



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

February 7, 2007

The Honorable Richard B. Cheney
President of the Senate
United States Senate
Washington, DC 20510

Dear Mr. President:

The Office of Personnel Management (OPM) is submitting the enclosed legislative proposal, "To make technical corrections to the process for certification of Federal agencies' performance appraisal systems, and for other purposes." We request that it be referred to the appropriate committee for prompt and favorable consideration.

The draft bill would amend section 5307(d) of title 5, United States Code, to clarify and correct the provisions governing the certification of Federal agencies' performance appraisal systems as making meaningful distinctions based on relative performance. The certification is necessary in order for an agency to have access to a higher limitation on aggregate pay for its senior executives and other senior professionals. The draft bill would make clear that it is the performance appraisal system, not the agency, that must be certified. The bill also would clarify that certification of any agency's performance appraisal system for purposes of authorizing it to apply the higher aggregate pay limitation would be in effect for up to 24 months, beginning on the date of certification, and could be extended by the Director of OPM for up to six months. The provision under current law specifies that certification can be in effect for two calendar years, which has had the unintended consequence of placing agencies at a disadvantage when their appraisal systems are certified near the end of a calendar year.

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

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

Sincerely,

A handwritten signature in blue ink, appearing to read "L. Springer".

Linda M. Springer
Director

Enclosures



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

February 7, 2007

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

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Linda M. Springer
Director

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A BILL

To amend title 5, United States Code, to make technical corrections to the process for certification of Federal agencies' performance appraisal systems, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. This Act may be cited as the "Performance Appraisal Certification Technical Corrections Act of 2007".

Sec. 2. Section 5307(d) of title 5, United States Code, is amended —

(1) in paragraph (2) by striking all after "purposes of" and inserting: "applying the limitation in the calendar year involved, has a performance appraisal system certified under this subsection as making, in its design and application, meaningful distinctions based on relative performance."; and

(2) in paragraph (3)(B)—

(A) by striking all through "2 calendar years" and inserting: "The certification of an agency performance appraisal system under this subsection shall be for a period not to exceed 24 months beginning on the date of certification, unless extended by the Director of the Office of Personnel Management for up to 6 additional months"; and

(B) by striking ", for purposes of either or both of those years,".

Sec. 3. (a) For any certification of a performance appraisal system under section 5307(d) of title 5, United States Code, in effect on the date of enactment of this Act and scheduled to expire at the end of calendar year 2007, the Director of the Office of Personnel Management may provide that such a certification shall be extended without

requiring additional justification by the agency. The expiration of any such extension shall be no later than June 30, 2008, or the first anniversary of the date of the certification, whichever is later.

(b) For any certification of a performance appraisal system under section 5307(d) of title 5, United States Code, in effect on the date of enactment and scheduled to expire at the end of calendar year 2008, the Director of the Office of Personnel Management may provide that such a certification shall be extended without requiring additional justification by the agency. The expiration of any such extension shall be no later than June 30, 2009, or the second anniversary of the date of the certification, whichever is later.

Sec. 4. The amendments made by section 2 of this Act shall take effect on the date of enactment.

SECTION-BY-SECTION ANALYSIS

To accompany a draft bill

“To amend title 5, United States Code, to make technical corrections to the process for certification of Federal agencies’ performance appraisal systems, and for other purposes.”

Section 1 of the draft bill would provide that the bill may be cited as the “Performance Appraisal Certification Technical Corrections Act of 2007.”

Section 2 of the draft bill would amend section 5307(d) of title 5, United States Code, to clarify and correct the provisions governing the certification of an agency’s performance appraisal system as making meaningful distinctions (as designed and applied) based on relative performance. The certification is necessary in order for an agency to have access to a higher limitation on aggregate pay for its senior executives and other senior professionals. Without certification, an employee of the agency is limited, in terms of the total basic pay (including allowances, differentials, bonuses, awards, or similar cash payments) paid in a calendar year to the annual rate of basic pay payable for level I of the Executive Schedule, the rate for heads of departments and comparable agencies. With certification, the agency would be able to apply a higher aggregate limitation (the Vice President’s salary).

Paragraph (1) of section 2 of the draft bill would amend paragraph (2) of 5 U.S.C. 5307(d) to clarify that it is the performance appraisal system, not the agency, that must be certified.

Paragraph (2) of section 2 would amend paragraph (3)(B) of 5 U.S.C. 5307(d) to provide that certification of an agency’s performance appraisal system for purposes of authorizing it to apply the higher aggregate limitation under section 5307 would be in effect for up to 24 months, beginning on the date of certification, and could be extended by the Director of the Office of Personnel Management for up to 6 months. The current provision specifying that the certification is in effect for 2 calendar years has placed agencies at an unintended disadvantage when their appraisal systems are certified near the end of a calendar year.

Section 3 of the draft bill would address the treatment of agency performance appraisal systems that have been certified under 5 U.S.C. 5307(d) prior to the date of enactment of the draft bill, where the certification is scheduled to expire either at the end of calendar year 2007 or 2008. Section 3 would permit the Director of the Office of Personnel Management to extend such certifications without requiring additional justification from the agency. In the case of such certifications scheduled to expire at the end of 2007, the extension could be up to the later of June 30, 2008, or the first anniversary of the certification. In the case of such certifications scheduled to expire at the end of 2008, the

extension could be up to June 30, 2009, or the second anniversary of the certification, whichever is later.

Section 4 of the draft bill would provide that the amendments made by section 2 of the bill would take effective on the date of enactment.