

THE  
PUBLIC  
DEFENDER  
SERVICE

*for the District of Columbia*



CHAMPIONS OF LIBERTY

**Testimony of**

**Avis E. Buchanan**

Director

**Public Defender Service for the District of Columbia**

before the

**United States House of Representatives**

Committee on Oversight and Government Reform

Before the Subcommittee on Federal Workforce, Postal  
Service and the District of Columbia

for the hearing entitled

“H.R. 5600: The District of Columbia Court, Offender  
Supervision, Parole, and Public Defender  
Employees Equity Act of 2008”

July 15, 2008

**Statement by Avis E. Buchanan**  
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I am Avis E. Buchanan, Director of the Public Defender Service for the District of Columbia. Thank you for the invitation to testify before the Subcommittee today in support of H.R. 5600, “The District of Columbia Court, Offender Supervision, Parole, and Public Defender Employees Equity Act of 2008.”

The Public Defender Service for the District of Columbia (PDS) is a federally funded, independent organization governed by an eleven-member Board of Trustees. PDS was created by a federal statute<sup>1</sup> enacted to comply with a constitutional mandate to provide defense counsel to indigent individuals.<sup>2</sup> PDS is a federally funded entity as a result of the passage of the Balanced Budget Act of 1997, which, among other things, transferred financial responsibility for the District of Columbia’s court functions to the federal government. As part of that transfer, the employees of the Public Defender Service and other District of Columbia employees affiliated with the city’s justice system became federal government employees solely for purposes of the applicability of several federal employee benefits provisions in Title 5 of the United States Code. One of those benefits – participation in the federal retirement system – is the subject of H.R. 5600.

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<sup>1</sup> Pub. L. No. 91-358, Title III, § 301 (1970); *see also* D.C. Code § 2-1601, *et seq.*, 2001 ed.

<sup>2</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

PDS supports H.R. 5600, as it will eliminate an inequity for certain current and former PDS employees and for certain District of Columbia Courts employees, related to their retirement eligibility. My comments focus on former and current PDS employees, however, the Courts' employees' circumstances are analogous.

PDS employees participated in the Civil Service Retirement System until October 1, 1987, when the District of Columbia reorganized its personnel functions and practices.<sup>3</sup> In addition, the Federal Employees Retirement System (FERS) was created that same year. From October 1, 1987 on, newly hired PDS employees were deemed ineligible to enroll in CSRS or FERS. After the District created the District of Columbia Defined Contribution Plan, PDS employees were permitted to participate in that program. In 1999, the Balanced Budget Act and the technical corrections thereto ended PDS employees' participation in the District's plan and made FERS available to all PDS employees.<sup>4</sup> Currently, these PDS employees do not receive credit toward their federal retirement for any time they worked at PDS between 1987 and 1999.

H.R. 5600 permits PDS employees to count their qualifying years of service to determine eligibility for participation in FERS. These employees have waited several years for this inequity to be addressed.<sup>5</sup> For some, this legislation could make the difference between retiring now and retiring twelve years from now.

PDS suggests that two technical corrections be made to the draft legislation. One correction will allow for consistent treatment for similarly situated PDS employees; the

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<sup>3</sup> See, District of Columbia Government Comprehensive Merit Personnel Act of 1987, 1 D.C. Code § 601.01 *et seq.* 2006 ed.

<sup>4</sup> District of Columbia Courts employees entered FERS in 1997; PDS employees didn't enter FERS until 1999 because PDS's status was not resolved until the passage of the District of Columbia Courts and Justice Technical Corrections Act of 1998 (which amended the Balanced Budget Act); it went into effect on April 11, 1999.

<sup>5</sup> This affects approximately 24 current PDS employees.

other will add clarity to Congress's intent to provide this retirement benefit to those employees.

First, current and former PDS employees who are enrolled in a third federal retirement plan, the "Offset" Civil Service Retirement System, should be included in the group of employees contemplated by H.R. 5600. As noted, the legislation will allow current and former PDS employees to receive credit under FERS for service they performed prior to being covered by the federal retirement provisions. H.R. 5600 does not, however, provide credit toward retirement for the same type of service by PDS employees, who, because they had sufficient prior service under the Civil Service Retirement System,<sup>6</sup> were placed under the CSRS-Offset retirement program, rather than the FERS program. These employees should also receive credit for their qualifying service.

Second, current and former PDS employees should be explicitly referenced in section 2(a) of the legislation; because section 2(a) describes the legislation's intended beneficiaries, an express reference will make clear that current and former PDS employees are contemplated by this provision. Evidence that the legislation is intended to include current and former PDS employees is found in its title and its prefatory language, but section 2(a), which describes the targeted employees, does not mention PDS employees. In order to understand that current and former PDS employees are included in section 2(a), one must refer to three other statutory provisions – one within PDS's authorizing statute, D.C. Code § 2-1605 (c)(1), 2001 ed. (which makes PDS employees federal employees for certain enumerated purposes, including federal retirement), 5 U.S.C. § 8401 (defining "employee" under FERS), and, assuming PDS's

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<sup>6</sup> An employee had to have five years of creditable CSRS service to be eligible for CSRS-Offset.

above-requested amendment is made, 5 U.S.C. §8331 (defining “employee” under CSRS). Neither of the two latter provisions specifically lists PDS. Naming PDS employees in section 2(a) will eliminate the need for reference beyond the “four corners” of the legislation.

With the above-described changes, this Subcommittee will help PDS succeed in accomplishing the long sought-after goal of obtaining for PDS employees appropriate credit toward their federal retirement. I appreciate the opportunity to present this testimony to the Subcommittee.