreign Service members who were not available or needed for worldwide assignment have 3 years to convert to Civil Service. State Department and USIA are the only agencies affected by this conversion. At the end of 1982, the State Department had 75 employees who had already converted to Civil Service and had 281 employees deferring conversion until their February 15, 1984, deadline. At USIA about 600 employees were awaiting conversion by their June 15, 1984, deadline. We were told individuals who were deferring their conversions until 1984 were doing so to maximize their salaries by salary step increases under the Foreign Service system. Final conversions are expected to be made in 1984.

The Department of Agriculture is the only foreign affairs agency to convert employees under the act from the Civil Service to the Foreign Service. Initially in 1981, 166 Agriculture Civil Service employees deemed available for worldwide assignment were converted. At the end of 1982 even with additional conversions, Foreign Service membership at Agriculture totaled 164 employees due to some retirements. Conversions in the other foreign affairs agencies are essentially complete.

The table below identifies the number of Senior Foreign Service and Foreign Service members authorized for each foreign affairs agency in fiscal year 1982.

Authorized Fiscal Year 1982  
Foreign Service Positions in  
the Foreign Affairs Agencies

	<u>State</u>	<u>AID</u>	<u>Commerce (Foreign Commercial Service)</u>	<u>USIA</u>	<u>Agriculture (Foreign Agriculture Service)</u>	<u>Peace Corps</u>	<u>ACDA (note a)</u>
Senior Foreign Service	725	345	20	199	15	11	-
Foreign Service (generalist and specialist)	<u>8,663</u>	<u>1,866</u>	<u>124</u>	<u>1,712</u>	<u>168</u>	<u>418</u>	<u>-</u>
Total Foreign Service	9,388	2,211	144	1,911	183	429	-
	=====	=====	=====	=====	=====	=====	=====

<sup>a</sup>ACDA maintains no Foreign Service appointment authority but employs Foreign Service members by use of temporary details from other agencies. In fiscal year 1982, 44 Foreign Service personnel were detailed to ACDA.

WORLDWIDE ASSIGNMENT AVAILABILITY

Section 504 of the act sets forth an important criterion for membership in the Foreign Service--worldwide availability. It reaffirms a requirement in the Foreign Service Act of 1946 that all career members accept the obligation to serve abroad as a condition of employment.

The act also provides that no member may be assigned to duty within the United States for any period of continuous service exceeding 8 years, unless the Secretary or agency head approves an extension for that individual in special circumstances. The act also calls for members who are U.S. citizens to be assigned to duty within the United States at least once during a 15-year period of service.

To facilitate its staffing overseas posts, the Department of State has developed a policy which calls for a 4-year tour of duty for most assignments in the United States. Generally, these domestic tours are composed of two consecutive assignments of 2 years each. One additional year may be added to a 4-year domestic tour if the officer and bureau concerned concur. Current policy provides that beyond the 5-year period, a further

extension of a tour in the United States will require the personal approval of the Director General of the Foreign Service (up to 8 years) or the Secretary of State (beyond 8 years). The Director General is a career member of the Senior Foreign Service appointed by the President to help the Secretary manage the Service.

Foreign affairs agency officials indicated that the reaffirmation of the worldwide availability concept was not presenting any major problems in either recruiting or sending Foreign Service officers overseas. However, as discussed in chapter 3, the Department of State is experiencing difficulties in meeting the worldwide rotation requirement for some security officers. With respect to recruitment, we were told that the requirement had no impact. Applications for the 1982 Foreign Service officer written examination totaled close to 28,000, a reported 19-percent increase over the previous year's record high. Additionally, officials pointed out that new employees were now required to sign worldwide obligation statements before entering the Foreign Service. Although they usually can be filled, officials conceded that filling hardship posts continues to be difficult.

#### FAMILY-ORIENTED PROVISIONS

The Foreign Service Act of 1980 contains some new features intended to improve the condition of family members in the Foreign Service and to take into account their contributions to the work of the Foreign Service. These features provide

- greater employment possibilities while accompanying an employee overseas;
- increased opportunities for orientation, language, and functional training;
- reimbursement for representation expenses incurred by family members while serving overseas;
- a statutory basis for the Family Liaison Office;
- retirement annuities and survivor benefits for qualifying former spouses; and
- separate maintenance allowances for family members when an employee serves alone overseas.

Progress has been made in implementing the family-oriented provisions. In particular, some uniform regulations have been issued concerning such areas as separate maintenance allowances,



travel for children of separated parents,<sup>1</sup> advance of pay on assignments to foreign posts, grants and reimbursements to facilitate orientation, language and functional training for family members, obstetrical care, emergency visitation travel, rest and recuperation trips, and retirement and survivor benefits for spouses and former spouses. Other regulations for family members are under negotiation or development and include such areas as former spouse health care, family member appointments, and family per diem and temporary duty travel.

In addition, a number of actions have also been taken to improve employment opportunities for family members stationed overseas. As part of its work in counseling family members, the Family Liaison Office has also undertaken to negotiate reciprocal bilateral work agreements. As of July 1983, the Family Liaison Office had negotiated agreements with 11 countries: the United Kingdom, New Zealand, Norway, Sweden, France, Canada, Jamaica, Bolivia, El Salvador, Denmark, and Colombia. Negotiations are under way with South Africa, the Philippines, and the Federal Republic of Germany.

Section 311 of the act also provides authority to temporarily employ spouses and other dependents in positions normally occupied by Foreign Service nationals. Some Foreign Service national positions abroad are now filled by U.S. dependents under an American family program. In addition, Executive Order, No. 12362, issued May 12, 1982, allows a family member who has been employed overseas for 2 years under this type of program to be appointed noncompetitively in the domestic Civil Service, as long as the member meets the requirements of a particular position. In November 1982, the Office of Personnel Management also authorized the broadening of Department of Defense appointment authority to allow appointment of dependents of all U.S. personnel assigned overseas. Officials told us that this was expected to provide additional employment opportunities for Foreign Service dependents abroad.

#### REVISED AND NEW ALLOWANCES FOR FOREIGN SERVICE MEMBERS

The Foreign Service Act of 1980 also provides revised and new authorities to

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<sup>1</sup>In its comments to our draft report, AID indicated that it was experiencing difficulties with the way the travel for children of separated parents provision was interpreted and implemented and asked us to provide guidance on the intent of the Congress regarding the provision. We did not review the operational aspects of the allowance to sufficiently comment on its implementation propriety.

- pay relocation allowances to members of the Foreign Service on domestic transfers;
- grant an additional rest and recuperation trip in extraordinary circumstances;
- authorize travel for a child when a parent is medically evacuated and the child cannot remain at the post alone;
- pay round trip travel from a location abroad for purposes of family visitation in emergencies involving hardship;
- supply better health care;
- award additional incentive payments to members with needed language skills;
- extend a danger pay allowance for service in a particularly hazardous post;
- dispense up to 3 months' advance pay upon assignment to a foreign post;
- give a special incentive differential upon assignment to a post where especially adverse conditions exist and warrant additional pay as a recruitment and retention device;
- provide for educational travel for dependents receiving secondary and post secondary educations;
- provide official reception, entertainment, and other representational expenses to family members;
- entitle members, other than members of the Senior Foreign Service, to special compensatory time off; and
- furnish special subsistence expenses to security officers and other members who must be on protracted travel status.

Progress has also been achieved in implementing these new provisions. Most of them have been put into effect in the form of uniform regulations. Areas where regulations are under development or negotiation with the unions include the special incentive differential, premium pay, and dental care. Chapter 3 discusses some difficulties which have prevented these authorities from being implemented.

## NEW CONGRESSIONAL REPORTING REQUIREMENTS

The act contains some new provisions which require annual reports on various matters of interest to the Congress. These new requirements are intended to ensure that (1) the Inspector General submits regular and special reports on significant problems, abuses, and deficiencies disclosed during audits and investigations; (2) the foreign affairs agencies progress in meeting affirmative action objectives; (3) nominees for appointments as ambassadors or chiefs of missions have demonstrated competence, are not being rewarded solely for contributions to political campaigns, and have sufficient foreign language skills; (4) career development needs of the Foreign Service members are being met; (5) progress in implementing the act is being achieved, and (6) there is a relationship between foreign language competence and the effectiveness of representation of the United States abroad. The act requires that the Secretary of State designate two model foreign language posts where government employees assigned possess an appropriate level of language competence and that he report on the operations of such posts and costs and the advantages and disadvantages of meeting the foreign language competency requirements.

### Inspector General

The State Department Inspector General is required to submit an annual report to the Secretary of State describing significant problems, abuses, and deficiencies disclosed during the reporting period and recommending corrective action. The report is also to identify significant previous recommendations on which corrective action has not been completed and is to summarize matters referred to prosecutive authorities and convictions which have resulted. Reports are to be submitted to the Secretary not later than April 30 of each year and are to be transmitted to appropriate committees of the Congress within 30 days thereafter, together with any comments the Secretary considers appropriate.

The Inspector General is also required to report immediately to the Secretary whenever he or she becomes aware of particularly serious or flagrant problems, abuses, or deficiencies, and any such reports must be transmitted by the Secretary to appropriate committees of the Congress within 7 days thereafter.

Since passage of the act, the Inspector General has prepared three annual reports addressing the activities of the Office of the Inspector General for calendar years 1980-82. As required by the act, these reports have been submitted by the Secretary to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs. According to Inspector General officials, no findings of particularly serious or flagrant problems or abuses have been identified and reported.

### Affirmative action

The act specifically mandates the establishment of a recruitment program for minorities consistent with the Civil Service Reform Act of 1978. The act requires the head of each foreign affairs agency using the authorities under the act to submit annually, no later than January 31 each year, a report to the Congress on the recruitment programs established, including any affirmative action plans submitted under section 717 of the Civil Rights Act of 1964, as well as recommendations for administrative or legislative actions which may be appropriate.

Each primary foreign affairs agency has submitted the required reports. Programs are in place at each agency which are designed to meet the affirmative action and equal employment principles of the Foreign Service Act of 1980. In addition, a representative from the Equal Employment Opportunity Commission is a member of the Board of the Foreign Service.

### Reporting for chiefs of missions

The act authorizes the President to confer the personal rank of ambassador for special temporary missions for a period of up to 6 months without the advice and consent of the Senate. However, advance notification to the Committee on Foreign Relations is required to report why the appointment was not submitted for Senate consideration.

The act also requires that the President provide to the Senate Committee on Foreign Relations a report on each nominee for appointment as chief of mission which demonstrates the nominee's competence to perform the duties of chief of mission in the country in which he or she will serve. The purpose of this provision is to help the Committee on Foreign Relations exercise its constitutional advise and consent responsibilities with respect to ambassadorial nominations.

Two other reports are required for chief of mission positions: (1) each individual nominated to be a chief of mission must report political contributions for a 4-year period to the Senate Committee on Foreign Relations, and (2) each chief of mission must report to both the House and Senate, within 6 months of assuming his or her position, on his or her own language competence and the language competence of the mission staff in the principal language used at posts. Our review of State Department records revealed that these reports were forwarded as required.

### Professional development

The Foreign Service Act of 1980 obliges the primary users of the Foreign Service personnel system to establish a professional development program and instructs the Secretary of State

to report annually to the Congress and the President on its implementation. Since passage of the act, the Department of State has prepared three reports with input from all the agencies and has submitted them as required. The reports have addressed steps taken in each foreign affairs agency to improve professional development for both Foreign and Civil Service employees.

#### Model foreign language posts report

The State Department has designated Dakar, Senegal, and Montevideo, Uruguay, as the model foreign language competence posts in accordance with the act. State Department officials told us good progress was being made in assigning government employees who were language qualified. This experiment will continue until September 30, 1985; the Department then must furnish a report to the Speaker of the House and Senate Committee on Foreign Relations no later than January 31, 1986, describing the costs, advantages, and disadvantages of this approach to foreign language competence.

#### Implementation report

To provide for congressional oversight on the progress achieved by the foreign affairs agencies in implementing the act, section 2402 requires the Secretary of State to report to the Speaker of the House and Chairman of the Senate Committee on Foreign Relations no later than February 1 of each year on

- steps taken to further maximum compatibility among the agencies;
- progress made by each agency in converting personnel and positions to new categories;
- the number of individuals assigned to positions more than one grade higher or lower above or below their personal rank; and
- 5-year flow-through projections of the upper and lower limits planned by each agency for each occupational category for recruiting, advancing, and retaining members of the Service.

In addition, the Congress also directed that the Secretary consult with the unions on the flow-through projections and that the report include their views.

Two implementation reports, as they are known, have been submitted, each addressing the areas spelled out by the act. The first was submitted in May 1982, the second in February

1983. According to our discussions with State and union officials, delays were experienced in submitting the first report because of some disagreements over the types of information to be furnished by the agencies to the unions on the flow-through models and delays in obtaining union responses. The second report was submitted in accordance with the February deadline, although AFGE chose not to submit its views on the implementation report. We have been told by an AFGE official that the union decided not to submit its views for inclusion in the report because it questioned the usefulness of the submission. Instead, other alternatives are being explored by AFGE to provide its views to the Congress.

#### PROMOTION AND RETENTION

The Foreign Service Act of 1980 provides that decisions on the numbers of individuals to be promoted into and kept in the Senior Foreign Service be based upon a systematic long-term projection of personnel flows and needs designed to provide

- a regular, predictable flow of recruitment in the Service;
- effective career development patterns to meet the needs of the Service; and
- a regular, predictable flow of talent upward through the ranks and into the Senior Foreign Service.

As previously mentioned, all foreign affairs agencies must give the Congress 5-year projections of attrition, recruitment and promotion, also referred to as flow-through planning. Its purpose is to ensure that management policies provide for a predictable flow of talent into and through the Foreign Service.

The statute aims to restore the concept of both voluntary and involuntary attrition at sufficient levels to achieve vitality in the Foreign Service. A balanced flow pattern of either "up or out" is expected. The premise behind the act is to require the agency head to establish long-term promotion ranges with due consideration for continuing the admission of new members, providing effective career development, and promoting only the best into the Senior Foreign Service. Once management has determined the promotion levels that meet the needs of the Foreign Service, selection boards are to identify those who get promoted and those who get selected out.

The mechanisms used to manage the flow of personnel are (1) maximum time-in-class limits that designate how long members of the Foreign Service may remain in class or combinations of classes without promotion, (2) limited career extensions which permit career members whose time in class is about to expire to

be renewed for 3 more years, (3) mandatory retirement at age 65, and (4) selection out when a career member does not maintain a standard of performance for that class. This means that those members under 65 years of age who are not promoted or offered limited career extensions at the time of expiration of the time-in-class limits will be retired or selected out.

The first use of the limited career extension mechanism for Senior Foreign Service members will not occur until 1984. (Members whose time-in-class limits expire in 1984 were evaluated for LCEs in 1983.) Department of State officials had decided that since there were so few members subject to the time-in-class limits in 1982 and 1983, no limited career extensions should be offered. Officials told us that between 100 and 120 State Department Senior foreign affairs officers would be at the end of their time-in-class limits in 1984 and limited career extensions would be offered to all but 26 officers as a result of 1983 selection board decisions. Those who are not promoted, are not offered extensions, and do not hold presidential appointments will be retired.

Profiles prepared by AFSA indicate that of 116 Senior Foreign Service members it identified for possible extensions in 1984, 45 will be 60 years old or older and 12 will be younger than 55.

#### PROFESSIONAL DEVELOPMENT

The Foreign Service Act of 1980 continues the authority of the Secretary of State to maintain the Foreign Service Institute and to provide training and counseling for the Foreign Service. The act consolidates existing authorities for training, career development, and counseling and authorizes training and counseling for family members of Foreign Service personnel in addition to that provided for members of the service.

The Foreign Service Institute was established by the Foreign Service Act of 1946 to provide training to employees of the Department of State and other U.S. government agencies involved in foreign affairs. The act expands the training mission of the Institute by mandating a structured professional development program for Foreign Service officers with required training at key stages of their careers and increased training for other Department employees. In particular, the act mandates establishment of a system to provide, insofar as possible, credit toward university degrees for successful completion of courses comparable to graduate level university courses.

The authorities which govern career development, training, orientation, and the operations of the Foreign Service are viewed by some officials as some of the most important in the law. Functional and management training courses, including those for language and area studies, are intended to provide the

necessary skills and expertise to produce effective Foreign Service officers. In addition, specialized training in such areas as science and technology, energy, and systems analysis is also intended to help members master new areas of foreign policy.

We were informed that the Institute has identified about 40 of its courses which are of graduate and undergraduate levels and which should be eligible for university credits as called for by the act. The number of credits for each course was determined by Institute faculty using the criteria established by the Commission on Higher Education of the Middle States Association of Colleges and Schools.

In December 1982 the Institute prepared a Credit Evaluation Report which identified each course offered for credit, its content, and the number of credits recommended for university credit. According to Institute officials, arrangements are being worked out with some universities to accept academic credits recommended by the Institute. Arrangements have already been made with several Washington, D.C., area universities to accept both undergraduate and graduate credits for foreign language training and some professional development courses offered by the Institute.



## CHAPTER 3

### SOME PROBLEMS REMAIN IN IMPLEMENTING THE ACT

This chapter describes areas where implementation difficulties are occurring or where operational problems may develop with the Foreign Service Act of 1980. While some implementation difficulties are attributable to execution of the act's new authorities, other problems pertain to interpretation of the act itself. A brief description of these problems is presented in the areas of appointments and personnel conversions, compensation, management of the Service, labor-management relations, benefits and allowances, and promotion and retention. This chapter also discusses a comprehensive legislative package prepared by the Department of State in consultation with the other foreign affairs agencies to amend the act. This package has been forwarded to the Congress.

### SOME APPOINTMENT AND PERSONNEL CONVERSION DIFFICULTIES PERSIST

Several problems have developed as a result of implementing provisions of the act dealing with appointment to the Senior Foreign Service and the conversion of employees to either the domestic Civil Service or worldwide available Foreign Service categories. The first involves a legal suit brought against the Department of State over its retirement policy for individuals who choose not to convert to the Senior Foreign Service. The second deals with the need to reconvert a number of Department security officials designated as Foreign Service employees to Civil Service status, because the Department cannot meet the act's rotational requirements due to a limited number of overseas positions.

In addition, concerns have been raised by the Foreign Service unions and a number of former Foreign Service officers over the number and type of non-career (political) nominations and appointments which have been made in the last several years. While these concerns are not necessarily new or directly attributable to the Foreign Service Act of 1980, the debate over the appointment of career versus non-career individuals to Senior Foreign Service positions continues to receive a great deal of attention. Union officials have stated that these nominations and appointments are important because of the impact they can have on the morale of the Foreign Service as a whole and on the successful conduct of U.S. foreign policy.

### Retirement benefits held to be available for those not converting to Senior Foreign Service

The act, in creating the Senior Foreign Service, provides that those officers who, before February 15, 1981, were serving in class 2 appointments or higher and who requested conversion

to the Senior Foreign Service after June 14, 1981, and were not accepted (or did not request appointment to the Senior Foreign Service) must leave the Foreign Service by February 15, 1984.

In converting high-ranking Foreign Service officers to the Senior Foreign Service, the State Department interpreted the act to provide individuals who declined or were not selected for conversion an annuity only if they met the standard retirement eligibility requirement of age 50 and 20 years of service at the time of separation. A Foreign Service officer and AFSA successfully challenged the State Department's interpretation with respect to pensions for those not converting by February 15, 1984. On June 8, 1981, the U.S. District Court of Washington, D.C., held that under the act, certain senior officers not converting to the Senior Foreign Service were entitled to an immediate annuity upon separation when they were forced to leave at the end of the 3-year period, even if they did not meet the standard eligibility requirement. In the Department of State Authorization Act, Fiscal Years 1984 and 1985, the Congress reaffirmed this decision.

State officials told us that after consulting with the other foreign affairs agencies and the employee representatives, they decided not to appeal the decision because (1) litigation could last as long as 18 months, thereby causing confusion and operational problems in creating the Senior Foreign Service, and (2) the number of employees likely to receive an immediate annuity at the end of the 3 years would be small.

State officials told us that because of such factors as the state of the economy, the marketability of an individual's skills, and the possible lifting of the pay cap, it was very difficult to predict how many individuals would actually take the annuity offered by the decision. One State official did project that, of those eligible, between 35 and 40 individuals from all the foreign affairs agencies could retire as a result of the court decision.

#### Reconversion of Foreign Service security personnel to Civil Service

As of January 1983, there were 370 Foreign Service positions in the Department of State's Office of Security. Of these positions, 258 have been identified as domestic positions, while the remaining 112 have been identified as overseas positions. However, under the act, all security officers as Foreign Service employees are subject to worldwide availability requirements.

The Department has determined that with this disparity in positions of about 70 percent domestic and 30 percent overseas, it would be impossible to meet the act's overseas worldwide available rotational requirements. State officials estimate that at present staffing levels, overseas assignments would not

be available for all security personnel with Foreign Service appointments until 1999. Because it recognizes this as a major problem and because a recent change has been made in the mission of the Office of Security which affects the types of personnel required, State has begun reorganizing security operations. State officials said the Department would like to reconvert about 200 individuals now in the Foreign Service to Civil Service status as part of its efforts to restructure the Office of Security. The major problem with this is how to preserve their grade, pay, and retirement benefits.

Section 2106 of the act protects those members of the Foreign Service converted to Civil Service by preserving their grades, basic pay, and eligibility for Foreign Service retirement benefits if they were classified as not available for worldwide assignment by June 15, 1981. State's legal staff has determined, however, that because a 120-day classification period expired on June 15, 1981, the security officers will not be eligible for preservation of pay status and retirement benefits under section 2106 if their positions are now reclassified Civil Service.

The Department proposed an amendment to the act which governs the protection of rights following mandatory conversion from Foreign Service to Civil Service during a 3-year conversion period that began on February 15, 1981. The amendment would allow the security officers to be designated Civil Service while preserving Foreign Service pay and other benefits and would provide another conversion period. According to documents prepared by State officials, the amendment would apply only to individuals not previously subject to conversion from Foreign Service to Civil Service. The amendment would not extend the original 3 years allowed for conversion for those originally designated for conversion to Civil Service. According to State officials, they would apply the new authority only to certain security officers and possibly to inspectors at the Department.

The Department considered this amendment to be one of the five most important amendments it submitted for congressional consideration. The Congress addressed the issue in the Department of State Authorization Act, Fiscal Years 1984 and 1985. The Authorization Act amends the Foreign Service Act of 1980 to allow for an additional conversion period not exceeding 1 year for Department of State security officers only. However, additional retirement changes may be considered later with the other proposed amendments.

#### Career versus non-career ambassadorial nominations

There has been a long-standing debate over the issue of appointments of career versus non-career political appointments to ambassadorial or chief of mission positions. Primary

arguments which favor appointing careerists to these positions include that they are better prepared for the duties of such positions after years of experience in the Foreign Service and that the practice of appointing such individuals is consistent with other Foreign Service systems in the world. Supporters of the non-career political appointees suggest that such individuals have direct access to and are more ideologically in tune with the President.

Most officials with whom we spoke suggested the controversy was not one of career versus non-career nominations but one of qualifications of those who were to serve in these important positions.

The act contains several new provisions that are now part of the ambassadorial nominations process. There now exists a formal requirement for the submission to the Senate Committee on Foreign Relations a report on the competency of an individual for such a post. The Secretary also must submit periodically to the President a list of career members of the Foreign Service who are qualified to serve as ambassadors.

Career nominations for ambassadorial appointments are screened by a high-level State Department committee chaired by the Deputy Secretary that includes the Under Secretaries for Management and Political Affairs, the Director General of the Foreign Service, the Executive Secretary of the Department, and the Executive Assistant to the Secretary of State. Nominations have been put before the committee by State, AID, and USIA. We were told by a senior State official that the committee had not considered nominations from any other foreign affairs agency. Once candidates are screened by the committee for a particular position, a list of nominees is forwarded to the White House for consideration. The process for considering and selecting non-career candidates for ambassadorial and other high-level appointments is handled by the White House.

Since passage of the act, a number of union, former Foreign Service, and other officials have expressed increasing concerns over the

- number of non-career appointments,
- qualifications of non-career nominees for ambassadorial positions, and
- types of positions being filled by non-career appointees.

Particularly disturbing to some union officials has been the appointment in the last several years of two non-career individuals to senior diplomatic positions below the ambassadorial level. These positions of consul general and deputy chief of

mission had previously been filled by career Foreign Service members. The chart below identifies career and non-career ambassadorial appointments since 1961.

Statistics on Ambassadorial Appointments to  
Bilateral Missions, 1961-83

<u>Year</u>  (Note a)	<u>Career</u>		<u>Non-career</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
1961	67	72	26	28
1962	63	64	35	36
1963	66	65	36	35
1964	74	73	27	27
1965 (Nov.)	79	72	30	28
1966	80	75	26	25
1967	73	71	30	29
1968	71	66	36	34
1969	68	68	32	32
1970	72	68	34	32
1971	73	68	34	32
1972	72	73	27	27
1973 (July)	72	71	29	29
1974	80	69	36	31
1975	80	72	32	28
1976	82	70	35	30
1977 (Aug.)	86	78	24	22
1978	92	75	30	25
1979 (Dec.)	91	75	30	25
1980	94	76	30	24
1981 (Jan.)	90	78	26	22
1982	85	69	38	31
1983 (Sept.)	84	68	40	32

<sup>a</sup>All data reflect statistics as of October except as indicated.

Source: Department of State.

Because the controversy over the nominations of non-career ambassadors is not new, there have been various attempts to evaluate the qualifications of nominees, as well as to limit their number. In 1981, the Chiefs of Diplomatic Missions Bill was introduced to amend the Foreign Service Act of 1980 and to provide that not less than 85 percent of the total number of ambassadors be career members of the Foreign Service. In part because this was seen as limiting too severely the President's prerogative to nominate whomever he sees fit, this amendment did not become law.

political and career nominees and to make recommendations to the President. One reported criticism was that it did not consist of individuals who could adequately evaluate and determine the qualifications of nominees. The Board has not been continued under the present administration.

A recent news report indicated that a group of retired diplomats intend to establish an organization composed of 60 to 70 distinguished individuals who would rate the abilities of ambassadorial nominees. The founders have expressed the hope that this organization could serve the same sort of advisory function as that provided for candidates for federal judgeships by a standing committee of the American Bar Association. Most officials with whom we spoke from the foreign affairs agencies generally supported the idea of a board to help the President and the Senate Committee on Foreign Relations evaluate the qualifications of potential ambassadors.

### COMPENSATION DIFFICULTIES

The Foreign Service Act of 1980 contains provisions which cover a wide variety of compensation items, including performance pay for the Senior Foreign Service; salaries, within-class salary step increases, and premium pay for Foreign Service members; and local compensation plans for foreign national employees.

Before passage of the act, a congressionally directed study comparing compensation in the Foreign Service, Civil Service, and the private sector found that the Foreign Service was significantly undergraded compared with the Civil Service. To correct the problem, the act restructured the Foreign Service pay schedule and allowed the President to set links to the General Schedule of the Civil Service to provide greater compatibility. While the act has resulted in increased Foreign Service compensation, in a number of areas difficulties have been experienced in interpreting and implementing the act. These include performance pay and within-class salary step increases. In addition, some foreign affairs agency officials are concerned with the possible implications on the Foreign Service rank-in-person system as a result of a court case involving the Equal Pay Act of 1963. These three areas are discussed below.

#### Performance pay

One of the most disputed provisions of the Foreign Service Act of 1980 has been Senior Foreign Service performance pay awards. Due to difficulties in interpreting the act's performance pay provisions, performance pay became controversial. The controversy has resulted in two unfair labor practice charges and delays of awards to some members.

After performance pay in the Civil Service, the act authorizes foreign affairs agencies to distribute performance pay awards within established limits to Senior Foreign Service members for outstanding performance on the basis of recommendations by selection boards established by the agency heads. Under the act, selection boards are to be established to evaluate performance of Senior Foreign Service members and, in accordance with procedures approved by the Secretary, rank the members and make recommendations for promotions and awards of performance pay. Two types of awards may be made--agency performance pay awards and presidential performance pay awards.

The controversy was caused by a difference in views between employee unions and the foreign affairs agencies, particularly USIA, over whether the procedures governing the awards need to be negotiated. The unions contended that:

- Selection procedures for the award of performance pay are negotiable and should provide for the composition of the selection boards resulting in a majority of career foreign service officers.
- Heads of agencies should allocate funds for the awards before convening selection boards.
- Recommendations by the selection boards as to the ranking of members should be binding on management in awarding performance pay.

In contrast, USIA, along with State and AID, felt the issue was nonnegotiable. USIA insisted that it was the intent of the Congress that Senior Foreign Service performance pay be administered in the same manner as that for Senior Executive Service employees.

Under the Civil Service system, Senior Executive Service performance pay is not negotiated with unions because all senior members are treated as management officials and, therefore, are excluded from the bargaining units and union representation. While the Senior Executive Service uses performance pay selection boards, final decisions on who should receive awards are largely left up to management.

The performance pay issue developed during negotiations held in 1981 when AFGE and USIA could not agree on selection board procedures for promotions and performance pay. When differences could not be resolved, the matter was referred to FSIDP and later to FSLRB. As a result, all the foreign affairs agencies delayed proceeding with performance pay awards until a ruling could be issued. In June 1982, FSLRB found the issue to be negotiable and directed the parties to resume negotiations.

USIA declined to negotiate and initially deferred making performance pay awards to its employees. The Department of State and AID, however, renegotiated performance pay award procedures with their unions and have made agency awards in fiscal years 1982 and 1983. No presidential performance pay awards were made in 1982 because of legal questions over the propriety of negotiating interagency selection procedures and making the awards without USIA's participation.

In an effort to resolve the performance pay issue, AFGE charged USIA with two unfair labor practices. USIA argued before FSLRB that performance pay was nonnegotiable as a matter of law. Its position was supported formally by the Department of State and AID. Officials in the Office of Management and Budget, the Office of Personnel Management, and the other foreign affairs agencies told us that they also supported USIA. AFSA, on the other hand, supported AFGE.

In the summer of 1983, USIA altered its position to allow binding selection board recommendations for performance pay and initiated efforts to settle the dispute. As a result, in July 1983, USIA successfully negotiated procedures for the award of both agency and presidential performance pay. USIA officials told us that the agreement with AFGE provided for agency performance pay awards in fiscal year 1983 (covering the 1981-82 rating year) as well as retroactive agency awards for fiscal year 1982 (covering the 1980-81 rating year).

Because the agreement concluded by all the foreign affairs agencies and unions covering presidential performance pay awards was only for fiscal year 1983, no fiscal year 1982 presidential awards were made. We were told that new agreements would be required for both agency and presidential performance pay awards in future years.

The outstanding unfair labor practice charges were settled as a result of USIA's action in November 1983. However, officials in the Department of State and USIA have stated that because of the act's ambiguity over performance pay, the negotiability issue could again become a problem.

#### Difficulties in administering salary step increases

Shortly after the act was passed, a difficulty arose in interpreting section 406 dealing with salary step increases for Foreign Service members. Although the provision is very specific for awarding or denying annual and biannual step increases on the basis of performance, the language is unclear regarding special circumstances, such as leave without pay (LWOP), meritorious step increases, part-time employment, and other situations.



The Department of State has resolved its initial difficulties in awarding merit and language incentive step increases through consultations with congressional committees and GAO, but has proposed an amendment to the act that would permit regulations dealing with these and several other special circumstances.

A particular problem exists for Foreign Service members who are in LWOP status. Although the Civil Service provides for adjustments to step increase periods while in LWOP status, the Department of State continues to calculate step increases for Foreign Service members regardless of pay status. Because of a lack of specific statutory authority, the result has been the award of step increases without adjustments for LWOP time. State officials estimate at any one time, 60 Foreign Service members are in LWOP status. Other foreign affairs agencies have indicated that they have employees in LWOP status also.

The proposed amendment would allow the foreign affairs agencies to issue regulations to follow Civil Service procedures more closely. AFSA and AFGE oppose the amendment because it provides broad discretion to the Department of State in administering step increases. AFSA believes problems should be corrected by statutory language specifically addressed to each situation. AFGE believes that rather than seeking legislative change, the problems can be solved by issuing regulations after completion of negotiations with the unions.

#### Equal Pay Act is applied to Foreign Service

Some USIA and AFSA officials are concerned about the possible impact of a pending court case against USIA regarding the Equal Pay Act of 1963. They believe an unfavorable decision could jeopardize the Foreign Service rank-in-person personnel concept and could hinder flexibility in assigning employees throughout the Foreign Service.

The suit was brought against the Director of USIA by a female Foreign Service Reserve officer for alleged sex discrimination. The officer filed suit while serving as a budget analyst in Washington, D.C., and claimed that she was being paid at a rate applicable to a GS-12, while two other male budget officers were paid at the higher GS-14 rate for substantially equal work.

While the initial court proceeding before the U.S. District Court expressed doubt that the Equal Pay Act could apply to the Foreign Service and dismissed the suit for failure to exhaust administrative remedies, the U.S. Court of Appeals for the District of Columbia in 1983 reversed and remanded the case to the District Court for further proceedings where it is pending. The U.S. Court of Appeals in its decision (Ososky 704 F2 1264, 1983), determined that the Equal Pay Act applied to the Foreign

Service and further decided that the suit may not be dismissed for failure to exhaust administrative remedies.

A USIA official informed us that a decision against USIA could set precedence and severely restrict agencies from assigning Foreign Service employees to positions that were different from their personal rank (called stretch assignments). The Foreign Service, unlike the Civil Service, has maintained its system based on the rank-in-person rather than the rank-in-position concept. Foreign Service employees often occupy positions different from their personal rank. For example, about 30 percent of the Department of State's Foreign Service assignments in the first 2 months of 1983 were to positions graded higher or lower than the employees' personal rank.

Before the courts, USIA has argued that the Equal Pay Act's principle of "equal pay for equal work" is fundamentally at odds with Foreign Service's rank-in-person system. USIA officials have stated that applying the principle could undermine the Foreign Service assignment system and use of stretch assignments. One USIA official suggested that if the courts decide to apply the Equal Pay Act, one recourse might be to seek a legislative amendment excluding the Foreign Service from Equal Pay Act so that the rank-in-person system could be preserved.

The Department of State and AFGE in commenting on our draft report stated that they do not believe the consequences of the court case will be as far-reaching as the report implies. State Department officials informed GAO that they had no written formal legal opinion supporting this view but did say the outcome will likely result from the District Court's retrial on the merits of the case.

#### MANAGEMENT OF THE FOREIGN SERVICE

In drafting the Foreign Service Act of 1980, the Congress sought to promote maximum compatibility among the agencies using the Foreign Service personnel system. To promote congressional expectation for maximum compatibility among the agencies and between the Foreign Service and the Civil Service, the law directs regular consultations between the Secretary of State and the other heads of the foreign affairs agencies. It also requires continuing efforts to consider the need for uniformity of personnel policies and procedures and for consolidation of personnel functions. As discussed in chapter 2, the agencies point to a number of actions which serve to comply with the intent of the act.

While including language in the act which seeks to promote maximum compatibility and to point the foreign affairs agencies in the direction of greater uniformity in administrative and personnel operations, the act also makes clear that the authority of the individual agency head to administer the Foreign

Service personnel system directly is in no way diminished. The act contains a great deal of compatibility language, but very few provisions which actually force greater uniformity. Examples where greater uniformity is being sought are the work of the Board of Examiners and Board of the Foreign Service, administration of the retirement system, joint negotiations, the mandatory personnel conversions which have taken place, and the limited career extension mechanism. However, not much compatibility has been achieved in operational terms.

In practice, the efforts designed to promote maximum compatibility have been addressed on an issue-by-issue basis and have centered on developing uniform regulations through joint negotiation. According to a September 19, 1983, status report prepared by the Department of State, agreements on uniform regulations have been reached in only about 14 areas, primarily those dealing with benefits and allowances for members and their families. As a practical matter, it has proven easier for the agencies to develop uniform policies and regulations in these areas than it has to actually take steps to unify any operating programs.

According to the 1983 implementation report, the foreign affairs agencies employing the Foreign Service personnel system are determined to achieve maximum compatibility in their personnel policies and operations consistent with their different missions and circumstances. However, in talking with management officials from each agency, we found that maximum compatibility was a loosely held concept. We found no common definition nor any attempts to specify compatibility objectives or to develop a compatibility plan involving the agencies. The concept of maximum compatibility is viewed as a long-term goal, but also as one which, in reality, is limited regarding what is achievable. Officials told us that maximum compatibility could be viewed only in terms of each agency's mission, staffing pattern, areas of expertise, and circumstances. Unless additional legislative changes are made, officials from all the agencies generally pointed to the joint negotiation process and the issuance of uniform regulations as the best mechanism for promoting compatibility. However, most officials indicated that progress in negotiating additional areas would be slow over the next several years. In commenting on our report draft, the Department of State said that achieving more compatibility would always be very difficult without statutory changes.

#### LABOR-MANAGEMENT RELATIONS

This section discusses labor management negotiations and the composition and roles of the unions representing Foreign Service members. It specifically addresses problems which have arisen concerning inclusion of the Senior Foreign Service in the Foreign Service employee bargaining units and some structural and operational problems in joint negotiations.

Senior Foreign Service  
union membership

Foreign affairs agency officials disagree considerably over membership of the Senior Foreign Service members in unions. At issue is whether the Senior Foreign Service should be permitted to be part of bargaining units that are represented by Foreign Service unions. Under the act, most Senior Foreign Service members and supervisors are allowed to be members of Foreign Service bargaining units. Only certain members with personnel, security, and auditing duties are excluded.

Senior officials are not included in bargaining units elsewhere in government. Since there are well over 1,000 senior officers, union leaders are understandably interested in keeping such a large pool of potential members available. According to union officials, losing this contingent could seriously weaken AFSA and AFGE membership.

Many officials in the foreign affairs agencies agree on the need to exclude the Senior Foreign Service from bargaining units. Those officials who support excluding them usually cite, as principal reasons, the potential for conflict of interest and the need for compatibility with the Senior Executive Service of the Civil Service. Even some senior officers who have served in management positions told us that this was necessary to bring the Foreign Service in line with the rest of the federal government.

A major theme sounded by officials to emphasize the potential for conflict of interest was that it violated management confidentiality. Sensitive management information may become available to union members in positions close to high-level management. Such serious potential conflicts jeopardize the credibility of negotiations where union and management positions may be compromised. No matter how professionally competent and ethically aware those in the Senior Foreign Service may be, it has been suggested that they could be unduly tempted to influence their own and their peers' future careers and negotiated benefits and allowances.

Department of State officials with whom we spoke who supported or did not object to Senior Foreign Service membership in bargaining units suggested that many senior officers did not always serve in policy or supervisory positions; that no actual cases of conflict of interest could be cited; and that in the final analysis, Senior Foreign Service removal would have little impact due to strong management and union interrelationships that had developed. In addition, several officials suggested that Senior Foreign Service presence in bargaining units had a moderating influence on union activities. However, many officials indicated that without senior officers in bargaining units there would not have been a drawn-out dispute over performance pay.

Two proposals to amend the act to exclude senior officers from bargaining units were considered but dropped by the Department of State from further consideration. An amendment to exclude policymaking officials was dropped because of disagreement among foreign affairs agencies over how to define policymaking officials and over which individuals in which positions would be affected. A second amendment to exclude senior officers from bargaining units was originally proposed by USIA management. Strongly supported by USIA, Commerce, Agriculture, and AID officials, the proposal was dropped from consideration after a decision at the top level of the State Department.

OMB and OPM officials with whom we spoke supported the amendment to exclude the Senior Foreign Service from bargaining units. Both cited the need for compatibility with labor and management in the government and private sectors as well as the need to eliminate the inherent conflict of interest.

Officials from both agencies asked the Department of State why it was not included in the package of amendments sent to OMB for the legislative clearance process. State responded that it was up to the Secretary of State to determine which amendments were necessary and that the decision had been made not to propose the amendment at this time. Although all the involved agencies except State sought to include the amendment, the final package was approved by OMB without it. Many officials with whom we spoke suggested this issue would be raised again.

In commenting on our draft report, the Department of State, AFSA, and AFGE stated that membership of the Senior Foreign Service in the bargaining unit should be continued. The reasons cited were generally the same as those presented above. The Department of State and AFSA further commented that there are unique differences between the Foreign Service and Civil Service deserving special consideration. OMB and OPM, however, said they supported the exclusion of the Senior Foreign Service, citing some of the same rationale presented in the report. The other foreign affairs agencies provided no specific comments to our draft on the issue.

#### Progress in joint negotiations

Section 1013 of the Foreign Service Act of 1980 obligates the foreign affairs agencies to negotiate jointly in good faith with respect to conditions of employment. Since completing uniform regulations to deal with such issues as benefits and allowances, the negotiating progress has slowed appreciably and the development of uniform regulations in other areas has proceeded slowly. As of September 1983, there were 18 uniform regulations under development and 7 uniform regulations under negotiation, some since 1981.

Both management and union officials agreed that progress had slowed appreciably in developing uniform regulations under the joint negotiations and that some structural and operational problems exist. According to these officials, negotiations have often been unwieldy and cumbersome.

Officials from five agencies and two unions often participate in the negotiations. As indicated in chapter 2, while State, AID, and USIA have unions and need to negotiate, representatives from the other foreign affairs agencies or agency elements, such as USIA's Bureau of Broadcasting (Voice of America), may send representatives to attend the weekly joint negotiations. As many as 23 officials have attended and participated in the negotiations.

We were told that the negotiations were conducted on an ad hoc issue-by-issue basis, generally using draft regulations prepared by the foreign affairs agencies as starting points. With so many officials and agencies participating, we were told, reaching a consensus is very difficult. While agreement cannot always be achieved between management and unions, as reflected in the use of the available third party mechanisms, there are times when agreements cannot be reached between managers themselves or between AFSA and AFGE. Officials told us that other than resorting to third party mechanisms, there was no method for breaking deadlocks. Although the Department of State takes the lead in negotiations, it lacks any authority to forge a management consensus among the agencies.

In addition, officials from both foreign affairs management and the unions suggested each side was bureaucratically organized and thus unable to make rapid decisions. The unions have also suggested that management negotiators lacked sufficient authority to agree to a specific proposal, which caused delays in reaching agreements.

Some union officials suggested that the decision not to develop an overall collective-bargaining agreement with specifically delineated negotiating objectives, ground rules, and agreed-upon priority areas for negotiation had led to the current problems and resulted in a lack of progress.

The prospects for improvement are mixed. Now that an established negotiation process is in place, the institutional memory on all sides may be improving and expertise is growing. However, officials have suggested that unless some changes are made to the existing negotiation structure, disagreements would be likely to continue. Most foreign affairs agency officials suggested that the agencies were several years away from negotiating agreements in those areas already on the table and under development. In commenting on our draft report, the State Department stated that they desire to move toward a "contract" rather than the "rolling negotiation" approach to the labor-management process in the future.

SEVERAL NEW OR REVISED BENEFITS AND  
ALLOWANCES REMAIN TO BE IMPLEMENTED

Some of the more well-liked provisions of the act among Foreign Service members are those dealing with overseas benefits and allowances. About 20 new or revised benefits and allowances were granted by the act. Although most of these provisions have been implemented, several remain to be acted upon--special incentive differential, family per diem and travel while on extended temporary duty, health care for former spouses, and dental care travel.

Special incentive differential

The foreign affairs agencies have great difficulty in implementing the special incentive differential provision because of uncertainty over how the new allowance should be administered. Funding priorities, payment restrictions, and other administrative constraints complicate efforts by the agencies to arrive at an acceptable method to pay the allowance.

SID is a newly created allowance authorized by section 2309 of the act to help fill jobs at some hardship posts which, even with other allowances, are difficult to fill. Under the act, SID payments are limited to up to 15 percent of an employee's basic pay. SID may be paid either periodically or as a lump sum and may be authorized along with other hardship allowances, such as post differential and danger pay.

SID is designed as an added recruitment and retention incentive to attract employees to serve in especially arduous assignments that are hard to fill, while post differential and danger pay allowances are more specifically designed to compensate employees for extraordinary living conditions, excessive political unrest, physical dangers, and other hardships. Taken together, the three allowances--post differential, danger pay, and special incentive differential--are limited by the act to 50 percent of an employee's base salary. To improve administrative efficiencies, the Department of State is considering changes to the act that would combine the three allowances under a single allowance structure.

Initially, State planned to pay SID at 35 posts, but in December 1980, the Office of Management and Budget and State agreed to reduce the budget request which lowered the number of posts potentially eligible for SID. State documents indicate that the lowered funding made decisions on how to establish SID criteria more difficult.

Uncertainty also arose over whether to pay SID to all employees at a post or only to those in occupations that were difficult to staff. A State official informed us that success in filling certain overseas assignments varied between occupation and even agency. For example, we were told that the

Department of State may have difficulty in locating secretaries willing to accept assignments in less open societies but may not have any trouble attracting political officers to such assignments. Likewise, a State employee may view an assignment in developing nations as unfavorable while an AID employee may find it more attractive than other AID assignments in less developed nations.

In the summer of 1981, the Department of State's Under Secretary for Management decided for reasons of equity and morale to pay SID to all employees at an authorized post, regardless of an employee's occupation or agency. As of January 1983, the Department planned to pay SID at 39 posts but had funding for only 22 posts. Department cost estimates for SID range from \$1.7 million to \$3 million annually.

Disagreements over payment methods have also contributed to SID delays. All the foreign affairs agencies, except AID, had initially proposed to pay SID in two lump sum payments--one significant advance at the beginning of an assignment and a subsequent payment at the end to emphasize the incentive aspect of the allowance. Due to payroll system limitations and a question as to the legal authority to pay SID as an advance, however, the foreign affairs agencies agreed in 1982 to pay SID using existing biweekly payment systems.

Other difficulties impeding implementation of SID have been restrictions agreed to by the Office of Management and Budget and the Department of State and an administratively imposed pay cap. According to State documents, these restrictions and the pay cap have complicated efforts to structure SID to make it suitable to the needs of all the foreign affairs agencies.

During discussions in 1980 on development of draft regulations for SID, OMB and the Department of State agreed that SID would not be paid to members of the Senior Foreign Service or Senior Executive Service. They also agreed to limit payments to Foreign Service employees at the FS-1 level or Civil Service employees at the equivalent GS-15 grade to no more than 5 percent of their basic salary and limit payments to employees at the FS-2 level or GS-14 grade to no more than 10 percent of their pay. All other employees at or below the FS-3 level or GS-13 grade, however, may be paid the full 15-percent SID allowance. OMB officials told us that without any restrictions, implementation of the allowance would provide the greatest benefit to the senior members of a post. Furthermore, they felt that without a controlled implementation, SID could be precedent setting throughout the government. OMB officials told us they preferred that SID be targeted to those hard-to-fill occupations, instead of State's proposal to pay the allowance to everyone at a post.



During a meeting of the Board of the Foreign Service, agency officials indicated that they were displeased with the effects of the restrictions and the pay cap. AID officials, in particular, have argued that the restrictions and pay cap will affect those mid- and senior-grade employees that they are trying to recruit for hardship post assignments.

Listed below is a chart depicting Foreign Service base pay, the payment of a 25-percent post differential, and effects of the proposed SID payments. Because of the restrictions, the Senior Foreign Service is not eligible to receive SID. We found that if SID is implemented with the restrictions but without the administrative pay cap, some Foreign Service members could be paid more than the Secretary of State and congressional members.

Effects of Proposed Special Incentive  
Differential Payments on the Senior  
Pay Levels of the Foreign Service

<u>Level/step</u>	<u>Base salary</u>	<u>25 percent post differential</u>	<u>Special incentive differential (note a)</u>	<u>Total compensation</u>
<b>Senior Foreign Service:</b>				
SFS-6	\$67,200	\$16,800		\$84,000
SFS-5	65,500	16,375		81,875
SFS-4	63,800	15,950		79,750
SFS-3	61,515	15,379		76,894
SFS-2	59,230	14,808		74,038
SFS-1	56,945	14,236		71,181
<b>Foreign Service:</b>				
FS-1/10-14	63,115	15,779	\$3,156	82,050
FS-1/9	61,505	15,376	3,075	79,956
FS-1/8	59,714	14,929	2,986	77,629
FS-1/7	57,975	14,494	2,899	75,368
FS-1/6	56,286	14,072	2,814	73,172
FS-1/5	54,647	13,662	2,732	<u>71,041<sup>b</sup></u>
FS-1/4	53,055	13,264	2,653	68,972
FS-1/3	51,510	12,878	2,576	66,964
FS-1/2	50,010	12,503	2,501	65,014
FS-1/1	48,553	12,138	2,428	63,119
<b>Foreign Service:</b>				
FS-2/14	57,775	14,444	5,778	77,997
FS-2/13	56,092	14,023	5,609	75,724
FS-2/12	54,459	13,615	5,446	73,520
FS-2/11	52,872	13,218	5,287	<u>71,377<sup>b</sup></u>
FS-2/10	51,332	12,833	5,133	69,298
FS-2/9	49,837	12,459	4,984	67,280
FS-2/8	48,386	12,097	4,839	65,322

<sup>a</sup>The Office of Management and Budget and the Department of State have agreed to the following restrictions on SID payments:

No SID for the Senior Foreign Service, 5 percent for employees at FS-1 level, 10 percent for employees at FS-2 level, and 15 percent for other Foreign Service employees.

<sup>b</sup>The Department of State has imposed an administrative pay cap of \$69,700 on combined pay and differential payments.

Note: Data based on 1983 salaries.

Even though Department of State officials estimate that 85 percent of all SID payments will be made to employees at or below the FS-3 level, the inability to arrive at a common SID position by the foreign affairs agencies, particularly for making SID payments to senior Foreign Service officials, has delayed implementation.

In September 1983, we were told that the foreign affairs agencies had finally arrived at a common SID position and agreed that SID could be implemented while maintaining the restrictions if the administrative pay cap were lifted. At the time of our report preparation, the Department of State was seeking comments on the proposed regulation from other federal agencies. In commenting on our draft report, the Department of State informed us that due to congressional concerns and a change in agency management, the SID implementation proposal has been once again modified and may be implemented without lifting the pay cap.

#### Family per diem and travel while on extended temporary duty

Family per diem and travel while a Foreign Service member is on extended temporary duty has been delayed mainly due to a lack of funding and to a lesser extent by interagency concerns over how the allowance should be structured. The foreign affairs agencies are studying various proposals before a management position is approved and presented to the unions for negotiation.

Section 901(3) of the act expands existing authority enabling family members to accompany, precede, or follow a member of the Foreign Service to a place of temporary duty. According to a 1980 report by the House Committee on Foreign Affairs, the new provision will permit family members to accompany employees detailed to international conferences or other temporary assignments that may last unusually long periods of time. The Committee believed that authorizing family travel would be cheaper than assigning an employee and family to the location and shipping their effects. It is expected that the new authority will be limited by regulation to situations when temporary duty is anticipated to last a long time. OMB and the Department of State have interpreted this time to be 120 days or longer.

Budget priorities have precluded use of fiscal years 1981 or 1982 funds for this allowance. According to a State official, although earlier estimates were much higher, estimates prepared shortly after the start of fiscal year 1982 range from \$100,000 to \$140,000. In addition, the foreign affairs agencies still do not agree on how the new authority will be administered. A draft regulation has been developed, but concerns over the per diem structure for spouses and dependents and exceptions to the 120-day temporary extended duty limit remain to be worked out.

Health care for former spouses  
and dental care travel

Two health-related provisions of the act provide for health care for former spouses and dental care travel. Both provisions are expansions of previous authorities under the Foreign Service Act of 1946 to establish and maintain a health care program for the Foreign Service. As of June 1983, uniform regulations had not yet been developed and issued covering these new benefits.

Section 904(e) of the act authorizes the Secretary of State to provide health care to qualified former spouses and family members of Foreign Service employees and other eligible government employees. According to State documents and officials, health care has been provided since 1967 to former spouses if a medical condition resulted from an assignment abroad. Officials told us they believe they are already complying with the intent of the provision and plan to continue health care to eligible former spouses at an estimated cost of \$160,000 each year.

Travel for medical care abroad is authorized by section 901(5) of the act. Documents supplied by the Department of State indicate that they are considering the implementation of a uniform regulation that would permit travel for required dental care while assigned abroad. This new benefit is being developed as part of a comprehensive update of regulations governing Foreign Service Medical Care Program. Department estimates for dental care travel range between \$160,000 and \$440,000 each year. In December 1983, a State official informed us that \$260,000 had been targeted to provide dental care travel.

PROMOTION AND RETENTION OPPORTUNITIES  
REQUIRE CONTINUOUS MANAGEMENT ATTENTION

One central purpose of the act is to restore the personnel flow in the Foreign Service promotion and retention process. According to congressional committee reports, the law intends to reverse past occurrences where the "up or out" nature of the Foreign Service system was not maintained and too many persons were promoted into the upper grades. To restructure the "up or out" system, the act

- reaffirms and expands coverage of selection-out mechanisms for both expiration of time in class and relative performance,
- establishes a renewable limited career extension for retaining senior employees for the needs of the service, and
- raises the mandatory retirement age from 60 to 65.

To help maintain congressional oversight, section 2402 of the act also requires the Secretary of State to report annually on planned and actual Foreign Service appointments, promotions, and attritions.

As the implementation reports have indicated, many factors influence promotions and retention. Voluntary attrition, time-in-class limits, limited career extensions, non-career and mid-level appointments, pay cap adjustments, and retirement considerations are just some of these factors. Although the foreign affairs agencies have constructed flow-through models to project promotion and retention patterns, concerns have been and continue to be raised in several areas. These include the use of the limited career extension mechanism, the continuing problem with the senior surplus, and use of stretch assignments.

#### Limited career extensions

A new feature added to the Foreign Service promotion and retention process was the creation of renewable LCEs by section 607 of the act. Limited career extension is a tool by which foreign affairs agencies may retain Foreign Service members for the required needs of the service once their maximum time-in-class limits have expired. According to State documents, the LCE feature is intended to ensure that the retention of senior officers is based on performance. The act also directs that members who have served a prescribed time in class after attaining the highest class for their respective personnel categories shall be retired unless offered LCEs or promotions. By regulation, the head of each foreign affairs agency or department is to determine the number of LCEs in conjunction with the required promotions necessary to maintain sufficient upward personnel flows each year.

Foreign Service officials stated that the LCE mechanism had raised concern among members of the Senior Foreign Service. Some members believed there was a potential conflict between the legislation's intent to balance the "needs of the service" with a "predictable flow of talent upward through the ranks." An emphasis on the "needs of the service" creates possibilities of offering large numbers of LCEs, which could reduce promotion opportunities and limit the upward "flow of talent." On the other hand, an emphasis on the upward "flow of talent" creates possibilities for higher promotion levels through the separation of sufficient numbers of senior officers each year by reducing LCE offerings. In both cases, the number of LCEs and promotions to be offered depends heavily on actual attrition levels.

If attrition is lower than expected, fewer LCEs will have to be offered if promotion goals are to be maintained. Should attrition be higher than expected, more LCEs could be offered while maintaining promotion goals.

The Department of State anticipates that LCEs will be offered to between 74 and 78 percent of an estimated 100 to 120 Senior Foreign Service members who will reach the end of their time in class in 1984. Except for those presidentially appointed positions, persons of this group not promoted or offered LCEs will be retired. State selection boards convened in 1983 to evaluate members whose time-in-class limits expire in 1984 identified 26 members who would not be offered extensions. Other agencies will begin to offer LCEs after the State Department because they did not have functioning time-in-class limits when the Foreign Service Act of 1980 was passed. USIA has stated that its projection for LCE offerings will be significantly lower.

By being the first agency to administer LCEs and awarding many of them, the Department of State may be setting a precedent for the other foreign affairs agencies to offer high levels of LCEs. In the past, the Department of State has separated relatively few of its members, which caused promotion difficulties. During the past 10 years, the Department has involuntarily separated no more than 22 Foreign Service members in any one year using more lengthy time-in-class limits. Under the act, more restrictive time-in-class limits have been established to provide for a more effective attrition mechanism.

Officials in other foreign affairs agencies have stated they consider even a 70-percent LCE rate to be high. Although they realize that each agency has its own unique characteristics involving work force management, State's plan to retain a high number of Senior Foreign members by offering a high percentage of LCEs may cause problems for the other agencies. An official of one agency stated that it was already feeling pressure to award similar LCE levels. State officials recognize that the Department is looked upon as the lead foreign affairs agency but that to equitably manage its members, they feel LCEs must be administered to prevent erratic variations in the number of involuntary separations. State Department documents indicate that they do not plan to expand the number of Senior Foreign Service members so separated to more than 20 or 30 each year.

### Senior surplus

A widely publicized concern of the Foreign Service as well as agency management is the senior surplus. "Senior surplus" is a loosely used term relating to an overcomplement of senior officers for whom no appropriate permanent positions are available. It has also been referred to as a senior assignment mismatch, where available officers do not match the requirements of available jobs.

Department of State documents as of April 1983 indicate that there were about 65 senior officers who were considered senior surplus. In the past, the senior surplus in the

Department ranged between 30 and 70 officers. Recently, State officials have found that senior officers are remaining in surplus status for longer periods than in the past. State officials acknowledged that the senior surplus was indeed a serious problem but that it was not likely to go away because of the factors contributing to it.

According to State officials, some factors influencing the senior surplus are

- stretch assignments,
- past promotion patterns,
- political appointments,
- attrition rates, and
- social conditions.

The Department has long used a practice called stretch assignments whereby Foreign Service members are assigned to positions above or below their personal ranks. In 1981, for example, the Department made over 150 stretch assignments to promising mid-level officers to enable them to exercise added responsibilities and to allow selecting officials a larger cadre of employees from which to choose. This practice, which is discussed in more detail in the following section, is regarded by some officials as one of the more important reasons for the senior surplus problem.

Department of State past promotion patterns have also contributed to the senior surplus. We were told by State officials that in the past, State had overpromoted individuals into the senior ranks or had unevenly clustered too many promotions together.

The shift from career to non-career appointments for some senior presidentially appointed positions in the Department was another factor identified as a cause of the senior surplus. We were told that as more non-career appointments were made, the number of assignments available to career senior officers declined. State documents have noted that since 1981, about 20 positions previously occupied by career Foreign Service members are now filled by non-career appointees.

Attrition rates, considered by some senior State officials as the most important factor contributing to senior surplus, have declined during the past several years. Lower attrition rates are blamed because they reduce the number of officers accepting retirement. The raising of the mandatory retirement age from 60 to 65, the lifting of the pay caps, and recent poor economic conditions contribute to the decline in attrition

rates. Attrition declined at the Department in 1981 and 1982. State officials expect that a large surplus of senior officers is likely to continue until the new time-in-class limits and recent pay increases used for calculating retirement annuities take effect over the next 3 years.

Various social influences have contributed to the senior surplus as well. We were told that some senior officers have difficulty in accepting what are considered less important assignments in Washington, D.C., after serving in more prominent positions overseas. Others are reluctant to accept positions designated below an officer's personal rank. Other difficulties are experienced with senior officers who desire to extend their Washington, D.C., tours because of spousal career considerations, the quality of dependent education, and aging parents.

State officials emphasize that officers are gainfully employed while in a surplus status. They state that senior surplus officers (1) perform duties that State's bureaus have been unable to accomplish with their regular personnel or (2) undertake tasks for which no permanent positions are assigned. For example, some senior surplus officers are assigned to work on Foreign Service examinations, human rights reports, and Iranian asylum case evaluations.

A senior State official has testified before the Congress that the senior surplus problem will be dealt with using the act's authorities. We were told by other State officials that it may be several years before the situation could be improved.

#### Stretch assignments

The Department of State and the other foreign affairs agencies have for some time assigned Foreign Service members to positions classified above or below their personal rank. In accordance with agency needs, it has become an accepted practice for the foreign affairs agencies to fill some senior positions with mid-level officers and some mid-level positions with senior officers. Stretch assignments are also used by some Foreign Service support personnel.

In an effort to monitor agency use of stretch assignments, section 2402 of the act requires that the foreign affairs agencies report annually to the Congress on those stretch assignments that are more than one grade above or below members' personal ranks. The agencies are reporting statistics on stretch assignments for positions two or more grades above or below members' personal ranks.

For a 2-month period in 1983, we reviewed statistics covering all assignments made by the Department. Our analysis revealed that of a total of 786 assignments, only 42, or 5 percent of this total, involved assignments at least two grades



above or below members' personal ranks while 198, or 25 percent, involved assignments at least one grade above or below members' personal ranks.

Because the act does not require that all stretch assignments be identified, current reporting on stretch assignments may not be presenting the Congress with the full extent of its use. State officials with whom we discussed this matter agreed.

#### PROPOSED AMENDMENTS PACKAGE

By late 1982, the foreign affairs agencies, led by the Department of State, had developed a comprehensive package of proposed amendments to the Foreign Service Act of 1980. Before submission to OMB for formal interagency legislative clearance and eventual transmittal to the Congress, the package contained over 50 separate proposed policy, technical, and operational changes to the act designed to improve its administration. These included amendments concerning the administration of the Foreign Service retirement and disability system, calculation of annuities for former spouses, clarification of AID's authority to operate a selection-out system, and administration of salary step increases in special situations. In addition, a number of amendments would represent, if adopted, clear changes in policy. They included

- repeal of the prohibition on payment of overtime for Foreign Service officers and the special differential in lieu of overtime.
- establishment of a new on-call pay system to replace the existing on-call and standby duty pay system, and
- exclusion of members of the Senior Foreign Service from the bargaining units.

With one exception, all the foreign affairs agencies generally agreed on the package being formulated for submission to the Office of Management and Budget. The package that was eventually submitted to OMB for clearance in January 1983 did not include the amendment dealing with the exclusion of Senior Foreign Service members from collective-bargaining units. Even though management officials from all the foreign affairs agencies, except State, supported the amendment, we were told by State officials that a decision has been made by the Secretary of State and the Under Secretary for Management not to include it in the package because the present arrangement promoted stronger unions and because there was a perceived problem in gaining approval of such an amendment in the Congress.

As part of its legislative review process, OMB reviewed the package and distributed it to the Departments of Defense, Justice, Labor, and Education and the Office of Personnel Management for comment. This package was eventually cleared by OMB in April 1983 and was forwarded soon thereafter by State to the Congress.

While OMB and OPM officials did not furnish us with any documentation prepared as part of the clearance process, they did discuss the process and provide their views on the package. For a number of the proposed amendments, both OMB and OPM expressed concerns that (1) some of the supporting material providing the rationale for the amendments was inadequate, (2) the government-wide precedent setting implications were not always considered, and (3) cost estimates furnished were insufficiently supported and did not include calculations for all the foreign affairs agencies.

As a result of these and other concerns, a number of amendments were dropped from the package while several others were substantially modified.

Those dropped amendments included

- travel in relation to the separate maintenance allowance,
- storage of household goods beyond the existing absolute limit of 90 days,
- changing the geographic locations from which travel is paid for children of separated parents,
- advance payment of differentials,
- creation of a new on-call pay system,
- payment of tort claims and malpractice suits arising from incidents overseas,
- provision for payment of attorney fees in separation for cause cases, and
- bringing the Director General of the Foreign Service explicitly under coverage of the Hatch Act.

Among the major modifications made, the amendment concerning within-class salary step increases was rewritten substantially to leave in the statutory time period for step increases and to provide flexibility in awarding quality step increases.

The amendment on conversion rights for former worldwide employees was also rewritten and made more restrictive. In addition, the home service transfer allowance amendment was changed from the initial proposal of 30 days at a foreign post before departure and 60 days in the United States to a maximum of 60 days of any combined foreign post or U.S. transfer use. In commenting on our report draft, the State Department stated that two proposed amendments in the area of domestic transfer allowance and the weight allowance for household effects on official transfers were adopted in the continuing resolution in November 1983.

The approved amendments package which has been forwarded to the Congress contains about 40 proposed amendments. State officials categorized five amendments as "must have" for immediate congressional action. Three of these concern protecting rights of certain Foreign Service employees converting to Civil Service; provident funds for foreign nationals and burial expenses for foreign nationals were recently addressed in the Department of State Authorization Act, Fiscal Years 1984 and 1985. The other two amendments deal with within-class salary step increases and the selection-out authority for AID. The rationale provided to us for these two amendments is discussed below.

#### Eligibility for within-class salary increases

Section 406 of the act presently addresses three points. It provides for (1) regular within-class salary step increases for members of the Foreign Service, (2) the withholding of such increases on the basis of selection board determination that performance, while satisfactory, is at a level below that of most members of the class, and (3) additional salary step increases for meritorious service.

Because of the difference between the Foreign Service performance evaluation cycle and the anniversary dates of promotion into a class, it has been difficult under the present legislative language to reconcile regularly scheduled increases with meritorious increases or to justify the withholding of regular increases on performance grounds. The proposed amendment would make each point the subject of a separate subsection and provide that actions could be keyed to one another or be taken independently as deemed appropriate. In addition, a new proposed subsection would authorize the deferral or withholding of increases for members on leave without pay or in part-time employment and require such withholding or deferral when selection boards determine that an individual's performance is not up to the standard of the class.

#### Selection-out authority for AID

Before the effective date of the Foreign Service Act of 1980, the Department of State had a selection-out procedure for

Foreign Service officers who did not meet standards of performance prescribed by regulation. State's authority for selection out was based on section 633 of the Foreign Service Act of 1946. Selection out was not applicable, however, to State's Foreign Service staff employees. Concurrently, AID had a selection-out procedure applicable, with certain exceptions, to all its Foreign Service employees, including Foreign Service staff employees. However, AID's selection-out authority was based on section 625 of the Foreign Assistance Act of 1961.

Section 608 of the Foreign Service Act of 1980 replaced both former selection-out authorities and applies to Foreign Service career members in all the foreign affairs agencies. However, the new act sought to delay the impact on State's employees who were in a career Foreign Service staff status before its enactment by not making them subject to selection-out for 10 years. To achieve this, the new act exempted career appointees who had not been subject to section 633 of the Foreign Service Act of 1946. Unfortunately, a literal interpretation of the new act could also exempt AID Foreign Service employees who were not subject to section 633 of the Foreign Service Act of 1946 but instead were subject to selection-out procedures under section 625 of the Foreign Assistance Act of 1961.

This amendment corrects a technical defect in the statute by making clear that all AID Foreign Service employees who were subject to selection out under section 625 of the Foreign Assistance Act remain subject to the selection-out provisions of section 608 of the Foreign Service Act of 1980.

## CHAPTER 4

### GAO OBSERVATIONS AND AREAS FOR FUTURE

#### COMMITTEE FOCUS

The Foreign Service Act of 1980 is a comprehensive package which goes a long way toward providing those authorities and provisions for developing an effective Foreign Service system. As discussed in chapter 2, the act provides authorities for a wide range of items governing the administration of the Foreign Service and the needs of members and their families.

This chapter presents our observations on the progress achieved and problems experienced by the foreign affairs agencies in implementing the act. It also discusses specific areas where the Committee may want to focus its attention during oversight hearings on the act.

#### GOOD PROGRESS MADE IN MANY AREAS; MORE PROGRESS NEEDED IN OTHERS

Given the complexity and scope of the act and the short time which has elapsed since it was enacted, we believe that, on balance, the foreign affairs agencies, led by the Department of State, have made good progress in implementing a number of new sections of the act and in generally complying with its overall objectives. In particular, a number of actions taken have improved the morale of Foreign Service members and their families and streamlined the Foreign Service personnel system. Good progress has been achieved in several areas, including

- creation of the Senior Foreign Service,
- establishment of a new Foreign Service pay system,
- reduction in the number of Foreign Service personnel categories, and
- development of numerous new or revised benefits and allowances.

More time and effort will be required to implement other areas of the act. This is particularly true in the conduct of joint negotiations and the development of uniform regulations. Progress in these areas has bogged down, and officials from both the unions and foreign affairs agencies are dissatisfied.

Over the next several years as the act becomes more fully operational, an evaluation of selected programmatic aspects of the act would be particularly helpful to assist the Committee assess the act's impact and effectiveness. In the interim, there are certain areas where Committee attention could be

focused as the Congress performs its oversight responsibility to ensure that the act is being implemented along desired lines. These are discussed below.

#### AREAS DESERVING COMMITTEE ATTENTION

Areas deserving special attention include: (1) labor-management relations, (2) efforts to promote maximum compatibility, (3) compensation, and (4) promotion and retention.

#### Labor-management relations

The Committee may want to identify through oversight hearings what steps, if any, can be taken to alleviate some of the operational and structural problems in the conduct of ongoing joint negotiations and development of uniform regulations. Further examination may produce some proposed modifications which could speed up the pace of ongoing negotiations. While in any new activity start-up problems can be expected, progress being achieved in this area has slowed to a pace where concern is warranted. The many impasses reached and unfair labor practice charges lodged during negotiations also seem to indicate that some changes may be necessary. Foreign affairs agency officials have consistently told the Congress that several years were going to be needed after passage of the act for this process to be essentially completed. It now appears that additional time will be needed before the remaining uniform regulations can be developed, negotiated, and issued. Some officials have suggested that several more years may be required.

The issue of Senior Foreign Service membership in bargaining units represented by Foreign Service unions is expected to receive continued attention by the management of the foreign affairs agencies, as well as by officials in the OMB and OPM. As discussed in chapter 3, there are arguments supporting and opposing continued Senior Foreign Service inclusion in bargaining units. While we did not identify specific examples where conflict of interest had occurred, many officials believe the appearance exists. In addition, the Task Force of the President's Private Sector Survey on Cost Control (Grace Commission) concluded that a conflict of interest is present under the existing arrangement and recommended that the Senior Foreign Service should be excluded from the bargaining unit. Others contend that if union representation of the Senior Foreign Service were disallowed, it would have little effect other than disrupting union membership.

Because of concerns raised by many of the foreign affairs agencies, the Office of Management and Budget, and the Office of Personnel Management, we believe the Committee may want to examine whether the rationale for permitting Senior Foreign Service union membership under the Foreign Service Act of 1980 is still justified. Because this is an issue that will likely

surface again, the Committee may want to explore whether any changes are necessary and, if so, the impact of such changes on labor-management relations in the Foreign Service.

#### Efforts to promote maximum compatibility

Efforts among the foreign affairs agencies to promote maximum compatibility have been achieved mainly through uniform regulations, interagency agreements, and interagency meetings. While foreign affairs agency officials agree on the desirability of greater compatibility, in practice it has generally been achieved only in selected areas.

The act contains language exhorting the need for promoting maximum compatibility, but contains few specific requirements for greater uniformity of policies and operations to take place. The act also makes clear that the authority of the individual agency head to administer the Foreign Service personnel system is in no way diminished. Both factors make the maximum compatibility objectives of the Foreign Service Act of 1980 largely voluntary goals.

Among officials of the foreign affairs agencies, there was no common definition of compatibility, nor had there been any attempt to specify compatibility objectives or to develop a foreign affairs agency compatibility plan. In addition, the Board of the Foreign Service, principally established to carry out some of these objectives and so advise the Secretary of State, has yet to assume its role as envisioned by the Congress.

The Committee may want to identify what progress can be reasonably expected in this area and whether more specific guidance or requirements for developing uniform policies, operating procedures, and consolidated personnel functions are needed. In addition, the Committee may want to determine what role the Board of the Foreign Service can play in promoting compatibility and identify what else can be done by the agencies to achieve the compatibility objectives.

#### Compensation

The performance pay provisions of the act were one of the most difficult areas to implement. As discussed in chapter 3, the unions and foreign affairs management had disagreed over how these provisions should be implemented. As a result, Senior Foreign Service performance pay awards given at USIA were delayed and some presidential Senior Foreign Service performance pay awards were not awarded.

The Committee may want to examine how performance pay in the Senior Foreign Service is administered and consider whether additional clarifying language is needed. There was disagreement over whether performance pay administrative procedures should be

negotiated between the unions and management. USIA and the Department of State have previously maintained that performance pay awards should be determined solely by management and should not be based on binding recommendations by selection boards. Although USIA, AID, and State have negotiated performance pay administrative procedures with their unions, disagreements could resurface without clarifying language.

A recent development may have far-reaching consequences for the Foreign Service personnel system. In April 1983 the U.S. Court of Appeals for the District of Columbia ruled that the Equal Pay Act is applicable to the Foreign Service. In a suit brought against USIA, the court determined that the Equal Pay Act's principle of equal pay for equal work is applicable in Foreign Service sex discrimination complaints. Although USIA argued that the Foreign Service's rank-in-person system allowed employees to be assigned to positions graded differently than their personal rank, the court held that employees should be paid at rates commensurate with equally qualified employees doing equivalent work. The case was returned to District Court for retrial.

While the issue is still pending in the courts, some foreign affairs agency and union officials fear that the Foreign Service assignment process could be disrupted by a final decision unfavorable to USIA. The Committee may want to examine the possible implications of the Court of Appeals decision.

### Promotion and retention

Foreign Service promotion and retention are areas of long-standing congressional concern. One of the most important features of the Foreign Service Act of 1980 is to restore the flow to the promotion and retention process in the Foreign Service personnel system. In the past, too many people were promoted to the upper grades. To help maintain congressional oversight, section 2402 of the act requires the Secretary of State to report annually on actual and expected Foreign Service appointments, promotions, and attrition levels. While the foreign affairs agencies have constructed and reported on their projected flow-through models, there are several areas where congressional focus should be directed.

First, use of the limited career extension mechanism by the Department of State is not scheduled until 1984, while use of this mechanism by the other foreign affairs agencies will occur after 1984. Over the next few years, the Department expects between 65 and 75 percent of its eligible Senior Foreign Service members to receive 3-year career extensions. As these are granted, the Committee may want to examine the rationale used by the Department in conjunction with the number of promotions made, the actual attrition rate, and the continued problems with the senior surplus.



The Committee may also want to examine the use of stretch assignments and statistics in the implementation reports. The act requires the foreign affairs agencies to report on individuals serving in stretch assignments which are more than one grade higher or lower than their personal rank, and the agencies are reporting the information. The Congress may want to direct the agencies to report on all stretch assignments so that a more accurate picture of their use may be presented.

CHARLES H. PERCY, N.L., CHAIRMAN

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## United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, D.C. 20510

October 18, 1982

The Honorable Charles A. Bowsher  
 Comptroller General of the United States  
 Washington, D. C. 20548

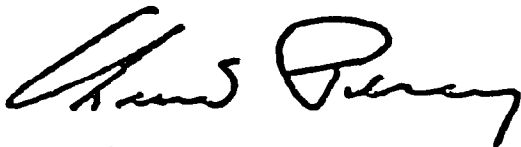
Dear Mr. Bowsher:

On October 17, 1980, the Foreign Service Act of 1980 (P.L. 96-465) was signed into law. As you may know, that law addressed a wide range of issues, including the management of the Foreign Service, the general policy governing Foreign Service appointments, compensation, promotions, retirement, grievances and labor-management relations.

We would appreciate the General Accounting Office providing the Committee with a report on the implementation and effectiveness of that Act with an emphasis on highlighting the problems caused or not addressed by the legislation.

Please have your staff contact Mr. David Keaney (224-4615) or Ms. Nancy Stetson (224-7523) of the Committee staff to discuss the thrust and direction of this study.

Sincerely,



Charles H. Percy  
 Chairman

CHP:gbb



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D. C. 20503

January 4, 1984

Mr. William J. Anderson  
Director, United States  
General Accounting Office  
Washington, D.C. 20548

Dear Mr. Anderson:

On behalf of Director Stockman, I am commenting on your draft report entitled "Foreign Service Act of 1980: Implementation Status, Progress and Problems." I wish to compliment your staff in preparing a thoughtful and generally accurate report on a difficult matter.

The report correctly describes the posture of the Office of Management and Budget on a matter of some importance. Notwithstanding certain differences between the civil service and the foreign service, it is our belief that it is not appropriate for officials of the rank, compensation level, and responsibility of the Senior Foreign Service to be included in labor relations bargaining units.

My staff has informally suggested to your staff that a few changes be made in the sections on the Special Incentive Differential and Family Per Diem and Travel (pages 41-45). The draft's current language implies that OMB unilaterally imposed various restrictions on the use of those two allowances. The limitations were, however, mutually agreed to between OMB and State Department officials during their discussions in December 1980 regarding regulations governing the administration of the new or modified allowances authorized in the Foreign Service Act of 1980. Those discussions were conducted in a constructive manner over a range of regulatory questions and resulted in compromises by both parties on a number of matters.

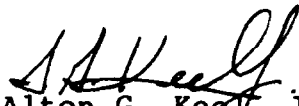
Lastly, I request that the last sentence of the second full paragraph on page 52 be deleted. My staff has assured me that in their discussion with your staff they did not intend to question the judgement of the State Department in seeking the number or kind of amendments to the 1980 Act. We did not agree with

GAO Note: Page numbers have been changed to correspond to page numbers in the final report.

several of the amendments, some of which were dropped or modified during the legislative clearance process as the next few paragraphs of the draft report accurately note. However, we understand why the Department sought a large number of amendments and do not question their judgement in doing so.

I appreciate your courtesy in giving me an opportunity to comment on the draft report.

Sincerely,



Alton G. Keel, Jr.  
Associate Director for  
National Security and  
International Affairs



DEPARTMENT OF STATE  
*Comptroller*  
Washington, DC 20520

13 DEC 1983

Dear Frank:

I am replying to your letter of November 18, 1983, which forwarded copies of the draft report: "Foreign Service Act of 1980: Implementation Status, Progress, and Problems."

The enclosed comments on this report were prepared in the Bureau of Personnel.

We appreciate having had the opportunity to review and comment on the draft report. If I may be of further assistance, I trust you will let me know.

Sincerely,

A handwritten signature in cursive script that reads "Roger".

Roger J. Feldman

Enclosure:  
As stated.

Mr. Frank C. Conahan,  
Director,  
National Security and  
International Affairs Division,  
U.S. General Accounting Office,  
Washington, D.C. 20548

GAO Note: Page numbers have been changed to correspond to page numbers in the final report.

GAO Draft Report: Foreign Service Act of 1980:  
Implementation Status, Progress, and Problems

Department of State Comments

The Department appreciates the opportunity to comment on the draft GAO Report on the Implementation of the Foreign Service Act of 1980. We have worked closely with the representatives of the Comptroller General through the preparation of this report and wish to commend them on their diligence and skill in coming to terms with a very complex subject. While we do not, as will be seen below, agree with their conclusions in every particular, we nevertheless think the report in general is comprehensive, balanced and fair.

We have several general comments. First, there are numerous places in the report where changes have occurred since the initial research was completed. As a consequence, some comments are simply inaccurate in terms of the status of implementation, while others have been overtaken by subsequent events. Ideally, it would be possible to issue reports while they are still current, but if this is not possible, we think it is important to update to the maximum extent possible, so that the Congress and the public are not left with a mistaken impression of the current situation. We will point out specifics of this nature in consultation with Mr. McAnney and his group, since by and large they are merely questions of fact and currency.

A second general point is that in our opinion, the report is focussed excessively on the Department of State, to the exclusion in some cases of the implementation activities of the other foreign affairs agencies.

Two or three examples of changed circumstances which are not reflected in the report but which we think should be warrant specific mention. First, a sizable amount of space in the report is devoted to the new Limited Career Extension mechanism, together with reports on estimates by management and by the unions on the impact of this provision. Since State's selection boards have already identified the number of individuals who will be offered Limited Career Extensions and the number who will not, we see no particular advantage in including the outdated speculations as to what the numbers might be. For information, 26 officers in State were not granted LCE's and thus will leave the Foreign Service not later than June of 1984. For clarification, the report should show that, as a result of moving from quite a long time-in-class limitation at the senior levels under the previous legislation

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to much shorter TIC's with the LCE mechanism under the 1980 Act, a transition period was necessary in order to be fair to employees. Since State already had a functioning TIC mechanism while the other agencies did not, a shorter transition period was needed in the Department than in the other agencies. Thus, there should be no surprise that the first consideration for LCE's did not occur until this year, with those not renewed leaving in 1984, and that the mechanism will not be applied in other agencies until 1985 or later.

Second, the draft report gives considerable attention to discussion of proposed amendments to the Foreign Service Act which have been submitted to Congress, with particular emphasis on five amendments characterized as particularly urgent by the Foreign Affairs agencies. Two of the five were included in identical form and one in a slightly modified version in the State/USIA Authorization Act for 1984 and 1985. The report should take note of this fact, and perhaps consideration of these three amendments in the report does not need to be as extensive as it now is.

Third, there have been several further developments with respect to performance pay for members of the Senior Foreign Service. While the issue remains a difficult one, there has been considerable activity and some progress in the past six months, which perhaps should be reflected in the report.

We also have several other comments which may be of use in preparing the final version of the report, so that it more fully reflects the current situation.

1. With respect to the Special Incentive Differential and the difficulties encountered in implementing it, the description in the draft report is largely accurate although there are one or two steps of importance which have not been included. Because of the emphasis given this particular allowance and benefit problem, the report may also fail to give proper recognition to the fact that the large majority of new authorities provided by the Act in this area are in place and have been so for some time.

2. Changes in the continuing resolution enacted in November have probably made certain of the proposed amendments to the Foreign Service Act unnecessary and references to them should perhaps be modified. These are in the area of the domestic transfer allowance and the weight allowance allowed for household effects on official transfers.

3. Although we have discussed this issue at some length with the team preparing the report, we continue to take exception to

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the suggestion of sharp practice on the part of the Foreign Affairs agencies in the way that "stretch" assignments are reported to the Congress, as required by Section 2402 of the Act. The statutory requirement clearly states that assignments more than one grade above or below personal rank should be reported. This we have done in the two previous years and will do again in February 1984. The research team apparently feels that this does not adequately capture the full nature of the stretch assignment situation because it does not report information on assignments which are only one grade above or below personal rank. We think it is perfectly appropriate to suggest that the Congress might wish to know more about stretch assignments and therefore may wish to modify the statutory language. The implication that we have not fully met the current requirements enacted by Congress is patently unfair and should be removed from the report.

4. The report devotes considerable attention to the issue of achieving maximum compatibility among the agencies authorized to employ the Foreign Service personnel system, and concludes that in general, progress has been modest in this direction. While not disputing this assessment, it must be remembered that the possibility of requiring substantially greater integration of the personnel systems of the several agencies was directly considered by Congress while it was working with the new Foreign Service Act, and the idea was rejected. As a practical matter, absent statutory change which consolidates authority to operate the Foreign Service in a central location, achievement of a greater degree of compatibility will always be very difficult.

5. The report also mentions in two places that the Board of the Foreign Service may not be fulfilling its intended function, since it has not taken formal positions, and has not communicated with the Secretary of State or other agency heads in writing. While this is true, it should be remembered that, unlike the previous Board of the Foreign Service, the new BFS membership contains a number of management representatives of the agencies. Indeed, it was specifically designed to do so, so there would be a direct channel from concerns of "users" of the personnel system to those responsible for managing it. In short, if the official designated by the Secretary of State or other agency head to manage the personnel system is sitting across the table at a BFS meeting, there is arguably less need to communicate formally, with a message that would come to that same official for staffing.

6. The report also devotes considerable attention to the so-called "equal pay" case (Ososky v. Wick), noting that the Court of Appeals decision could jeopardize the Foreign Service



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rank-in-person concept. In fact, the case in question relates to a Foreign Service domestic employee, in what was essentially a rank-in-job situation. Thus the conclusion of the Department's legal staff is that the implications are not nearly as farreaching as the report suggests.

7. While progress on issuing regulations, particularly those which are uniform and therefore require five-agency and three bargaining-unit agreement, has been slower than we would have liked, given the size of the task we are not as pessimistic about the progress as the authors of the report. Moreover, a number of those not yet issued are either under active negotiation with the unions, or in the final stages of management preparation, prior to being submitted to the unions, or were less urgent since existing regulations have remained in place and served adequately pending formal updating.

8. With respect to the chart summarizing the effect of the proposed Special Incentive Differential on pay levels in the Foreign Service (p. 44), we believe the presentation would be clearer if a column were added between the existing third and fourth columns, showing combined base pay and post differential amounts, as limited by the cap. This would give a better reflection of the impact of both the cap and the SID.

9. On page 50, the report states that attrition in the Department of State "is projected to decline for the next several years." We are not aware of the source for this conclusion, which of course is speculative as any such conclusion would be, but our management judgement is that attrition is likely in fact to increase substantially over the next few years (a) as individuals retire with a new "high three" in place, (b) through application of the new TIC and LCE rules, and (c) as the new mandatory retirement age of 65 begins to have an effect (since everyone in the Foreign Service was under age sixty in October 1980, since the mandatory retirement age was 60 at that time, no one will reach the new mandatory retirement age until October 1985, except for a few new hires).

10. On page 52, the report notes that OMB and OPM officials felt that it was a mistake for the foreign affairs agencies to prepare as comprehensive an amendment package as they did. This opinion was never expressed to the agencies by those officials, and in any event the comment is somewhat inconsistent with the argument made by both that there should be additional amendments, especially one eliminating members of the SFS from eligibility to participate in a labor-management relations bargaining unit (see below). We do not think this comment is necessary, and would suggest it be eliminated from the final report.


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12. Perhaps the major issue in the report on which the Department has reached different conclusions from those of the research team is the issue of labor/management relations for the Foreign Service and particularly whether it is appropriate for members of the Senior Foreign Service to retain membership in the bargaining unit. Drawing upon a presumed analogy with the Senior Executive Service, all of whose members are excluded by statute from membership in the bargaining unit, the draft report suggests that it is somehow inappropriate for some members of the Senior Foreign Service to be included. We think that this analogy is a false one, owing to the fundamental differences between the two kinds of personnel systems. Presumably, the purpose of labor-management relations in government is to allow employees, under controlled circumstances, to have some control over the conditions of employment which affect them. In the Foreign Service, many of the most major facets of employment affect both supervisor and subordinate alike, most particularly the rank-in-person promotion and assignment systems. Thus to organize labor-management relations on a principle which fits elsewhere, that of supervisors and subordinates, would be inconsistent in our opinion with the purposes for which employees are allowed to organize. While the report asserts the possibility of conflict of interest if SFS members are in the bargaining unit, it fails to give any examples of how this has occurred, or to differentiate why the SFS is different from other members of the Service who may be serving at a given time as management officials in this respect. On a more technical point, the report should reflect, in its comments on p. 40 about the desirability of a "contract" approach as opposed to "rolling negotiations," that this has been considered desirable for some time by the Department's management, at least for certain areas of negotiable issues. In practice, this has proved to be difficult to do, especially at a time of extraordinary labor-management activity required by the need to implement a virtually new statutory base for the Foreign Service, and to extend it to agencies not previously covered. We hope to be able to move in this direction, once we return to less complicated times.

In conclusion, our evaluation of our progress in implementing the Foreign Service Act of 1980 would be more positive than that suggested in the summary conclusions of the report which begin on page 55. We think we have made substantial progress in virtually all areas, not just "Good progress in some areas," with more progress made in others.

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The Department appreciates the opportunity to comment on the draft report. Should our comments raise additional questions, we would also be happy to provide clarification, in either written or oral form.



Andrew L. Steigman  
Deputy Assistant Secretary  
for Personnel



**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCAL 1812**  
 AFL-CIO  
 U.S. INFORMATION AGENCY  
 400 C STREET, S.W. WASHINGTON, D.C. 20547

January 6, 1984

Mr. Frank C. Conahan  
 Director, National Security and  
 International Affairs Division  
 United States General Accounting Office  
 Washington, D.C. 20548

Dear Sir:

Thank you for the opportunity to meet with Mr. McAnney of your staff to discuss the proposed draft report on the Foreign Service Act of 1980: Implementation Status, Progress, and Problems. In addition to those comments we made orally, please note the following remarks referenced to the Draft Report's pages:

1) Career Ambassadors - p. 30

AFGE shares the concerns of some Foreign Service officers over the number, quality, and kinds of positions to which non-career nominees are being appointed. Furthermore, AFGE is also concerned that because the Committee for career ambassadorial appointments has no USIA representatives, USIA career officers fail to receive equal consideration for ambassadorial appointments with the State Department's officers.

2) Performance Pay - p. 32

This issue has been resolved through a binding settlement agreement of AFGE's unfair labor practice charges. Since both USIA and the Department of State signed this agreement and explicitly recognized therein the negotiability of the performance pay, the issue should not arise again.

3) Difficulties Exist In Administering Salary Step Increase - p. 34

AFGE opposes the proposed amendment on step increases. Rather than seeking a legislative change, the Department should attempt to resolve special circumstances through issuing regulations after completion of negotiations with the unions.

4) Equal Pay Act Is Applied To The Foreign Service - p. 35

AFGE believes that USIA has overstated the impact of Ososky v. Wick, 704 F.2d 1264 (D.C. Cir. 1983) on the Foreign Service. First, Ososky was a Foreign Affairs Specialist employee and under that system she occupied a GS slot and was not subject to the strict rank in person system. Second, the Circuit Court decision clearly allows the government to attempt to justify a pay disparity on the express defenses of 29 U.S.C. section 206(d). The decision is thus not calamitous.

AFGE would oppose any legislative amendment excluding the Foreign Service from the Equal Pay Act.

5) Senior Foreign Service Union Membership - p. 38

First, the Report language does not distinguish between Senior Foreign Service members' right to organize for the purposes of collective bargaining from their right to join a union. The latter is constitutionally protected under NAACP v. Alabama, 357 U.S. 449 (1958).

The Report raises the question of whether the SFS should be organized without any reflection of the Congressional exploration of this issue at the time of the Act's passage. In examining the nature of the Foreign Service, Congress then made a specific decision that supervisors should be included in the bargaining unit on account of the mutuality of interest amongst all officers.

The Report also raises a potential conflict for members holding positions close to high level management.

Such potential conflict is no more serious than in any labor-management setting. It is under the spread practice in the labor-management setting that negotiated benefits and allowances accrue to all personnel regardless of their bargaining unit status. Thus, all negotiated benefits and allowances are issued as regulations affecting all Foreign Service personnel; a change in bargaining unit status for the Senior Foreign Service will not remove the potential conflict of interest but would disenfranchise a significant portion of SFS members.

Finally, while absent the obligation to bargain on performance pay, that dispute would not have been formally pursued by the union, and the history of the performance pay dispute clearly shows USIA intransigence caused the drawn out dispute. The union believes the conflict and ultimate resolution of the issue shows the wisdom and viability of an organized and represented Senior Foreign Service whose concerns can be administratively resolved under the Act.

The Report is incorrect in referring to a need for compatibility with labor-management in the private sector; supervisors in the private sector may be organized and recognized for purposes of collective bargaining.

6) Progress In Joint Negotiations - p. 39

On p. 73, the report notes that at times agreement between the unions cannot be reached. This language is misleading in two ways. First, it is rare that the unions do not, as a matter of practice rather than policy, make the same counter proposal to a management proposal. Second, the Act requires agreement among the agencies on a proposal throughout the negotiating process; the Act does not require agreement or negotiations between the unions and, in fact, preserves representation by agencywide bargaining units.

Finally, as indicated by the next section of the report entitled Several New Or Revised Benefits And Allowances Remain To Be Implemented, agency inaction has been the obstacle to implementation; after three years such issues have not yet reached the bargaining table and other benefits,

although negotiated, have not been fully funded.

7) Foreign Service Promotion And Retention Opportunities Require Continuous Management Action - p.

The Report which indicates that this subject matter was a prime purpose of the Act does not comment on the lack of planning or analysis by the USIA in this area. In fact, in the area of stretch assignments, the USIA policy of advertising positions as Senior Foreign Service, or just Foreign Service and then converting the position grade to the grade corresponding to the rank of the officer assigned to the position, actually disinforms Agency employees - when not reflected in the Agency's annual reports under section 2402 of the Act - and misinforms the Congress of USIA's actual use of stretch assignments. The union unsuccessfully filed an unfair labor practice concerning this change in reporting practice, but has not filed other actions challenging the policy.

We appreciate the opportunity to meet with you concerning the implementation of the Act and the proposed GAO report.

Yours truly,



Frank Chiancone  
Vice President

cc: Kenneth Blaylock  
Norman Painter

UNITED STATES INTERNATIONAL DEVELOPMENT COOPERATION AGENCY  
AGENCY FOR INTERNATIONAL DEVELOPMENT  
WASHINGTON D C 20523

JAN 1 0 1984

Mr. Frank C. Conahan  
Director  
National Security and International  
Affairs Division  
General Accounting Office  
Washington, D. C. 20528

Dear Mr. Conahan:

We have reviewed the draft of your proposed report on implementation of the Foreign Service Act of 1980.

We find the draft report comprehensive, well researched, and balanced in its examination of problems and progress to date. Elements of particular interest to AID include the report's discussion of:

- The Special Incentive Differential and problems which the pay cap creates for higher level AID officers;
- Senior performance pay;
- Participation of Senior Foreign Service members in the bargaining unit, and
- A need to define the practical limits of "maximum compatibility" and "joint negotiations" with bargaining unit(s).

The report's discussion of proposed amendments to the Act, especially those concerning Foreign Service Schedule salary step increases (section 406(a)) and a technical fix clarifying AID selection out authorities (section 2106(e)), were also most welcomed.

The only adjustment we would suggest in the draft report is a minor one. On page 19, there is a reference to "educational travel for children of separated parents." We believe the text meant to acknowledge development of joint or uniform regulations covering two separate allowances under the Act, i.e.

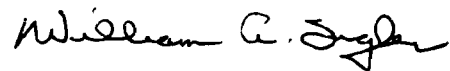
- Travel of children of separated parents (section 901(15)), and
- Educational travel for dependents (section 2308).

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Both allowances are being implemented. AID, however, questions whether the State Department's uniform regulation (3 FAM 699.8) on travel of children of separated parents properly translates what is written in the Act. The final report should show these allowances separately and, perhaps, give the agencies guidance on the intent of Congress regarding section 901(15).

I commend you and your staff for preparing a useful report on a very difficult subject. We are looking forward to publication of the final version.

Sincerely,



William A. Sigler  
Director  
Personnel Management



Washington, D C 20547

December 14, 1983

Dear Mr. Conahan:

Your letter of November 18, 1983 solicited our comments on the draft report entitled "Foreign Service Act of 1980: Implementation Status, Progress and Problems".

In general, we believe the report to be a fair and accurate representation of the actions taken to date to implement the Foreign Service Act by the foreign affairs agencies and more specifically, by the U.S. Information Agency.

Additionally, we offer the following observations, suggestions and corrections for possible inclusion in the report.

1. In the section on Promotion and Retention beginning on page 24 , we would point out that the figures mentioned as Limited Career Extension projections for 1984 relate only to the Department of State. The projections of USIA will be significantly lower.
2. In the section on Performance Pay beginning on page 32 , the history of USIA's position and negotiations with its Union on the issue are correctly outlined, however it may be more accurate to state that USIA's management has altered its position so that now and for the foreseeable future it will subscribe to the view that such awards will be made on the basis of binding recommendations received after colleague review in the Selection Board process.
3. Also in the section on Performance Pay, the third paragraph on page 34 should be revised to read:

"Because the agreement concluded by all the foreign affairs agencies and unions covering Presidential performance awards were only for the 1981-82 rating year, no Presidential performance awards were made for the 1980-81 rating year."

GAO Note: Page Numbers have been changed to correspond to page numbers in the final report.

Mr. Frank C. Conahan  
Director  
National Security and International  
Affairs Division  
United States General Accounting Office  
Washington, D.C. 20548



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4. In the section on Management of the Foreign Service, beginning on page 36, in which the question of compatibility of systems is discussed, we believe that there might be more discussion of the difference between compatibility and uniformity. Also, it is our view that virtually every aspect of USIA Foreign Service personnel administration is compatible if not uniform with that of the Department of State. The number of regulations that are exactly uniform, i.e., common to both agencies, has increased significantly since the passage of the Foreign Service Act and now stands at over fifty.
5. In the section on Progress in Joint Negotiations, the second sentence in the second paragraph on page 40 might be changed to read: "As we indicated in Chapter two, while State, AID and USIA, having unions, need negotiate, representatives from other agencies or agency elements such as USIA's Bureau of Broadcasting (Voice of America), may send representatives to attend the weekly joint negotiations."

We appreciate the opportunity that you have provided us to review and comment on this report. We found our contacts with the members of the General Accounting Office survey team both enjoyable and instructive.

Sincerely,

Woodward Kingman  
Assistant Director for  
Management



United States  
Department of  
Agriculture

Foreign  
Agricultural  
Service

Washington, D. C.  
20250

27 DEC 1980

J. Dexter Peach  
Director  
Resources, Community and Economic  
Development Division  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Peach:

This is in reply to your request for the views of the Department of Agriculture on the draft GAO report, Foreign Service Act of 1980: Implementation Status, Progress, and Problems. The views of the Department expressed in the draft report are correct and adequately cover salient issues.

Thank you for the opportunity to review and comment on the draft report.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard A. Smith".

Richard A. Smith  
Administrator

**AMERICAN  
FOREIGN SERVICE  
ASSOCIATION**

*2101 E Street, Northwest*

*Washington, D. C. 20037 • 338-4045*

January 13, 1984

Mr. Frank C. Conahan  
National Security and  
International Affairs Division  
United States General Accounting Office  
Washington, D.C. 20548

Dear Mr. Conahan:

The American Foreign Service Association welcomes this opportunity to comment on the draft GAO report on the Foreign Service Act of 1980. We at the Association were pleased to work with the auditors and commend their initiative in seeing that we were kept informed at all stages of this report. With one major exception, we believe the report to portray a balanced view of the difficulties that both the Association and Management have faced over the past three years.

The one exception concerns the resurrection of the question of whether the Senior Foreign Service (SFS) belongs in the bargaining unit. We deeply regret that this issue is being raised once again as we believe the ensuing furor will overshadow many other points more worthy of discussion. We are further concerned that this subject has been presented in a one-sided manner and that our comments have not been adequately incorporated into the report.

Summary of our objections:

- The draft does not mention that this subject has been firmly addressed by Congress on numerous occasions.
- The report ignores the uniqueness of the foreign service.
- The report does not address the tested history of success that the inclusion of the SFS in the unit has had for over ten years.
- We are unaware of any knowledgeable individual who supports removing the SFS from the unit. The officers in the SFS (those directly affected) oppose removal, the unions oppose it, the Congress opposes it, the State Department management opposes it, and responsible officials in the other agencies oppose it. We have tried to determine who supports this proposal but the auditors have chosen not to inform us.

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-- From what we can guess, the supporters of this proposal are non-career officials with little or no knowledge of the Foreign Service personnel system who are guided by ideology rather than concern for the well-being of the foreign service. The goal here is union busting--not effective foreign policy.

-- The events of the recent past, such as the fight over performance pay, demonstrate the need the SFS has for protection from transient non-career management officials.

1. The question of whether the Senior Foreign Service belongs in the bargaining unit has been carefully examined numerous times. The report of the House Committee on Foreign Affairs states:

"The Foreign Service is unique within U.S. Government civilian employment systems in its characteristics of rank-in-person, worldwide availability for periodic reassignment and supervisory responsibility reaching into the junior ranks. It is to accommodate a labor relations system to these factors that Chapter 10 does not adopt the approach of title VII of the Civil Service Reform Act, which excludes from the scope of its labor relations program any individual possessing one or more prescribed criteria of supervisory authority.

"Experience under Executive Order 11636, containing a similar definition of management official, has shown this delineation between agency management and the bargaining unit to be workable and constructive. The highly centralized and integrated nature of the Foreign Service personnel system is also conducive to maintaining this delineation."

The Senate came to the same findings and in their report state:

"Section 1012 provides for a single bargaining unit consisting of all Foreign Service employees of each agency affected by this chapter, excluding personnel officers, investigators, and those who audit the work of individuals for certain purposes. Executive Order 11636 contemplated a Department worldwide bargaining unit, a requirement carried forward in this bill because of the highly centralized Foreign Service personnel system and the constant and regular worldwide movement of all Foreign Service personnel.

"The concept of a single agencywide bargaining unit reflects the fact that the most essential features of

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the Foreign Service--promotions by selection boards, worldwide assignability, and special benefits--are applicable to all employees regardless of rank or occupation. Bargaining units embracing only a segment of the Service, whether on a functional, organizational, or geographic basis, would not possess significant stability of personnel to permit effective dealings or efficiency of agency operations. Questions of representation could arise frequently as different individuals were assigned to and from the bargaining unit."

2. The draft GAO report briefly mentions that "many items subject to negotiation relate to conditions of service and not to supervisor-subordinate relationships". This point is central to this discussion and should be more fully addressed. Under the section "Revised and New allowance for foreign service members", the authors list 13 provisions ranging from language incentives to educational travel. Of the 13, 11 apply to everyone - from the most senior members of the service to the most junior. The section on family oriented provisions is even more telling as eight out of eight sections apply across the board, regardless of rank. We would have expected that statistics like these would by themselves make an overwhelming case for retaining the current system.

3. The inclusion of the SFS in the unit is not something new; it has been fact since the creation of the unit. We are unaware of a single instance in which the integrity of a senior officer serving in a management position has been questioned. The report's emphasis on "the potential for conflict of interest" is unjustified and demeaning to career officers now serving at the highest levels in the foreign affairs agencies.

4. The Foreign Service is unlike any Civil Service or any private sector personnel system. Worldwide availability, rank in person, an up or out promotion system, and service discipline set us apart from all others. Those who are familiar with the system, namely those in the service itself, Members of Congress and their staffs, and experienced Washington based personnel have looked carefully at this issue and decided, time and again, that the Foreign Service requires one unit.

5. It is difficult for those who have not worked with the system to understand it. It is much easier to try to impose a preconceived model onto the Service than to try to learn about it. The purpose of those who support removing the SFS from the unit is simple--it is to weaken the union. On this point they are right. It will weaken the union and correspondingly will

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weaken the entire foreign service--a price the proponents of this change seem willing to pay.

6. The history of the past three years has demonstrated the need to protect the SFS from unwise initiatives by management. The union serves as a needed check and balance to insure that the strengths and traditions of the Service are protected. The long running battle which took place over the awarding of performance pay in USIA, in which Management sought to replace demonstrated competence and professionalism with thinly disguised cronyism, is but the most blatant of many such examples.

As I stated at the beginning, we regret that we have been forced to direct our comments to this one matter. We hope that we can bury this and move on to new areas where the Association and Management can work together to improve the Foreign Service.

Sincerely,



Dennis Hays  
President

(462522)







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